

Title IX and Sexual Assault Prevention



Safe Campus Preventing Sexual Assault at West Virginia University

WVU Employee Training

Division of Diversity, Equity and Inclusion
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Title IX of the Education Amendments of 1972:

“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.”

Dear Colleague Letter (DCL): April 4, 2011

- Submitted by the Office of Civil Rights in April 2011
- Outlined the need for a national “call to action” regarding statistics surrounding sexual violence:
 - 1 in 5 women are victims of completed or attempted sexual assault while in college;
 - 6.1% of males were victims of completed or attempted sexual assault during college;
 - 3,300 forcible sex offenses reported by college campuses in 2009;
 - 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools (K-12).
- Provides guidance to schools regarding student-on-student sexual violence and:
- Guidance on the unique concerns in sexual violence cases;
- School’s independent responsibility to investigate and address;
- Interplay between Title IX, FERPA, and Clery Act as they relate to the Complainant’s right to know the outcome of the complaint;
- Role of criminal investigations.
- Provides recommendations on actions for compliance:
 - Guidance and examples about key Title IX requirements;
 - Examples of remedies and enforcement strategies that schools and Office of Civil Rights may use to respond to sexual violence;
 - Proactive efforts schools can take to prevent sexual violence.

Title IX Requirements

- A school “shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities” under the law, including the investigation of complaints.
- A school shall “notify all its students and employees of the name, office address, and telephone number of the employee(s) appointed...”

Title IX Coordinator

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- Design, oversight, distribution, and implementation of Title IX policies;
- Development and implementation of institution-wide educational programs, including Title IX training;
- Oversight of all Title IX complaints, including:
 - Grievance initiation
 - Interim measures (if necessary)
 - Grievance processing
 - Documentation and notice
 - Non-retaliation provisions

Obligations under Title IX

Once a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate action to investigate.

- 60 calendar days to complete an investigation
- If sexual violence has occurred, prompt and immediate steps to end the sexual violence, prevent its recurrence, and address its effects **MUST** be taken.
- Must take steps to protect the Complainant as necessary, including interim steps taken prior to the final outcome of the investigation.
- Provide a grievance procedure for students to file complaints of sex discrimination, including complaints of sexual violence.
- Equal opportunity for both parties to present witnesses and other evidence.
- Grievance procedures must use the preponderance of evidence standard to resolve complaints.
 - “50% + a feather”
- Notify both parties of the outcome of the complaint and appeal rights.
 - Complainant and Accused have equal rights to notification
 - Each are informed of appeal rights and action of the other person

Violations

Sexual Misconduct

- “Sexual misconduct” means “sexual assault” and “sexual exploitation.” It is a broad term used to encompass unwelcome behavior of a sexual nature that is prohibited by Title IX and West Virginia University.
- It denies or limits an individual’s ability to participate in or benefit from a school’s educational program.

Sexual Assault

- Sexual intercourse or sexual contact that occurs without consent.
- **“Sexual Contact”** means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor’s sex organs.
- **“Sexual intercourse”** is defined as anal, oral, or vaginal penetration, however slight, by an inanimate object or another’s body part, including, but not limited to a penis, tongue, or finger.
- **“Consent”** is defined as agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. A person is not competent and therefore lacks the ability to consent where there is either forcible compulsion or incapacity to consent. A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist. It is important to remember that silence, by itself, cannot constitute consent. . “Forcible compulsion” means:
 - physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or
 - threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or
 - fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

Consent to one sexual act does not constitute or imply consent to a different sexual act. Previous consent cannot imply consent to future sexual acts. Consent is required regardless of the parties’ relationship status or sexual history together.

Intoxication from alcohol or drug use, alone, does not bar consent, but can when a party is so intoxicated as to be incapacitated; i.e., unable to knowingly and intentionally make decisions for him or herself. Incapacitation negates consent when the alleged perpetrator knows, or a reasonable person in his or her position, under the circumstances, should know, that the alleged victim is incapacitated.

Sexual exploitation

- Taking sexual advantage of another person without consent. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.

Domestic Misconduct refers to “Domestic Violence” and “Dating Violence”.

Domestic Violence

- means a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or who has cohabitated with the alleged victim as a spouse, by a person similarly situated to a spouse of the alleged victim under the domestic or family laws of the State of West Virginia, by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the State of West Virginia.
- **“Domestic Violence”** under the laws of the State of West Virginia, which is also prohibited by this Policy, means unlawfully and intentionally making physical contact of an insulting or provoking nature with one’s family or household member(s); unlawfully and intentionally causing physical harm to one’s family or household member(s); unlawfully attempting to commit a violent injury against one’s family or household member(s) or: unlawfully committing an act which places one’s family or household member(s) in reasonable apprehension of immediately receiving a violent injury.
 - **“Family or household”** members means persons who: are or were married to each other; are or were living together as spouses; are or were sexual or intimate partners; are or were dating; provided, that a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship; are or were residing together in the same household; have a child in common regardless of whether they have ever married or lived together.
- **Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. The view of the Complainant shall generally be controlling in determining whether such a relationship existed. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.

Stalking

- means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - (i) fear for his or her safety or the safety of others; or
 - (ii) suffer substantial emotional distress.

One engages in an impermissible course of conduct under this definition if one engages in two or more acts that include, but are 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 in a way prohibited as described above, or interferes with a person's property.

A "reasonable person", for purposes of this definition, means a reasonable person under similar circumstances and with similar identities to the victim. "Substantial emotional distress", for purposes of this definition, means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Sexual harassment is unwelcome conduct of a sexual nature that interferes with a person's educational and work environment. Sexual Harassment is a form of discrimination that violates federal and state laws (including Title IX) and is prohibited by West Virginia University.

Sex and/or gender discrimination is the unfair or unequal treatment of an individual (or group) based on sex or gender which violates federal and state law (including Title IX).

Retaliation

- No individual may retaliate against any Reporter or Complainant, any person that assists a Complainant in the filing of a complaint of prohibited conduct, or a witness. Complaints of retaliation for such activities will be treated the same way as other complaints under this policy.
- "Retaliate" means to take an adverse action against an individual or subject an individual to conduct that has the purpose or effect of unreasonably interfering with that individual's educational experience, work or academic performance, or creates an educational experience or academic or work environment that a reasonable person would find intimidating or hostile because of something that individual did to further this Policy, including but not limited to filing a complaint or being a witness in or supporter of or against a complaint. This includes interfering with the reporting of or the investigation of prohibited behavior, such as tampering with or destroying relevant evidence; intimidating, threatening or attempting to influence, in any way, the testimony or information of a Reporter, Complainant, or witness.

What should you do?

- If a student reports to you that s/he has been involved in an act of sexual violence or misconduct...the University has been “placed on notice” per Title IX. Alert your supervisor.
- All employees of WVU are considered mandatory reporters unless they are prohibited by law from disclosing (pastors, counselors, lawyers, doctors, etc.), or have been designated confidential by the Title IX coordinator
- Get as much information as possible
 - What happened?
 - When did it happen?
 - Who else may have witnessed this?
- Confidentiality
 - You cannot promise Confidentiality
 - Assure student you will keep information private to the extent possible but DO NOT promise the student that you will keep the information absolutely confidential (unless you legally bound to provide confidential services)

What if the student clams up?

- Offer to go with the student to report their complaint.
- Let him/her know that the University does not condone this type of behavior and the effect it has on others.
- Tell him/her that you have an obligation to report what s/he has told you.
- Inform the student that s/he will probably be contacted by someone who works with these types of complaints so that options are explained.
- The student can decide at that point if they want to cooperate.

What if you don't believe the student?

- It is best to allow an investigation to determine the credibility of the complaint
- You will have an opportunity to give information regarding the credibility of the individuals involved.

Complaint Procedures

- Complaints against West Virginia University students are governed by West Virginia University Board of Governors Policy 31.
- West Virginia University Policy 44 sets forth West Virginia University's policy regarding sexual misconduct, including sexual violence and other forms of non-violent sexual harassment, all of which are forms of discrimination based on sex.

Process

Intake meeting scheduled with Complainant(s):

- ✓ Provide a general understanding of regulations;
- ✓ Identify forms of support or immediate intervention;
- ✓ Discuss accommodations that may be appropriate regarding academic, University housing, and/or University employment arrangements, No Contact Orders;
- ✓ Seek to determine if Complainant wishes to proceed with conduct process or does not wish to pursue resolution of any kind.

If the Complainant does NOT wish to proceed...

Title IX requires that we investigate and "take reasonable action" in response to the information provided.

- The Title IX Coordinator must weigh the Complainant's request not to proceed or for confidentiality with:
 - The seriousness of alleged sexual misconduct;
 - Whether there have been other sexual misconduct complaints against the same Accused student;
 - The Accused student's right to receive information about the allegations under FERPA

If the Complainant does wish to proceed...

- The Investigator will contact the Complainant(s), Accused Student(s), and any relevant witnesses to participate in an investigation interview
- Investigator will compile an investigative report
- Title IX Coordinator and Student Conduct Administrator determine if agreed resolution can be reached or if Board Hearing is warranted
- Administrative Judicial Board hearing is scheduled if necessary
 - Lead Investigator presents Investigation Report
 - Complainant(s) and Accused provide testimony
 - Board determines level of responsibility based on preponderance of evidence
 - Board determines appropriate sanction(s) if Accused Student is found responsible
- Both parties are notified in writing of the outcome
- Both parties have right to appeal the Board's decision based on:
 - Violation of due process; or
 - Material deviation from Substantive and Procedural Standards
 - NOT because they do not like the sanctions assigned

Where can you direct the student?

File a Complaint:

- Fill out an Equity Assurance complaint form online at TitleIX.wvu.edu or Diversity.wvu.edu/ea
- Download a PDF version of the Equity Assurance complaint form and email to titleIX@mail.wvu.edu
- File a complaint in person at the Division of Diversity, Equity and Inclusion located at: Suncrest Center
1085 Van Voorhis Road Suite 250 P.O. Box 6202 Morgantown, WV 26506-6202
- Contact:
 - James Goins, Jr. Director of Equity Assurance and Title IX Coordinator at james.goins@mail.wvu.edu 304.293.5600
 - Cindy Scott, Sr. Investigator, cindy.scott@mail.wvu.edu 304.293.5600
 - Jacqueline Sikora, Sr. Investigator, Jacqueline.sikora@mail.wvu.edu 304.293.5600
 - Courtney McHenry, Investigator, courtney.mchenry@mail.wvu.edu 304.293.5600

To get more information or for help contact:

- West Virginia University Police Department: **304-293-2311**
- Carruth Center for Psychological and Psychiatric Services: **304-293-4431 (Confidential resource) | 24-Hour Hotline | Drop-in Free counseling**
- Rape and Domestic Violence Information Center **304-292-5100 (Confidential resource) | 24-Hour Hotline**
- **Private 24/7 Resource Title IX Education Specialist 304-906-9930**
- Ruby Memorial Hospital, Emergency Department: **304-598-4172**
 - All victims of sexual assault have a right, under West Virginia law, to have a forensic medical examination and evidence kit collected up to 96 hours (4 days) after the assault in order to preserve any evidence of the assault. The forensic exam will be administered by a trained Sexual Assault Nurse Examiner (SANE) who has received advanced training to provide care and treatment to sexual assault victims.
 - Even if you are not sure that you want to file a police report, it can be helpful to have any available evidence collected in case you decide to file a report with law enforcement at a later date. The nurse can also provide emergency contraception, treatment for sexually transmitted infections (STIs), and other needed medical care.
 - **Ruby Memorial Hospital and WVU will waive the cost of the medical examination for students.**