Overview for SF State Faculty & Academic Leaders:
Understanding Your Title IX- & DHR-Related Responsibilities
Luoluo Hong, PhD, MPH
Vice President for Student Affairs & Enrollment Management
Title IX Coordinator & DHR Administrator

Title IX, Violence Against Women Act & Campus SaVE Act

• Title IX
  o A federal law prohibiting discrimination on the basis of sex in an educational institution’s academic, extracurricular and athletic activities
  o Protects all persons, regardless of gender or gender identity, from sexual harassment and sexual violence, which are forms of sex discrimination
  o VAWA amends Clery Act, which already requires campuses to:
    ❖ Report annual crime statistics
    ❖ Develop and publish prevention policies and procedures

• Campus SaVE Act:
  ❖ Clarifies that “sexual violence” now also includes domestic violence, dating violence and stalking
  ❖ Requires policies that address and prevent sexual violence through specified training, education, and discipline procedures
Scope of the Problem

- 1 in 5 women experience completed/attempted sexual assault while in college
  - 12 sexual offenses, 3 dating violence & 4 stalking reported in 2017 under Clery definitions
  - 138 sexual violence reports filed with the Title IX Coordinator in AY 2017-2018
  - Among SF State students, 17.9% reported experiencing sexual touching without consent; 7.1% stalking; 17% report experiencing a emotionally, physically or sexually abusive intimate relationship
- About 90% of victims know their offenders
- Less than 5% of sexual assaults are reported
- While sexual violence disproportionately affects women and transgender students, more than 6% of men are sexually assaulted in college
- Regardless of victim’s gender, men are disproportionate majority of perpetrators

Sources: US DOJ Reports – Findings from the National Violence Against Women Survey (2000); The Sexual Victimization of College Women (2000); Association of American Universities Campus Climate Survey (2015); ACHA National College Health Assessment (Spring 2018)

No Matter Where It Happens...

- SF State obligated to review and, if warranted, investigate info regarding possible sexual violence, when it is reported to the university or when it becomes aware of sexual violence, that:
  - takes place on or near campus;
  - is connected with university programs or activities, whether on or off campus, including online or overseas;
  - creates a hostile environment; and/or
  - involves a complainant or respondent who is a current student or employee.
- 93% of crimes against students occur off campus. (US DOJ, 2005: http://www.bjs.gov/content/pub/pdf/vvcs02.pdf)
CSU Executive Orders

- New revisions for EO 1096 and 1097 released October 5, 2016

Significant Policy Elements (6/23/15)

- A new category of prohibited behavior added: sexual misconduct
  - Includes any sexual activity engaged in without affirmative consent, where affirmative consent means an informed, conscious, voluntary, and mutual agreement to engage in sexual activity.
- Employees are prohibited from entering into a consensual relationship with any student or employee over whom they exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling, or extracurricular authority.
- Both Complainants and Respondents now have the right to appeal the finding of an investigation, as well as appeal any sanctions imposed following a finding of responsibility in a Title IX incident.
**Significant Policy Elements (6/23/15)**

- While reporting as soon as possible maximizes SF State’s capacity to respond effectively to a reported incident, there is no longer a time limit for when a Complainant may come forward to report a potential violation of policy.

- Complainants may now request an Early Resolution Process when filing a complaint under EO 1096/1097
  - Purpose is to explore whether the Complainant’s concern(s) can be resolved by SF State without an investigation.

- Employees, as well as students, will have access to a confidential victim-advocate through The SAFE Place if they wish to have one.

---

**Title IX Prohibits Discrimination on the Basis of Gender Identity**

- Institutions of higher education must provide equitable educational access to students who are pregnant, nursing or parenting.
  - Visit [http://titleix.sfsu.edu/content/pregnant](http://titleix.sfsu.edu/content/pregnant) for more information.
  - Students who need academic accommodations while they are experiencing pregnancy or immediately after childbirth should visit the Disability Programs & Resource Center (dprc@sfsu.edu) in SSB 110

- We must treat students equitably, regardless of gender.
  - San Francisco State continues to expand the number of restrooms that are gender inclusive. Please visit [http://titleix.sfsu.edu/content/all-gender-restrooms](http://titleix.sfsu.edu/content/all-gender-restrooms) for the most updated list.
  - Preferred name should be used in all cases, without requiring ID
Key Definitions: Sexual Misconduct

- **Sexual Misconduct** - any sexual activity without first obtaining Affirmative Consent to the specific activity, whether or not the conduct violates any civil or criminal law.
  - Includes any unwelcome physical sexual acts such as Sexual Assault, Sexual Battery, Rape, Dating/Domestic Violence, or stalking
  - May include use of physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person’s intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person’s incapacitation (including voluntary intoxication) to engage in sexual activity.

Affirmative Consent

- An informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity
  - Each person involved in the sexual activity is responsible to affirm consent of the other participant(s), even if they are intoxicated or incapacitated
  - Lack of protest or resistance does not affirm consent, nor does silence
  - Must be voluntary and given without coercion, force, threats or intimidation
  - The existence of a dating/social relationship or past sexual activities between those involved, cannot be assumed to be an indicator of affirmative consent
  - A request to use a condom or birth control does not, in and of itself, constitute consent
  - Consent can be withdrawn or revoked at any time, and once withdrawn, sexual activity must stop immediately
  - Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms or instances of sexual activity
Affirmative Consent - continued

- Cannot be given by a person who is incapacitated, defined as an individual who:
  - Is asleep or unconscious
  - Due to the influence of drugs, alcohol or medication cannot understand the fact, nature or extent of the sexual activity
  - Lacks the physical and/or mental ability to communicate or to make informed, rational decision
  - Is a person with a medical or mental disability who lacks the capacity to give consent.
  - Is a minor (a person under 18 years old) – even if they give consent

Prohibited Conduct - Stalking

- Stalking: Engaging in a repeated Course of Conduct directed at a specific person that would cause a reasonable person to fear for their or others’ safety or to suffer Substantial Emotional Distress.
  - Course of Conduct: Two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through 3rd 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;
  - Substantial Emotional Distress: Significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling
Sexual Harassment

- Unwelcome verbal, nonverbal or physical conduct of a sexual nature that includes but is not limited to sexual advances, requests for sexual favors, any other conduct of a sexual nature, offering employment benefits or giving preferential treatment in exchange for sexual favors, or indecent exposure, where:
  - **Quid Pro Quo:** Submission to, or rejection of, the conduct by the Complainant is explicitly or implicitly used as the basis for any decision affecting a term/condition of or decision about the Complainant's employment (1096), academic status/progress, or access to benefits/services, honors, programs, or activities available at or through the University (1097);
  - **Hostile Environment:** The conduct is sufficiently severe, persistent or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as creating an intimidating, hostile or offensive environment.

Discrimination

- **Discrimination** means Adverse Action taken against a student, employee or 3rd party by the CSU, or by a CSU employee or student, because of a Protected Status.
- **Adverse Action** means an action that has a substantial and material adverse effect on the Complainant's employment or ability to participate in a University program or activity free from discrimination, harassment or retaliation. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.
- **Protected Status** includes Age, Disability, Gender, Genetic Information, Nationality, Marital Status, Race or Ethnicity, Religion, Sexual Orientation, and Veteran or Military Status.
Retaliation

- Adverse Action taken against someone because they have or are believed to have:
  - Exercised rights under this Executive Order;
  - Reported or opposed conduct which they reasonably and in good faith believes is in violation of EO 1095/1096/1097;
  - Assisted or participated in a policy-related investigation/proceeding regardless of whether the complaint was substantiated;
  - Assisted someone in reporting or opposing a violation of EO 1095/1096/1097 or retaliation
- Retaliation may occur whether or not there is a power or authority differential between the individuals involved.

Is it a Title IX Incident?

- The University (rather than individuals) can be found responsible for violation of Title IX
- Executive Orders 1096/1097 govern campus response to both incidents of alleged Title IX violations and incidents of alleged Discrimination, Harassment & Retaliation
- While all Title IX violations are violations of EO 1096/1097, not all violations of EO 1096/1097 are Title IX violations
- “Title IX incidents” refer specifically to the following:
  - Sexual harassment
  - Discrimination on the basis of sex, gender and/or gender identity
  - Sexual misconduct (sexual assault, sexual battery, rape, dating/domestic violence, and/or stalking
Academic Freedom & Title IX/DHR

- Academic freedom does not mean individuals can say whatever, whenever:
  - Time, place and manner of expression can be reasonably regulated
  - Expression that violates the law can be restricted
- In the instructional setting, if the speech arises out of the creative process, informs the intellectual development and learning of students, is grounded in pedagogical purpose, and is not directed specifically at any student, then it is protected (see *Lyle v. Warner Brothers Television Productions*, Supreme Court of California, April 20, 2006)
- “Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.” *(University of Chicago Freedom of Expression Committee Report, 2015)*

Academic Freedom & Title IX/DHR

- “Title IX is intended to protect students from sex discrimination, not to regulate content of speech…The offensiveness of a particular expression as perceived by students, standing alone, is not a legally sufficient basis to establish a sexually hostile environment under Title IX. In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a student’s ability to participate in or benefit from the educational program.” *(USDOE Office of Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 2001, p. 22)*
- Lessons from UC Berkeley and Milo Yiannopoulos (February 2017)
  - Hate speech is still protected speech; viewpoint neutrality is imperative
  - One person’s freedom of speech cannot violate another person’s freedom of speech, i.e., “heckler’s vote”
  - University may lawfully curtail speech only as a last resort to avert a serious imminent threat to public safety.
Confidentiality & Sexual Misconduct

Three separate categories of reporters:
- Physicians, mental health counselors, sexual assault/domestic violence advocates, clergy, etc.
  - Must maintain complete confidentiality
- Law enforcement employees
  - May maintain partial confidentiality
- Title IX Coordinator and all other employees (including ombudsperson)
  - Can only provide minimal confidentiality
  - Exception: union representatives

Duty to Report: The CSU Bottom Line

- Except as noted by policy, any Employee who knows or has reason to know of allegations/acts that violate EO 1095/1096/1097 shall promptly inform the DHR Administrator or Title IX Coordinator.
  - All info must be disclosed, including the names of the Parties, even where the person has requested confidentiality.
  - The DHR Administrator/Title IX Coordinator will determine whether confidentiality is appropriate given on a case-by-case basis
- The University strongly encourages victims/survivors to report sexual violence directly to the Title IX Coordinator or designee
- If a victim seeks assistance or support at The SAFE Place they retain control regarding the outcome of a disclosure
- We are ultimately incident responsive, not complaint driven – even if we do not investigate, we may have a duty to inquire & intervene
SF State Changes to Improve Response

- Senior Deputy Title IX Coordinator/DHR Administrator for employees and 3rd parties has been administratively relocated to Equity Programs & Compliance from Office of Labor Relations
- Services and support of an ombuds will be available to faculty and staff (anticipated start date April 1, 2017)
- Discrimination complaints filed with external agencies will be coordinated through Equity Programs & Compliance (as of 4/1/17)
- Office of Human Relations will be reestablished
  - Offer proactive education & outreach to improve campus climate
  - Provide training/technical assistance to reduce incidents of discrimination
  - Implement institutional/systemic strategies to promote equity & inclusion
  - Plan & deliver program interventions to foster civil discourse & social justice

Elements of the Investigation

<table>
<thead>
<tr>
<th>Trauma-Informed Response for the Complainant</th>
<th>Due Process Rights for the Respondent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accessible support resources</td>
<td>Notified of charges</td>
</tr>
<tr>
<td>Interim and ultimate remedies</td>
<td>Explanation of evidence used to determine finding</td>
</tr>
<tr>
<td>Confidential advocacy and assistance</td>
<td>Opportunity to provide evidence</td>
</tr>
<tr>
<td>Protection from retaliation</td>
<td>Have an advisor of choice</td>
</tr>
<tr>
<td>Choice to participate in the investigation</td>
<td>Hearing on the proposed discipline</td>
</tr>
<tr>
<td>Parity in due process</td>
<td>Opportunity to appeal</td>
</tr>
<tr>
<td>Timely intervention and investigation</td>
<td></td>
</tr>
</tbody>
</table>
Investigations: General Parameters

• Title IX Coordinator oversight is required throughout

• Experienced investigators who are trained on a regular basis

• Neutral, unbiased, thorough and no conflict of interests

• Preponderance of the evidence standard applies, i.e., 50% plus a feather

Student Complaint Timeline

• Intake interview – within 10 working days after receipt of complaint

• Notice of investigation decision – within 10 working days

• Investigative report completed – within 60 working days

• Notice to both parties – within 10 working days

• Appeal of finding to be submitted to CO – within 10 working days

• Response on appeal (with extension allowed) – within 30 working days

• Timeline may be extended by investigator/appeal officer or mutual agreement of the parties for reasonable time period not to exceed an additional 30 working days for either investigation or appeal review

• Possible total number of working days = 190 (approx. 9-1/2 months)
Investigations: Coordination With Criminal Proceedings

- May not wait for conclusion of police investigation (University or local)
  - May need to wait while police gather evidence
  - Must promptly resume and complete Title IX investigation

- Title IX Coordinator should be granted access to University police investigation notes and findings

- Can coordinate with local law enforcement

Findings of Responsibility

- For students - sanctioning for violating CSU Student Conduct Code is addressed via Executive Order 1098 by the Student Conduct Administrator

- Represented employees – outcomes are levied in accordance with the prevailing collective bargaining agreement in close consultation with Human Resources and/or Faculty Affairs

- MPP employees – appointees are “at will” and consequences are determined administratively, commensurate with the finding of responsibility
How Can You Make An Impact?

- Know how to quickly access applicable CSU Executive Orders & University policies
- Program names, numbers & emails of key points of contact in your phone
- Listen actively & leverage teachable moments to promote reflection, discussion & learning on issues of
  - gender inequity & discrimination
  - social justice with regard to all marginalized identities, e.g., disability
  - root causes of sexual violence
- Role model intervention/interruption behaviors: the “power of one”
- Conduct an environmental scan within your work team, unit or department
  - Elevate potential areas of concern to the Title IX/DHR personnel
  - Engage in regular dialogue, self-inventory and improvement efforts
- For more on faculty involvement: [http://www.facultyagainstrape.net](http://www.facultyagainstrape.net)

Summary of Title IX Duties for Faculty

1. Clarify the scope of confidentiality with students & colleagues proactively
   - Prior to disclosure if possible
   - Include the syllabus clause passed by Senate and approved by President
2. Participate in all requested training in a timely manner
3. Elevate potentially concerning events/incidents to the Title IX/DHR office ASAP
   - Usual lines of authority do not apply for Title IX & DHR
   - Leave investigation to the Equity Programs & Compliance Office
4. Refer victims/survivors when they disclose an incident to appropriate resources on campus
   - If out of danger: Title IX Office; The SAFE Place; Counseling & Psychological Services; Office of Human Resources/EAP
   - If in immediate danger: University Police Department, local law enforcement
5. Respond from the role of an institutional officer, i.e., fiduciary duty
Who To Contact – Referral Guide:

- If the complainant/victim is a student, regardless of the who the perpetrator is or where the incident occurred:
  - Katon Dalton, Equity Programs & Compliance Manager (Email: kdalton@sfsu.edu; 415-338-2967)

- If the complainant/victim is a CSU employee or 3rd party, regardless of who the perpetrator is or where the incident occurred:
  - Christina Sabee, Dean of Equity Initiatives (Email: csabee@sfsu.edu; 415-338-2032)

- If unsure who to contact, if primary contact cannot be reached, or if unclear if an incident falls under EO 1095/1096/1097:
  - Luoluo Hong, VP for Student Affairs & Enrollment Management (Email: luoluo@sfsu.edu; 415-338-7313)
  - Sara Lewis, Equity Programs & Compliance Assistant Manager (Email: saral@sfsu.edu; 415-338-6053)

THANK YOU!

For more information, please visit http://titleix.sfsu.edu

Luoluo Hong
a: 338-7313
c: 338-2032
m: 415-666-6313
e: luoluo@sfsu.edu