

Title IX: Faculty Senate

April 4, 2016

1. Under Title IX: Campus Community protected from gender-based harassment, violence, and discrimination
2. Evolution of Title IX:
 - a. Passed in response to marked educational inequalities women faced prior to 1970s.
 - b. Admission into educational programs/activities has increased dramatically since 70's
 - c. Sex-based harassment:
 - i. Case Law: Supreme Court has held that sexual harassment, including sexual violence, is a form of sex discrimination when harassment is so severe/pervasive, effectively limiting access to education
 1. Cannon v. University of Chicago (1979) – Supreme Ct recognized cause of action
 2. Alexander v. Yale (1980): Ct recognized sexual harassment as a form of sex discrimination
 3. Gebser v. Lago Vista (1998): Supreme Ct – Teacher on student harassment liability
 4. Davis v. Monroe County Board of Education (1999): Held Institutions can be liable for peer on peer sexual harassment/violence that creates hostile environment
 5. Title IX cases – almost daily coming up in the media
 6. ***Actual Knowledge + deliberate indifference = Liability**
 - ii. Department of Education – Office for Civil Rights Guidance
 1. Gender-based harassment – expanded to consider unwelcome conduct based on person's gender expression, gender identity, and/or sexual orientation
 2. Responsible Employees
3. Why are colleges involved in cases of Sexual Violence?
 - a. Community Standards – Disciplinary Procedures and Campus Safety
 - b. Liability (courts)
 - c. Enforced by Department of Education (OCR and DOJ)
 - i. Investigations & Resolutions
 - ii. Federal Funding
4. Title IX compliance and institutional response
 - a. Institutional **Duty to respond** to reports promptly and equitably
 - i. Title IX Assessment
 - ii. Investigation – timely, thorough, equitable, impartial
 - iii. Informal or Formal Resolutions options
 - b. **Resolution must:**
 - i. *Stop harassment/violence/discrimination*
 - ii. *Eliminate hostile environment*
 - iii. *Prevent recurrence*
 - iv. *Remedy effects*
5. Difference between campus and criminal procedures and outcomes (BACK)
6. Future Initiatives
 - a. Title IX website: online reporting
 - b. Campus Climate Survey - Assessment for 2016-2017 Cycle
 - i. Measure Prevalence of gender-based harassment and sexual violence on campus
 - ii. Assess campus attitudes and awareness
 - iii. Guide future prevention and intervention efforts
 - iv. Sections: Demographics, Academic Success, General Climate Questions, Perceptions of Leadership, Policies and Reporting, Alcohol and Drug Use, Sexual Violence, Stalking and Relationship Violence, Readiness to Help, Bystander Confidence, Bystander Norms, Bystander Behaviors, Contextual Perceptions of Sexual Assault, Rape Myth Acceptance

c. Prevention efforts

Criminal Process vs. Student Conduct Process

- There are significant differences between the campus conduct process and the criminal justice procedures. **The processes are not mutually exclusive.** A student may be arrested and charged in the criminal justice system as well as under the Code of Student Conduct. Alternatively, charges can occur for alleged violations of the Code of Student Conduct, which may not be violations of the law.
- The campus conduct process is not comparable to a trial. **Rather a university hearing is educational in nature.** Students and their advisor should expect a supportive and non-adversarial environment during the hearing process.
- Students are entitled to one advisor throughout the process, which may be a friend, parent, attorney, or any person of their choosing excluding witnesses. **However, the advisor may not represent that student.** Students are expected to speak for themselves at all times during the process. Any advisors disregarding these rules will be asked to leave any meeting or hearing.
- The standard of evidence in determining whether a student is in violation is **not as high as that of the criminal process.** We use a level of “preponderance of evidence,” as opposed to “beyond a reasonable doubt.” **Legal rules of evidence do not apply in campus conduct cases.** The hearing officers will gather and utilize any information that is **relevant**, including hearsay or third party testimony.
- **Campus conduct cases are confidential, in compliance with the Family Educational Rights and Privacy Act (FERPA), a federal law.** Conversely, criminal records are public records, and information may be shared with the community at large. Findings of “in violation” in the campus conduct process will not result in any criminal record. Additionally, findings of “guilty” or “not guilty” in the criminal system often have no bearing on the outcome of campus conduct proceedings.
- The campus conduct process is intended to be educational, not punitive. Our goal is to help the student to better understand the impact of his or her actions and to help him or her take steps towards repairing the harm done to the university community. **Sanctions are not predetermined, but rather are developed with consideration given to the individual circumstances of the case and any previous disciplinary history.** Overall, the campus conduct process is much less formal than criminal proceedings.