



*Sex Discrimination, Sexual Harassment & Sexual Misconduct  
Prevention In Educational Programs and Employment*

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# Sex Discrimination, Sexual Harassment, and Sexual Misconduct

## Workshop Agenda

- ▶ Title IX, Title VII and Negligence defined
- ▶ Organization's Responsibility & Liability
- ▶ Sexual Harassment: Distinctions between Employee Matters and Student Matters
- ▶ Investigation Overview
- ▶ What Next?
- ▶ Prevention Measures
- ▶ No Retaliation
- ▶ Hypotheticals

# Compliance is Everyone's Responsibility!



# What is Title IX?

Prohibition against discrimination:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or **activity receiving Federal financial assistance...***

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688; & C.F.R. Part 106).

# Title VII of the Civil Rights Act of 1964

Section 2000e-2. [Section 703]

## (a) Employer practices

It shall be an unlawful employment practice for an employer—

- ▶ (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex (including pregnancy, sexual orientation, and gender identity, or national origin; [also included are age [40 or older], disability, and genetic information [including family medical history]).
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race., color, religion, sex, or national origin.

# Negligence

*“Failure to use reasonable care, resulting in damage or injury to another.”*

4 Elements:

- (1) **Duty of care:** A duty of care is essentially an obligation that one party has toward another party to exercise a reasonable level of care given the circumstances.
- (2) **A Breach of Duty**
- (3) **Causation**
- (4) **Damages**



# Institution's Liability:

- ▶ If the Organization has not taken reasonable steps to prevent harm to others, there could be liability;
- ▶ If the Organization has notice of a sexually hostile environment and does not take corrective action, there could be liability.
- ▶ Liability attaches if the Organization **knew or should have known of the harm (harassment)** and failed to take steps to prevent the harm and its recurrence.





# Institution's Responsibility:

- ▶ The Institution must:
  - Prevent discrimination and harassment
  - Prevent reoccurrence
  - Address effects
  - Prevent retaliation





# To Whom Does Title IX Apply?

- ▶ Students
- ▶ Program Participants
- ▶ Board Members
- ▶ Employees
- ▶ Volunteers
- ▶ Subcontractors/Vendors
- ▶ Guests/Visitors



# What is Sexual Harassment (Employees)

- ▶ Sexual harassment includes, but is not limited to, making unwanted sexual advances and requests for sexual favors where either:
  - ▶ (1) Submission to such conduct is made an explicit or implicit term or condition of employment, or
  - ▶ (2) Submission to or rejection of such conduct by an individual is used as the basis of employment decision affecting such individual; or
  - ▶ (3) Such conduct is sufficiently severe, persistent, **or** pervasive to interfere with one's work or educational performance creating an intimidating, hostile, or offensive work environment, or interfering with or limiting one's ability to participate in or to benefit from a program or activity



# Sexual Harassment



## *Quid Pro Quo* -

An employee/student of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

## *Hostile Environment* -

Unwelcome conduct (verbal or nonverbal) determined by a reasonable person to be so severe, pervasive or objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;

# Sexual Harassment (Student on Student)

Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes) determined by a Reasonable Person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to participate in or to benefit from an institutional education program or activity.



# Examples of Unlawful Harassment

- ❑ Verbal conduct such as epithets, derogatory jokes or comments, slurs or unwanted sexual advances, invitations or comments.
- ❑ Visual conduct such as derogatory and/or sexually oriented posters, photography, cartoons, drawings, e-mail and faxes or gestures.
- ❑ Physical conduct such as assault, unwanted touching, blocking normal movement or interfering with work directed at an employee because of the employee's sex or other protected characteristic.
- ❑ Threats and demands to submit to sexual requests in order to keep one's job or avoid some other loss, and offers of employment benefits in return for sexual favors.
- ❑ Retaliation for having reported or threatened to report unlawful harassment.



# Chippendales Dancers Screensaver



# What is Sexual Harassment?

- ▶ Unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.
- ▶ It also can include offensive remarks about a person's gender.
- ▶ Both the victim and the harasser can be either a woman or a man.
- ▶ And the victim and harasser can be the same sex.
- ▶ The harasser can be the victim's supervisor, a manager in another area, a co-worker, or even someone who is not an employee, such as a board member, volunteer, donor or vendor.



# Take Action and Investigate Complaints

- ▶ An employee, or participant, or other person who believes he or she has been harassed by a another student, co-worker, supervisor, or agent of the organization, or by a nonemployee, should promptly **report the facts** of the incident or incidents and **the names of the individual(s)** involved to the **Title IX Coordinator, to his or her supervisor, or in the alternative, or to the Director of Human Resources.**
- ▶ Upon receipt of a complaint, the Institution must undertake a prompt, thorough, objective and good faith investigation of the harassment allegations using a **trained investigator.**
- ▶ Standard of review: “Preponderance of the evidence” **NOT** “Beyond a reasonable doubt.”



# If Harassment has Occurred



- ▶ If the organization determines that harassment has occurred, **effective remedial action** should be taken in accordance with the circumstances involved.
- ▶ Any employee determined by the organization to be responsible for harassment will be subject to appropriate disciplinary action, up to and including termination of employment.

# Retaliation

- ▶ Employees or students will not be retaliated against for filing a complaint and/or assisting in a complaint or investigation process.
- ▶ Further, the organization will not tolerate or permit retaliation by supervisors or co-workers against any complainant or anyone assisting in a harassment investigation.



# Harassment



Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted or removed from the program).



# Key Categories of Prohibited Conduct

**Dating Violence** - Violence by a person who is or has been in a romantic or intimate relationship.

**Domestic Violence**—Violence by a current or former spouse or intimate partner, co-parent, living partner, youth, or other under state law.

**Sexual Assault** - A forcible or non-forcible sex offense under the FBI Uniform Crime Reporting System (Non-consensual sexual contact and non-consensual sexual penetration). Sexual assaults consist of any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- ▶ Rape
- ▶ Attempted Rape
- ▶ Sodomy
- ▶ Fondling
- ▶ Statutory Rape

# Prohibited Conduct Cont'd

- ▶ **Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
- ▶ **Sexual Exploitation** - Taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit or for the benefit or advantage of anyone other than the one being exploited.
  - Invasion of sexual privacy.
  - Prostituting another individual.
  - Non-consensual photos, video, or audio of sexual activity.
  - Non-consensual distribution of photo, video, or audio of sexual activity, even if the sexual activity or capturing of their activity was consensual;
  - Intentional observation of nonconsenting individuals who are partially undressed, naked, or engaged in sexual acts;
  - Knowingly transmitting an STD or HIV to another individual through sexual activity;
  - Intentionally and inappropriately exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances; and/or
  - Sexually-based bullying

# What Can We do to prevent Sexual Harassment

- ❑ Focus on Culture
  - Respect and accountability
- ❑ Policies and Procedures
  - Prohibiting harassment and retaliation
- ❑ Training and Education
  - Build awareness of policies and procedures
- ❑ Orientation
  - Set expectations for ethical conduct





# Building a Consent Culture

## Trevor Noah on Building a Consent Culture

<https://www.youtube.com/watch?v=Tifu2g7bgY8>



# Reporting Sexual Harassment

Employees and Volunteers should know that they can report instances of sexual harassment in a safe way.

- Easy to understand, not too burdensome;
- Accessible;
- Everyone knows how to file a complaint;
- Does not require complaint in writing;
- All complaints investigated; all complaints taken seriously;
- More than one individual to receive complaints;
- Perhaps a 3<sup>rd</sup> party reporting system, such as a hotline that lets employees anonymously report suspected behavior;
- Respond to all reports/complaints;



# Investigating and Responding to Allegations

- ▶ Respond immediately to allegations of harassment;
- ▶ Seek legal assistance if needed; Contact local police if appropriate.
- ▶ Insurance carrier?
- ▶ Swift, fair, thorough and documented investigations;
- ▶ Consistency; Follow written policy and procedures;
- ▶ Due process;

# Next Steps

- ▶ After investigation:
  - Determine any consequences for the alleged victim and alleged harasser going forward;
  - Communicate with all involved;
  - Avoid retaliation; including toward witnesses;
  - Levy appropriate discipline, if any;
  - Written summary shared with the alleged victim/harasser involved and the Board;
  - Be prepared for further action should either party not agree with outcome;



# Hypothetical #1

- ▶ Eve Thompson is a participant in the Young Author Project, but she has not been seen in the program the last 2 or 3 sessions. According to her classmate, Siena, Eve and her boyfriend, Kurtis (also a participant), would take off in Kurtis' car at the beginning of the session, then return just as the session was ending and Eve would then get a ride home with Siena.
- ▶ Last Tuesday, the Site Coordinator noticed that Eve was crying when she entered the room. When the Site Coordinator asked her what was wrong, Eve said that she'd fallen on the steps outside the site, and possibly broken her hand. Eve said she tripped on her shoe string and tried to catch her fall with her hand. The Site Coordinator noticed that Eve made movements as if more than her hand was hurting. Eve said she had decided that she and Kurtis needed to take a break.
- ▶ What should the Site Coordinator do, if anything?

# Hypothetical #1

- ▶ Eve Thompson is a participant in Upward Bound, but she has not been seen in the program the last 2 or 3 sessions. According to her classmate, Siena, Eve and her boyfriend, Kurtis (also a participant), would take off in Kurtis' car at the beginning of the session, then return just as the session was ending and Eve would then get a ride home with Siena.
- ▶ Last Saturday, the Upward Bound Coordinator noticed that Eve was crying when she entered the room. When the Coordinator asked her what was wrong, Eve said that she'd fallen on the steps outside the building, and possibly broken her hand. Eve said she tripped on her shoe string and tried to catch her fall with her hand. The Coordinator noticed that Eve made movements as if more than her hand was hurting. Eve said she had decided that she and Kurtis needed to take a break.
- ▶ What should the Upward Bound Coordinator do, if anything?

# Hypothetical #2

- ▶ On Monday, Tracey arrived at Deep for a 912 Freedom School session in an Uber. She was clearly upset. The facilitator saw that she was upset, and asked her to step over to the side. She said she just wanted to tell the facilitator what a crappy day she had. She said, she almost did not make it to the session because one of her high school teachers had volunteered to help her with her calculus after school, so she stayed. She said the teacher cornered her in the closet and put his hands all over her. She said she barely escaped. She did not want to tell her parents because they would probably not let her do any afterschool activities, including the 912 Freedom School.
- ▶ What counsel do you have for Tracey?
- ▶ What is Deep's responsibility, if any?



# Hypothetical #2

- ▶ On Monday, Tracey (who is a freshman) arrived at SSU Campus for an Upward Bound Saturday study session in an Uber. She was clearly upset. The facilitator saw that she was upset, and asked her to step over to the side. She said she just wanted to tell the facilitator what a crappy day she had. She said, she almost did not make it to the session because one of her high school teachers had volunteered to help her with her college calculus after school and on Saturday mornings. She said the teacher cornered her in the closet and put his hands all over her. She said she barely escaped. She did not want to tell her parents because they would probably not let her do any campus activities, including football games, because they could not come with her.
- ▶ What counsel do you have for Tracey?
- ▶ What is SSU's responsibility, if any?

# Hypothetical #3

- ▶ It is no secret that Janie and Sandi are not friends. They have had shouting matches, and at one point, were competing with each other on Instagram. They have many mutual friends since they attend the same middle school.
- ▶ Earlier in the afternoon, one of the “mutual friends” told a university volunteer that there will likely be a fight soon because Janie was sharing intimate photos of Sandi on social media. Janie received the photos from Sandi’s ex-boyfriend with whom she had just broken up. The ex-boyfriend attends Savannah Tech. He apparently convinced Sandi to disrobe and send him the photos. Janie was now sharing the photos with anyone who would take the time to view them. The “mutual friend” said that she received the photos in her in-box just a few minutes ago.
- ▶ You are the Volunteer; what do you do?

# Hypothetical #4

- ▶ Jonathan and Gabrielle are both Gear UP staffers. Jonathan has been on the staff for 5 years, and has held several positions, including Manager of Student Volunteers. Gabrielle worked as a student volunteer for 2 years, then was hired as a permanent employee. Gabrielle recently shared with Cynthia, a current volunteer, that she (Cynthia) should never, ever, sleep with Jonathan. That he has a habit of taking advantage of the volunteers, promising them permanent jobs if they “work with him.” “He is just a player.”
- ▶ Cynthia told her Mom that she did not want to return to SSS because the Volunteer Manager was sexually harassing her.
- ▶ The Mom called the Director. What next?



teasing RUMORS  
gossiping

insults

threats

**CYBER BULLYING**

LIES

name-calling

harassment

mean

words