

Title IX and the Violence Against Women Act (VAWA) Primary Prevention & Awareness Training

Title IX Language:

“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 educational program or activity receiving federal financial assistance.”

(Title IX of the Educational Amendment of 1972 -
32 C.F.R. § 106.31)

Who Does Title IX and VAWA Apply To?

Who?

- Everyone - Students faculty, staff, visitors, volunteers, vendors, women, men, boys, girls

What?

- Sexual misconduct - sexual harassment, sexual violence, interpersonal relationship violence, stalking
- Gender based harassment

Where or When?

- On Campus, off campus
- If it causes discrimination that impacts institutional programs and activities regardless of location

Statement of Policy

This institution prohibits discrimination, harassment, sexual misconduct, domestic and dating misconduct, and stalking, by or against any student or employee that occurs on the institutions premises or in connection with a sponsored activity, or off-campus conduct that unreasonably interferes with the educational or orderly operation of the institution, its mission, or its objectives; and off campus conduct that, in light of all of the facts and circumstances, would endanger the health and safety of the institutions community.

Understanding Sexual Misconduct

Understanding what constitutes sexual misconduct helps us to:

- **Avoid behaviors that violate another person's boundaries**
- **Know when your boundaries have been violated**
- **Recognize when someone needs help or should be held accountable for misconduct**
- **Know when to report a concern**

Terms and Concepts

- Sexual misconduct
- Sexual assault
- Rape/ Acquaintance rape
- Sexual exploitation
- Stalking
- Dating violence
- Domestic violence
- Sexual harassment
- Gender based harassment
- Hostile environment
- Unwelcome conduct
- Consent
- Bystander intervention
- Notice
- Confidentiality
- Retaliation
- Complainant's rights
- Resources and Response

Understanding Sexual Misconduct

Sexual Misconduct

- Sexual misconduct encompasses a spectrum of sexual violations and gender based violence inclusive of sexual harassment, dating violence, domestic violence, rape, sexual assault, and stalking.
- These violations may occur between strangers or acquaintances, people involved in an intimate or sexual relationship, and people of the same or different sex.
- These violations may be committed by men or by women and against men or women.

Hostile Environment

- Hostile environment is the term used to understand the impact of sex-based harassment (any form of sexual misconduct).
- An analysis for hostile environment requires examination of the conduct from a subjective and objective perspective.
 - Was the conduct unwelcome? (necessary but not enough)
 - Would a reasonable person in the complainant's position perceive the conduct as undesirable or offensive?
- Factors to consider include:
 - Type, frequency, duration of conduct
 - Relationship of people involved
 - Number of people involved
 - Location of conduct and context in which it occurred
 - Degree to which the conduct affected one or more people

Definitions

Sexual harassment

- Sexual harassment is unwelcome conduct such as sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.
- Sexual harassment occurs when an individual is the recipient of conduct of a sexual nature where:
 - (1) Submission to, or toleration of, such conduct is made either explicitly or implicitly a term or condition of the student's education, employee's employment; or
 - (2) Submission to or rejection of such conduct by an individual is used as the basis for academic decisions about the student or professional decisions about the employee; or
 - (3) Such conduct has the purpose or effect of unreasonably interfering with the employee/ student's welfare or professional/ academic performance, or creates an intimidating, hostile, offensive or demeaning work/ academic environment.

Gender-based harassment

- Gender based harassment is unwelcome conduct of a nonsexual nature based on actual or perceived sex including behaviors based on gender identity, expression and nonconformity with gender stereotypes.

Unwelcome conduct

- Unwelcome conduct is behavior that was not requested or invited and considered to be undesirable or offensive.
- It is possible to welcome some conduct without welcoming other conduct
- Passivity in response does not imply welcomeness.
- Examples include but are not limited to: name calling; verbal or written statements, threatening, harmful or humiliating acts

Definitions

Sexual assault

- Sexual assault is actual or attempted physical contact of a sexual nature against someone's will or without their consent.
- This includes but is not limited to:
 - Intentional sexual contact with another person without that person's consent; or
 - Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate body parts without that person's consent.
 - Rape of another individual.

Consent

- Consent is an agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person.
- Lack of consent results from: forcible compulsion or incapacity to consent, or if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly imply.
- A person is deemed incapable of consent when that person is either less than sixteen years old, mentally incapacitated, or physically unable to resist.
- Silence by itself, cannot constitute consent.

Definitions

Stalking

- Stalking is a pattern of behavior directed at a specific person that would cause a reasonable person to feel fear for his/her safety.
- “Credible threat” means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out.
- Stalking may include but is not limited to:
 - » Excessive communications via text, email, phone, social media, etc.
 - » Showing up often in places where the target plans to be or tends to frequent
 - » Inappropriate knowledge or awareness of the target’s schedule or past activities
 - » Anger or aggression when told to stop a stalking behavior or denied access to the target of the stalking target

Definitions

Domestic Violence

Domestic Violence or Abuse means the occurrence of one or more of the following acts between family or household members:

- (1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- (2) Placing another in reasonable apprehension of physical harm;
- (3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;
- (4) Committing either sexual assault or sexual abuse; and
- (5) Holding, confining, detaining or abducting another person against that person's will.

• Family or household members means:

- persons who are or were married to each other;
- are or were living together as spouses;
- are or were sexual or intimate partners;
- are or were dating (a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship);
- are or were residing together in the same household; have a child in common regardless of whether they have ever married or lived together;
- persons related by blood or marriage; or have the relationships by blood or marriage to a family or household member.

Definitions

Dating violence

- Dating violence is a crime of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant.

Bystander Intervention

- A bystander is someone other than the victim who is present when an act of sexual misconduct is occurring in which a reasonable person feels as though some protective action is required.
- You could be a bystander.
- Bystanders, if active, can prevent harm or intervene before a situation gets worse.
- Bystanders play a crucial role in preventing and responding to sexual misconduct.
 - If it is safe to do so, create a distraction or intervene while additional help can be contacted.
 - If it is not safe to create a distraction or otherwise intervene, get help immediately by calling campus personnel or local police.
 - Identify yourself to police as a witness and provide your contact information.
 - Support complainants by refraining from victim blame and by holding perpetrators accountable.
 - Speak up when you hear people making inappropriate jokes or comments or incorrect statements about sexual misconduct and consent.

Duty to Report

Responsible Employees

All responsible employees must report any information of sexual misconduct to the Title IX Coordinator and the Campus President.

Responsible employees include:

- The Campus Response Team (CRT) members. These CRT members are identified by their CRT lanyard, and each CRT member has a hand held radio.
- The Campus President

Reports assist the institution with:

- Keeping an accurate record of the number of reported incidents
- Determining any pattern of sexual misconduct regarding a particular location, method, or offender
- Alerting the campus community to potential danger(s)
- Initiating an investigation/ hearing/ review process when appropriate

If you are questioning whether to report something, assume that you should:

- Every report must be processed even if it appears unreasonable on its face
- Prejudgment is not acceptable regardless of reasonableness of conduct
- Unreasonable complaints will still require sufficient documentation to support discharge of claim
- Multiple reports without sufficient information may cumulatively permit a comprehensive investigation and response
- Retaliation will not be tolerated.

Duty to Respond

An institutional response includes promptly and effectively:

- Stopping the misconduct/discrimination
- Investigating the allegation
- Preventing recurrence of the misconduct/discrimination
- Remediating the effects for an individual and/or the community
- Addressing environmental factors that contributed to the misconduct/discrimination

Institutions must also determine if an incident of sexual misconduct alone or in combination with other incidents is severe and pervasive*

- Factors to consider include:
 - Type of misconduct - verbal or physical
 - Frequency and severity of the misconduct
 - Age, sex, and relationship of the individuals involved
 - Setting and context in which the misconduct occurred
 - Whether other incidents have occurred at the school

*A single incident of sexual assault or rape is severe enough to create a hostile environment. Other sexual misconduct i.e. verbal sexual harassment may need to be repetitive to create a hostile environment.

Confidentiality

Disclosure of any amount of information will be considered notice / a complaint:

Based on the nature of the report, the institution will investigate and respond and may be obligated to do so with or without the complainant's involvement.

CONFIDENTIALITY

- Will be maintained to the extent possible
- Cannot be assured to a complainant or witness
- Will not be maintained where there is an obligation to assure community safety through a continued investigation.

While limits on confidentiality may be alarming to victims, their concerns can be mitigated by:

- taking appropriate steps to assure safety
- assuring regular updates
- allowing the victim to choose their own level of participation
- discussing our zero tolerance retaliation policy

Retaliation

Retaliation is harassing behavior or negative consequences targeted at a complainant or witness by the accused or by others either on behalf of or due to affiliation with the accused.

The institution prohibits retaliation against any individual who in good faith makes a complaint or assists a complainant in the filing of sex discrimination, sexual harassment, or sexual misconduct or participates as a witness in a proceeding.

Victims and the accused must be made aware that retaliation will not be tolerated.

- Victims and witnesses should contact the Campus President or CRT Coordinator if they fear for their immediate safety.
- Victims and witnesses should contact the Campus President or CRT Coordinator if they experience or suspect retaliatory behavior.
- Accused individuals must have a clear understanding that retaliation includes conduct by others on their behalf.

Investigation Process

After receiving a report of sexual misconduct the institution will:

- Promptly investigate the report (independent of law enforcement)
- Conduct fair, unbiased, and objective investigations
- Take appropriate steps to resolve the situation
- Identify actions to prevent recurrence of similar incidents in the future

Clery Warnings

- Timely warnings are required for serious and continuing threats
- Emergency notifications are required for any immediate threats

The Investigation

- Independent obligation to investigate Investigation will be adequate, reliable and impartial
- Standard of Review: More likely than not that an act occurred based on a preponderance of the evidence.
- Interim measures: Will be considered throughout the process

Common Victim/ Survivor Responses

Responses following sexual or interpersonal victimization vary widely and may not look like victimization. Some common responses may include but are not limited to:

- Self blaming
- Attempting to have a normal relationship with the perpetrator
- Minimizing the experience
- Changing thoughts (and statements) about the perpetrator's actions over time
- Seeking corrective sexual or intimate experiences with the perpetrator or others
- Acting out sexually and/or engaging in other high risk behaviors
- Isolating
- Self harming
- Engaging in social activism to combat sexual violence
- Seeking revenge or experiencing revenge fantasies
- Experiencing a range of emotions including fear, sadness, shame, anger, and aggression

Note: Trauma impacts how we think and organize information

Anyone can become a victim although perpetrators tend to target people who are emotionally or physically vulnerable, submissive, distracted, and/ or unlikely to report victimization.

Resources

- “Not Alone: The First Report of The White House Task Force to Protect Students From Sexual Assault,” April 2014 (http://m.whitehouse.gov/sites/default/files/docs/report_0.pdf)
- “Questions and Answers on Title IX and Sexual Violence,” United States Department of Education, April 2014 (<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>)
- “Dear Colleague Letter,” United States Department of Education Office for Civil Rights, April 4, 2011 (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>)
- “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties,” United States Department of Education Office for Civil Rights, January 19, 2001 (<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>)
- NotAlone.Org: <https://www.notalone.gov/resources/>
- National Sexual Assault Hotline: 1-800-656-HOPE

All allegations of sexual misconduct of any kind should be immediately reported to the Campus President and a Title IX Coordinator:

Title IX Coordinator:

Dr. Jayne Moschella, Vice President of Academic Affairs

jmoschella@evergladesuniversity.edu

5002 T-Rex Avenue, Suite 100

Boca Raton, FL 33431

More information including your rights, how investigations are handled and additional resources can be found on the Safety and Security page on our website at:

<http://www.evergladesuniversity.edu/university-safety.asp>