

Title IX

Mandatory Reporting

Title IX states:

“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
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

Sexual Harassment:

(a) As used in this part:

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in § 106.8(a).

Sexual Harassment:

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent. The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

Sexual Harassment:

Formal complaint means a document filed 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. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under § 106.8(a), and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under § 106.45, and must comply with the requirements of this part, including § 106.45(b)(1)(iii).

Sexual Harrasment:

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;(2) Unwelcome conduct 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(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Sexual Harrassment:

Supportive measures means 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 recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Supportive measures 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 recipient 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. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

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graph TD; A["Dr. Travis Frampton  
Title IX Coordinator"] --- B["Trish Snow  
Deputy Coordinator  
for Students"]; A --- C["Dr. Bill Davis  
Deputy Coordinator  
For Employee and Faculty"]
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Dr. Travis Frampton
Title IX Coordinator

Trish Snow
Deputy Coordinator
for Students

Dr. Bill Davis
Deputy Coordinator
For Employee and Faculty

Title IX Background

- Dear Colleague Letter
 - Title IX Compliance
 - Policy, infrastructure, prevention/education/response
- Cleary
 - Reporting Crime Stats

Title IX Background

- Violence Against Women Act (VAWA)
 - Applies to women and men
 - Domestic violence
 - Dating violence
 - Sexual assault
 - Stalking
- Sexual Violence Elimination Act (SaVE Act)

Title IX Principles:

INVESTIGATION =	Thorough	Reliable	Impartial
PROCESS =	Prompt	Effective	Equitable
REMEDIES =	End Discrimination	Prevent Recurrence	Remedy effects upon victim & community

Source: ATIXA

Title IX : Misconduct, Harassment, and Violence

- Sexual misconduct, harassment and sexual violence are forms of sex discrimination and therefore are violations of Title IX.
- Misconduct
- Harassment under Title IX
 - Quid Pro Quo – this for that
 - Hostile Environment - severe or pervasive
 - Retaliatory Harassment
- Violence

Liability for Sexual Harassment Claim Under Title IX

- Under US Supreme Court decisions, a school district or college can be held **liable** for sexual harassment of a student by either an employee or a fellow student if:
 - a school administrator who has authority to stop the harassment has **actual knowledge** of the harassment and is **deliberately indifferent** to the harassment.

- The US Department of Education, Office of Civil Rights, (“OCR”) is responsible for enforcing Title IX.
 - OCR takes a broader view of an institution’s responsibility to respond to sexual harassment against students and to **remedy gender discrimination**, sexual harassment and sexual assault.
- OCR guidelines state:
 - The college is responsible if it **knew or reasonably should have known of the harassment**, and failed to **promptly take reasonable steps** to end the harassment and prevent recurrence.

What does OCR Say?

- Texas – SB 212
 - Changes apply 8/1/2019
 - Mandator Reporting for all employees
 - Class A misdemeanor
 - “shall terminate” employment
 - New reporting requirements
- Texas – HB 449
 - Transcript Notation

- Texas – HB 1735
 - Changes apply 8/1/2020
 - Board must review and approve policy
 - Prevention programming required
 - If not in compliance \$2 million fine or TEG

- Rule by letter era – DeVos
- Sexual misconduct occurring “under any education program or activity”
- Must be a student
- Parties have right to review investigation file upon request
 - All evidence “directly related” to allegations, even if school does not intend to rely on it

What's Next???

- The clear and convincing standard for sexual harassment cases is allowed.
 - May use POTE only if school uses POTE for conduct code violations that do not involve sexual harassment, but carry the same maximum disciplinary sanction
- All Title IX records must be kept for three years
- Colleges and universities must have live hearings for resolution of formal complaints
 - Hearing officer/body cannot be the same as investigator
 - Eliminates single-investigator model
 - Party's support person allowed to cross examine other party and witnesses "support person must be provided"

What's Next??

- Faculty and staff who receive complaints of sexual harassment or sexual violence are **obligated** to report complaints to the Title IX Coordinator or a Deputy Coordinator as follows:
 - If the accused individual is a student, the complaint should be reported to
 - **Ms. Trish Snow, Assistant Dean of Students/Title IX Deputy Coordinator**, (830) 792-7240, psnow@schreiner.edu
 - If the accused individual is an employee, the complaint should be reported to
 - **Dr. Bill Davis, Dean of Faculty/Title IX Deputy Coordinator**, (830) 792-7415, wdavis@schreiner.edu
 - At any point a complaint can also be reported to
 - **Dr. Travis Frampton, Provost and Title IX Coordinator**, (830) 792-7371, tframpton@schreiner.edu

Our Title IX Program

- To prevent sex discrimination on campus, promptly address reported issues, and limit the effects of harassment on the educational environment.

WHY DO THIS?

SMART

- **Safety**
 - Determine if the victim is safe. Ask them if they would like you to contact Security at (830) 739-1111
- **Medical attention**
 - Peterson Regional Medical Center - (830) 896-4200
- **Ask** – what you can do to help
- **Report** – talk to student about options
 - including the fact that you will have to report this to a Title IX Coordinator.
- **Talk** – About what will and can happen next
 - Health Center, Counseling Center, Rape Crisis Services

Process



Hearing

Our grievance process must provide for a live hearing.

At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness.

Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Hearing

If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Hearing

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Hearing

Live hearings may be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

- Schreiner Title IX Webpage:
 - <http://www.schreiner.edu/TitleIX>
- DOE (OCR) Dear Colleague Letter
 - <http://www.oeosh.ucsb.edu/Policies/2011.04.DearColleague.pdf>
- OCR Know Your Rights Document
 - <http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>
- Not Alone.gov
 - <https://www.notalone.gov/>
- US Department of Education information on Sexual Harassment
 - <http://www2.ed.gov/about/offices/list/ocr/docs/ocrshpam.pdf>

Resources

Schreiner Health and Wellness (counseling and medical services)

Phone: (830) 792-7279

Website: <http://students.schreiner.edu/health/>

Campus Conduct Hotline

Phone: (866) 943-5787

A confidential, independent, call-in service that provides a simple, anonymous way for you to help preserve the values and reputation of our institution. The Campus Conduct Hotline offers an easy, comfortable way to report activity or behavior you may observe or experience on campus that is harmful, unethical, questionable, or causes you or someone else personal injury.

Hill Country Cares (Shelter, Crisis Intervention, Legal Advocacy, and Referral Sources)

Phone: (830) 257-7088

Website: www.hillcountrycares.org

Promotes healthy relationships and seek to prevent domestic and sexual crimes by working with people at high risk of victimization and the perpetrators themselves.

TAASA (Texas Association Against Sexual Assault)

Website: www.taasa.org

Phone: (512) 474-7190

TAASA is designed to assist sexual assault survivors and to create a Texas free from sexual violence. TAASA advocates for individual sexual assault survivors as well as sexual assault programs collectively.

RAINN (Rape, Abuse and Incest National Network)

Website: www.rainn.org

Phone: (800) 656-4673

At any given moment, more than 1,100 trained volunteers are on duty and available to help victims at RAINN-affiliated crisis centers across the country.

Office for Civil Rights (OCR)

Website: www.ed.gov/ocr

Phone: (800) 421-3481

Summary

- “Students cannot learn if they don’t feel safe, and sexual harassment and sexual violence interfere with a **student’s right** to receive an **education free of discrimination**,” Assistant Secretary for Civil Rights Russlynn Ali
- Between 2008 and 2011, the OCR has seen a **78% increase** in sexual harassment complaints
 - (Source: <http://www.csmonitor.com/USA/Justice/2012/0615/Yale-settles-Title-IX-complaint-launches-new-sexual-misconduct-policies>)