Title IX & VAWA Overview

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Objectives

- What is Title IX?
- What are the VAWA Amendments?
- What are the University’s policies on sexual violence & related misconduct?
- What is my role as a University employee?
- What is the University process for responding to reports?
- Resources
Title IX in the News

- Columbia University
- Florida State University
- University of Virginia
- The Hunting Ground Movie
Title IX of the Education Amendments of 1972 is a Federal law that prohibits *discrimination based on sex* in educational programs and activities that receive Federal financial assistance.
“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.”

Title IX is enforced & interpreted by the U.S. Department of Education, Office for Civil Rights (OCR)
Conduct Prohibited by Title IX

- Sex Discrimination
- Sexual Harassment
- Hostile Environment
- Sexual Violence

Title IX & possibly criminal

Title IX & criminal
Sex discrimination includes all forms of sexual harassment, including verbal sexual harassment and sexual violence. It also includes:

- Unequal pay based on gender
- Discrimination on the basis of pregnancy or parental status
- Unequal distribution of athletic funds
- Unequal admissions policies or practices
- Unequal access to/receipt of financial aid
Sexual Harassment

- Sexual harassment is **unwelcome conduct of a sexual nature**. It includes:
  - Requests for sexual favors
  - Unwelcome advances
  - Sexist comments
  - Comments about someone’s body, sexual activity or sexual attractiveness
  - Sexually suggestive touching, leering, gestures, sounds, comments, or displays of sexually suggestive objects

- A **hostile environment** exists when the conduct is sufficiently serious (severe & pervasive) that it interferes with or limits a student’s ability to participate in or benefit from the school’s program.
OCR defines sexual violence as “an extreme form of sexual harassment.” It includes physical sexual acts perpetrated without consent. Examples are:

- Rape
- Sexual assault
- Sexual coercion
- Sexual contact with a person who is unable to consent due to incapacity or impairment
Title IX does not prohibit discrimination on the basis of sexual orientation, BUT:

- LGBTQ students are protected from sexual harassment and sexual violence the same as all other students.
- Title IX prohibits gender-based harassment, which is harassment based on sex, sex-stereotyping, gender identity and gender-nonconformity.
- Discrimination and harassment based on sexual orientation are prohibited by state law and university policy.
If a school **knows** or **reasonably should have known** about sexual harassment, the school must take immediate action to:

- eliminate the harassment
- prevent its occurrence
- address its effects

Schools must also:

- Appoint a Title IX Coordinator
- Have published “prompt and equitable” grievance procedures. “Prompt and equitable” includes:
  - Notice of procedures and where to file complaint
  - “Adequate, reliable and impartial investigation”
  - Opportunity to present witnesses and evidence
  - Reasonable and prompt timeframes (60 days)
  - Notice of outcome
- Provide remedies and resources to complainants/victims
- Provide training for members of its community

If someone believes that a school has not met these obligations, they can file a complaint with OCR.
Scope of Title IX

- Protects students and employees in connection with all the academic, educational, extracurricular, athletic and other programs that occur:
  - On-campus
  - During off-campus activities that are school-related

- Schools must process all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the conduct:
  - occurred in the context of an education program or activity or
  - had continuing effects on campus or in an off-campus education program or activity

- Even if there are no continuing effects of the off-campus sexual violence, the school still should handle these incidents as it would handle other off-campus incidents of misconduct or violence
VAWA Amendments

- Amendments to the Clery Act
  - Collection & reporting of crime statistics
- Includes stalking, dating violence and domestic violence
- “Prompt, fair, and equitable” proceedings
  - Adviser of their choice
  - Simultaneous written notice
- Training and education requirements
  - For all incoming students & staff
  - For those involved in investigation & adjudication processes
How Does Rutgers Comply with Title IX and VAWA?

- “Not Anymore” online program for all students
- In-person training for employees
- New Policy: “Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and other Related Misconduct”
Student Policy Prohibiting Sexual Harassment, Sexual Violence, Relationship Violence, Stalking, and other Related Misconduct

- Covers misconduct committed by a current Rutgers University student that either:
  - occurs on any University campus or in connection with University programs or activities; or
  - creates a hostile environment for University students; or
  - involves a Complainant who is a current University student.

- Affirmative definition of consent
- Defines all violations covered by Policy
- Defines “responsible employees” and “confidential employees”
- Explains procedures for investigation & adjudication of complaints
Consensual sexual activity requires **clear** and **unambiguous** communication and **mutual agreement** for the act in which the participants are involved. Consent will be assessed objectively from the standpoint of a reasonable person.
A sexual interaction is considered consensual when individuals willingly and knowingly engage in the interaction.

Someone who is incapacitated cannot consent.

Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or previous consent for sexual activity is not consent to sexual activity on a different occasion.

Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

Silence or the absence of resistance is not the same as consent.

Consent can be withdrawn at any time.
Sexual harassment refers to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct, or communication of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education, educational or campus life activities; or
- submission to or rejection of such conduct by an individual is used as the basis for academic or student life decisions affecting that individual; or
- such conduct has the effect of unreasonably interfering with an individual's education or academic performance or creating an intimidating, hostile, demeaning, or offensive campus, work or living environment.
- Sexual harassment may be committed by anyone regardless of gender identity and may occur between members of the same or different sex.
Sexual Assault

Sexual assault or non-consensual sexual contact refers to any one or more of the following acts:

- Touching of an unwilling or non-consenting person’s intimate parts (such as genitalia, groin, breast, buttocks, or mouth under or over a person’s clothes).
- Touching an unwilling person or non-consenting person with one’s own intimate parts.
- Forcing an unwilling person to touch another’s intimate parts.
- Penetrating an unwilling person orally, anally, or vaginally with any object or body part. This includes, but is not limited to, penetration of a bodily opening without consent, through the use of coercion, or through exploitation of another’s inability to give consent.
- Penetrating an unwilling person orally, anally, or vaginally with any object or body part by use of force, threat, and/or intimidation.
Relationship violence refers to any act of physical, sexual, and/or psychological harm against an individual by a current or former intimate or romantic partner, or by a person with whom the victim shares a child in common. Intimate or romantic partners may be dating, cohabitating, married, separate or divorced, and may be of the same or different sex. Dating violence and domestic violence are both considered “relationship violence.”
Stalking refers to any course of conduct directed at a specific person that would cause a reasonable person to be fearful of serious harm or danger to themselves or to individuals close to them. Examples of stalking include:

- non-consensual communication and physical contact
- following or pursuing the other person
- waiting or showing up at locations visited by the other person
- spying on a person
- trespassing or vandalism
- gathering of information about a person from others
- or manipulating and controlling behaviors such as threats to harm oneself or threats to harm someone close to the victim.
Sexual exploitation refers to non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of sexual exploitation include, but are not limited to:

- observing another individual’s nudity or sexual activity or allowing another to observe nudity or sexual activity without the knowledge and consent of all participants;
- non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all participants;
- exposing one’s genitals in non-consensual circumstances; or
- inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
What is my role?

- **Support** students and help them understand what resources are available if they or a friend report an incident.

- **Report** incidents of sexual harassment, sexual violence, relationship violence and stalking.
  - Any employee who is not a confidential employee must report observed, experienced, or known incidents to the Title IX Coordinator.
    - phone call, email, online reporting form, in-person meeting
  - Report all information you have, but do not do your own investigation.
  - Do not share details with your supervisor, co-workers, etc.
How do I support a student who discloses?

- Give them your undivided attention
- Thank them for telling you
- Share your reporting obligations/limits to confidentiality
- Show your concern
- Allow them to lead the conversation
- Make an appropriate referral to a confidential resource:
  - VPVA, CAPS, Health Services, Student Legal Services
- Check in later
Confidential Crisis Response Advocates include trained volunteers and staff of VPVA. They receive a state mandated training to respond to survivors of sexual violence and domestic violence. Their role is to:

- provide a confidential resource to a survivor
- assure that the survivor is aware of and understands their various legal, medical and university based options, talks with the survivor about their feelings and concerns
- provides ongoing support during the time of crisis and during any medical or legal process.

Their role is NOT to tell the survivor what to do OR to disclose information to anyone else.

According the New Jersey Attorney General’s Standards on Responding to Victims of Sexual Assault and to the Campus Sexual Assault Victim’s Bill of Rights any survivor should have the opportunity to speak with an advocate at any time and have an advocate with them during all medical and legal proceedings.
The student asked me not to tell anyone. What should I do?

- Refer the student to a confidential resource.
- Explain your obligations. You cannot promise confidentiality, but you can promise privacy.
- You still must report all known information to the Title IX Coordinator.
- The Title IX Coordinator will only share details or personal on a need-to-know basis.
I reported, now what?

- Check in with the student and continue to provide support.

- The Title IX Coordinator will contact the student (usually via email) and inform them of:
  - Available medical services, counseling, and academic support services, whether on or off-campus
  - Options to file a criminal complaint and campus disciplinary procedures
  - Available interim remedies, such as housing and academic accommodations, no-contact order, campus ban
Will there be an investigation?

- Privacy is protected to the extent possible under the law.
- The University is required by law to respond/investigate, but that investigation will be limited by the information provided by the victim, and the victim’s interest in pursuing the complaint process.
- The Title IX Coordinator must balance confidentiality with the safety of other members of the University community.
  - Repeat offenders
  - Accused poses an imminent threat of danger to the complainant or the community
  - Accused has access to a vulnerable community
Law enforcement involvement does not relieve the University from investigating under Title IX.

Even if an act does not constitute a crime, it may be a Title IX violation.

Schools must promptly investigate a complaint, delaying only if required while police are collecting evidence.
What if the victim violated a University policy?

- We never want a victim to not report for the fear of getting in trouble with the University
- Amnesty typically given for alcohol consumption and/or drug use
The Title IX Coordinator and the Office of Student Conduct work together to resolve complaints.

- **Title IX /Student Affairs Compliance**
  - Preliminary meetings with victim and accused
  - Consideration of confidentiality requests
  - Informal resolution
  - Investigation & report
  - *Student Policy on Sexual Violence* charges

- **Office of Student Conduct**
  - Sanctions
  - Administrative Hearing

- **Appeal**
Retaliation

- Retaliation against **ANY** participants in the process - accused, survivor, witnesses, reporting individuals - is prohibited.

- Retaliation refers to any act of intimidation against individuals who, in good faith, assert their rights to bring a complaint under University policy, including individuals who file a third-person report, or participate in an investigation, or protest the alleged conduct or retaliation.

- Retaliation can take many forms, including sustained abuse or violence, threats, and intimidation.

- Any individual or group of individuals, not just a Respondent or Complainant, can be responsible for retaliation.

- Retaliation is considered a separate offense from the original complaint, and will be considered independently from the merits of the underlying complaint.
Confidential Resources

On-campus:
- Office for Violence Prevention & Victim Assistance (VPVA)
  http://vpva.rutgers.edu
  848-932-1181
- Counseling, ADAP & Psychiatric Services (CAPS)
  http://rhscaps.rutgers.edu
  848-932-7884
- Rutgers Health Services
  http://health.rutgers.edu
  848-932-7402
- Student Legal Services
  http://rusls.rutgers.edu
  848-932-7402

Off-campus:
- Local off-campus rape crisis centers
- Middlesex Center for Empowerment
- Licensed mental health professionals
- Clergy

If you’re not sure of someone’s ability to keep information confidential, ask them.
Title IX Coordinators

➢ Jackie Moran
   Title IX Coordinator for Students (New Brunswick)
   Office of Student Affairs Compliance
   jackie.moran@rutgers.edu
   848-932-8576

➢ Judy Ryan
   Title IX Coordinator (University-wide)
   Office of Enterprise Risk Management, Ethics and Compliance
   judy.ryan@rutgers.edu
   (732) 235-5304

➢ Lisa Grosskreutz
   Title IX Coordinator for Employees
   Office of Employment Equity
   lisa.grosskreutz@rutgers.edu
   848-932-3980
Additional Title IX Resources

- Rutgers-New Brunswick Anti-Sexual Violence Campaign
  - http://endsexualviolence.rutgers.edu/

- U.S. Department of Education, Office for Civil Rights (OCR)
  - www2.ed.gov/about/offices/list/ocr/index.html

- Not Alone, https://www.notalone.gov/