

Title IX and Gender Equity Overview

FELICIA FULLERTON
ASSOCIATE COUNSEL

9.25.24



AULTMAN
COLLEGE

Today's Topics

- Title IX Overview
- Gender Equity and Sex Discrimination
- Sexual Harassment
- Reporting and Investigation

TITLE IX OVERVIEW

Title IX prohibits discrimination based on sex in any educational program receiving federal funding.

Title IX Overview

- Covers all programs at the educational institution
- Covers students, employees, and many 3rd parties
- Definition of sex includes pregnancy
- Recent judicial and regulatory opinions interpret “sex” to include sexual orientation and gender identity.



AULTMAN
COLLEGE

TITLE IX OVERVIEW

Title IX has a wide-ranging reach.

Title IX Impact Areas



Gender Equity & Discrimination



AULTMAN
COLLEGE

Prohibition Against Sex Discrimination

Aultman College policy defines sex discrimination to include discrimination on the basis of gender identity and failure to conform to stereotypical notions of femininity and masculinity.

Aultman College
prohibits Sex
Discrimination.

Discrimination
can take various
forms.

Types of Discrimination

Disparate Treatment - Treating someone different based on their sex

Decision maker was aware of the complainant's sex and acted at least in part based on sex

Does not require bad faith, ill will, or evil motive

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 College provides accommodations to promote gender equity.

Aultman College Policy on Gender Equity

Specifically addresses the 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 Id's 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 will be investigated as a potential Title IX violation.

Sexual Harassment



Aultman College Policy on Sexual Harassment

Aultman College Policy defines Sexual Harassment as a form of prohibited sex discrimination which includes sexual violence.

Aultman College prohibits all forms of sexual harassment.

What is Sexual Harassment?

Further defined by Title IX as

- Unwanted sexual conduct (may include sexual advances and requests for sexual favors).
- Submission to the actual or threatened conduct is a term or condition of employment or education; or
- Submission to or rejection of the actual or threatened conduct is used as a basis for academic or employment decisions
- 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.

Title IX
prohibits sexual
harassment.

Domestic Violence, Dating Violence, and Stalking

Aultman College's Title IX Policy states -

- 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.

Harassment may take various forms.

Not everything
is harassment.

What is Not Harassment?

- Negative evaluations or grades based on performance
- Supervisor or instructor directives related to 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.

Reporting and Investigations



AULTMAN
COLLEGE

Title IX
Reporting is
Important.

Reporting Title IX Complaints Overview

All allegations of a Title IX violation should be reported to the Title IX Coordinator

Aultman College's Title IX Coordinator

Sue Shepherd

Dean of Student Success

2600 6th St. SW

Canton, OH

330. 363.4349

Sue. Shepherd@aultmancollege.edu

Under College policy, all faculty and staff (except confidential resources) have an obligations to report alleged violations of Title IX.

Students should be encouraged to report but are not required to report.

There is a
responsibility to
report
situations of
misconduct
and/or
harassment.

When Should You Report?

Think Critically About Reporting:

- Is this an academic issue or a sexual harassment and/or discrimination issue?
- Is someone looking for guidance on interacting with someone without any indicators of misconduct or harassment?

But when in doubt - you should report.

Investigations may be more effective when allegations are reported timely.

The Complaint Process

There is no required timeline for filing a complaint but the sooner a complaint is filed, the easier it is to investigate and respond as the information will be fresh.

- To the extent possible, a complaint 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 of the complainant

Aultman College strives to close out an investigation within 30 days of receiving a complaint. The investigation must be started within 7 days of receiving the complaint.

REPORTING AND INVESTIGATION

Supportive Services can help provide educational access and protect safety.

Supportive Services: Reasonable individualized services 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 of Supportive Services may include:

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



**AULTMAN
COLLEGE**

REPORTING AND INVESTIGATION

Parties involved in an investigation have rights.

Rights of the Parties

- 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.



**AULTMAN
COLLEGE**

REPORTING AND INVESTIGATION

Aultman College has policies for the Investigation process.

Investigation Process



AULTMAN
COLLEGE

REPORTING AND INVESTIGATION

All formal Title IX investigations must have a live hearing before an impartial Hearing Officer



Live Hearings

Formal Title IX investigations must have a live hear in 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.

The Hearing Officer will provide a written determination.

Live Hearings - Hearing Officer's Written Determination

The Hearing Officer will provide a written determination including:

- Findings of Fact
- Conclusions about whether the conduct occurred
- Rationale for conclusions as to each allegation
- Any disciplinary sanctions that may be imposed
- Any remedies that may be provided to the Complainant

Either party may appeal to the College President within 10 days of receipt of the Hearing Officer's written determination.

Complaint resolutions should include communication to the involved parties.

Complaint Resolution

Share with 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 Respondent

- If Misconduct is Confirmed: Advise respondent of determination and applicable corrective action. If corrective action is less than termination -
 - Advise that retaliation will not be tolerated
 - Advise that future misconduct may result in termination/expulsion
- If Misconduct is NOT Confirmed
 - Counsel Respondent about any policies at issues and how to avoid problems
 - Advise that retaliation will not be tolerated.

Informal
Resolution is
available so
long as both
parties agree.

Informal Resolution

Informal Resolution, such as mediation, may be used instead of the formal investigation and live hearing process. The following standards apply -

- Informal Resolution may only be used if both parties consent to it in writing. No party will be forced to waive their right to a formal investigation or determination.
- The complainant will not be required to work directly with the respondent to resolve the concern.
- Either party may terminate the informal process.

Informal resolution should

- Be documented,
- May not be appealed and
- May never be used for allegations of sexual harassment of a student by an employee

Title IX
Investigations
should be
documented

Investigation Best Practices

Preserve Documentation

- Keep investigation file together in secure location (Do not keep in personnel files)
- Any documentation of disciplinary action should go to the appropriate personnel or student file.
- Document follow-up actions

Appropriate follow-up with Parties should occur

- Respondent Follow-up: Monitor behavior to prevent further misconduct or retaliation.
- Complainant Follow-up: Follow-up to confirm that misconduct is not ongoing nor is there any retaliatory behavior.

New Title IX Rule

In July 2022, the Biden Administration proposed changes to the Title IX rule.

- Codifying sex discrimination to include sexual orientation and gender identity.
- Require an investigation for all complaints and not just formal complaints.
- Provide greater protections for all sex discrimination and not just sexual harassment.

Currently, there are over 200,000 comments for the Department of Education to review.

Changes to Title IX may be coming.

QUESTIONS?



AULTMAN
COLLEGE