

# Interpersonal Violence under Title IX and the Clery Act

Presented by Julie Caron,  
Title IX Coordinator



# Title IX

Title IX of the Education Amendments of 1972 states:

“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.”

Every educational institution must designate a Title IX Coordinator to oversee university's response and prevention of Title IX matters.

# Title IX continued

Discrimination and harassment on the basis of one's sex includes:

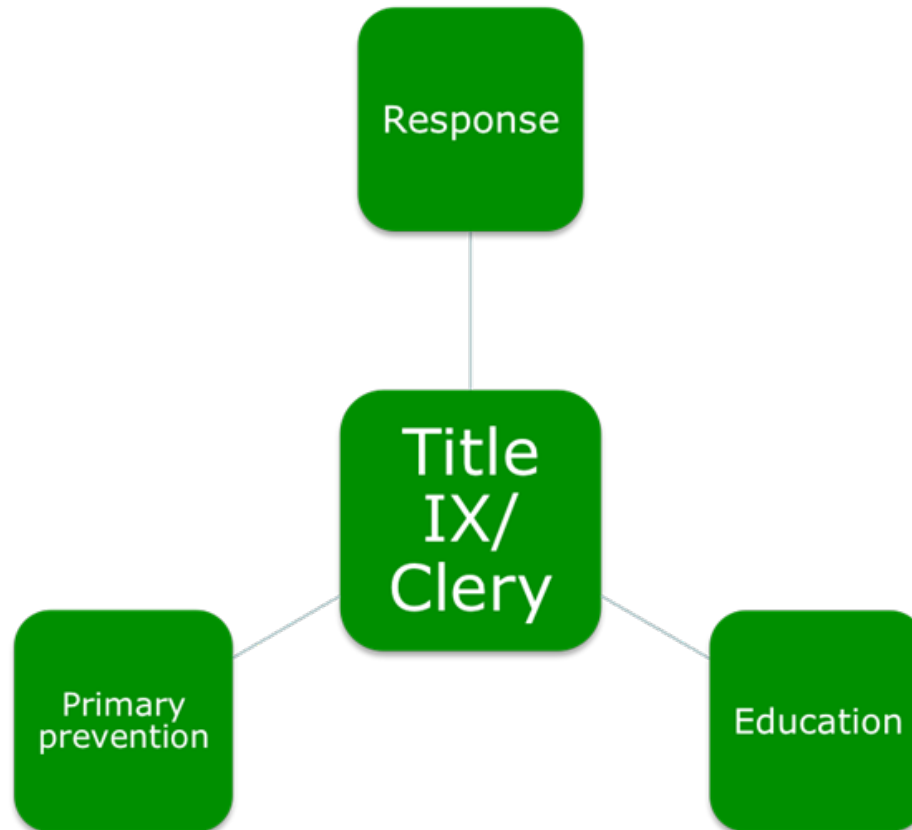
- Gender (males, females and trans),
- Gender identity & expression,
- Sexual orientation,
- Sexual harassment, and
- Sexual Assault.

# Sexual Harassment

Sexual Harassment is a form of gender discrimination and is defined as **unwelcome sexual advances**, request for sexual favors and other verbal comments, graphic or written statements, or **physical conduct of a sexual nature**. It must be severe, pervasive or persistent.

**Sexual misconduct and sexual assault** are forms of sexual harassment.

This may be an incident of student to student, employee to student or employee to employee.



# Office of Civil Rights Guidance

- Prior to April 2011, OCR had provided guidelines on what constitutes sexual harassment.
- April 2011 Dear Colleague Letter (DCL), clarified that sexual harassment includes sexual violence, and in particular student on student sexual harassment.
- DCL explained universities' requirements under Title IX.

# Clery and Campus SaVE Act

Clery Act requires universities to report on it's webpage statistics of crimes, including sexual assaults, that happened within it's geographic area.

Campus Sexual Violence Elimination Act (Campus SaVE Act) is an amendment to Clery Act.

# Campus SaVE Act of 2014

Universities are also required to respond to and support students and employees who experience incidents of Interpersonal Violence, including

- sexual assault,
- stalking, and
- domestic and dating violence.



# Campus SaVE Act

Campus SaVE Act, similar to Title IX, also requires universities to provide to its students and employees

- **primary prevention** and
- **information (educate)**
  - what constitutes sexual misconduct,
  - it's grievance process and
  - what resources are available on campus.

# **Prohibited Conduct under the Student Code of Conduct:**

- Sex/Gender discrimination
- Sexual harassment
- Sexual exploitation
- Stalking
- Non-consensual sexual contact
- Non-consensual sexual intercourse
- Domestic and Dating Violence
- Retaliation

# Sanctions against a student:

A Student found responsible for violating the Student Code of Conduct could be required:

- to engage in training;
- write educational paper;
- be excluded from programs or facilities; or
- suspended or expelled.

# Sanctions against employee:

An employee who is found to have violated PSU's Prohibited Discrimination and Harassment Policy may:

- Be required to attend a training;
- Receive corrective action, from an oral or written reprimand to suspension without pay;
- Be terminated.

# **Required Reporting of “Responsible Employee”**

The Department of Education requires University authorities to report incidents of interpersonal violence to the Title IX Coordinator or her designee, such as the Dean of Student Life (DOSL).

# University Reporting Obligations

The university is on notice of a Title IX incident when an employee, whom a student would expect an employee to address the conduct, is informed of an incident. University authorities include:

- school administrators,
- campus safety or sworn officers
- faculty, and
- resident advisors.

PSU's reporting obligations:

- **Any supervisor, Manager, faculty member or other University Official (which includes all individuals with oversight responsibility for students) who becomes aware of an incident that **may** constitute discrimination or discriminatory harassment is required to promptly notify the OEC or DOSL.\***
- PSU's Prohibited Discrimination and Harassment Policy

# **Where the Incident occurs:**

If an incident occurs off campus, PSU must evaluate the impact the incident has on students in their education or employees in their employment and evaluate how the incident impacts the PSU community and then take appropriate action.

PSU's DOSL investigates all interpersonal violence complaints against students.

# Confidential Services for Victims

Last Oregon legislative session, Oregon passed a law that permits community and campus based advocates to be confidential and privileged.

- OCR permits universities to have limited confidential personal on campus, including advocates and health care providers.
- Allows for students to give full disclosure of what occurred and learn of reporting options without an investigation occurring.



# Role of the IPV Advocate for Students:

- With or without reporting, Advocates can help by:
  - Making a safety plan to ensure a student's ability to safely attend classes, work on campus and participate in campus life.
  - Helping students change academic and on-campus living situations as needed.
  - Connecting students to the Financial Aid or Registrars office to assist with making arrangements for their tuition or financial aid.
  - Going over all reporting options and supporting students with whatever choice the students makes.
  - Connecting students to on and off-campus resources such as counseling, medical or legal services.

# CPSO as First Responder

- If a report of interpersonal violence is reported first to CPSO, CPSO will contact an advocate to assist in taking a report. It is the student's choice to make a report to law enforcement.
- If CPSO receives a report it will notify the DOSL and Title IX Coordinator immediately.
- Title IX Coordinator and DOSL also receive CPSO's Weekly log of incident reports.

# Criminal Process vs. Title IX

- Sexual violence is often a crime.
- A criminal investigation may occur concurrently with a Title IX investigation through the DOSL or OEC.
- Criminal process: District Attorney's office determines if a reported incident of a sexual assault should be prosecuted.
  - It could take up to a year for a case to go through the criminal justice system.
  - Jury decides on a beyond a reasonable doubt standard

# University-Title IX Process

- Universities may not wait for the conclusion of a criminal investigation or proceeding to begin university Title IX process.
- University may delay an investigation for a short period for law enforcement to gather evidence.
- Title IX Coordinator and DOSL Investigators receive annual Title IX training, including trauma informed investigative training.
- Det. Horton and other CPSO officers also trauma informed trained.

# Title IX Process continued

- The University ensures that the person who experienced sexual violence is safe, while the investigation is ongoing and concluded.
- The University will take interim measures as needed, including No Contact Orders, academic and on-campus housing accommodations, assistance with financial aid and referral for health related services.
  - Either through IPV Advocate or CARE team
- University will have and publish a grievance procedure for investigating complaints of sexual harassment.
- University applies a preponderance of evidence standard.

# Complaint Procedures:

- Complainant and Respondent will have timely access to information that will be used in a student conduct hearing.
- Complainant and Respondent will both have the opportunity to have others present (an advocate, advisor or attorney) during an investigation or conduct hearing, present evidence, and have witnesses speak during university disciplinary proceedings.
  - Attorneys are only advisors and cannot cross examine the other party or witness
- Both parties will be informed in writing of the outcome of any university disciplinary proceeding.
- Both parties may appeal the decision.

# University's Obligations

If a university knows or should have known about a student-on-student harassment that creates a hostile environment, Title IX requires the university:

- to take immediate action to stop the conduct,
- to investigate promptly,
- to prevent it's re-occurrence, and
- to address it's effect.

Questions?