

Sexual and Interpersonal Misconduct (SIM) Policy Training – Insights and Support for Faculty and Staff

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Today's Topics

***Disclaimer: Today's topics are serious in nature and may be challenging for some individuals.

- Background information
- Types of prohibited conduct
- Process Options
- Supportive Measures
- Your Role
- Questions

Terminology

- **Complainant:** an individual who is reported to have experienced sexual harassment (could also be the parent acting for a student)
- **Respondent:** an individual who has been accused of prohibited conduct/sexual harassment
- **Party:** Complainant or Respondent
- **Witness:** an individual who may have information relevant to a report of prohibited conduct

Understanding Title IX

“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

The Framework

Understanding Title IX

- When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred
- If an investigation reveals that sexual harassment created a hostile environment, the school must then take prompt and effective steps reasonably calculated to
 - Eliminate the hostile environment
 - Prevent its recurrence
 - Address its effects
- School must protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation



Understanding Title IX

- Requires **grievance procedures** for “**prompt and equitable**” resolution of student, employee, and third-party 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.

**Title IX
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Coordinators**

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Types of Prohibited Conduct Covered under McMurry's SIM Policy

Scope of McMurry's educational programs or activities – Understanding TIX Sexual Harassment

- An Employee conditions the provision of an aid, a benefit, or a service on another Employee's or a Student's participation in unwelcome sexual conduct (i.e., Quid Pro Quo sexual harassment); or
- A Student, Employee, or Third Party (to the extent applicable) engages in unwelcome conduct on the basis of sex that would be determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to the University's programs or activities; or
- A Student, Employee, or Third Party engages in Sexual Assault, Domestic Violence, Dating Violence, or Sexual and/or Gender-based Stalking as defined below; and
 - The alleged conduct was perpetrated against a person in the United States; and
 - The conduct took place within the University's programs and activities. Conduct takes place within the "University's programs and activities" when that conduct occurs:
 - in a location, at an event, or in a circumstance where the University exercises substantial control over both the respondent and the context in which the conduct occurs; or
 - in any building owned or controlled by a student organization recognized by the University. Events that occur off campus or in locations with no connection to the University are unlikely to be considered a University program or activity.

Title IX Sexual Harassment

- TIX Quid Pro Quo Sexual Harassment
- TIX Severe, Pervasive and Objectively Offensive Sexual Harassment
- TIX Sexual Assault
- TIX Domestic Violence
- TIX Dating Violence
- TIX Stalking

*Limited to location of the incident or limitation that it reportedly occurred within a program or activity of the school in the United States.

Non-Title IX Misconduct

- Non – TIX Sexual Harassment
- Non –TIX Sexual Contact
- Non – TIX Sexual Assault
- Sexual Exploitation
- Domestic Violence
- Dating Violence
- Stalking
- Retaliation
- Complicity

*NOT limited to location of the incident or limitation that it reportedly occurred within a program or activity of the school in the United States.

TIX Sexual Harassment

TIX Quid Pro Quo Sexual Harassment:

Conduct on the basis of sex by which an employee of the University conditions the provision of an aid, benefit, or service of the University on a student's or employee's participation in unwelcome sexual conduct.

Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment: is conduct on the basis of sex that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the University's education program or activity.

TIX Sexual Assault

Includes rape, fondling without consent, incest or statutory rape, defined as follows:

- Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral genital contact of another person without consent (as defined below).
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without consent.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape is sexual intercourse with a person who is under the statutory age of consent. Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

Consent

Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

<https://www.youtube.com/watch?v=fGoWLWS4-kU>

Incapacitation

- Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring.
- An individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act.
- A state beyond drunkenness, intoxication, or being under the influence.

TIX Dating Violence

Conduct that constitutes violence committed by a person who was/is in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the parties' statements and with consideration of the

- length of the relationship,
- the type of relationship, and
- the frequency of interaction between the persons involved in the relationship.

TIX Domestic Violence

Conduct that constitutes a felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the complainant;
- By a person with whom the complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

TIX Stalking

Conduct on the basis of sex that constitutes a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Non-TIX Sexual Assault:

Same behavior as Title IX, but not in program/activity of University in the U.S.

Non-TIX Non-Consensual Sexual Contact:

Any intentional touching of a person's breast(s), buttock(s), groin, genitals, or other intimate parts without consent. May be over or under clothing. May be RP touching CP, RP making CP touch RP/other person, or RP making CP touch own body.

Non-TIX Sexual Assault and Non-TIX Non- Consensual Sexual Contact

Non-TIX Sexual Harassment

Unwelcome sexual advance, request for sexual favors, and/or other unwelcome, verbal, or physical conduct of a sexual nature when one of the three conditions outlined below is present.

- Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit (not TIX Quid Pro Quo).
- Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, in circumstances (not TIX Quid Pro Quo).
- Such conduct creates a hostile environment.

Non-TIX Gender-Based Harassment

Based on gender, sexual orientation, gender identity, or gender expression, which include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the three conditions outlined below is present.

- Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit (not TIX Quid Pro Quo).
- Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, in circumstances (not TIX Quid Pro Quo).
- Such conduct creates a hostile environment.

Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another, but that does not fall within the definition of Title IX Sexual Harassment.

Examples:

- Filming an intimate encounter without the other person's knowledge and showing it to others.
- Posting the nude pictures that your girlfriend or boyfriend sent only you, that they asked to keep private, to Snapchat or Instagram.
- Surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved.

**Sexual
Exploitation**

Complicity

Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

Retaliation

Intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing regarding Prohibited Conduct.



Grievance Process Basic Requirements Overview

Grievance Process Basic Requirements

- Treat parties equitably
- Presumption of non-responsibility
- Reasonably prompt time frames with extensions for good cause
- Practitioners trained and free from conflict of interest/bias
- Uniform standard of evidence
- Restricted use of privileged information
- Objective evaluation of all relevant evidence
- Credibility determinations not based on person's status
- Range of supportive measures, remedies, and sanctions
- Remedies only following a finding of responsibility
- Sanctions only following the grievance process
- Designated appeal grounds

Procedural Options Offered:

Adaptable Resolution – informal or restorative options for resolving reports

Disciplinary Resolution – involves an investigation and adjudication (hearing protocols differ if the prohibited conduct would be Title IX vs. non-Title IX)

- 1. Title IX Sexual Harassment matters**
- 2. Non – Title IX Misconduct matters**



Formalized Process

Report

Outreach

Intake

Assess which process – Adaptable or Disciplinary Resolution

Investigation

Hearing/ Sanctioning

Appeal

Adaptable Resolution

Steps a school can take to limit the effects of the alleged sexual violence and prevent its recurrence **without initiating formal action** against the respondent:

- Providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred
- Providing training and education materials for students and employees
- Changing and publicizing the school's policies on sexual harassment
- Conducting climate surveys regarding sexual violence
- Putting a respondent on notice of allegations of harassing behavior

*Voluntary and remedies-based resolution option. All parties and TIX Coordinator must agree to adaptable resolution for this option to be used.

Disciplinary Process

- Receive a formal complaint
- Notice of Allegations to parties
- Investigation
- Evidence Review – review and response period
- Investigative Report – review and response period
- Pre-Hearing Meeting
- Hearing
- Decision Rendered and Sanctions, if appropriate
- Appeals

Through all stages of a formal disciplinary process...

- Presumption of innocence for Respondent throughout the grievance process. A Respondent is provided a thorough, transparent, and equitable process under McMurry's SIM policy. No punishment if there is not a determination of responsibility.
- Preponderance of the evidence standard utilized ("more likely than not").
- Parties may have an "advisor of choice" present at meetings throughout process if desired.
- Written notices and access to review evidence/reports, if applicable.

TIIX Coordinator/Deputy Coordinator Determines Jurisdiction

- As long as one of the parties is a McMurry student, faculty, or staff, the Title IX Coordinator can provide reasonable assistance and possible opportunity of process.
- Jurisdiction to investigate.
Example: Complainant is a McMurry student; Respondent is not – no jurisdiction
- Complainant is offered support when affiliated with the University regardless of whether formal process occurs.
- Protections potentially apply to: faculty, staff, students, visitors.
- Assess location of incident and whether tied to McMurry program/activity (Title IX vs. Non-Title IX prohibited conduct) to determine appropriate process options.

Interim Measures and/or Supportive Measures

- Interim Measures provided in writing
- Support/advocacy/intake functions are separate from investigative/adjudicative functions.
- Options for, available assistance in, and how to request changes to:
 - Academic
 - Living
 - Extracurricular
 - Transportation
 - Working
 - Protective Measures
- If requested by the Complainant and if reasonably available
- Regardless of whether the Complainant chooses to file a formal report with the University or law enforcement.

*Supportive measures and assistance beyond interim measures may be provided to both parties. These are non-punitive and non-disciplinary individualized services. These are meant to preserve each party's access to education pending the outcome of an investigation.

School vs. Criminal Process – Two Independent Processes

- School process is separate from the criminal process; however, records may be subpoenaed.
- Timelines will run separately.
- Burden of proof different.
- Do not forget possible duty to report if the individual is a minor and the behavior may constitute child abuse...
 - *Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse, or exploitation; or*
 - *An act or failure to act which presents an imminent risk of serious harm.*

Your Role with a SIM Report

- What:** Name of Complainant; any additional information shared including location
- When:** Immediately after speaking with Complainant or hearing of prohibited conduct
- How:** Call or email the Title IX Coordinator
- Remember:** Do not investigate. Maintain privacy as much as possible. Avoid sharing information with others. Share that you must share the information with someone who is trained to handle these issues.

Texas' Expectations for Responsible Employees

- Mandatory Reporting obligations for all employees – student and employee matters (SH, SA, DV, Stalking) to TIXC
 - if not done, criminal offense for failure to report or false report
 - Class B misdemeanor (maximum of 180 days in jail and/or fine \$2,000) – If fails to report or known false reporting
 - Class A misdemeanor (one year in jail and/or fine \$4,000) – if intended to conceal incident
 - Institution must terminate if “determines in accordance with institution’s disciplinary procedure to have” not made required report.
 - Must report “all information concerning the incident known to reporting person”
 - Exceptions: Confidential employees, when incident occurs to employee (self), disclosure at public awareness event
- Civil litigation immunities – “in good faith” report unless was alleged perpetrator

Reporting and Confidentiality

All “responsible employees” are to report to the TIX Coordinator suspected: sexual or gender-based harassment, sexual assault, stalking, dating or domestic violence, or retaliation regardless of where or when the alleged misconduct occurred.

- Includes Student workers who are responsible employees

Exception – Confidential Resources

- Any employee who is a licensed medical, clinical, or mental-health professional when acting in that professional role in the provision of services to a patient.
- University Chaplain

The Dynamics of Trauma

- Nature of sexual and interpersonal violence
 - Delay in reporting
 - Barriers to reporting and proceeding with formal action
 - Reluctance to report to law enforcement
- Schools should be mindful that traumatic events such as sexual violence can result in delayed decision-making by a student who has experienced sexual violence.
- Hence, a student who initially requests confidentiality might later request that a full investigation be conducted.

Questions



Use of Slides

- This PowerPoint presentation is not intended to be used as a stand-alone teaching tool.
- These materials are meant to provide a framework for informed discussion, not to provide legal advice regarding specific institutions or contexts.
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