University of Virginia Training: Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence

February 18, 2016
Three key laws govern institutional response to sexual and gender-based harassment and violence:

1. **Title IX of the Education Amendments of 1972**
   - Prohibits sex discrimination in educational institutions that receive federal funds.

2. **The Jeanne Clery Act (1990)**
   - Requires reporting of crimes, timely warnings, education/prevention programs, and policies and procedures for sexual assault.

3. **The Violence Against Women Reauthorization Act of 2013**
   - Amends Clery to expand sexual assault requirements and include dating violence, domestic violence, and stalking; applies to all students and employees.
The laws are many, complex, and require thoughtful coordination.

Central process to uniformly vet all complaints of sexual and gender-based harassment and violence.

University’s Response Policies/Procedures Informed by:
- University Counsel
- Criminal Law (Loc. Law Enforcement)
- Negligence (Civil Counsel)
- State Laws (AG)
- Clery Act (DOE)
- Title IX (OCR)
- NCAA
- VAWA (DOE)
- University Policy (internal)
- Child Protective Services (CPS)
- FERPA (DOE)
- HIPAA (HHS/CMS/OCR)
- NCAA

Note: Lists of report recipients and relevant laws not exhaustive.
The legal responsibility must also be viewed through the lens of those we serve.

Legal Framework:
- Title IX
- Clery
- VAWA
- State Law
- Guidance

Needs of Those We Serve:
- Individual and Community Needs
Successful responses require integration and coordination

- Regulatory framework (State and Federal Laws and Guidance)
- Dynamics of trauma, sexual misconduct, and intimate partner violence
- Institutional policy, culture, climate, history, resources, procedures, and personnel
"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."

20 USCA Sec. 1681
Understanding Title IX

Who Must Follow:
- All recipients of federal financial assistance

Who it Protects:
- Protects students, employees, and third parties from sexual and gender-based harassment and violence by any school employee, another student, or a non-employee third party.

Who can file:
- A harassed student or employee
- The student’s parent or guardian
- A third party
- Anyone who requests action on the student or employee’s behalf
What it Requires:

- Requires **grievance procedures for “prompt and equitable” resolution** of student and employee complaints;

- A school violates Title IX if it “has notice” of a sexually hostile environment and fails to take **immediate and effective corrective action**. A school has notice if a **responsible employee** knew or, in the exercise of reasonable care, should have known about the harassment.

- Once a school “knew or should have known,” the school must:
  - **Eliminate** the harassment,
  - **Prevent** its recurrence, and
  - **Address** its effects
Title IX: Responsible Employee Recap

• A school is on notice if a responsible employee knew or should have known about harassment that creates a hostile environment

• Responsible Employee
  – Has the authority to take action to redress harassment
  – Has the duty to report sexual harassment or other misconduct
  – Is someone an individual could reasonably believe has this authority or responsibility

• Whether an employee is a responsible employee or whether it would be reasonable for a student to believe the employee is, even if the employee is not, will vary depending on factors such as the age and education level of the student, the type of position held by the employee, and school practices and procedures, both formal and informal

2001 Revised Sexual Harassment Guidance
Title IX: Responsible Employee

- If an employee is required to report other misconduct that violates school policy, then the employee would be considered a **responsible employee** obligated to report incidents of sexual violence that violate school policy.

- A responsible employee **must** report incidents of sexual violence to the Title IX coordinator or other appropriate school designee.

- Title IX coordinator **must** be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office.

- A responsible employee **must** report all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation, including:
  - The names of the alleged perpetrator (if known)
  - The student who experienced the alleged sexual violence
  - Other students involved in the alleged sexual violence
  - Relevant facts, including the date, time, and location

Source: Questions and Answers on Title IX and Sexual Violence, Question D-1, D-3, D-5, p.14-18
Examples of Conduct Covered Under Title IX

• **Sexual discrimination and harassment**
  – Verbal
  – Physical
  – Electronic

• **Sexual violence**
  – Rape
  – Sexual assault
  – Exploitation

• **Stalking**
  – Cyberstalking

• **Interpersonal violence**
  – Intimate partner
  – Domestic
  – Dating
  – Relationship

• **Retaliation**

• **Gender-based discrimination and harassment**

• **Bullying/hazing**
Title IX and Law Enforcement: Two Distinct Systems

“A law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct” and “resolve complaints promptly and equitably.”

“Police investigations may be useful for fact-gathering, but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX.”

“Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation.”

Source: OCR Dear Colleague Letter, April 4, 2011, pp. 4, 10
VAWA and Criminal Process

“Policies shall **address procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred**, including information in writing about:

Options regarding law enforcement and campus authorities, including notification of the victim's options:

- Notify proper law enforcement authorities, including on-campus and local police
- Be assisted by campus authorities in notifying law enforcement authorities **if the victim so chooses**
- Decline to notify the authorities”

2013 Reauthorization of the Violence Against Women Act, March 2013
Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence

The Policy
The new policy applies to all members of the University community.
Read more

Procedures
The new Policy has separate procedures for reports of Prohibited Conduct against Students (Appendix A) and Employees (Appendix B).
Read more

Resource Guides
The University offers a wide range of resources for both Students and Employees following any incident of Prohibited Conduct.
Read more

Related Links
- Report an incident
- Sexual Violence Education and Resources
- Office of Equal Opportunity Programs
- Office of the Dean of Students
Prohibited Conduct under the University Policy

- Sexual Assault
- Sexual or Gender-Based Harassment
- Sexual Exploitation
- Stalking
- Intimate Partner Violence
- Complicity
- Retaliation
Training: Reporting Responsibilities

- First response
- Where to report
- What to report
- What happens when reporting
- Documentation?
Stop, Drop, and Roll

• **Stop**: Assess safety and need for emergency response
  – How long ago did the incident happen?
  – Is there an immediate safety threat?
  – Is there a need for immediate medical attention?

• **Drop**: Document the report
  – Take basic information as to who, what, when, where

• **Roll**: Roll it out to the Title IX team
  – Get the report to the centralized team
  – Triggers the University’s response
# How to Report?

- **My Name**: 
- **My Email Address**: 
- **Number at which I can best be reached**: 
- **Alternate Number at which I can best be reached**: 
- **Name of person who reported this information to you**: If you are reporting information regarding an incident you personally observed or personally experienced, please write "self."
- **Affiliation of alleged perpetrator (if provided)**:  
  - University Student
  - University Employee
  - Not-Affiliated with University
  - Affiliation Not Known
- **Was the name of the alleged perpetrator disclosed?**:  
  - Yes
  - No
- **Were the names of any witnesses disclosed?**:  
  - Yes
  - No
- **Was the date/time of the alleged incident disclosed?**:  
  - Yes
  - No
- **Was the location of the alleged incident disclosed?**:  
  - Yes
  - No

**Note: Incident Description**

Please describe the incident as reported to you. Please include all relevant details reported to you, e.g., name of alleged perpetrator, names of any witnesses, date, time, and/or location of reported incident, and description of what occurred.
Infographic: What Students Need to Know

1. IMMEDIATELY AFTER INCIDENT
   - Reporting the incident
     - Report to any police officer, person, or calling one of the students to the right. If you seek medical attention at the Ohio Emergency Department (see below), you may not be able to make a police report at the hospital. Reporting to police will not be able to prevent usage of the University process (see next page). The University’s process is independent of the criminal process.
   - Seeking Emergency Medical Attention
     - You may obtain medical attention at any medical facility. However, the University’s Medical Center is the only local hospital with nurses (unlicensed “same nurse”) who are specially trained to perform a forensic sexual assault examination. The nurse can include forensic physical trauma, sexually transmitted disease, and pregnancy. Pregnancy involves attention and medication to prevent infection and pregnancy; and, within the first 72 hours, administer a “thought exam” to examine evidence of sexual assault. More information about the forensic exam can be found in the Resource Guide for Students (http://www.ohio.edu/vms/sexualv.htm) and on the SV website. Students are not required to report an incident, but the University is required to receive medical attention at a forensic exam. No medical treatment and support can be obtained through the Student Health Center (http://www.ohio.edu/health).
   - Seeking Confidential Crisis Counseling
     - You may obtain crisis counseling and confidential information, advice, and support through any of the sources listed on the right.

2. SEEKING EMOTIONAL SUPPORT
   - There are many sources of information, assistance, and support at the University and in the community.
     - Seeking Counseling
       - At the University, confidential support is available through OWS (434) 243-5150, the Women’s Center (434) 982-2752, and at Student Health (434) 924-3626 (in the departments of Gynecology, General Medicine, and the Student Disability Access Center).
       - In the Charlottesville Community, confidential support is available through SARA (434) 977-7273 and SHE (434) 293-9450. Detailed contact information and a list of other sources of confidential support are contained on the SV Website: www.sara.ccm.edu/counseling.
     - Seeking Remedial and Protective Measures
       - University Measures: OWS can arrange for a broad range of protective and remedial measures, including (1) a “non-contact” directive, which is enforceable through the Standards of Conduct, and (2) appropriate and available academic, University, housing and university employment modifications. Information you share with OWS will be evaluated to assess individual and community safety consistent with UNIVERSITY OBLIGATIONS listed below. Remedial measures are available regardless of whether a student or student’s report of an incident. Judicial Protective Orders: When there is an immediate threat to health or safety, it may be possible to obtain a judicial protective order. OWS and the University Police can provide information and assistance in filing a protective order.

3. REPORTING OPTIONS
   - You may report to the police and/or the University.
     - Police Report
       - You may report to the police directly or request assistance from OWS in reporting the incident. The University will be notified by applicable criminal statistics, but the University’s process is independent of the criminal process. The standard of proof under the Policy is a “preponderance of the evidence,” and sanctions may include disciplinary action, up to and including suspension or expulsion.
     - University Report
       - You may report to the University through its reporting website, Just Report it: www.ohio.edu/justrit. Please refer to the SV website for more information.

4. UNIVERSITY OBLIGATIONS
   - Once a report of a Prohibited Conduct is received, the University will conduct an initial assessment, threat assessment, and take any immediate action that may be necessary to protect the health and safety of individuals and the University community. Depending on the nature and severity of the conduct, the University may be required to share all relevant information, including records, with a law enforcement. The University is committed to protecting the safety of the broader University community, which includes reporting crime statistics and, in some cases, issuing mandatory notifications in accordance with federal law. Most University employees are “Responsible Employees” as defined by federal law and are required to report any knowledge of an incident of sexual assault, domestic violence, or harassment to the University’s Title IX Coordinator. Licensed clinical health and mental health care providers are considered confidential resources and will report Prohibited Conduct to the University’s Title IX Coordinator.
Responsibilities and Tools for Implementation

The University of Virginia takes gender-based violence seriously and provides support and information to survivors, friends and families of survivors, and the University community.

About Us
Learn more about the Maxine Plater-Lynn Women’s Center and the Office of the Dean of Students, the joint sponsors of this website. Read More.

Get Involved
Find more information about prevention initiatives, campaigns and groups around Grounds who educate peers about sexual violence and advocate on behalf of survivors. Read More.
Responsibilities and Tools for Implementation

Not on Our Grounds
A University of Virginia Initiative to End Sexual Violence

Not on Our Grounds is a University of Virginia initiative dedicated to ending sexual violence in our community through a series of awareness campaigns and prevention efforts. More>

Take the Pledge

Sexual and gender-based violence will not end until all members of the University of Virginia community accept responsibility to become part of the solution. That responsibility encompasses words, actions, and beliefs that directly combat sexual violence and help to build a safer community.

Related Links
- Sexual Violence Education & resources
- Just Report It: Sexual and Gender-Based Violence
- Student Sexual and Gender-Based Violence: Understanding Your Responsibility
- Request a Presentation
- Support the Cause

Across Grounds

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