



sociation of Title

Administrators

COURSE SLIDE PACKET

This training manual is intended to provide assistance for achieving best practices with respect to campus sexual misconduct, but is not given and should not be taken as legal advice.

Before acting on any of the ideas, opinions or suggestions in this publication, participants should check first with a licensed attorney in their own jurisdiction.

Small Group Discussion

- ! What are the three biggest concerns you have regarding your role as a Title IX administrator (coordinator, deputy, etc.)?
- ! What are you hoping to take away from this training?
- ! Describe and discuss a recent or current Title IX case at your institution that presented a number of difficulties.

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A Brief History of Title IX 1972-Present

- ! Department of Health, Education and Welfare (HEW) Title IX regulations codified in 1975.
 - ! Title IX and Interscholastic Athletics (1979).
- ! 1979 Supreme Court created a private right of action under Title IX, Cannon v. U. of Chicago, 441 U.S. 677 (1979).
- ! 1980 U.S. Department of Education was created.
 - ! Title IX oversight transferred to Dept. of Ed.'s Office for Civil Rights (OCR).
- ! Supreme Court holds "Employment discrimination comes within Title IX's prohibition," North Haven Bd. of Education v. Bell, 452 U.S. 512 (1982).

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A Brief History of Title IX 1972-Present

- ! OCR Guidance
 - ! 1997 Guidance.
 - ! 2001 Guidance.
 - ! 2011 Dear Colleague Letter (The "DCL").
 - ! Questions and Answers on Title IX and Sexual Violence (April 2014).
 - ! 2015 Dear Colleague Letter, Dear Coordinator Letter & Resource Guide.
- ! "Not Alone" White House Task Force to Protect Students From Sexual Assault (April 2014).
- ! Also: The Clery Act, VAWA 2013: Section 304.

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Title IX

- ! Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education.
 - ! Applies to non-discrimination based on sex/gender to all recipients of federal funds, both public and private institutions
 - ! Applies to issues of program equity, such as in athletics, and also to sexual harassment and sexual assault.
- ! In addition to the implementing regulations, the guidelines for compliance with Title IX are provided by the U.S. Department of Education, Office of Civil Rights:
www2.ed.gov/about/offices/list/ocr/docs/shguide.html

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Title IX Essential Compliance Elements

- ! Once a "responsible employee" has either actual or constructive notice of sexual harassment/sexual misconduct, the school must:
 - ! Take immediate and appropriate steps to investigate what occurred.
 - " The obligation to investigate is absolute, even if just a preliminary inquiry (see Davis).
 - ! Take prompt and effective action to:
 - " Stop the harassment;
 - " Remedy the effects; and
 - " Prevent the recurrence.

NOTE: This is regardless of whether or not the victim makes a complaint or asks the school to take action.

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SIGNIFICANT CASES

- ! North Haven Bd. of Education v. Bell, 456 U.S. 512 (1982).
- ! Cannon v. Univ. of Chicago, 441 U.S. 677 (1979).
- ! Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).
- ! Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998).
- ! Davis v. Monroe County Bd. of Education, 526 U.S. 629 (1999).

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Cannon v. University of Chicago

441 U.S. 677 (1979)

Basic Facts:

! In 1975, Geraldine Cannon (age 39) was denied admission to Univ.

Davis v. Monroe County Bd. Of Ed.

526 U.S. 629 (1999)

Facts (cont.):

- ! Davis's assigned seat was next to the male student throughout the harassing behavior; not allowed to change seats for over three months.
- ! Davis's grades declined and her father found a suicide note his daughter had written; Davis told her mother she didn't know how much longer she could keep [the male student] off her.
- ! Others in the class also faced harassment; group of students tried to complain to the principal, but were allegedly prevented from doing so and told, "If [the principal] wants you, he'll call you."
- ! Parents had complained to three teachers and the principal; student had also complained to three teachers.
- ! In May 1993, principal told Davis's mother, "I guess I have to threaten him a little harder." Male student not disciplined.

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Davis v. Monroe County Bd. Of Ed.

526 U.S. 629 (1999)

- ! Davis's parents finally reported the harassment to the local sheriff; male student charged with and plead guilty to sexual battery.
- ! The abuse finally stopped; male student ultimately moved away.
- ! Davis's mother filed a Title IX action, alleged that persistent harassment and deliberate indifference resulted in her daughter's inability to attend school and participate in activities.

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Davis v. Monroe County Bd. Of Ed.

526 U.S. 629 (1999)

- ! Finding in favor of Davis, the Supreme Court applied same standards to find the institution liable for damages as in the Gebser case: the institution must have actual notice of the harassment; and the institution must have responded to the harassment with deliberate indifference. Additionally, court held:
 - ! Harassment must be severe, pervasive, and objectively offensive, and the indifference systemic, to the extent that the victim is deprived of educational opportunities or services.
 - ! Justice O'Connor added a framework to determine deliberate indifference: stating that deliberate indifference constitutes a response that is clearly unreasonable in light of the

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OCR & TITLE IX

- ! OCR's role
- ! Regional offices
- ! Enforcement mechanisms
- ! OCR complaints
- ! Investigation process
- ! OCR process alternatives
- ! Remedies under Title IX
- ! Civil lawsuits v. administrative actions

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Role of OCR & Title IX

- ! The Office for Civil Rights (OCR) under the Department of Education is responsible for establishing the compliance standards to be applied in investigations and enforcement of Title IX regarding sexual harassment.
 - ! Provides regulatory and sub-regulatory guidance.
- ! OCR standard indicates that upon receipt of notice, institution must immediately take immediate and appropriate steps to

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OCR Enforcement Mechanisms

- ! Complaints
 - ! Filed by an individual, a representative, or a group.

- ! Compliance Reviews
 - ! OCR targets resources on class-wide compliance problems that appear particularly acute.

- ! Technical Assistance
 - ! To help institutions, students, and parents understand their rights and responsibilities.

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OCR Complaints

- ! When received by an office, the complaint is evaluated.

- ! OCR will open an investigation if:
 - ! OCR has jurisdiction over the institution.
 - ! The allegation alleges a violation of one of the laws enforced by OCR.
 - ! The complaint is timely (180 days).
 - ! The allegation contains sufficient detail to raise an inference of discrimination or retaliation.

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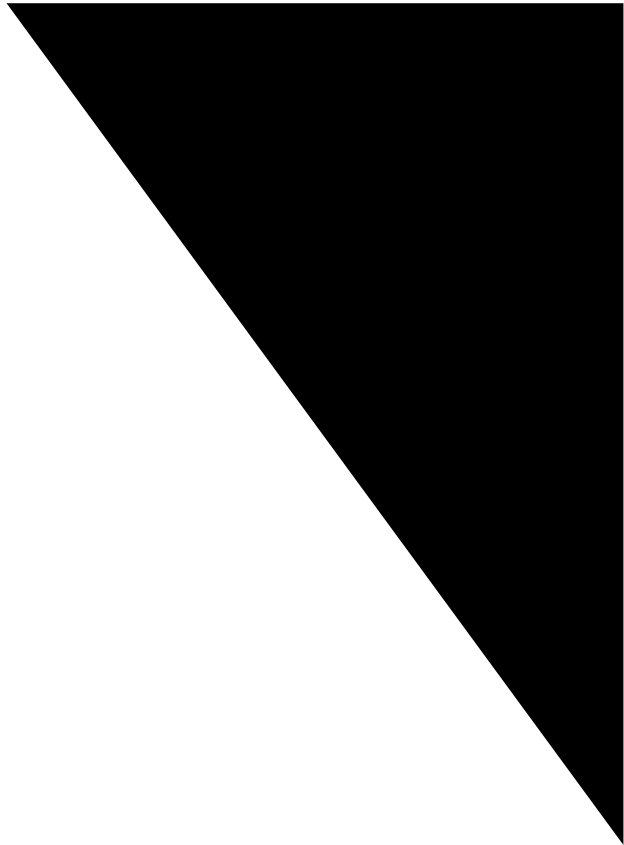
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The OCR Investigation Process

- ! OCR is a neutral fact-finder that collects and analyzes relevant information.

- ! Notification letters:
 - ! To the reporting party and recipient information

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Voluntary Resolution Agreement

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Recent OCR Resolutions

- ! The Ohio State University (Sept. 2014).
- ! Princeton University (Nov. 2014).
- ! Southern Methodist University (Nov. 2014).
- ! Harvard Law School* (Dec. 2014).
- ! LaPorte Community School Corporation (April 2015).
- ! Rockford University (Spring 2015).
- ! Michigan State University (August 2015).
- ! University of Virginia (Sept. 2015)

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Additional Resources About OCR

- ! About OCR:
 - ! <http://www.ed.gov/about/offices/list/ocr/index.html>
- ! Updated OCR Case Processing Manual:
 - ! <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>
- ! NCHERM Group database of OCR Resolution Agreements:
 - ! <http://www.ncherp.org/resources/legal-resources/ocr-database/>

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Remedies Under Title IX

- ! An individual may assert a Title IX claim against the institution by:
 - ! Suing the institution in court and seeking monetary damages or injunctive or declaratory relief.
- And/Or
- ! Filing an administrative complaint, a grievance with U.S. Dept. of Ed. Office for Civil Rights.

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**TITLE IX UPDATES:
OCR GUIDANCE**

- ! 2001 Revised Sexual Harassment Guidance
- ! 2011 Dear Colleague Letter
- ! 2014 Q&A on Title IX and Sexual Violence
- ! 2015 Dear Colleague Letter, Resource Guide,
and Dear Coordinator Letter

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**2001 Revised Sexual
Harassment Guidance**

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2011 Dear Colleague Letter

- ! Centrality of the Title IX coordinator.
- ! Sexual violence is a form of sexual harassment.
- ! Preponderance of the evidence.
- ! Promptness and time frames.
- ! Equity in process.
- ! Equity in appeals.
- ! Possible off-campus jurisdiction.

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2011 Dear Colleague Letter

- ! Provision of interim and long-term remedies.
- ! Mediation not permitted for sexual violence cases.
- ! Balancing reporting party requests for confidentiality.
- ! Training of those involved in resolution of complaints.
- ! Training of student population.

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2014 Q&A on Title IX and Sexual Violence

- ! Clarify who is and the role of a Responsible Employee.
- ! Confidentiality and reporting.
- ! Title IX coordinator role and responsibilities.
- ! Disciplinary processes & robust investigation.
- ! Interim measures.
- ! Remedies
- ! Appeals.
- ! Training, education, and prevention.

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- ! Training of student population.

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2014 Q&A
on Title IX and Sexual Violence

! Training for Students

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Title IX Resource Guide (2015)

- ! Topics addressed (cont.)
 - ! Key Title IX issues:
 - " Recruitment, admissions, and counseling.
 - " Financial assistance.
 - " Athletics.
 - " Sex-based harassment
 - " Pregnant and parenting students.
 - " Discipline.
 - " Single-sex education.
 - " Employment.
 - " Retaliation.
 - ! Information collection and reporting.

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When Do You Investigate?

- ! Receive Notice
 - ! Actual notice or constructive notice.
- ! How do rumors, gossip, social media, etc., fit in?
- ! Once notice exists, the duty to investigate is absolute.
 - ! Small i preliminary Inquiry.
 - ! Big I comprehensive Investigation.

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Examples of Actual Notice

- ! Individual files a Title IX grievance.
- ! Individual notifies the Title IX coordinator or other responsible employee.
- ! Individual reports to campus police or security official.
- ! Responsible employee witnesses harassment.
- ! Indirect notice is received from sources such as flyers posted on campus, media, social media, or video.

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Examples of Constructive Notice

- ! Pervasiveness of the harassment may be enough to conclude that the college should have known of the hostile environment.
- ! Harassment is widespread, openly visible, or well known to students and/or staff.
- ! OCR can conclude the institution should have known of incidents of harassment from a report to an employee who had a reporting duty to a supervisor, but failed to do so.

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The Clery Act: Campus Security Authority

- ! Clery identifies a CSA as:
 - ! Campus police.
 - ! Non-



Additional Reporting Requirements

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Who is Confidential

- ! Confidential/Privileged Employees*
 - ! Licensed professional counselors.
 - ! Pastoral counselors.
 - ! Licensed medical professionals (Health Service Employees).
- ! May Be Deemed Confidential**
 - ! Student health staff (support staff).
 - ! Counseling center staff (support staff).
 - ! Victims advocate/sexual assault-related services and resource centers & staff.
 - ! Others?

* To be confidential, these individuals must be acting in the capacity for which they are employed, acting within the scope of their license, and receive the disclosure during the scope of that employment.

** OCR indicates these should still report aggregate, non-identifiable data for Clery and Title IX purposes.

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Who is Not Confidential

- ! Faculty at all levels.
- ! Faculty advisors.
- ! Student organization advisors.
- ! Mediators & ombuds.
- ! Resident advisors.
- ! Student affairs staff.
- ! Academic affairs.
- ! Residence life staff.
- ! Campus police/public safety.
- ! Intercollegiate athletics staff.
- ! Everyone else

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Training For Responsible Employees

Colleges and universities should ensure that employees are trained so that:

- ! Those with authority to address harassment know how to respond appropriately.
- ! Other responsible employees know that they are obligated to report harassment to appropriate officials.
 - " Essential topics for training:
 - ! Knowledge of institutional and community resources.
 - ! Information regarding reporting.
 - " Who to report to.
 - " What to report.

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Reluctance to Report

- ! If a reporting party requests that his or her name not be used:
 - ! The institution should take all reasonable steps to respond and investigate consistent with that request.
 - ! So long as doing so does not prevent the school from responding effectively and preventing the harassment of other students or the reporting party.
- ! PPTVW: Pattern, Predation, Threat, Violence, Weapon.

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Analyzing a Reporting Party Request for Confidentiality

- ! Pattern, Predation, Threat, Violence, or Weapon
 - ! Additional complaints of sexual violence involving the same perpetrator.
 - ! Whether the sexual violence was committed by multiple perpetrators.
 - ! Whether the perpetrator has a history of arrests or records from a prior school indicating a history of violence.
 - ! Whether the sexual violence was committed by multiple perpetrators.
 - ! Whether the student's report reveals a pattern of perpetration at a given location or by a particular

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Reluctance to Report

- ! The college or university should explain to the reporting party that:
 - ! Its responsive action may be limited based on the level of privacy requested by reporting party.
 - ! It cannot guarantee privacy if doing so would jeopardize the safety of the reporting party or others.

- ! Emphasize that only those with a need to know will be informed.
 - ! Train those who will be informed about confidentiality expectations.

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When does Title IX apply?

Jurisdiction

- ! This means we will be taking off-campus jurisdiction.
 - ! See, e.g., Simpson v. Colorado.
- ! When?
 - ! Whenever our policy says.
 - ! When the behavior occurs on property we own or control.
 - ! When the behavior occurs in programs/events we sponsor.
 - ! When the downstream effects of purely off-campus c [(Ju)55 (r)0

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When does Title IX apply?

Subject Matter

- ! All unwelcome sex-based and gender-based conduct.
- ! All unwelcome conduct of a sexual nature.
- ! All sex discrimination.
- ! All gender discrimination,
 - ! Including gender identity discrimination; and
 - ! Sexual orientation discrimination that implicates gender.
- ! Pregnant and parenting student (employee?) discrimination.

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VAWA 2013 Section 304 & Clery

- ! The Clery Act
- ! Campus Sexual Assault Victims Bill of Rights
- ! Recent Clery Amendments from VAWA Reauthorization
- ! Reporting Hate Crimes
- ! Annual Security Report
- ! Sexual Assault, Dating Violence, Domestic Violence and Stalking
- ! Clery: VAWA 2013 Section 304

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The Clery Act

- ! Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)
 - ! Crime reporting.
 - ! Campus crime log.
 - ! Campus Sexual Assault Victims Bill of Rights
 - ! Primary crimes (7+3).
 - ! Hate crimes (8 categories).
 - ! Policy and procedure disclosures.
 - ! Timely warnings & emergency notifications.
 - ! Sex offender information dissemination.
 - ! Enforcement and fines.
 - ! VAWA 2013 Section 304.



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Campus Sexual Assault Victims Bill of Rights (1992)

- ! Added to the Clery Act through the Higher Education Amendments of 1992.
- ! Provisions:
 - ! In a disciplinary proceeding, the victim and accused must have equal opportunity to present witnesses.
 - ! The victim and the accused must have equal notification of the proceeding's outcome.
 - ! Institution must:
 - " Inform the victim of counseling services.
 - " Inform the victim of option to notify law enforcement.
 - " Inform victim of options to avoid the accused, such as changing residence halls or classes.

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Recent Clery

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VAWA 2013 Section 304 Primary Crimes

- ! Criminal Homicide:
 - ! Murder and non-negligent manslaughter.
 - ! Negligent manslaughter.
- ! Sex Offenses:
 - ! Rape.
 - ! Fondling.
 - ! Incest.
 - ! Statutory rape.
- ! Robbery.
- ! Aggravated assault.
- ! Burglary.
- ! Motor vehicle theft
- ! Arson.
- ! PLCr.
- ! PLUS:

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VAWA 2013 §Sec. 304 Sexual Assault

{ Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI. }

- ! Forcible sex offense is defined as any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.
- ! Non-forcible sex offense is defined as unlawful, non-forcible sexual intercourse. (Sex with a minor or incest.)

Clery : VAWA 2013 Section 304

- ! Institutional disciplinary procedures shall provide a prompt, fair and impartial investigation and resolution.
- ! Accuser and accused are entitled to the same opportunities to have a support person/advisor of their choice at any proceeding or related meeting.
- ! Accuser and accused must be simultaneously informed in writing of:
 - " The outcome that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking.
 - ! Outcome = Finding, sanction, and rationale.
 - " The institution's procedures for appeal.
 - " Any change to the results that occurs prior to the time that such results become final.
 - " When such results become final.

VAWA 2013 § Sec. 304 Consent

- ! Primary prevention programs for all incoming students and new employees; AND
- ! Ongoing prevention and awareness campaigns for students and employees including:
 - ! The applicable jurisdiction's definition of consent in reference to sexual activity.
 - " Typical definitions cite to force as well as incapacity due to alcohol, drugs, mental disease or defect, and age (minors).
- ! ATIXA Consent Statutes by State:
 - ! <http://atixa.org/resources/consent-statutes-by-state/>

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Consent isÉ

- ! Informed, knowing, and voluntary (freely given),
- ! Active (not passive),
- ! Affirmative action through clear words or actions,
- ! That create mutually understandable permission regarding the conditions of sexual activity.
- ! Cannot be obtained by use of:
 - ! Physical force, compelling threats, intimidating behavior, or coercion.
- ! Cannot be given by someone known to be > or should be known to be > mentally or physically incapacitated.

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Consent

- ! Lack of protest or resistance! consent.
- ! Consent should not be assumed.
- ! Must be present through the entire incident; consent can be withdrawn at any time.
- ! The inability to give consent may be a result of, but not limited to, the following individuals:
 - ! Persons who are asleep or unconscious.
 - ! Persons who are incapacitated due to the influence of drugs, alcohol, or medication.
 - ! Persons who are unable to communicate consent due to a mental or physical condition, including minors.

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Incapacity

- ! Incapacity is dependent on many or all of the following factors:
 - ! Body weight, height, and size.
 - ! Tolerance for alcohol and other drugs.
 - ! Amount, pace, and type of alcohol or other drugs consumed.
 - ! Amount of food intake prior to consumption.
 - ! Voluntariness of consumption.
 - ! Vomiting.
 - ! Propensity for blacking-out (mentally or physically).
 - ! Genetics.

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Training for Responsible Employees / Mandatory Reporters

- ! Colleges and universities should ensure that employees are trained so that:
 - ! Those with authority to address harassment know how to respond appropriately.
 - ! Other responsible employees know that they are obligated to report harassment to appropriate officials, what to report, and to whom.
 - " Who does this represent on your campus? Faculty? Coaches? Trainers? Graduate teaching assistants? RAs?

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Training for Responsible Employees / Mandatory Reporters

- ! The institution's policies and procedures must also address cross-constituency complaints.
 - ! Faculty.
 - ! Staff.
 - ! Students.
- ! The departmental/college expectation for reporting incidents of sexual assault and harassment:
 - ! Who to tell.
 - ! How to tell.
 - ! When to tell.
 - ! Confidentiality.

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Basic Training Topics (cont.)

- ! The college's resources for sexual assault/harassment victims including:
 - ! Title IX administrator or deputy administrator.
 - ! Law enforcement on campus and local.
 - ! Student conduct.
 - ! EOP/EEOC officers.
 - ! Victims' services/advocates.
 - ! Counseling services.
 - ! Health services.
 - ! Remedial measures available (e.g., no-contact orders, course or work adjustments, etc.).

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Training for Students

- ! Review institutional policies.
- ! Discussion of consent (use case studies).
- ! Discussion regarding how to report.
 - Where to find reporting resources.
- ! Presentation of resources.
- !

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! What are you doing that works?

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THREE TYPES OF SEXUAL HARASSMENT

- 1. Hostile Environment
- 2. Quid Pro Quo
- 3. Retaliatory Harassment

Hostile Environment

- ! A hostile environment is created when sexual harassment is:
 - ! sufficiently severe, or
 - ! persistent or pervasive, and
 - ! objectively offensive that it:
 - " unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social, and/or residential program.
- ! From both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

Hostile Environment

- ! Totality of the circumstances to consider:
 - ! The frequency (persistent or pervasive), nature, and severity of the conduct
 - ! Whether the conduct was physically threatening.
 - ! Whether the conduct was humiliating.
 - ! The identity of and relationship between the alleged harasser and the subject or subjects of the harassment.
 - ! The age and sex of the alleged harasser and the subject or subjects of the harassment.
 - ! The size of the school, location of the incidents, and context in which they occurred.

Hostile Environment

- ! Totality of the circumstances to consider:
 - ! The effect on the victims

Severe? Pervasive? Persistent? Objectively Offensive?

Student -based examples

- ! Female student texts pictures of herself to a male classmate.
- ! Whiteboard writings.
- ! E-mailed pictures.
- ! Revenge pictures.
- ! Viewing porn on a computer in the library.

Hostile Environment?



Hostile Environment?



Severe? Pervasive? Persistent? Objectively Offensive?

Faculty -based examples

- ! Giving a student a back-rub.
- ! Post-class sex demonstration.
- ! Require students to read 50 Shades of Grey and give an assignment to compare their own experiences against those from the book.
- ! Female faculty member repeatedly referring to male students as "penises."
- ! Telling repeated "dirty" jokes in class.

Severe? Pervasive? Persistent? Objectively Offensive?

Staff-based examples

- ! Telling dirty jokes: In common area? Staff meeting? To a single individual?
- ! Sending porn to a colleague.
- ! Rolling eyes and making masturbation motion with hand at comments during a staff meeting.
- ! Coming up behind a colleague and giving a brief shoulder rub.
- ! Repeated staring at a colleague of the opposite sex; accompanied by occasional winking.
- ! Colleague repeatedly mentions how much he/she likes a person's outfits.

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Quid Pro Quo Sexual Harassment

! Quid Pro Quo harassment is:

! by website 5xg78d7e0846684023544001685800900768

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Retaliation and Adverse Action

- ! Common definition of adverse action:
 - ! Significantly disadvantages or restricts the reporting party as to his or her status as a student or employee, or his or her ability to gain the benefits or opportunities of the program; or
 - ! Precluded from his or her discrimination claims; or
 - ! Reasonably acted or could act as a deterrent to further protected activity.
 - ! The U.S. Supreme Court and the federal courts have defined adverse action very broadly.

Intercourse Defined

- ! Non-consensual sexual intercourse includes:
 - ! Vaginal or anal penetration,
 - ! By a penis, object, tongue or finger, and oral copulation (mouth to genital contact),
 - ! No matter how slight the penetration or contact.

Non-Consensual Sexual Contact

- ! Non-consensual sexual/TT2 1 Tf (n)56 (((n]TJ c7I35 176 re

Sexual Exploitation (Cont.)

- ! Invasion of sexual privacy.
- ! Non-consensual digital, ITd [[47-28 (0 TJ 6 (l0 (12re226(l)c)]1)T] o226(l)rd22

Contact for Government Inquiries

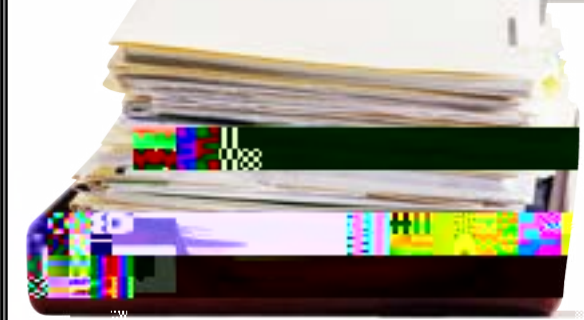
! A person may make a complaint with OCR and file a lawsuit under Title IX, 504, and Title VI.

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Contact for Government Inquiries

- ! The Title IX coordinator is responsible for the implementation and oversight of all compliance elements in the voluntary resolution agreement.
- ! It's always a good idea to review recent voluntary resolution agreements sent to other institutions. However, recognize that while there may be similarities, each regional office will have unique priorities for compliance.

POINT PERSON FOR CAMPUS COMPLAINTS



Point Person for Campus Complaints

- ! The Title IX coordinator must ensure the institution is promptly engaging in:
 - ! Initiation of the preliminary inquiry.
 - ! Prompt response to stop the harassment/discrimination.
 - ! Immediate remedial support for the victim.
 - ! Action to reasonably prevent the recurrence.

- ! The Title IX coordinator must coordinate all these steps, oftentimes across administrative processes.