

Title IX and Education Institution Best Practices

Supporting Equal Access and Appropriate Accommodations



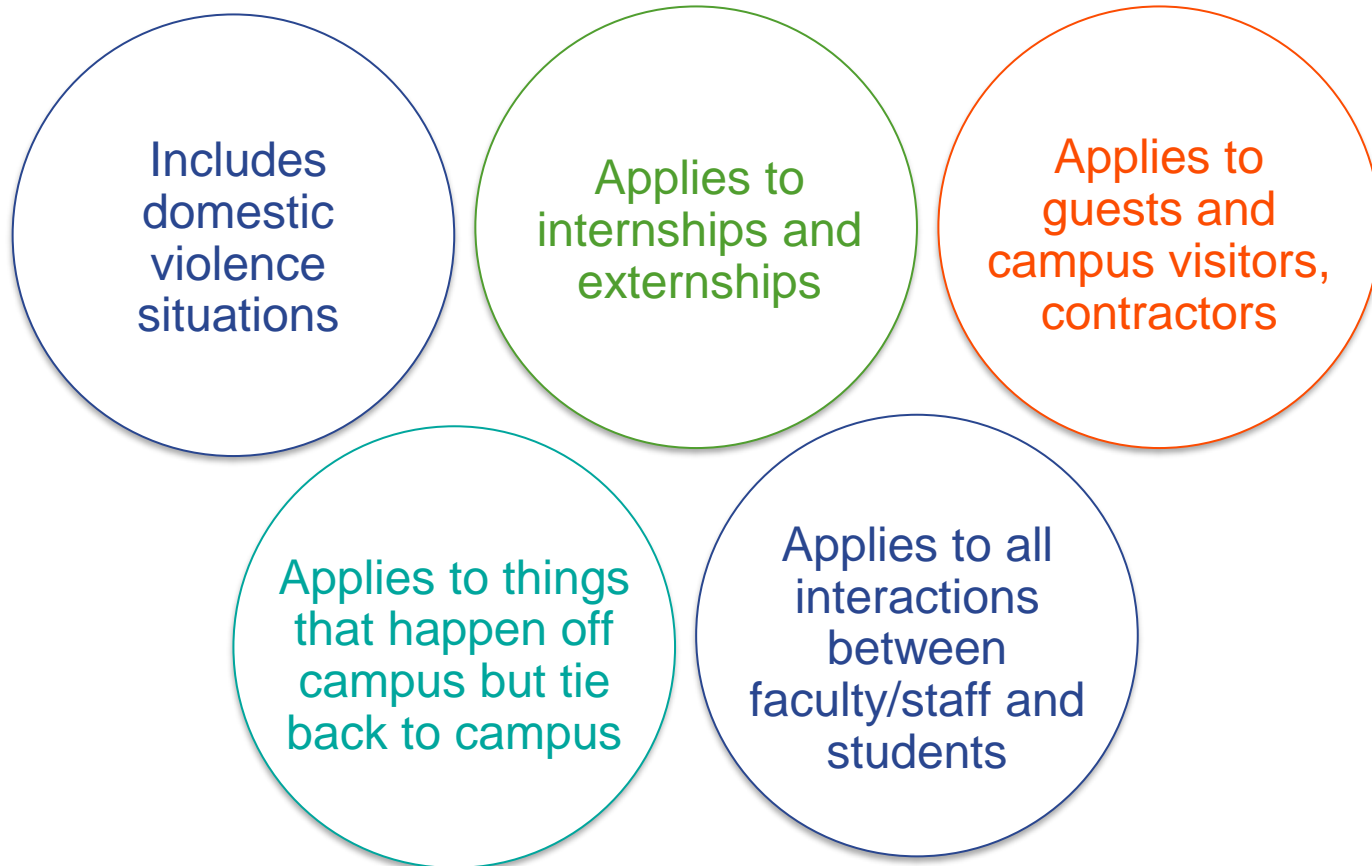
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Why Should Title IX Matter to You?

- Promotes a safe and professional workplace
- Creates a positive educational environment for students, and attracts students to your campus
- Compliance protects the college from federal investigations and litigation

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

- **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.



Aultman'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

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 has the purpose or effect of **substantially interfering** with the individual's academic or professional performance; or
- The conduct has the purpose or effect of creating what a reasonable person would perceive to be an **intimidating, hostile or offensive** environment.

Examples: Physical Harassment

- Unwanted advances/touching
- Invasion of personal space
- Elevator eyes
- “Fatal attraction” type of pursuits



Examples: Verbal Harassment



- Sexual innuendo
- Sexual profanity/name calling
- Discussion of a sexual nature
- Inquiries regarding sexual topics

Examples: Visual Harassment

- Calenders/posters
- Screen savers
- Emails
- Gestures



Examples: Situational Harassment



- Meeting sites that exclude based on gender, race or other protected class.
- Group entertainment of a sexual nature.
- Inappropriate conduct during social activities.

What is Not Harassment?

- 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
- Disagreements with supervisors, co-workers, instructors or other students

Definition: Consent

Aultman's Title IX Policy includes the following definition:



Consent is informed, freely given and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

Consent can be withdrawn.

Effective consent may not exist where there is a disparity in power between the parties.



Definitions: Domestic Violence, Dating Violence and Stalking

Aultman'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.

Your General Responsibility

Take **ALL** complaints or rumors of inappropriate behavior seriously.

Maintain confidentiality. Only discuss with those who have a **NEED** to know.

Document and aid with investigation after reporting.

Follow up with all parties and maintain a compliant work/educational environment.



Confidentiality

The chaplain and nurse are **confidential resources** and are not to share information without the reporter's permission (unless otherwise required by law).

Disclosure is required by law when:

- You're presented with a court order; or
- The reporter is a high risk of harm to themselves or others; or
- A minor is being abused.

All employees should keep information shared about potential Title IX violations **private**, sharing it only with people who need to know.

All employees must also **report any crimes** that occur to the Title IX Coordinator, even if the victim's name is withheld.



Privacy

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

- **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:

Lyn Sabino

Director Institutional Effectiveness and Compliance Officer

Aultman Education Center, 2nd Floor

College Main Office

Phone: (330) 363-4227

Email: Lyn.Sabino@aultman.com

- 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.
 - Told the college will keep their information as confidential as possible.

Contents and Timing of a Complaint

- 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.

What is the Goal of the Investigation?

**Comply with legal obligation and
reduce risk of legal exposure**

Address and resolve complaint

**Deter employees and students from
engaging in similar conduct**

**Demonstrate the College's response
commensurate with seriousness of complaint**

**Communicate the College's support for
appropriate workplace and student conduct**

Determine the facts and document them

- 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

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

**Interview
Complainant
and witnesses**

**Interview
Accused and
witnesses**

**Conduct follow-up
interviews as
necessary**



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

- Investigation must start within 7 days of receiving the complaint.
- Questions to answer:
 - Is it more likely than not that the alleged behavior occurred?
 - If so, does the behavior constitute sexual misconduct under Aultman's policy?




The Investigator should:

- Conduct interviews in private.
- Consider the credibility of interviewees.
- Focus on facts and avoid unsupported conclusions.
- Take thorough notes.

The Investigator should not:

- Promise confidentiality (but should set an expectation that the interviewee keep the discussion confidential).
- Prevent witnesses from leaving.
- Characterize alleged misconduct.

- Think 5Ws – who, what, when, where and why?
- In general, just keep asking people to explain further.
- Summarize as you go, and again at the end.
- Empathize but don't take sides.



**Conduct follow-up
interviews as
necessary**

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 Accused:

If Misconduct Is Confirmed

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

- Advise Accused that retaliation will not be tolerated
- Advise Accused that future misconduct risks termination

If Misconduct Is NOT Confirmed

Advise Accused that there was insufficient evidence to corroborate complaint

- Counsel Accused – go over policy at issue and advise on how to avoid problem in the future
- Advise Accused 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 Accused

Monitor behavior of Accused 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.

One of your social work students is assigned to do home visits for several families. The student comes back from her first home visit and tells you that the father in the family told her she was “hot” and squeezed her butt when she walked by him. **Is this a Title IX issue?**

A. Yes

B. No



A male student comes to you and reports that one of the doctors at the hospital has said he will only work with female nurses. **Is this a Title IX issue?**

A. Yes

B. No



The College is having some sidewalks replaced, so there are concrete crews on campus. A student reports to you that three of the crew members catcalled her as she walked past them to class in the morning. **Is this a Title IX issue?**

A. Yes

B. No




One Monday, one of your students come to you and confides that while she was at a party on Saturday at an off-campus apartment, she had a few drinks and fell asleep. When she woke up, one of her classmates was on top of her. She ran out of the room, but now she's scared she may see the classmate on campus. She is afraid to be around him. **Is this a Title IX issue?**

A. Yes

B. No



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?

A student comes to you every morning to complain about how her boyfriend didn't call her back last night. **Do you need to report that as a possible Title IX issue?**

A. Yes

B. No



A student comes to you and confides that they really aren't getting along with their partner on a project in your class. Apparently the partner spends the whole class period texting and checking Instagram, instead of working. **Is this a Title IX issue?**

A. Yes

B. No



One of your students comes to you and reports that her friend was sexually assaulted but does not want to report. She names her friend. **Are you required to report?**

A. Yes

B. No



When you begin work at Aultman, a colleague warns you to watch out for another employee because he harasses people. **Are you required to report?**

A. Yes

B. No



A female student reports to you that she feels uncomfortable because her study group has been discussing and debating recent state legislation regarding abortion.

Is this a Title IX issue?

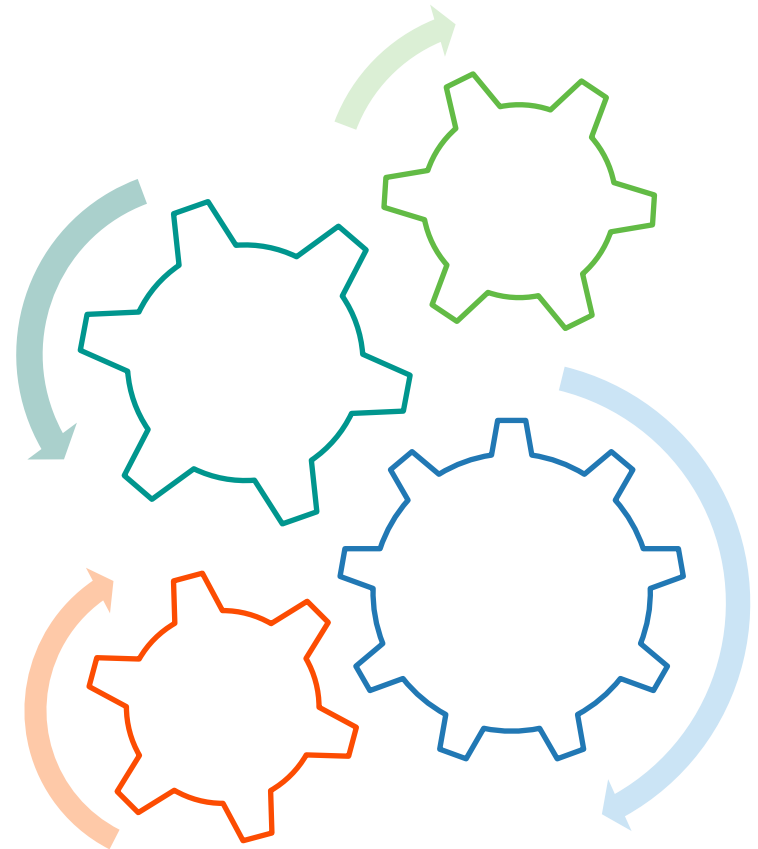
A. Yes

B. No



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



If You are Accused...

1

Stay professional; remember your role as a leader!

2

Refer matter to the Title IX Compliance Officer

3

Cooperate in the investigation

4

Maintain confidentiality

Reporting Involving Minors

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?

The U.S. Department of Education has proposed several changes to Title IX regulations:

- **Definition of sexual harassment:** Would change to “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”
 - Narrows from “unwelcome conduct of a sexual nature”
- **Deliberate indifference standard:** Schools will be liable only if their response to sexual harassment is “clearly unreasonable in light of the known circumstances.”
 - Currently liable if the student is denied access to school programming or opportunities because of the harassment.
- **Mandatory reporters:** Would require colleges to investigate only those formal complaints made to an official with the ability to remedy the situation.
 - Currently, all college employees are mandatory reporters of sexual harassment and assault (except the chaplain and nurse).
 - Under current rules, colleges must investigate even complaints raised informally.

- **Presumption of innocence:** Investigations must presume the accused's innocence throughout the process.
 - There are no current presumptions built in to the regulations.
- **Access to evidence:** The accused and accuser must have equal access to all evidence in the investigation.
 - There are no formal requirements for access to evidence built in to the regulations.
 - Proposed rule includes a requirement that the accused (or their representative) be permitted to cross-examine the accuser.
- **Decision-making standard:** Schools may decide whether or not harassment occurred based on the “preponderance of the evidence” or “clear and convincing evidence” standards.
 - Schools are currently using a preponderance standard.
 - Under the new regulations, schools would only be permitted to use a preponderance standard if that is also used for non-sexual harassment code of conduct offenses that carry similar discipline options.

If you are ***not*** a confidential resource, to whom do you report Title IX concerns?

- A. College President
- B. Head of Security
- C. Director of Institutional Effectiveness
- D. Ombudsman



Who are the confidential resources at Aultman?

- A. College president and security officers
- B. Security officers and the nurse
- C. Director of Institutional Effectiveness and the chaplain
- D. The chaplain and the nurse



Should you reassure a complainant that their case will be handled completely confidentially?

A. Yes

B. No



True or False: A complaint under Title IX must be made within 10 days of the incident, otherwise, it cannot be investigated.

A. True

B. False



What questions must the Title IX compliance officer answer in the course of their investigation?

- A. Did the behavior alleged happen beyond a reasonable doubt and, if so, was a crime committed?
- B. Is it more likely than not that the behavior happened and, if so, did it constitute sexual misconduct?
- C. Is it more likely than not that the behavior happened and, if so, did it violate Title IX?



Who is entitled to know the outcome of an investigation under Title IX?

- A. The complainant and the accused
- B. The complainant and the staff member who reports the complaint
- C. The complainant, the accused and all witnesses interviewed
- D. No one

