University of Wisconsin-Whitewater

Title IX Awareness & Reporting Training for Supervisors

Presenter:
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Learning Outcomes

By the end of this training we hope you have a better understanding of …

1. Title IX regulations and requirements as it relates to sexual misconduct on a college campus
2. University of Wisconsin Whitewater policies as it relates to sexual misconduct on University property and off
3. University of Wisconsin System requirements for employee reporting issues related to sexual misconduct
4. Definitions related to Title IX and Clery Act reporting
5. How to respond to a student or employee who may have been involved in sexual misconduct
6. How to report alleged sexual misconduct
7. The process of how Title IX complaints are handled on the campus at UWW
Title IX Timeline

June 1972
- Pres Nixon signs Title IX into law; affects 10 key areas in education

1974-1976
- Challenges to Title IX in US Senate & by NCAA
- Final policy interpretation - require 3-Prong Test

1979
- DOE establishes Title IX
- Supreme Court Case Alexander v. Hehl - Title IX makes sexual harassment illegal

1980
- DOE was established
- Supreme Court Case Alexander v. Hale - Title IX makes sexual harassment illegal

1984
- Supreme Court case Grove City v. Bell limits Title IX to programs receiving federal financial assistance

1988
- Congress passes Civil Rights Restoration Act, including Title IX broad scope in education

1992
- First gender equity study to evaluate Title IX impact - athletic options heavily biased toward men

1994
- Congress passes the Equity in Athletics Disclosure Act

1997
- Guidance from the OCR. Required grievance procedures for students to report

2001
- 2nd Guidance doc from OCR. Outlined ways for schools to address sexual harassment

2005
- USDoe policy guidance weakens survey requirements for learning female students interest in sports

2010
- USDoe rescinds 2005 guidance on relaxed survey compliance

April 4, 2011
- Dear Colleague letter sent by OCR on sexual misconduct

June 25, 2013
- Dear Colleague letter from OCR addressing pregnant and parenting students

2013
- Reauthorization of the Violence Against Women Act (VAWA) called the Campus Sexual Violence Elimination Act (SaVE Act) revised the Clery Act

2014
- Not Alone Report of the White House Task Force under Pres Obama and VP Biden

2017
- Update on Not Alone Report from the White House Task Force. Also, DoEd reminds most aspects of the 2011 DCL

May 6, 2020
- DOE releases new Title IX Regulations to be implemented by August 14, 2020

August 14, 2020
- Implementation date of new Title IX Regulations

2020
- USDoe guidance on relaxed survey compliance

“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.”
Former Penn State defensive coordinator Gerald "Jerry" Sandusky was found guilty of sexual abuse, convicted of 45 out of 48 counts on Friday, June 22, 2012. He was accused of sexually abusing 10 boys over a 15-year period.

By the fall of 2018, 499 known victims of Larry Nassar “broke their silence.” Over the course of 20 years, women and girls reported to their parents, coaches, University police, city police, USA Gymnastics. The story is that of a system of trust impermeable to common sense. “If this is a story of institutional failure, it is also a story of astonishing individual ingenuity.” – K. Hawley
People v. Turner, (2015), was a criminal case filed in Santa Clara County Superior Court. Brock Turner was convicted of three counts of felony sexual assault. Turner was a student athlete at Stanford University at the time he sexually assaulted C. Miller, an intoxicated and unconscious 22 year old.
Definitions – Sex Discrimination

• Treating someone unfavorably because of that person's sex, sexual orientation or gender identity. (This includes pregnant and parenting students and employees)

• Sex discrimination in the workplace becomes unlawful when it involves different treatment based on sex that negatively affects the “terms or conditions of employment.”

  • “Terms or conditions of employment” include things like employment status (being hired or fired); your job position or duties; your work schedule, shift, or job location; your pay rate or salary; and advancement and training opportunities.

As an employee, this is also related to Title VII of the Civil Rights Act of 1964 – This prohibits sex discrimination in terms and conditions of employment
Definitions – Sexual Harassment

• Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
  • An employee of the institution conditions the provision of an aid, benefit, or service of the institution directly or indirectly on an individual’s participation in unwelcome sexual conduct;
  • Unwelcome conduct of a sexual nature directed towards a student, an employee, or a person participating in a program or activity of the university that, when using the legal “reasonable person” standard is so severe, pervasive, and objectively offensive that it effectively denies the person equal access to the institution’s education program or activity.

UW System definition found at:
https://www.wisconsin.edu/regents/policies/sexual-violence-and-sexual-harassment/
Definitions – Title IX Misconduct

• A report considered Title IX Misconduct when
  • a formal complaint …is either filed by a complainant or signed by the Title IX Coordinator and the alleged conduct meets the definition of sexual harassment, sexual assault, dating violence, domestic violence, or stalking
  • occurred within a university “education program or activity”
  • occurred against the complainant while in the United States; and
  • the complainant is participating in or attempting to participate in a university education program or activity at the time they file the formal complaint.

• Title IX misconduct cases will follow procedures as detailed in Chs. UWS 4.11-24 (faculty), UWS 11.13-26 (academic staff), UWS 17.16-21 (students), and Appendix C (university employees other than faculty or academic staff).
“Sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as defined below. [20 U.S.C. 1092(f)(6)(A)(v), 34 CFR 668.46(a).]

- Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of the complainant, without the consent of the complainant.
- Fondling: The touching of the private body parts of the complainant for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law (See s. 944.06, Stats.)
- Statutory Rape: Sexual intercourse with a complainant who is under the statutory age of consent (See s. 948.02, Stats.)
• Title IX prohibits discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions. It also prohibits a school from applying any rule related to a student’s parental, family, or marital status that treats students differently based on their sex.
When is the University Liable?

- **Quid Pro Quo (supervisor/employee)**
  - a favor or advantage granted or expected in return for something

- **Hostile Environment**
  - workplace in which unwelcome comments or conduct based on gender, race, nationality, religion, disability, sexual orientation, age, or other legally protected characteristics unreasonably interfere with an employee’s work performance or create an intimidating or offensive work environment for the employee

**Liability when**

- University fails to take remedial action;
- Failure to use the policy/process to address the alleged harassment.
When are you personally liable?

• If you are the harasser:
  • Civil and Criminal – If you are the harasser (and the matter is adjudicated) and the victim/complainant sues/prosecutor files a criminal complaint
  • Employment – may be subject to discipline up to and including termination

• If you are a supervisor of a harasser:
  • Usually no personal liability will attach. Will be indemnified by state if acting in scope of employment. It is important to follow the processes in place by the Institution.
“In the end what does the intent of our action really matter if our actions have the impact of furthering the marginalization or oppression of those around us?”

- Jamie Utt

Please note: the statement made in the above picture states woman/girl. This is intended to mean “person who is being touched”, regardless of sex or gender.)

Information retrieved from https://everydayfeminism.com/2013/07/intentions-dont-really-matter/
Complaint Process - Employees

When an employee believes they have been sexually harassed:

- Informal Resolution:
  - Inform immediate supervisor, member of administration, or Office of Human Resources

- Formal Complaint:
  - Filed with Office of Human Resources & Diversity to use applicable policies/processes

- External Complaint:
  - EEOC/OCR complaints may be filed
Complaint Process - Students

When a student believes they have been a subject of sexual misconduct:

• The student may disclose to a “responsible employee”. A responsible employee is any person who the students thinks or reasonably would think the employee can do something about it. Therefore we define all UW employees as “Responsible Employees”

• Formal Complaint:
  o Student may file a formal complaint with the Dean of Students Office or the Title IX Coordinator or Human Resources

• External Complaint:
  o Office of Civil Rights
A Supervisor’s Obligations

• Supervisors may find out about sexual harassment in a variety of ways

• If a report of sexual harassment comes to your attention:
  • Take the report seriously; do not dismiss it or speculate
  • Contact OHRD or Title IX Coordinator immediately
  • Do not attempt to investigate the complaint yourself
  • Be supportive of both parties – remain neutral

• Harassment claims can take a serious toll on the morale of an office setting or a team
# Child Abuse/Neglect, Clery Act, Sexual Misconduct – How toRespond

<table>
<thead>
<tr>
<th>Who Reports</th>
<th>Child Abuse or Neglect (Exec. Order 54)</th>
<th>Particular Crimes on Campus Geography (Clery Act)</th>
<th>Sexual Assault &amp; Sexual Harassment involving a student</th>
<th>Sexual Violence or Sexual Harassment (Title IX involving students and employees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>All UW System employees (no exceptions) See Policy</td>
<td>UW-Whitewater employees identified as Campus Security Authorities (CSAs) based on criteria provided by the US Dept. of Education. CSAs are notified of their status.</td>
<td>All UW-Whitewater employees (exceptions are for confidential reporters such as a health care provider, counselors and advocates)</td>
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</tbody>
</table>

| What to Report | | Crimes involving Murder, Robbery, Sex Offenses, Aggravated Assault, Burglary, Motor Vehicle Theft, Arson and Arrest on UW-W campus, owned or controlled property [adjacent property], or owned and controlled by a student organization. | Any employee who may witness or receive a direct report of: Sexual Assault, Sexual Harassment, Stalking, Dating and/or Domestic Violence | A violation of the UW-Whitewater Sexual Violence and Sexual Harassment Policy (i.e., gender discrimination, sexual harassment, sexual assault, dating/domestic violence, stalking, related retaliation) |

<table>
<thead>
<tr>
<th>How to Report</th>
<th>Contact your local child Protective Services or law enforcement agency</th>
<th>Clergy Act Crime [CSA] Reporting Form</th>
<th>Sexual Misconduct Reporting Form UW-W Campus / UW-Rock Campus OR Contact Dean of Students Office OR Title IX Coordinator with questions</th>
<th>Sexual Misconduct Reporting Form UW-W Campus / UW-Rock Campus OR Contact Human Resources OR Contact the Title IX Coordinator</th>
</tr>
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<tr>
<td></td>
<td>If suspected offender is an employee of UW-Whitewater, also notify the Human Resources and Diversity office.</td>
<td>Contact Campus Police</td>
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</tr>
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</table>

How to file a report:

NOTE: If you are an employee, you are REQUIRED to report what you know to:

Internal Contacts:
- Office of Human Resources and Diversity
- Title IX Coordinator
- Immediate Supervisor
- Dean of Students Office (if a student)

External Reporting Options for Complainants (optional):
- Office for Civil Rights, Department of Education
- Equal Employment Opportunity Commission
- UW System Office of Human Resources
How to file a report - Forms:

- Sexual Misconduct Reporting Form
- CARE Team Report Form
- Hate and Bias Reporting Form
- Student Organization Misconduct/Hazing Reporting Form
- Clery Act Crime Reporting Form
- Policy 136 Disclosure Reporting Form

https://www.uww.edu/dean-of-students/reporting-forms
Grievance Process

Report of Sexual Assault, Dating/Domestic Violence, Stalking is made involving an Employee

Copy of Report is forwarded to Deputy Title IX Coordinator for Human Resources

Sexual Misconduct Report is filed in Maxient

Complainant is a Student, Respondent is an Employee

Title IX Coordinator requests Resource Meeting with Complainant(s)

No formal investigation requested (in writing)

Formal Investigation Requested (in writing)

Notice of Review Letter sent to Respondent and Title IX Coordinator requests Resource Meeting

Investigation begins including charge letter to respondent, interview with complainant(s), respondent(s), and any witnesses.

Assessment of threat to campus and implementation of any necessary interim measures

Report of Sexual Assault, Dating/Domestic Violence, Stalking is made involving an Employee

Copy of Report is forwarded to Deputy Title IX Coordinator for Human Resources
Grievance Process

1. Sexual Misconduct Report is filed in complaint.
2. Copy of report is forwarded to Title IX Coordinator for human resources.
3. Title IX Coordinator requests Resource Meeting with complainant.
4. No formal investigation requested (no findings).
5. Formal investigation requested (without).
7. Investigation begins with charge letter to respondent, interviews with complainant(s), respondent(s), and any witnesses.
8. Preliminary report provided to all parties, and all have 10 days to review and make written suggestions to investigation.
9. Comments reviewed by investigator and final investigative report submitted. Parties have another 10 days to review final report.
10. Investigation finds respondent violated one or more University Policies. Investigative report submitted with recommendations to Chancellor’s designee.
11. Respondent agrees to recommended disciplinary action(s). Decision is shared with both parties in person and in writing.
12. Respondent does not agree to recommended disciplinary action(s) and a formal hearing is requested.
13. Hearing body decides based on information provided and provides report with recommendations to Chancellor’s designee. Complainant and respondent and respondent’s supervisor informed of decision in writing.
14. Complainant or Respondent can appeal hearing body’s decision.
15. Final report submitted to Chancellor’s designee, with final decision in writing.
Retaliation Prohibited

Retaliation is prohibited under both state and federal law

• Unlawful to take adverse action against a person for engaging in “protected activity”

• Protected activity includes:
  o Filing a complaint,
  o Participating in an investigation,
  o Simply opposing discrimination

Even the perception of retaliation can create a negative environment, so take this seriously!!
References

- Title IX of the Education Amendments of 1972
- University of Wisconsin – Chapter 36
- University of Wisconsin Board of Regents Policy 14-2
- University of Wisconsin-Whitewater Policy
- U.S.C. Criminal Code Title 18 – Crimes and Criminal Procedure
- https://www.womenssportsfoundation.org/advocate/title-ix-issues/
Questions/Comments

• Websites:
  • https://www.uww.edu/dean-of-students/sexual-assault
  • https://www.uww.edu/dean-of-students/reporting-forms