

Title IX Update

TAMUG Faculty & Staff
2020





Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C 1681 & 34 C.F.R Part 106

June 23, 1972





No sex discrimination in ANY programs and activities



Academics



Athletics



Employment



Admissions

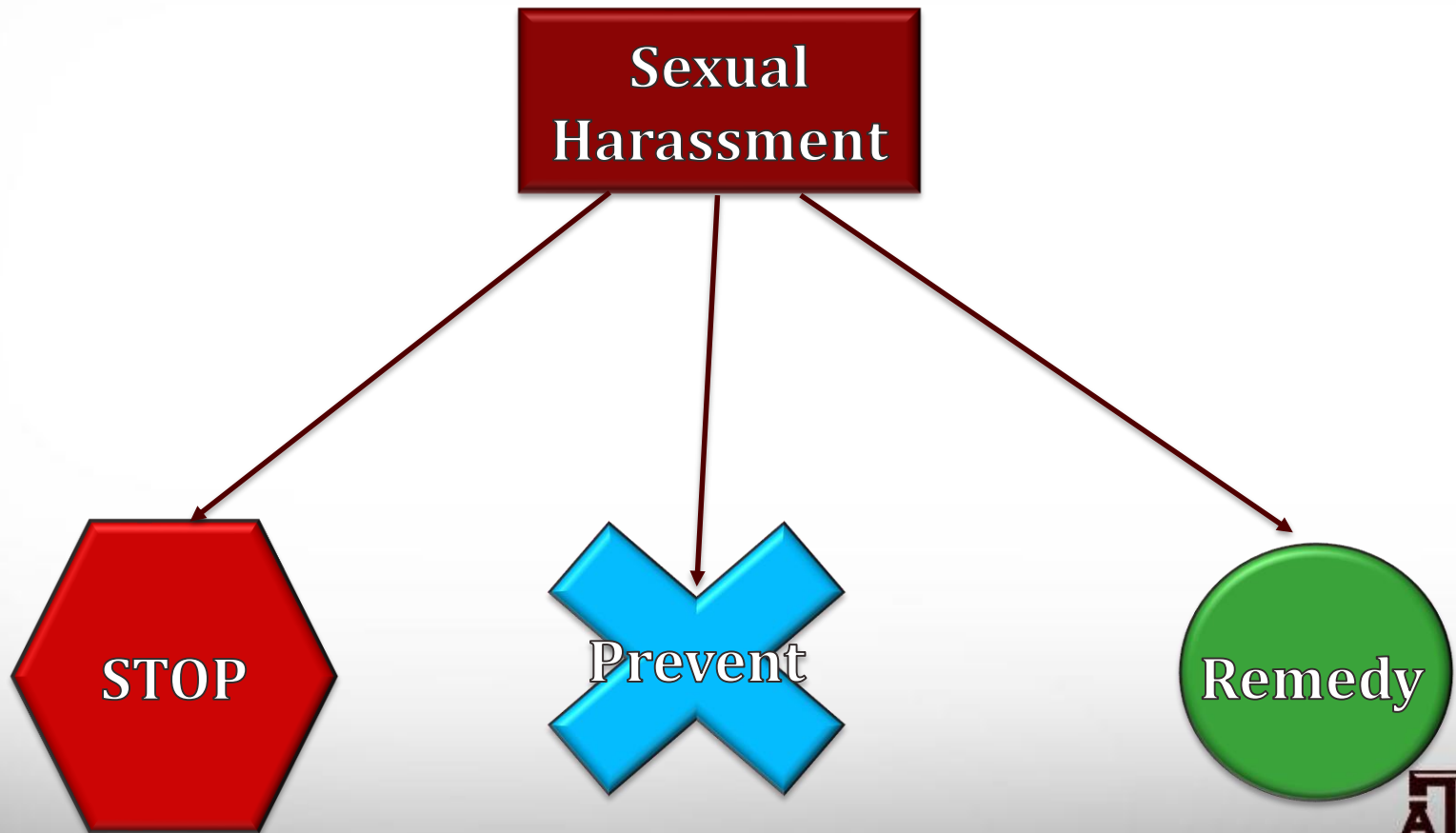


Clubs



Study Abroad
and Off-Campus

Institutional Obligations under Title IX



Examples of TAMU's Efforts



- Thorough and timely investigations
- No Contact Restrictions
- Campus Crime Alerts
- Sanctions



- HAVEN Training
- Step In, Stand Up Awareness Campaign
- Green Dot Bystander Training
- Campus Programing, Art Exhibits, Speakers



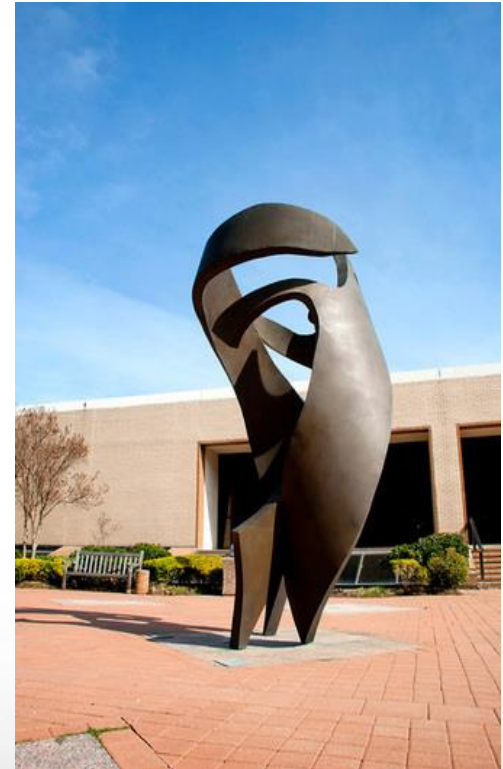
- No Contact Restrictions
- Academic Support
- Change in Housing/Transportation/Parking
- Medical and Mental Health Resources

CREI



Department of Civil Rights and Equity Investigations (CREI)

- Investigation and resolution of all Civil Rights complaints, including Title IX
- Includes all reports of discrimination, harassment, retaliation, or complicity based on a *protected class*.
- Protected classes: race, color, sex, gender identity or sexual orientation, age, religion, disability, national origin, Veteran status



Reports of **Inappropriate Conduct** which do not rise to the level of a civil rights violation are usually referred to the entity below for a response:

Reports against Faculty:	Department Head
Reports against Staff:	HR or Supervisor
Reports against Students:	Student Conduct



The Same Rules Apply to Faculty, Staff, and Students

System Regulation 08.01.01

Civil Rights Compliance

University Rule 08.01.01.M1

*Prohibited Conduct: Discrimination, Harassment, Complicity,
and Related Retaliation based on a Protected Characteristic*

SAP 08.01.01.M1.01

*Investigation and Resolution of Allegations of
Prohibited Conduct Against Students,
Employees, and Third Parties*



President

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graph TD; President[President] --> OREC[Office of Risk Ethics and Compliance (OREC)]; OREC --> CREI[CREI]; OREC --> Insurance[Insurance]; OREC --> Privacy[Privacy]; OREC --> URC[URC]; OREC --> UYP[UYP]; OREC --> OpenRecords[Open Records];
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**Office of Risk
Ethics and
Compliance
(OREC)**

CREI

Insurance

Privacy

URC

UYP

**Open
Records**

CREI by the Numbers

January – December 2019

- **Total Reports Received: 934**
- **Number of Reports By Month:**
 - **38 – January**
 - **51 – February**
 - **49 – March**
 - **68 – April**
 - **44 – May**
 - **56 – June**
 - **56 – July**
 - **80 – August**
 - **133 – September**
 - **176 – October**
 - **122 – November**
 - **61 – December**

***CREI did not have jurisdiction over students until June 1, 2019



CREI by the Numbers

January – December 2019

- **Total Reports Received: 934**
 - 578 Title IX Reports
 - 209 Other Civil Rights
 - 15 Retaliation Reports
 - 101 Inappropriate Conduct/Doesn't Rise to Level
 - 31 Unknown Complaint/Other
- **Total Investigations Opened (1/1/19 to 12/31/19): 98**
 - 49 against Faculty/Staff (including former Faculty/Staff)
 - 47 against Students
 - 2 against 3rd party/Other
- **Total Reports Received FALL 2019 (8/19/19 to 12/31/19): 537 (5.9 per business day)**
 - 208 Student Cases
 - 111 Faculty/Staff Cases
 - 66 Non-TAMU
 - 112 Unknown
 - 30 Former Faculty/Staff/Student
 - 10 Other



CREI Staff

- 1 Hearing Administrator
- 2 Case Managers
- 4 Investigators
- 1 Deputy Title IX Officer
- 1 Assistant Vice President and Title IX Officer

- 1 Hearing Officer (OREC)



**What is
*Prohibited
Conduct
under
08.01.01?***



Four Kinds of Prohibited Conduct

Discrimination

Harassment

Retaliation

Complicity



Sexual Harassment

- Unwelcome conduct of a sexual nature
- that is so severe, persistent, or pervasive
- that it unreasonably interferes with, limits, or deprives
- an individual of participation in the University's programs, activities, or benefits.

Requires conduct to be both objectively and subjectively offensive



Stalking

- 2 or more unwelcome acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
- that put a person in fear for their own safety or the safety of others
- OR causes substantial emotional distress



Dating Violence

- Violence (including sexual or physical abuse or threat of such abuse)
- committed by a person
- who is or has been involved in a social relationship of a romantic or intimate nature with the victim



Domestic Violence

A felony or misdemeanor crime of violence committed by:

- (a) a current or former spouse/intimate partner
- (b) a person with whom the Complainant shares a child in common;
- (c) a person who is cohabitating with, or has cohabitated with, the Complainant like a spouse
- (d) a person similarly situated to a spouse under the domestic violence rules of the jurisdiction



Sexual Exploitation

- Taking sexual advantage of another person
- For your own (or someone else's) benefit
- Without consent

Examples: hiding in the closet and watching others have sex without their consent, posting an intimate picture of someone on social media without their consent, indecent exposure



New Criminal Violation:

HB 2789

It is a criminal offense to knowingly transmit pictures (without consent) of:

- any person engaging in sexual conduct; OR
- exposed intimate parts; OR
- the covered genitals of a male person that are in a discernibly turgid state

Class C Misdemeanor



Sexual Assault

- Rape (penetration of genitals, anus, or mouth without consent)
- Fondling (touching breast, groin, genitals, butt) without consent
- Incest
- Statutory Rape



Statutory Rape

Under Texas law, a 16 year old (or younger) is legally incapable of giving consent to sexual penetration or sexual contact by a non-spouse who is more than three years older than the individual.

Can a 17 year old consent to sex?

Can a 16 year old consent to sex with a 19 year old?

Can a 16 year old consent to sex with a 20 year old?

**What if you hook up with someone
who lies about their age?**



Free Speech



Guidance from the Supreme Court for Evaluating Speech

A campus CANNOT censor or punish speech merely because a person or group considers the speech offensive or hateful.

A campus CAN censor or punish speech that meets the legal criteria for harassment, true threat, or other speech acts not protected by the 1st Amendment

A campus CANNOT censor or punish faculty/staff who express themselves OUTSIDE the professional educational context.

A campus CAN engage in activities designed to promote “more speech” – the remedy to hate speech.



Creating Opportunities for “More Speech”

- Prevent disruption of university activities and disruption of speakers on campus. Protect the rights of all students to speak out/protest speech that they don't appreciate
- Offer classes which sensitize the campus community to the effects of implicit bias and micro aggressions
- Stress the importance of an inclusive environment in the first-year experience class. Emphasize how the institution's scholarly mission is best accomplished when people of diverse backgrounds and perspectives work together in an environment of mutual respect and constructive engagement
- Condemn hate speech in presidential emails and on our websites
- Co-sponsor activities that celebrate diversity and provide victims with the opportunity to be heard



Reporting Civil Rights/Title IX Violations



Mandatory Reporting Rule Applies to All Civil Rights

- An employee who, **in the course and scope of employment**, experiences, observes, or becomes aware an incident of alleged discrimination or harassment (including Title IX Violations), that was alleged to have been committed **by or against a student who was enrolled at or an employee of the institution at the time of the incident** shall promptly report the incident to their supervisor or CREI.
- If the allegation is sexual assault, stalking, dating violence or sexual harassment, the report must be to the **Title IX Coordinator (CREI)**. Reporting to your supervisor is insufficient.
- Counselors and health care providers only report de de-identified statistics
- No obligation to report your own victimization



Employee Consequences for Failure to Make a Mandatory Report

As per system policy, an institution **must terminate** any employee who does not make a required report.

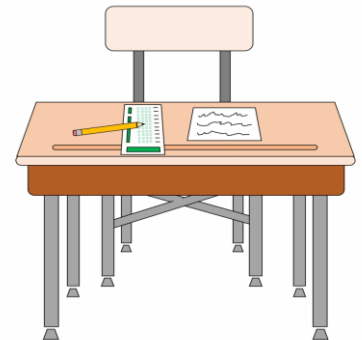
New State Law: fines and up to 1 year in jail (effective Jan. 1) for failure to report sexual harassment, sexual assault, stalking, or dating violence



Are Students Mandatory Reporters?

Students are not Mandatory Reporters unless they are also employees and receive a disclosure of discrimination or harassment while they are acting in their employee role at the time of the disclosure.

However, students are strongly encouraged to report so that the University can offer support and resources to your impacted individuals.



What should you do with the student or co-worker who discloses?

Ideally, you interrupt before they spill the secret and advise them:

- You are a mandatory reporter and must pass on a discrimination or harassment report to the Civil Rights Office
- You are concerned about them and will listen if they still want to talk
- You can get them to the right people on campus to get help
- They have options on campus to discuss their issue confidentially
- If they have safety concerns, call the police



ALL CIVIL RIGHTS REPORTS GO TO:

**Jennifer Smith,
Assistant Vice
President and Title IX
Officer**

Department of Civil Rights &
Equity Investigations (CREI)
Medical Sciences Library
Bldg., Suite 007
College Station, TX 77843
979-458-8407
civilrights@tamu.edu



Anonymous Reports:

https://www.tamug.edu/care/Tell_Somebody.html



What happens after a report is made?

- Case Managers at CREI will reach out via email and/or telephone with an invitation to talk about filing a complaint, options for resolving a complaint, and supportive measures/academic adjustments
- No obligation to respond



Options for Resolution

The Complainant's Case Manager will request input for resolving the complaint from the Complainant. CREI makes the final decision about which resolution to pursue.

- ***Formal resolution*** (investigation, adjudication, and, if appropriate, the imposition of sanctions)
- ***Informal resolution*** (a restorative option for resolving complaints that does not involve disciplinary action against a Party; e.g., a facilitated conversation about how the behavior affected someone)
- ***No resolution at this time*** (complaint may be revived at a later date)



Responsibility and Sanctions Decided by Designated Administrator (DA)

Accused Faculty

Dean of Faculties - based on Investigation Report

Staff

Hearing Officer- based on Investigation Report

Students

Hearing Officer- based on Investigation Report and information provided at live hearing



**How does
TAMU Support
Victims and
Accused
Parties?**



Academic Supports and Academic Accommodations

Federal and State Laws require the University to offer interim measures and accommodations to **BOTH the Complainant and the Accused.**

Examples:

- Excused absence from class
- Reschedule a Test/ Due Date for Projects
- “No Contact” restrictions
- Changing an employee’s work location
- Change to a different section of a class or postpone a test
- Drop a class after the Q drop date
- Maternity/Paternity leave – copies of notes, allow makeup tests, etc.
- A temporary change to any other rule that applies to everyone else



Sanctions



Student Title IX Sanctioning Matrix












SANCTION RANGE

Stage 1: Reprimand/Restrictions/Review

Stage 2: Probation

Stage 3: Suspension

Stage 4: Expulsion

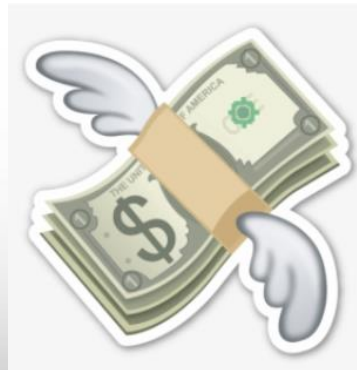
Pressuring another person for dates or sexual favors				
Destruction of property				
Engaging in sexual activity while knowingly infected with an STD without the other person's knowledge				
Assuming another's identity in order to make contact with complainant				
Collecting, creating, and/or distributing child pornography/sexual images of those under 18				



1 Year Suspension

Students found responsible for committing acts of sex-based violence and/or non-consensual sexual penetration of another person may be allowed to return to campus after a 1 year suspension. If so, they will be **ineligible**:

- **to hold a leadership position in a student organization**
- **to represent the university (in athletics, academic, or other competitions) and**
- **to receive an institutional scholarship**



Employee Sanctions for Title IX Violations

When an employee is found to have sexually harassed another member of the university or agency community, the sanction will be termination of employment.

TAMUS Regulation 08.01.01, Section 4.5.7

Sexual harassment includes non-consensual sexual contact, sexual assault, sexual exploitation, stalking, dating violence, and domestic violence when based on sex.

TAMUS Regulation 08.01.01, Definitions Section



Employee Sanctions for other Civil Rights Violations

- **Written Reprimand**
- **Performance Improvement Plan**
- **Leave with or without pay**
- **Suspension**
- **Training or Counseling**
- **Termination**
- **Demotion**



**What if
someone
files a false
report?**



Abuse of Process

Abuse of the investigation and resolution process as set forth in this rule is subject to disciplinary action up to and including dismissal from the University. Examples of abuse of process include, but are not limited to:

- Falsification, distortion, or misrepresentation of evidence or information
- Intentionally initiating or causing to be initiated a false report (mandatory termination).



**Where do I
get more
information?**





Title IX at Texas A&M
Department of Civil Rights & Equity Investigations

[Make a Report](#)

[Understand the Process](#)

[Get Help](#)

[About](#) ▾

[Get Help Now](#)

[Investigation Process](#) ▾

[Make a Report](#)

[Education & Training](#)

[Our Team](#)

Title IX at Texas A&M University

Title IX is a federal law that prohibits sexual harassment, sexual violence, and discrimination on the basis of sex.

The Consensual Relationship Policy



Consensual Relationships

System Regulation 07.05.01, *Consensual Relationships*, prohibits a Texas A&M University employee from having a consensual relationship in two instances:

- (1) An employee may not have a consensual relationship with an individual (graduate student, staff, faculty, or third party) who is under the employee's authority or supervision unless alternate arrangements have been approved; and,
- (2) An employee may not have a consensual relationship with an undergraduate student of Texas A&M unless the employee is granted an exemption under the regulation.

A consensual relationship in violation of this regulation may result in disciplinary action against the employee, up to and including dismissal.



Who is an “Employee”?

Under the regulation, an employee is anyone who receives compensation as a full or part-time employee of the TAMU System.

This definition includes all faculty and staff. It may also include **graduate students**, graduate research assistants, graduate teaching assistants, and non-teaching graduate assistants if they receive compensation as an employee.

Student worker positions are expressly excluded from the definition of “employee” under this regulation.



What is a *“Consensual Relationship”*?

Under the regulation, a consensual relationship is defined as a mutually agreeable amorous, romantic, and/or sexual relationship.

Employees are not prohibited from pursuing a consensual relationship with an undergraduate spouse or an undergraduate of a different institution.



**Mandatory Reporting
does not apply to the
Consensual Relationship Rule**



Request an Exemption

If the employee works for a college under the purview of the Provost's Office, the employee can apply for an exemption with the Dean of College.

If the employee works for a non-academic department, the employee apply for an exemption with the Head of the unit.

The undergraduate student will be asked to approve and sign the exemption request.



Questions?

