



TITLE IX CAMPUS SUMMIT

SAVANNAH STATE UNIVERSITY
Office of Title IX Compliance
Summer 2022

Title IX Regulations: Timeline

OCR's "Dear Colleague" Letter

2011

2014

Obama Administration Changes

Trump Administration Changes

2020

The Role of the Title IX Coordinator

- Oversee and Coordinate all Title IX responsibilities on SSU campus
 - --Compliance
 - --Prevention & Awareness
 - --Training
 - --Investigations
 - --Data Collection & Reporting
- Serve as an impartial representative of the institution:
 - --Ensure involved parties are treated equitably throughout the process
 - --Avoid prejudging the facts of a matter prior to the conclusion of the process
 - --Avoid conflicts of interest and bias
 - Recuse yourself and others as necessary



What Has Changed?

- Definitions of Prohibited Conduct
- Title IX Jurisdiction
- Provisions on Retaliation, Amnesty, False Statements
- Role of Advisors
- Adjudication Process
- Timeframe for Completion
- More...



Retaliation – Regulation Definition

§106.71 Retaliation

- **Retaliation prohibited.** No Recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...
- ...Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.



Retaliation

§106.71 Retaliation.

- The Recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder... Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under §106.8(c).

Specific circumstances.

- (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.
- (2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.



Role of Institution-Appointed Advisors

- Parties have the right to have an Advisor of their choice to assist them throughout the process, to include attending any meetings and interviews
- No mandate to provide an Advisor to the parties at the outset of the process
- If party does not have an Advisor at the hearing, the institution must provide an Advisor to conduct the cross-examination on behalf of the party during the live hearing
- Must be provided at no cost to the party
- No mandate to train Advisors however, it is advisable to do so for all institution-appointed Advisors



Cross-examination during hearing

Informal Resolution – Title IX Regulations

The Title IX regulations include a provision that encourages informal resolution, and it is a worthy practice, when voluntary

- **Informal resolution** is not defined
- Regulations specify:
 - ■ Formal complaint required
 - ■ Allowed at any time prior to a final determination at discretion of Title IX Coordinator
 - ■ Voluntary, written consent of the parties
 - ■ Not available for allegations of employee on student harassment
 - ■ Must still stop, prevent, remedy, and document response



What Has Remained the Same?

- Scope of Sexual Misconduct
- Jurisdictional reach of Sexual Misconduct
- Responsible/Confidential/Privileged Employee designations
- Definition of consent and incapacitation
- Standard of evidence
- System Office oversight
- Support services, interim measures



Reporting Prohibited Conduct

Effective Date

- According to the Dept. of Education, the Final rule is proactive from August 14, 2020, and will be enforced as such
- BOR Policy effective August 11, 2020
 - allegations reported and occurring before: Previous policy
 - allegations reported and occurring after: Current policy

Title IX Sexual Harassment (106.30)

- Conduct on the basis of sex that satisfies one or more of the following:
 - --(i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
 - --(ii) **Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity;** or
 - --(iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA.

Key Categories of Prohibited Conduct

Sexual Misconduct

- Dating Violence
- Domestic Violence
- Sexual Exploitation
- Sexual Harassment [Under Title IX & Title VII]
- Stalking
- Nonconsensual Sexual Contact
- Nonconsensual Sexual Penetration

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

Sexual Harassment (Other)

Unwelcome verbal, nonverbal, or physical conduct, *based on sex* (including gender stereotypes) that may be any of the following:

- Implicitly or explicitly a term or condition of employment status in a course program or activity
- A **basis for** employment or education decisions; OR
- Sufficiently severe, persistent, or pervasive to interfere with one's work or education performance creating an **intimidating, hostile, or offensive** work environment.
- Note: Behavior may rise to the level of a Title IX violation

Nonconsensual Sexual Contact

Any physical contact with another person of a sexual nature without the person's consent.

Includes:

- Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- Touching a person with one's own intimate parts; or
- Forcing a person to touch his or her own or another person's intimate parts

Nonconsensual Sexual Penetration

Any penetration of another's body parts without the person's consent.

Includes:

- Penetration of the vagina, anus, or mouth by a penis, object, tongue, finger, or other body part
- Contact between the mouth of one person and the genitals or anus of another person.

Jurisdiction

Title IX

Institution's program or activity the United States

- Institution Property
- Institution sponsored or affiliated events (substantial control is key)
- Buildings owned or controlled by officially recognized student organizations.

Sexual Misconduct

- Institution property
- Institution-sponsored or affiliated events
- Off-campus as defined by the institution
- policies

- Domestic or abroad

Required Response to a Report (106.44(a))

- Title IX Coordinator must promptly contact the Complainant to discuss:
 - Availability and consideration of supportive measures
 - Process for filing a complaint

Who Does Title IX Apply to?

- Students
- Employees
 - Faculty
 - Staff
- Administrators
- Subcontractors/Vendors
- Guests/Visitors



Terminology -- Violations

- **Sex Discrimination** - Discrimination based on sex, including sexual orientation and gender identity in educational programs and activities;
- **Sexual Harassment**—conduct on the basis of sex prohibited by Title IX:
 - **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, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or

Terminology -- Violations

- Sexual Harassment (cont.)
 - Clery Statutes:
 - 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. 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
 - Stalking - Interference with the peace and/or safety of a person; pattern of behavior which makes an individual feel afraid, nervous or harassed.

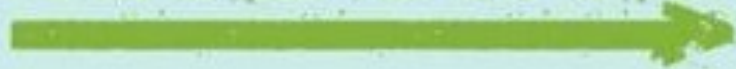
CONSENT IS:

CLEAR

COHERENT

WILLING

ONGOING



CLEAR

Consent is active.

It's expressed through words or actions that create mutually understandable permission.

Consent is never implied, and the absence of a no is not a yes.

Silence is NOT consent.

"I'm not sure," "I don't know," "Maybe" and similar phrases are NOT consent.

COHERENT

People incapacitated by drugs or alcohol cannot consent.

Someone who cannot make rational, reasonable decisions because she or he lacks the capacity to understand the "who, what, when, where, why or how" of the situation cannot consent.

People who are asleep or in another vulnerable position cannot consent.

WILLING

Consent is never given under pressure.

Consent is not obtained through psychological or emotional manipulation.

Consent cannot be obtained through physical violence or threat.

Someone in an unbalanced power situation (i.e. someone under your authority) cannot consent.

ONGOING

Consent must be granted every time.

Consent must be obtained at each step of physical intimacy. If someone consents to one sexual activity, she or he may or may not be willing to go further.

Terminology - Process

- **Actual knowledge** – notice of sexual harassment or allegations of sexual harassment to a University Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.
- **Complainant** – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Formal complaint** – a document filed and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

Terminology - Process

- **Retaliation** - Intimidating, threatening, coercing or discriminating against a person for the purpose of interfering with rights or privileges. Includes:
 - Lowering grades
 - Preventing student from participating in activities or programs
 - Threatening or taking disciplinary action (suspension/expulsion)
- **Respondent**- an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Terminology - Process

- **Supportive Measures** - non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's education environment, or deter sexual harassment

Terminology - Process

Supportive measures (cont.)

- May include counseling, extensions of deadlines, or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

Terminology - Process

- **Emergency removal** - removing a respondent from the University's education programs or activities on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- **Administrative leave** - placing a non-student employee respondent on administrative leave during the pendency of a grievance process.

Covered Activities

- On Campus
- University sponsored activities (on or off campus)
- Conferences
- Internships
- Alumni Activities



Covered Activities

- Where the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.
- Does not apply to activities outside of the United States and its territories.



Roles and Responsibilities

- **University**

- Where University has **actual knowledge** of sexual harassment in an education program or activity of the University against a person in the United States, the University must **respond promptly** in a manner that is not deliberately indifferent. A University is **deliberately indifferent** only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- **Complainants and respondents are treated equitably** by offering supportive measures and by following a grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures.

Roles and Responsibilities

- **Title IX Coordinator**

- Coordinates University's efforts to comply with Title IX



- Title IX Deputy Coordinator**

- Coordinates the effective implementation of supportive measures;



Duty to Report

- A **responsible employee** includes any employee so designated by the University
 - Has the authority to take action to redress the harassment
 - Has the duty to report harassment or other types of misconduct to appropriate officials
 - Any SSU Vice President or Dean are considered responsible employees



Who Can Report

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment.)



How To Report

Report may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.



Title IX Reporting

Flora B. Devine, Esq.

Title IX Coordinator

Suite 205, Colston Administration Bldg.

TitleIXReporting@savannahstate.edu

<https://www.savannahstate.edu/Title-IX/documents/Sexual-Misconduct-Report-Form.pdf>

912-358-4055 (Phone)

When To Report

The report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.



Resources

- [SSU/USG Title IX Policy](#)
- [SSU Sexual Misconduct Report Form](#)
- [Know Your IX College Resources](#)
- [NYU Consent](#)
- [College of Charleston Bystander](#)
- [The Bystander Effect](#)
- [Trevor Noah on Building a Consent Culture](#)

Thank You!

Contact:

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