

# Title IX and Gender Equity

## Supporting Equal Access in a Shifting Legal Landscape

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## Title IX: Current Status



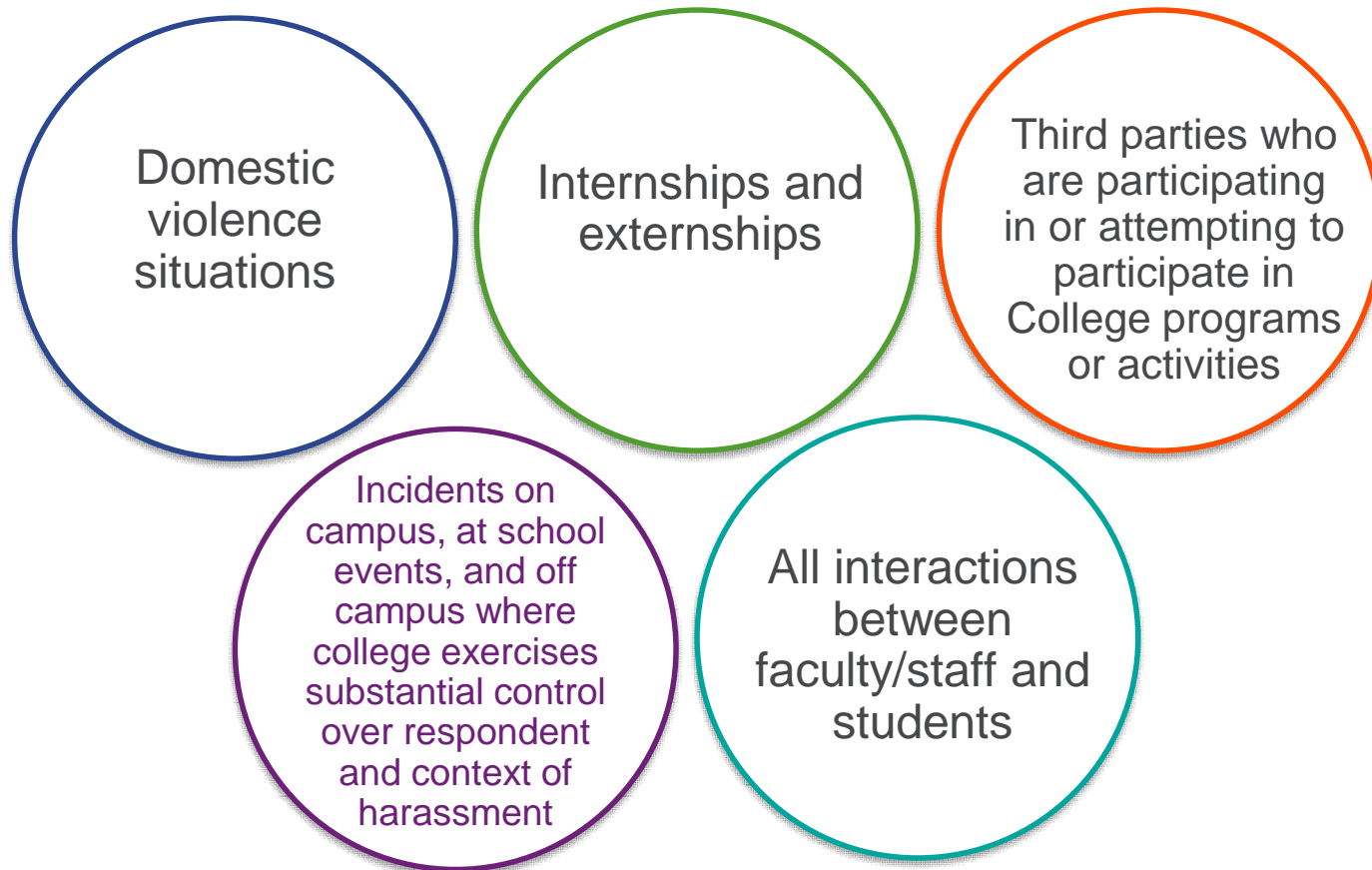
# Title IX Basics

- Title IX prohibits discrimination based on sex in any educational program receiving federal funding.
- Covers *all* programs at the educational institution.
- Covers students, employees and many third parties.
- Note that some courts and agencies have read “sex” to include sexual orientation and gender identity.
- “Sex” also includes pregnancy.

## Any form of sex discrimination, including:

- **Disparate Treatment:** Treating someone differently based on their sex.
  - Decision-maker was aware of the complainant's sex and took action *at least in part* based on sex.
  - Does not require bad motives on the part of the decision-maker.
- **Disparate Impact:** Applying a facially-neutral policy that has a different impact on one sex over the other.
  - Facially-neutral policy had a disproportionate adverse impact based on sex.
  - There was no substantial legitimate justification for the policy.
- **Retaliation:** Taking an action against someone because they made a complaint or participated in a Title IX investigation.
  - Complainant engaged in protected activity and the actor knew about it.
  - The actor subjected the complainant to adverse action because of the protected activity.

# Title IX's Reach



# Definitions: Discrimination and Harassment

**Aultman College's Title IX Policy includes the following definitions:**



Sex discrimination includes discrimination on the basis of pregnancy, gender identity, and failure to conform to stereotypical notion[s] of femininity and masculinity.

Sexual harassment is a form of prohibited sex discrimination, and sexual harassment includes sexual violence.



# Definition: Sexual Harassment

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Unwanted sexual conduct (sexual advances, requests for sexual favors, other verbal, physical or visual conduct) when:

- Submission to the conduct is made (or threatened to be made) a **term or condition of employment or education**; or
- Submission to or rejection of such conduct is used (or threatened to be used) as a **basis for academic or employment decisions**; or
- The conduct is so **severe, pervasive and objectively offensive** that it **effectively denies** the complainant access to the College's program; or
- The conduct constitutes **sexual assault, dating violence, domestic violence or stalking**.

# What is Not Harassment?

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- Change in assignment
- Negative evaluations or grades based on performance
- Supervisor or instructor directives related to the job/course
- Criticism of job performance or classwork
- Discipline consistent with employee handbooks or the student code of conduct
- Disagreements with supervisors, co-workers, instructors or other students

# Domestic Violence, Dating Violence and Stalking

**Aultman College's Title IX Policy includes the following definitions:**

- **Domestic Violence:** Crimes of violence committed by a current or former intimate partner of a victim or by any other person against a victim who is protected from that person under Ohio's domestic or family violence laws.
- **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim (where the existence of such a relationship is determined by length, type and frequency of interactions).
- **Stalking:** 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.

# Making a Complaint

Report any allegation of a Title IX violation to the Title IX coordinator.

- Under College policy, ***all*** faculty and staff (except confidential resources) have an obligation to report alleged violations of Title IX.
- Students should be encouraged to report but are not required to do so.


Title IX Coordinator:

Sue Shepherd  
Dean of Student Success  
2600 6<sup>th</sup> St. SW, Canton  
Phone: (330) 363-4349  
Email: Sue.Shepherd@aultmancollege.edu

**Once on notice of a complaint, the College must act in a way that is not “deliberately indifferent” to the concern.**

- Title IX Coordinator must reach out to the complainant to discuss the complaint and supportive measures.
- Response is only “deliberately indifferent” if it is “clearly unreasonable in light of the known circumstances.”

# When Should You Report?



**Everyone has the responsibility** to report situations of misconduct and/or harassment

- Think critically through situations first
- Distinguish between what really needs to be reported and what doesn't
  - When is it attention-seeking?
  - When is someone just looking for guidance on interacting with someone?
  - When is it an academic issue rather than sexual harassment?

# Reporting Involving Minors

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Avoid singling them out; same policies apply

Does anything need to be reported as suspected abuse?

Is there a need to report the incident to parents? When?

# Protection in the Complaint Process

- Except for confidential resources, there can be ***no guarantee*** of confidentiality in the process for the complainant or the accused.
- All parties involved (complainant, accused and witnesses) should be:
  - Asked to keep the information confidential (though not formally required to).
  - Told the college will keep their information as confidential as possible.

# Contents and Timing of a Complaint

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- There is no required timeline for filing a complaint, but the sooner it is filed, the easier it is to investigate and respond.
  
- Complaints should include:
  - Date(s) and time(s) of the alleged conduct;
  - Names of all individuals involved (including potential witnesses);
  - Description of what happened; and
  - Contact information for the complainant.
  
- The college's goal is to investigate and reach a resolution within 60 days of receiving the complaint. The investigation must start within 7 days.

**Supportive Services:** Individualized services reasonably available that are non-punitive, non-disciplinary and not unreasonably burdensome to another, while designed to ensure equal educational access, protect safety and/or deter sexual harassment.

Examples include:

- Separating the parties
- Placing limitations on contact between the parties
- Making alternative class-placement or workplace arrangements

- Identify and have the investigator consider witnesses and other evidence.
- Access to all information the investigator considers.
- Access to review statements or evidence provided by the other party.
- Access to review and comment on information the investigator develops.

# Conducting the Investigation

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**Notify parties and  
witnesses of  
investigation in  
writing**

**Interview  
Complainant  
and witnesses**

**Interview  
Accused and  
witnesses**

**Conduct follow-up  
interviews as  
necessary**

The formal Title IX investigatory process is required to involve a live hearing at which:

- All participants must be able to hear and see each other (even if virtually).
- The College must keep a verbatim record.
- The College must provide a representative to any unrepresented party.
- Each party must be permitted to cross-examine the other.

# Resolving the Complaint

## Share with the Complainant:

### If Misconduct Is Confirmed

Advise Complainant and inform that corrective action has been taken

### If Misconduct Is NOT Confirmed

Advise Complainant that there was insufficient evidence to corroborate complaint

## Share with the Respondent:

### If Misconduct Is Confirmed

Advise Respondent and inform what corrective action will be taken. If corrective action is less than termination:

- Advise Respondent that retaliation will not be tolerated
- Advise Respondent that future misconduct risks termination/expulsion.

### If Misconduct Is NOT Confirmed

Advise Respondent that there was insufficient evidence to corroborate complaint

- Counsel Respondent – go over policy at issue and advise on how to avoid problem in the future
- Advise Respondent that no retaliation will be tolerated

## Preserve documentation!

- Keep investigation file together in a secure location. (Do not keep it in personnel files.)
- Any documentation of disciplinary action should go in the appropriate personnel or student file.

### Follow Up with the Respondent

**Monitor behavior of Respondent to ensure no further misconduct or retaliation against Complainant or witnesses.**

### Follow Up with the Complainant

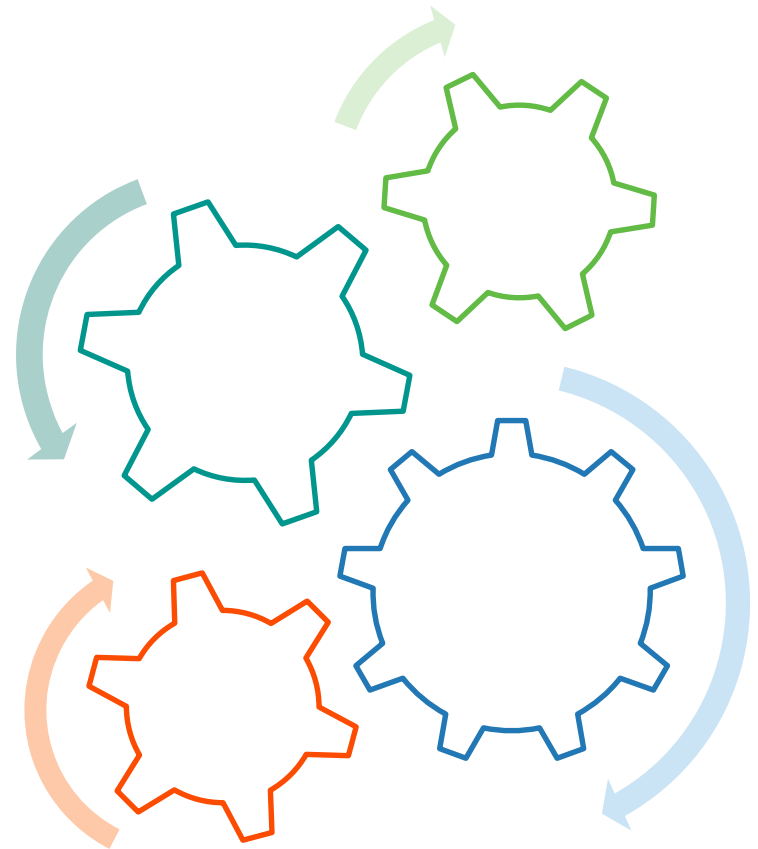
**Periodically follow up with Complainant to ensure that misconduct is not ongoing and that no retaliation is occurring.**

**Document that follow-up occurred.**

# Trauma Informed Response

Ohio has focused on five strategies for trauma informed response to sexual violence:

- Focus on data to guide action
- Empower campus constituencies to prevent and respond
- Encourage a culture of respect and responsibility
- Create a comprehensive response protocol
- Ensure your response is survivor-centered



## Title IX: Coming Changes?



# Scope of Title IX Policies

## Current

- Title IX prohibits all forms of sex discrimination.
- Title IX investigation procedures only apply to sexual harassment.
- Applies to harassment occurring in the United States and (1) on campus, (2) at school events and (3) anywhere the school exercises substantial control over the respondent and circumstances of the harassment.

## Proposed

- Title IX prohibits all forms of sex discrimination.
- Title IX investigation procedures would apply to all forms of sex discrimination.
- Would apply to any hostile environment occurring within the educational program or activity, regardless of where the harassment itself occurred.

## Current

- Schools must designate 1 coordinator responsible for handling all Title IX responsibilities.

## Proposed

- Coordinator could delegate some responsibilities so long as they retain ultimate oversight.

## Current

- Harassment must be “severe, pervasive **and** objectively offensive.”
- Behavior must “effectively deny” the complainant access to the program in order to be harassment.
- Schools must not show “deliberate indifference” to discrimination.
- Schools may choose between “preponderance of the evidence” or “clear and convincing” standards.

## Proposed

- Harassment would have to be “severe, pervasive **or** objectively offensive.”
- Behavior that “denies or limits” the complainant’s access would be harassment.
- Schools must “promptly and effectively remedy” discrimination.
- Schools would be required to use the “preponderance of the evidence” standard.

# Procedure for Complaints

## Current

- Complainant must make a written, signed complaint to the Coordinator in order to trigger an investigation.
- Complainant must have been participating/attempting to participate in school programs ***at the time of making the complaint.***
- Can only offer informal resolution after a formal complaint is filed.
- Cannot impose any supportive measures that burden one party over the other.

## Proposed

- Complaints could be written or oral, and need not be signed nor made to the Coordinator.
- Complainant must have been participating/attempting to participate ***at the time of the alleged discrimination.***
- Could offer informal resolution at any time.
- Could impose supportive measures that burden the respondent if they are non-punitive, non-disciplinary and the respondent has an opportunity to seek modification/reversal of the measure.

## Current

- Schools must use separate individuals in the roles of investigator and decision-maker.
- Gag orders on the parties are prohibited.
- Live hearings are required at the post-secondary level.

## Proposed

- Schools could adopt a single investigator model, meaning one person to be investigator and decision-maker.
- Schools could take “reasonable steps” to protect the privacy of parties and witnesses.
- Live hearings would be optional at every level.

## Current

- “Retaliation” is prohibited, but not defined.

## Proposed

- “Retaliation” would be defined as “intimidation, threats, coercion or discrimination . . . [undertaken] for the purpose of interfering with any right secured by Title IX.”
- Retaliation could be by the school itself, or anyone affiliated with the school (including a student, employee, etc.).

## Current

- “Pregnancy or related conditions” is not defined.
- “Parental status” is not defined.

## Proposed

- “Pregnancy or related conditions” would explicitly include pregnancy, childbirth, lactation, termination of pregnancy, medical conditions related to pregnancy, and recovery from such conditions.
- “Parental status” would include biological, adoptive, foster and stepparents, legal guardians, individuals in loco parentis status, and those actively seeking legal custody or guardianship of anyone under 18 or 18+ who is incapable of self-care.

## Current

- Title IX regulations do not specifically address sexual orientation or gender identity.
- Federal courts in Ohio and elsewhere have read Title IX to prohibit discrimination based on sexual orientation and/or gender identity.
- U.S. Supreme Court interpreted Title VII (applying to employees) to prohibit discrimination based on sexual orientation and gender identity, and let stand circuit court decisions holding the same under Title IX.

## Proposed

- Title IX would specifically prohibit discrimination based on sexual orientation and/or gender identity.
- Regulations would include specific language making clear the federal regulations supersede any state law to the contrary.
- Regulations would tie federal funding to compliance with the requirement that Title IX policies include protection based on sexual orientation and gender identity.

# Gender Equity Policy



# Gender Equity Policy

Specifically addresses the issue of accommodations for non-binary or transgender individuals.

- Requires an individual's ***legal name be used for official transcripts, financial aid documents***, and other college systems where a legal name is required by law or college policy.
- Requires an individual's ***preferred name and pronouns be used for internal college purposes***, including college IDs and classroom references.
- Permits everyone on campus to ***use the facilities (restrooms, etc.) of the gender with which they identify***.
- Requires ***students to notify faculty*** of their preferred name/pronoun.

Any employee's failure to comply with the gender equity policy, including intentional failure to use an individual's preferred name/pronouns once on notice of the preference puts the College at risk of a Title IX violation.

**There are two separate proposals for recognizing LGBTQ+ protection under Title IX:**

- New regulations discussed earlier.
  - Comment period is closed; not clear when/if they will be effective.
- June 2021 Notice of Interpretation: Notified schools that DOE would consider sexual orientation and gender identity protected under Title IX given the Supreme Court's interpretation of Title VII in *Bostock v. Clayton County* in 2020.
  - Tennessee judge issued a nationwide injunction in July 2022 prohibiting enforcement based on failure to follow notice and rulemaking procedures.

2016 6th Circuit decision made clear schools have an obligation to accommodate transgender students, including by allowing them to use the facilities of the gender with which they identify:

“

Under settled law in this Circuit, gender nonconformity . . . is an individual's failure to act and/or identify with his or her gender. Sex stereotyping based on a person's gender non-conforming behavior is impermissible discrimination.

”

*Dodds v. U.S. Dep't of Educ.*, 845 F.3d 217, 221 (6th Cir. 2016)

## Supporting Equal Access in a Shifting Legal Landscape

A dense collage of 30 small images showing various global landmarks and cityscapes, each with a different color overlay. The images include modern skyscrapers, historical architecture, bridges, and natural features like a bear statue.