Title IX

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Title IX of the Education Amendments of 1972
20 U.S.C. §1681 et seq.,

“No person in the United States shall, on the basis of sex, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any education programs or activity receiving Federal Financial Assistance.”
Title IX

Prohibits sex discrimination

Includes all forms of **Sexual Misconduct:**

- Sexual violence
- Stalking*
- Domestic violence*
- Dating Violence*
- Sexual harassment

Prohibits gender-based discrimination

Includes bullying and discriminatory sex stereotyping

Harassment of gender non-conforming students

Prohibits Retaliation
Once institution knows or reasonably should know about sex-based discrimination, the institution must take immediate and corrective action to:

- Eliminate harassment
- Prevent recurrence
- Address effects of harassment

Title IX requires adequate, reliable, and impartial investigations that are conducted by *investigators with sufficient experience or training*. 
Concepts and Definitions
Gender-based Harassment: unwelcome conduct based on sex or harassing conduct based on failure to conform to sex stereotypes (for example, harassing behavior directed at or about a person or group that does not conform to stereotypical assumptions and/or expectations about how someone of a certain sex should dress, behave, etc).
Sexual misconduct can occur in many forms, including, but not limited to, sexual harassment, non-consensual sexual contact (or attempts to commit same), non-consensual sexual intercourse (or attempts to commit same), rape, sexual violence, intimate partner violence, sexual exploitation, and stalking. Sexual misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can be committed by persons of any gender or sex, and it can occur between people of the same or different sex.
Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment may include, for example, an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention or advances; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence or sexual assault; intimate partner violence; stalking; and gender-based bullying. Sexual violence is a form of sexual harassment.
Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by this policy and Title IX.
Stalking

Stalking refers to:

(i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) Fear for the person’s safety or the safety of others; or (B) Suffer substantial emotional distress.

(ii) For the purposes of this definition-- (A) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property. (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
Sexual Exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Any act that is sexual in nature when such an act is likely to threaten any party’s health and/or safety without his/her knowing and valid consent. This includes, but is not limited to, any act that may reasonably be expected to transmit HIV or other sexually transmitted diseases and is performed when either party has failed to divulge his/her infection with such a disease;
- Exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.
Relationship violence (also known as “Intimate Partner Violence”) is physically, sexually and/or psychologically abusive behavior used by one individual to maintain power and control over an intimate partner. Intimate partner relationships are relationships between parties who are dating, cohabitating, married, separated or divorced. Relationship violence can occur in same- or opposite-sex relationships.
Non-Consensual Sexual Contact is any intentional sexual touching by a person upon a person that is without consent and/or by force. Sexual Contact includes, but is not limited to, intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice, with any object.
Non-Consensual Sexual Intercourse is any sexual intercourse by a person upon a person, which is without consent and/or by force. Intercourse includes, but is not limited to, vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.
Rape is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
Consent

An agreement that is informed and given freely. Consent must be clearly communicated through words and/or actions, to participate in each form of sexual activity. Silence cannot be interpreted as consent, nor can passivity or lack of resistance. Previous relationships or instances of consent do not imply future consent. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Impairment due to the use of alcohol or drugs does not excuse failure to obtain consent. Likewise, any person incapacitated by alcohol or drug use, or who is unconscious, asleep or physically impaired is incapable of giving consent. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.
Confidentiality

Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are not required by Title IX to report any information regarding an incident of alleged sexual violence to the Title IX coordinator or other appropriate school designee.
Coercion

It is inappropriate pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When a person makes clear that they do not want sex, wants to stop, or that going past a certain point of sexual interaction is unwanted, continued pressure beyond that point can be coercive.
Incapacitation can result from mental disability, sleep, involuntary physical restraint, or from intentional or unintentional taking of alcohol and/or other drugs. An incapacitated person does not have the ability to give knowing consent. Sexual activity with a person who one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated, constitutes a violation of this policy. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of the use of alcohol and/or drugs on another’s ability to give consent.
Retaliation is any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of sexual misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.
I. Hearing Panel as Decision-Maker

1. Investigator
   - Submits
   - Investigation
2. Investigative Report
   - to the
3. Hearing Panel
   - Evaluation
   - Sanctioning
4. Notice of Outcome

Note: Circled steps in the process indicate that the investigator or adjudicator communicates directly with both parties.
Many cases boil down to the issue of consent. If the Complainant and/or Respondent were impaired, panel must evaluate whether there was consent.

Panel members will need to weigh the credibility of conflicting accounts. You might consider:

- Which account makes more logical sense?
- Could the individuals have seen or heard what they claimed?
- Does one account offer reasonable explanations for the major inconsistencies between the versions?
- How general or detailed were the statements and testimony?
- What reasons might either party have to lie or exaggerate?
- Has either party offered a plausible explanation of why the other party might be lying or mistaken?
- What corroboration exists?
Myths and Stereotypes

- A true victim of sexual assault will complain immediately to family, friends or police
- Sexual assault occurs outdoors, at night, between strangers
- Sexual assault is an expression of misplaced sexual desire
- Women commonly make false reports of rape against men
- If someone previously consented to intercourse with a partner, the partner can fairly assume consent on later occasions
Some victims show little to no physical resistance
  – Surprised or confused
  – Frozen with fright
  – Fear of physical injuries
  – Intimidated into passivity
  – Under the influence of drugs or alcohol

Feelings of care or respect for abuser
Your “Job”

- To determine whether, by a “preponderance of the evidence,” there has been a policy violation
  - Not looking for 100% sure
  - Not a criminal court
  - Not “guilty” or “innocent”
  - Testimony is evidence (not looking for the “smoking gun”
Judicial Temperament –
Hear the case before deciding it

- Follow the facts wherever they lead, regardless of ideological predispositions
- Allegations usually highly charged, emotions are running high
  - Set the tone for the hearing, ensure all parties are treated with fairness, sensitivity and compassion
  - Not prosecutorial in tone and manner
  - Must ask questions about sexual matters in a respectful, neutral and calm manner
Prepare Your Questions

- Will the answer to this particular question help me to understand if a violation of policy occurred?
- How will the answer to this question illuminate whether or not a person’s behavior meets the definition of a violation?
- Does the information I am attempting to elicit serve my curiosity about the person or the incident? Or, does it help the panel make a decision?