

Fostering a Positive Academic Environment: Update from Title IX Policy for Augusta University

June 2017
Office of Legal Affairs

Title IX of the Education Amendments of 1972

“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 U.S.C. §1681



Title IX

Protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to societal notions of masculinity or femininity. This includes students who are pregnant and parenting, and all persons participating in educational programs.



Augusta University

“Augusta University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. Augusta University will not tolerate sexual misconduct, which is prohibited, and which includes, but is not limited to, domestic violence, dating violence, sexual assault, sexual exploitation, sexual harassment, and stalking.”

Federal Court Holds that Title IX applies to Private Hospitals and Residents: Residency Program “an Educational Program”

- The U.S. Court of Appeals for the Third Circuit ruled on March 7, 2017 that a medical residency program at a private hospital was an educational program, and thus subject to the provisions of Title IX (Jane Doe v. Mercy Catholic Medical Center).
- Female resident claimed that she forced out of the GME Program at Mercy Catholic Medical Center in Philadelphia (affiliated with Drexel Medicine) for denying the unwanted sexual advances of a superior.
- Case has national implications for GME and federally-funded residencies, US Department of Justice filed an amicus brief in support of the resident.

USG Sexual Misconduct Policy

USG mandated Sexual Misconduct Policy became effective for all USG schools on July 1, 2016 following:

- Georgia Legislature hearings and requests that USG review its policies covering Title IX and sexual misconduct.
- USG convened meetings in winter and spring 2016 that included student and legal affairs representatives from all USG institutions to discuss the need to create and implement a USG-wide sexual misconduct policy.

Sexual Misconduct Policy

Sexual Misconduct Policy adopted to:

- Comply with USG mandate.
- Maintain a safe learning environment that supports the dignity of all members of the AU community.
- Ensure that all parties involved receive appropriate support and fair treatment and that allegations are handled in a prompt, thorough and equitable manner

Title IX Guidelines

- Education, Prevention and Outreach
- Policies that are fair, equitable, timely and transparent
- Mandatory Reporting:
 - Administrator, supervisor, faculty member, or other person in a position of authority who is not a Privileged Employee.
 - Student employees, to include teaching assistants, residential assistants, student managers, orientation leaders
- Mandatory Training
- Campus Climate surveys

Why is Title IX Important?

- Eliminate sexual misconduct and dating/domestic violence:
 - Retaining student or employee
 - Provide resources/support
- Prevent its recurrence
- Address its effects-response must be prompt and equitable
- Prevent and address retaliation
- A University violates Title IX if it “has notice” of a sexually hostile environment and fails to take immediate and effective corrective action

2016-17 Title IX Events Summary

From Aug 1, 2016 to May 24, 2017:

1. Total reported incidents/cases= 45
2. Total Investigations assigned=34
3. Ongoing assigned /active investigations=10
4. New case/not assigned=1

Investigation Outcomes:

1. Responsible Investigation Findings Reports:
 - a. Sexual Harassment=5
 - b. Nonconsensual Contact-1
 - c. Sexual Exploitation=1
 - d. Dating violence



2016-17 Title IX Events Summary

Investigation/Hearing Sanctions:

- 1.(4) Disciplinary Conduct Probations
- 2.(5) Educational component with reflection reports/essays
- 3.(1) Online alcohol awareness program
- 4.(1) Sexual Awareness and sensitivity training
- 5.(1) Counseling
- 6.(1) 50 hours of Community Service
- 7.(1) Recommended Dismissal-(student withdrew)

2016-17 Title IX Implementation

- Prevention/Education
 - Online sexual misconduct training
 - Undergrad students = 1003 registered, 909 completed)
 - Employees = 6020 registered, 5680 completed
 - Workshops, Seminars and Professional Development
 - MCG, Deans, Presidents Cabinet, DCG, Athletic teams, coaches, Student Government, Divisions/Departments, Greek Life, Clubs/Orgs, RA's, various Academic departments

Definitions

Sexual Assault

“An umbrella term referring to a range of nonconsensual sexual contact, which can occur in many forms including but not limited to rape and sexual battery.”

Definitions (Cont'd)

Sexual Harassment

“Unwelcome verbal, nonverbal, or physical conduct, based on sex or gender stereotypes, that is implicitly or explicitly a term or condition of employment or status in a course, program, or activity; is a basis for employment/educational decisions; or has the purpose or effect of interfering with one’s work or educational performance creating an intimidating, hostile, or offensive work or learning environment, or interfering with or limiting one’s ability to participate in or benefit from an institutional program or activity.”

Definitions (Cont'd)

Consent

“Words or actions that show a knowing and voluntary willingness to engage in mutually agreed-upon sexual activity. Consent cannot be gained by force, intimidation or coercion, by ignoring or acting in spite of objections of another, or by taking advantage of the incapacitation of another, where the respondent knows or reasonably should have known of such incapacitation. Consent is also absent when the activity in question exceeds the scope of consent previously given. Past consent does not imply present or future consent. Silence or and absence of resistance does not imply consent. Minors under the age of 16 cannot legally consent under Georgia law.”



Definitions (Cont'd)

Dating Violence

“Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the alleged victim.”

Domestic Violence

“Violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.”

Definitions (Cont'd)

Incapacitation

“The physical and/or mental inability to make informed, rational judgments, and can result from mental disability, sleep, involuntary physical restraint, or from intentional or unintentional taking of alcohol and/or other drugs. Whether someone is incapacitated is to be judged from the perspective of an objectively reasonable person.”

Definitions (Cont'd)

Nonconsensual Sexual Contact

“An intentional sexual touching upon a person, without consent or where the person is incapacitated, and/or by force, by another person or with any object. Sexual contact includes but is not limited to, intentional contact with the breasts, buttocks, groin, or genitals, or touching another with these body parts, or making another touch the alleged victim or themselves with or on any of these body parts.”



Definitions (Cont'd)

Sexual Exploitation

“[O]ccurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited.”

Definitions (Cont'd)

Stalking

“Engaging in a course of conduct directed toward another person based upon sex that would cause a reasonable person (i) to fear for his or her safety or the safety of immediate family members or close acquaintances, or (ii) to suffer substantial emotional distress.”

Definitions (Cont'd)

Community

“Students, faculty and staff, as well as contractors, vendors, visitors, and guests.”

Complainant

“An individual lodging a complaint. The complainant may not always be the alleged victim.”

Respondent

“Individual who is accused to have engaged in conduct that violates this Policy.”

Definitions (Cont'd)

Responsible Employees

- “Employees who must promptly and fully report complaints of or information regarding sexual misconduct to the Title IX Coordinator.”
- “[A]ny administrator, supervisor, faculty member, or other person in a position of authority who is not a Privileged Employee.”
- “Student employees who serve in a supervisory, advisory, or managerial role are in a position of authority for purposes of this Policy (e.g., teaching assistants, residential assistants, student managers, orientation leaders, etc.).”

Definitions (Cont'd)

Privileged Employees

“Individuals employed by Augusta University to whom a complainant or alleged victim may talk in confidence, as provided by law. Disclosure to these employees will not automatically trigger an investigation against the complainant’s or alleged victim’s wishes.”

Definitions (Cont'd)

“Privileged Employees include those providing counseling, advocacy, health, mental health, or sexual-assault related services (e.g., Student Health Services, Student Counseling and Psychological Services and Pastoral Counseling) or as otherwise provided by applicable law.”

“Exceptions to confidentiality exist where the conduct involves suspected abuse of a minor (in Georgia, under the age of 18) or otherwise provided by law, such as imminent threat of serious harm. Further, Privileged Employees must still submit anonymous statistical information for Clery Act purposes.”

Reporting Sexual Misconduct

Several options at Augusta University to report sexual misconduct:

- File a criminal complaint with law enforcement officials
- File an report with the Title IX Coordinator
- File an anonymous report with the Title IX Coordinator

Reporting Sexual Misconduct (Cont'd)

- Complainants of sexual misconduct who wish to file a report with the institution should notify a Responsible Employee or the Office of the Title IX Coordinator. However, complainant may file with law enforcement.
- Because sexual misconduct may constitute criminal activity, a complainant also has the option of filing a report with campus or local police.
- Complainant may also seek assistance from rape crisis centers or other support agencies.

Reporting Sexual Misconduct (Cont'd)

Responsible Employees informed about sexual misconduct allegations involving any student must:

- Notify the Office of the Title IX Coordinator as soon as practicable.
- Not attempt to resolve the situation, but must notify and report all relevant information to the Title IX Coordinator.

Reporting Sexual Misconduct (Cont'd)

- *Augusta University Police, (706) 721-2914 or (706) 721-2911. For crisis response and criminal investigation, contact Augusta University Police and/or local law enforcement*
- **Title IX Coordinator: Michele Reed, Office of Compliance and Enterprise Risk Management, 706-721-0901 or micreed@augusta.edu**

Title IX Investigators:

- Gina Thurman, Assistant Dean of Students
- Kay Allen, JD, Assistant Director of Athletics for Compliance
- Debra Arnold, Director, Employee Relations
- Dr. Quincy Byrdsong, VP Academic Planning & Strategic Initiatives
- Karen Mobley, Director of Diversity and Inclusion
- Angie Baker, Director Testing and Disability Services
- James Mayes, Academic Advisor
- Danny Finn, HR GCHC

Resolving Sexual Misconduct

University Responsibilities

1. Investigate Complaint.
2. Take prompt and effective action to end the harassment or inappropriate activity (if needed).
3. Remedy the effects.
4. Prevent a recurrence.



Resolving Sexual Misconduct

Timeframe:

- Make reasonable effort to complete investigation and resolution within 60 calendar days of the initial complaint.
- The Title IX Coordinator will notify the respondent and the alleged victim, in writing, of any extension of this timeframe.

Resolving Sexual Misconduct

“Allegations of sexual misconduct involving a student that are brought against an institution’s faculty or staff will be investigated as outlined [in this policy], but will be further addressed and/or resolved through the institution’s applicable employment policies, and in accordance with the procedures for dismissal outlined in the Board of Regents Policy including procedures for appealing such decisions.”

Interactive Activity

The definition of sexual harassment includes the following:

- A. Unwelcome or unwanted nonverbal or verbal comments
- B. Impacts ability to concentrate or complete academic or work requirements
- C. Based on sex or gender stereotypes
- D. All of the Above

Interactive Activity

Mandatory reporting for Title IX is required for:

- A. Graduate Assistants
- B. Resident Assistants
- C. Teaching assistants
- D. Orientation leaders
- E. All of the above

Interactive Activity

Consent is NOT defined as:

- A. Mutually agreed upon sexual activity
- B. Active, not passive
- C. Permission given freely by words or actions
- D. Silence or lack of resistance
- E. All of the above



Interactive Activity

Reporting sexual misconduct can be done by:

- A. Calling 911
- B. Contacting the Title IX Coordinator
- C. Completing incident report form on Title IX Website
- D. CARE report
- E. All of the above

Interactive Activity

An incident of sexual misconduct/Title IX may be reported if:

- A. Off campus
- B. During study abroad experience
- C. The incident occurred a year ago
- D. By a third party report
- E. All of the above



Interactive Activity

A student or employee may change their mind at any point when deciding what to do with an allegation/incident:

A. Yes

B. No



Interactive Activity

Interim measures include:

- A. Classroom adjustments
- B. Office relocation
- C. Temporary suspension from classes or work
- D. Letters of no contact
- E. All of the above

Questions?

