

Title IX

Employee Training

Cristina Martin, Director

Title IX and Gender Equity

Title IX & Gender Equity

At California State University, San Bernardino

- The CSUSB Title IX Coordinator, Cristina Martin

Location: SMSU 103-A

Hours: 8:00am to 4:30pm

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Who I am...

CSUSB is committed to ensuring that sexual violence does not occur in any area or activity of the University. Title IX requires CSUSB employees who become aware that a student has been a victim of sexual violence to report these incidents to the Title IX and Gender Equity Office.

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Title IX is a federal law enacted in 1972 that prohibits discrimination on the basis of sex in an educational institution's academic, educational, extracurricular and athletic activities (both on and off campus).

Title IX protects all people regardless of their gender or their gender identity from sexual harassment and sexual violence which are forms of sex discrimination.

What is Title IX?

- April 4, 2011 Dear Colleague Letter -a “call to action”
- High profile civil, criminal and regulatory actions at colleges and universities nationwide
- Encourages complainant/victim/survivors to speak publicly
- Coordinated activism
- Social media
- Evolving legislation
 - Reauthorization of VAWA and Campus SAVE Act
- Executive Branch Task Force

How it's changed...

- Centrality of the Title IX Coordinator
- Sexual violence is a form of sexual harassment
- Preponderance of the Evidence
- Promptness and timeframes
- Equity in process
- Equity in appeals
- Possible off-campus jurisdiction
- Provision of interim and long-term remedies
- Mediation not permitted for sexual violence cases
- Balancing complainant requests for confidentiality
- Training of those involved in resolution of complaints
- Training of student population

Dear Colleague...

The CSU Chancellor's Office issued the following:

- Executive Order 1095-Implementation
- Executive Order 1096- Employees and Third Parties
- Executive Order 1097- Students
- Executive Order 1098- Student Conduct Procedures

CSU Title IX Standards

Per Executive Order 1095...

- Certain University employees are required by law to maintain near or complete confidentiality; talking to them is sometimes called a “privileged communication.” University law enforcement employees may maintain the victim’s identity as confidential, if requested by the victim, but will report the facts of the incident to the Title IX Coordinator, including the identity of the perpetrator.
- Most other University employees are required to report all details of a Sexual Violence incident (including the identities of both the victim and alleged perpetrator) to the Title IX Coordinator so the University can take immediate action to protect the victim, and take steps to correct and eliminate the cause of Sexual Violence.
- University Police, the Title IX Coordinator, University-employed physicians, professional counselors, sexual assault and domestic violence counselors and advocates, and certain other University employees are required to explain to victims their rights and options with respect to confidentiality.

Confidentiality

Privileged and Confidential Communications

- *Physicians*
- *Psychotherapists*
- *Professional Counselors*
- *Clergy*
- *Sexual Assault and Domestic Violence Counselors/Advocates*

The University will be unable to conduct an investigation into a particular incident or pursue disciplinary action against a perpetrator if a victim chooses to (1) speak only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate; and (2) maintain complete confidentiality. Even so, these individuals will assist victims in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise victims regarding their right to file a Title IX complaint with the University and a separate complaint with local or University police.

Confidentiality

Under Executive Order 1095:

- All University employees *except* physicians, licensed counselors, sexual assault counselors and advocates, must report to the Title IX Coordinator all relevant details about any Sexual Violence incidents of which they become aware.

Reporting...



**Title IX Investigations include the
following**

What types of incidents?

- **Sexual Assault** is a form of Sexual Violence and is an attempt, coupled with the ability, to commit a violent injury on the person of another because of that person's gender or sex.
- **Sexual Battery** is a form of Sexual Violence and is any willful and unlawful use of force or violence upon the person of another because of that person's gender or sex.
- **Rape** is a form of Sexual Violence and is non-consensual sexual intercourse that may also involve the use of threat of force, violence, or immediate and unlawful bodily injury or threats of future retaliation and duress.
 - Acquaintance Rape
 - Incapacitation from drugs or alcohol
 - Under the age of 18; or
 - Has a mental disorder or developmental or physical disability that renders the person incapable of giving consent

Definitions...

- **Domestic Violence** is a form of Sexual Violence and is abuse committed against someone who is a current or former spouse, current or former cohabitant, someone with whom the abuser has a child, someone with whom the abuser has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law.
- **Dating Violence** is a form of Sexual Violence and is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim.
- **Stalking** means a repeated course of conduct directed at a specific person (when based on gender or sex) that places that person in reasonable fear for his/her or others' safety, or to suffer substantial emotional distress.

Definitions continued...

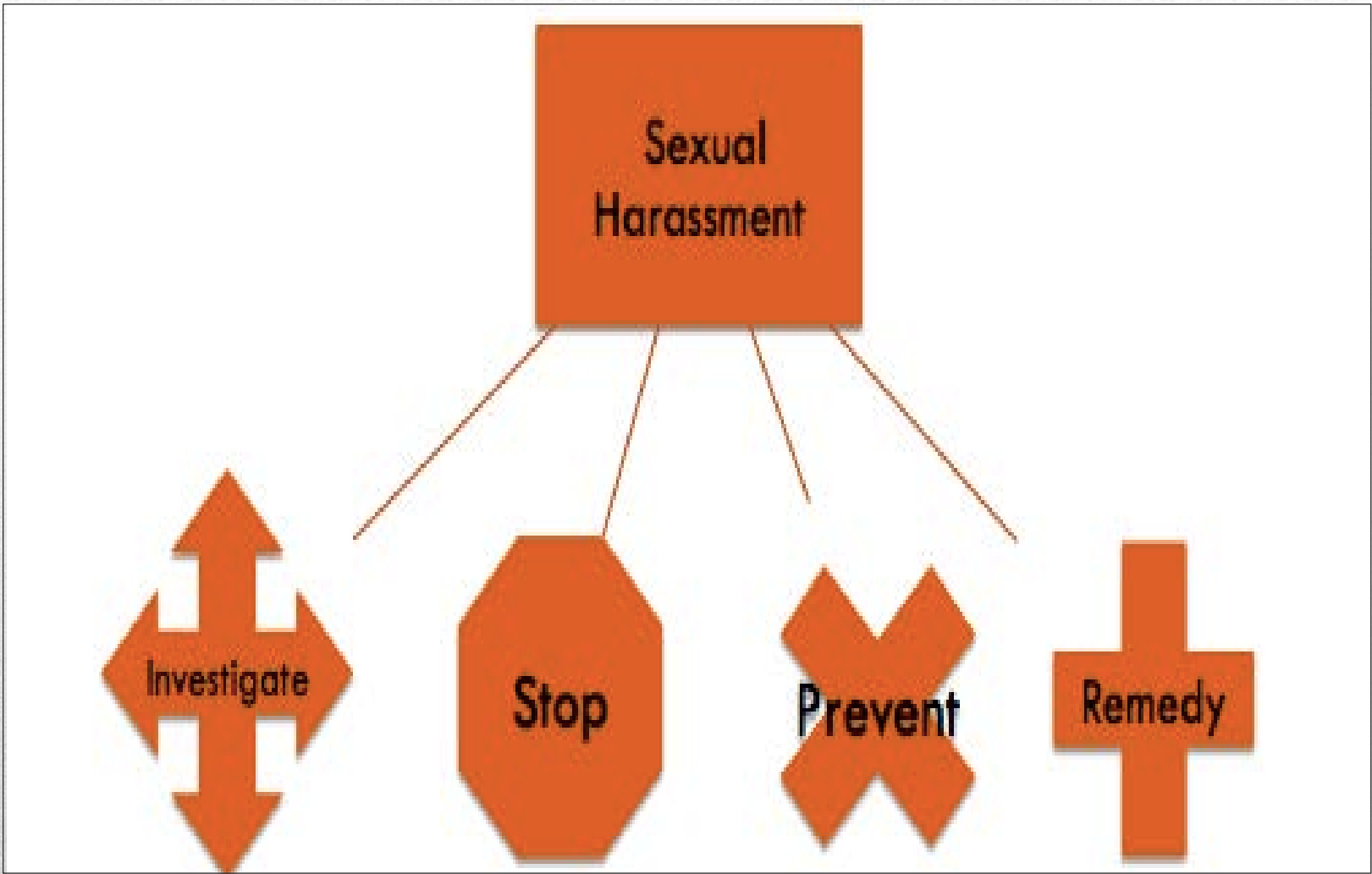
- Once a “responsible employee” has either actual or constructive notice of sexual harassment/sexual misconduct, the University must:
 - Take immediate and appropriate steps to investigate what occurred
 - Take prompt and effective action to:
 - Stop the harassment
 - Remedy the effects
 - Prevent the occurrence

NOTE: This is regardless of whether or not the victim makes a complaint or asks the University for action.

Getting started...

- The duty of a responsible employee should be to report all Title IX incidents to the Title IX Coordinator.
- A responsible employee should also inform the victim of the University's obligations to investigate.
- A responsible employee should never feel as though he or she must fully investigate a Title IX incident.
 - There are designated MPP staff on campus who have been trained in Title IX investigations, who are assigned incidents by the Title IX Coordinator.

A responsible employee
initiates the process



Institutional Responsibilities

Thorough	Reliable	Impartial
Prompt	Effective	Equitable
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community

Investigation

Process

Remedies

A “Responsible Employee” includes any employee who:

- Has the authority to take action to redress the harassment,
- Has the duty to report harassment or other types of misconduct to appropriate officials, OR
- Is someone a student could reasonably believe has this authority or responsibility

Accordingly, colleges and universities need to ensure that employees are trained regarding their obligation to report harassment to appropriate administrators

What role do I play in this?

- OCR requires that a college or university may be held accountable for harassment of students (even by other students) if any person perceived to be a responsible school employee was put on notice and took no corrective action
- This is different from the standard applied by the courts, which imposes liability when a school official with authority to take corrective action fails to respond, or is deliberately indifferent

Notice & Employee Obligations

- Encourage the student to report the incident to the appropriate Title IX Coordinator and advise the student that you are required to report the information.
- Following the disclosure by the student, provide as much information as possible to the Title IX Coordinator based on the type of incident reported.

What to do...

- **Advise the student that the Title IX coordinator is required to conduct an investigation whenever the University knows or should know about alleged misconduct.**
 - a) This obligation applies even if the alleged conduct occurred off campus or the alleged perpetrator is not a student of CSUSB.
 - b) Title IX investigations are separate from law enforcement investigations. The University may not delay investigating because of criminal proceedings.
 - c) Some events that put the institution on notice are obvious, such as a student filing a formal complaint or making a report to the University Police Department of sexual assault.

What do I tell a student?

Some less obvious but common triggers for an investigation include:

- A student filing a report of sexual assault with local police, who alert the institution
- Parents calling an administrator or a faculty member to complain that their child was sexually harassed or assaulted
- An article in the local paper detailing campus assaults of which the institution was unaware
- An administrator or a faculty member receiving an anonymous voicemail, email, or written message alleging sexual violence
- A student advisor or residential advisor overhearing a student saying that she “might” have been sexually assaulted at a campus party and doesn’t know what to do

Common triggers for an investigation

When a student alleges sexual violence, the Title IX Coordinator shall promptly contact the student to explain:

- CSUSB's formal and informal resolution procedures and the investigation process, including the importance of treating both parties equitably
- Counseling services available either on or off campus
- Possible academic or residential accommodations
- CSUSB's prohibition on retaliation against student complainants

What happens next?

The University must investigate, even if the complainant refuses to participate. However, there is no obligation on the part of the complainant to participate if he or she chooses not to.

a) In such cases, the University must do what it can with the facts that it has to fulfill its Title IX obligations, even if the student requests anonymity. In deciding how to proceed, institutions must weigh the complainant's anonymity request against the alleged perpetrator's potential danger to other students.

b) If the complainant requests anonymity:

- Remind the complainant that he or she will be protected from retaliation
- Explain that anonymity may limit the school's ability to respond
- Assure the complainant that the investigation will be discreet and only disclosed on a "need to know" basis.

What else can I tell a student about this process?

The failure of employees to comply with Title IX can result in the following

- a) The U.S. Department of Education Office of Civil Rights can conduct a Title IX compliance review that can be extremely time consuming and result in negative publicity.
- b) The University's defense can be hampered if a victim of sexual assault sues alleging that his or her case was not handled properly. In those cases, attorneys for the victim are likely to argue that the University was negligent.
- c) The Department of Education could initiate proceedings to cut off federal funding.

What happens if I don't report?

- If you are unsure if someone has reported something that can be a Title IX incident, call the Title IX Office and speak with the Title IX Coordinator, or the Deputy Coordinator.
- It is always best to err on the side of caution, allowing the Title IX office to vet all possible incidents, considering most incidents are complex in nature.

What happens if I'm not sure it's Title IX?

- Responsible Employees should refrain from discussing the incident to others. As the investigation and subsequent/possible Student Conduct proceedings occur, any informal discussions about the incident can be deemed a violation of FERPA, which can lead to discipline.
- Always keep in mind the sensitivity of the situation for the parties involved.
- Discussions of the incident or investigation should be handled on a “need-to-know” basis only.

After reporting...

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Questions?
