



FRESNO PACIFIC
UNIVERSITY

**Advisor Training: Center for
Community Justice
FPU Policy and Regulatory
Review
January 27, 2022**

Presented by:

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AGENDA

1. Harassment & Discrimination

1.FPU's Policy: The Three Buckets Model

2.Reporting Obligations

3.Case Studies & Hypos

4.The Role of the Hearing Advisor

5. Q/A

What is Harassment & Discrimination?

Discrimination v. Harassment

Discrimination: Excluding from participation, denying the benefits of, or otherwise subjecting an individual or group to different treatment based on a Protected Class.

Harassment : Unwelcome verbal, visual or physical conduct based on a Protected Class which creates an intimidating, offensive, or hostile work or educational environment that a reasonable person would find the conduct intimidating, hostile or offensive.



Protected Classes

- ✓ *Race (including natural hairstyle or hair texture related thereto); color, national origin (including possessing a driver's license issued under Vehicle Code § 12801.9), or ancestry;*
- ✓ *Age (40 and over);*
- ✓ *Physical or mental disability, perceived disability or perceived potential disability;*
- ✓ *Sex or gender;*
- ✓ *Pregnancy or perceived pregnancy, childbirth, breastfeeding or medical conditions related to pregnancy, childbirth or breastfeeding;*
- ✓ *Medical or genetic condition (including cancer-related physical or mental health impairment or history of same);*
- ✓ *Citizenship, military and veteran status;*
- ✓ *Political affiliation.*

California Sexual Harassment Defined

1. *Unwanted;*
2. *Sexual in nature; and*
3. *Detrimental effect on working conditions/
creates an intimidating,
hostile, or offensive
environment.*

IT DOES NOT NEED TO BE
MOTIVATED BY SEXUAL
DESIRE.

INTENT DOES NOT MATTER.

California Sexual Harassment

Quid Pro
Quo

Hostile
Work
Environment

- "This for That" - submission to or rejection of unwelcome sexual conduct by an individual that is used as the basis for employment decisions affecting that individual.
- Unwelcome comments or actions usually directed at the victim that are sexual or hostile to a protected class.
- Does not necessarily result in the loss of tangible job benefits.
- Harasser does not need to hold a position of authority.

California Hostile Environment cont.



“Severe or Pervasive” Considerations

- The nature of the conduct.
- The frequency.
- The period of time.
- Physical threats or humiliating.
- Unreasonably interference with an employee’s work performance.

**Two general models:
the slow burn, the crisis incident**

California Liability for Sexual Harassment

Quid Pro Quo Harassment by Supervisor

Harassment by Co-Workers or Third Parties

Personal Liability

Hostile Work Environment: Verbal

- Unwelcome Jokes
- Epithets
- Sexual Innuendo
- Derogatory Comments/Slurs
- Comments about body and appearance


- Personal questions about sex life
- Persistent invitations to go out
- Whistling/cat calling



Hostile Work Environment: Physical

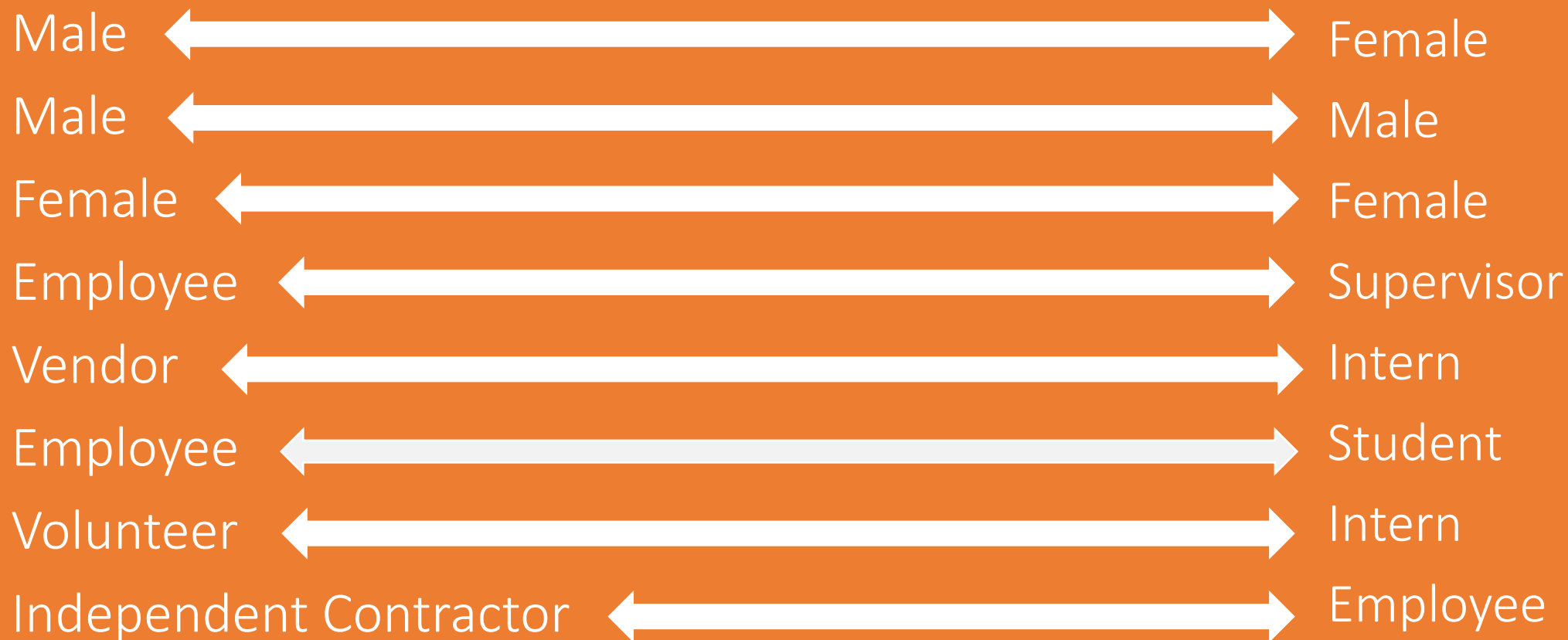
- Unwanted Touching
- Impeding or Blocking Movement
- Any Interference with Normal Movement
- Use of objects in a sexual manner

Hostile Work Environment: Visual

- 
- Derogatory Posters
 - Cartoons
 - Sexual Drawings
 - Email Messages
 - Text Messages
 - Sexual Gestures
 - Sexual Toys or Objects
 - Sexual Magazines

Warning:
“E” is for evidence

Who Can be the Harasser?



Personal Liability for CA Sexual Harassment



Title IX: Protects In the Following Areas

1. Employment
2. Recruitment/admissions/counseling
3. Financial assistance
4. Athletics
5. Pregnant and parenting students
6. Discipline
7. Single-sex education
8. Sex-Based Misconduct

Protects **both** students and employees from:

- ✓ **Sexual Harassment**
- ✓ **Sexual assault**
- ✓ **Dating violence**
- ✓ **Domestic violence**
- ✓ **Stalking**
- ✓ **Other conduct which implicates sex or gender**

Retaliation: Threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on: (a) their report of Title IX violations; (b) assisting with a report of Title IX violations; (c) participation in an investigation; (d) participation in remedial or disciplinary processes required under the Title IX policy.

Title IX Sexual Harassment

Conditioning an aid, benefit or service on unwelcome sexual conduct.

Quid Pro Quo



Unwelcome conduct that a reasonable person would consider severe, pervasive **AND** objectively offensive.

Denial of Equal Access



- Sexual Assault
- Dating Violence
- Domestic Violence
- Sex-Based Stalking

Clery & VAWA Offenses



“...Severe, pervasive AND objectively offensive...”

Program or Activity

✓ *Applicants for or students enrolled in a University academic programs;*

✓ *Applicants for employment or those employed by the University;*

✓ *Alumni of the University if they graduated from a program of the University and intend to either (a) apply to a different program offered by the University or (b) to remain involved with University's alumni programs and activities;*

✓ *A student who is on a leave of absence if they are still enrolled as a student of the University or if they intend to re-apply to the University after the leave of absence is concluded; or*

✓ *A student who has left the University because of Title IX Sexual Harassment, but who wants to reenroll if the University responds appropriately to the Title IX Sexual Harassment.*

Sexual Assault

Any sexual act directed against another person without consent or where the victim is incapable of giving consent. Includes rape, forced oral sex, sexual assault with an object and statutory rape.

Includes fondling: touching of a private body part, either clothed or unclothed, without consent or by force, for purposes of sexual gratification.

- 20% of college females
- 6% of college males
- 1 in 5 women, 1 in 38 men overall
- Colleges: Most of the time involving alcohol.

Sources: CDC; Journal of Sex Research 54(f):549-576).

**Consent: In California, yes means yes. Ed. Code § 67386.
Affirmative. Conscious. Voluntary. Revocable.**

Dating Violence and Domestic Violence

Dating Violence: conduct by a person who is or has been in a romantic or intimate relationship with the complainant that intentionally or recklessly caused bodily injury or fear of same.

Domestic Violence: Conduct by a current or former spouse or intimate partner of the complainant (or between two people who share a child) that intentionally or recklessly causes bodily injury or places in fear of same (applies to complainant or another).

Stalking



Repeated conduct of a sexual or romantic nature or motivation that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress.

E.g.: monitoring, observing, surveilling, threatening, communicating or interfering with property.


Title IX: Quick Note on Pregnant Students

The Pregnant Scholar

Reasonable Accommodations provided by Office of Education and Disability Access



California Standard of Proof – All Cases: Preponderance of the Evidence



More likely than not
to be true based on
totality of evidence.
E.g., 50.01%

Types of Evidence

Relevance: Not all evidence is relevant. Evidence is relevant if it tends to make a fact in dispute more or less true.



Written Statements



Other Documentary Evidence – photos, texts, emails



Interview statements and other verbal information



Witness Credibility



FPU's Policy: Discrimination, Harassment, Sexual Misconduct & T9 Policy

1. Effective August 2020

***2. Comprehensive Single Policy
Covering All Forms of
Discrimination/Harassment***



Discrimination, Harassment, Sexual Misconduct & T9 Policy

Fresno Pacific University is governed by the Pacific District Conference of Mennonite Brethren Churches. The University is deeply and intentionally rooted in the Anabaptist Christian tradition. ...As a Christian university, FPU administers this policy in alignment with the University's Statement of Faith, the FPU Idea and applicable exemptions for religious institutions afforded by state and federal law. Nothing in this policy is intended to limit or otherwise conflict with the University's exercise of rights as a religious institution and/or under applicable religious exemptions.



Discrimination, Harassment, Sexual Misconduct & T9 Policy

This Non-Discrimination Policy (“Policy”) prohibits the following conduct (“Prohibited Conduct”):

1. Harassment or discrimination, including, but not limited to, Sex-Based Misconduct against students, employees, and applicants for admission or employment based on membership in a Protected Class;
2. Harassment or discrimination based on the perception that a person is a member of a Protected Class or is associated with a person who has, or is perceived to have, membership in a Protected Class;
3. Any and all Retaliation against any person for submitting a report of violation of this Policy or for cooperating in the administration of this Policy, including participation in an investigation or adjudication process;
4. Knowingly submitting a complaint under this Policy based on false allegations or to knowingly provide false information in connection with an investigation or adjudication of a complaint processed under this Policy;
5. Any Responsible Employee who fails to report allegations of Prohibited Conduct, including, but not limited to, Sex-Based Misconduct or Title IX Sexual Harassment;
6. Any person in a position of power or influence that intentionally deters or hinders another person from reporting allegations of conduct which, if true, would violate of this Policy;
7. Any other violation of this Policy.



Discrimination, Harassment, Sexual Misconduct & T9 Policy

Conduct alleged to be –

- ✓ *On University property;*
- ✓ *In connection with University activities, programs, or events;*
- ✓ *Online or off-campus where the conduct affects the learning or working environment, would violate other University Policies had it occurred on campus, or where the University determines it has a substantial interest.*

The Three Buckets

Bucket 0: Informal Resolution/Requires a Formal T9 Complaint

(Respondent cannot be an employee, requires Responsible Administrator approval)

Bucket 1: Non-T9 Allegations of Harassment, Discrimination, Sexual Misconduct, Retaliation & Other T9

Bucket 2: T9 Sexual Harassment (New Regulations)

Responsible Administrators

Title IX Coordinator

- All gender-based or sex-based complaints, including cross-overs.

Highest Level Admin for HR

- All other complaints involving employees, including student-employees.

Highest Level Admin for Campus Life

- All other complaints involving only students.

Bucket 0: Nuts & Bolts

1. T9, HR, Campus Life Sign Off on Offer – Meets Compliance Criteria

2. If Formal T9, Written Complaint Filed

3. Respondent Must be a Student (Not Student Employee)

4. All Parties Agree – No Investigation or Adjudication

5. All Parties Get Written Notice of Informal Resolution Procedures & Voluntarily Sign Participation Agreement

Informal Resolution

✓ *Facilitated Restorative Justice*

OR

✓ *Facilitated Mediation*



Bucket 1: Nuts & Bolts

1. Support & Notice for All Parties

2. Investigation (If Required – 90 days)

3. Report Goes to Responsible Admin

4. Decision & Corrective Measures

5. Appeal (Paper Review If Requested)

Hearing Requirements

- ✓ *Students Only*
- ✓ *Upon Request After Decision*
- ✓ *Suspension/Expulsion Only*
- ✓ *Uses Student Judicial Board*



Bucket 2: Nuts & Bolts Formal T9 Sexual Harassment

1. Support & Notice for All Parties

*2. Investigation (90 days) – Includes
Required Disclosure of Evidence*

*3. Report Completed, Opportunity to
Respond & Hearing Notices Issued*

*4. Live Hearing with Cross Examination –
Hearing Officer Issues Decision*

5. Appeal (Paper Review)

Hearing Requirements

- ✓ *Students & Employees*
- ✓ *Mandatory – Requires Witnesses
to Appear Including Complainant*
- ✓ *Any Level of Corrective Action*
- ✓ *Legalistic Process – Numerous
Protocols Required*



Reporting Obligations: Policy Requirements

- *All employees are responsible for reporting complaints, concerns or allegations raised of policy violation.*
- *Few Exceptions: Campus Nurse, Campus Chaplain or Mental Health Counselors.*
- *Duty is to report – not to investigate, resolve, confront, or to be sure.*
- *Failure to report is a policy violation.*
- *<https://fresno.tfaforms.net/39>*



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FRESNO PACIFIC UNIVERSITY UNLAWFUL DISCRIMINATION, HARASSMENT AND SEXUAL MISCONDUCT REPORT FORM

FRESNO PACIFIC UNIVERSITY

Background Information

While anonymous reports are accepted, you are strongly encouraged to provide your name and contact information in order to allow us to most effectively provide appropriate supportive measures and resources, address the concerning behavior, and maintain safety on campus (Responsible Employees, who have knowledge of discrimination, harassment, sexual misconduct and Title IX misconduct are required to fill out the Name & Contact information), you are STRONGLY encouraged to provide your name and contact information in order to allow us to most effectively provide appropriate supportive measures and resources, address the concerning behavior, and maintain safety on campus.

Do you wish to provide your name?

Yes No

Your position/title:

Your phone number

How to Receive a Complaint

Do's

- ✓ Listen first.
- ✓ Ask gentle for more information.
 - Can you say more about that?
- ✓ Tell the person: I am required to report this.
- ✓ Reassure:
 - Did the right thing.
 - University prohibits harassment.
 - University has a policy.
 - Retaliation is not permitted.
 - Offer confidential resource.
- ✓ Take immediate action to report the conversation.

Do Not's

- × Assume the best.
- × Assume the worst.
- × Blame or draw conclusions.
- × Promise confidentiality or that their complaint can be “informal.”
- × Dismiss concerns.
- × Wait to take action.
- × Tell other colleagues before reporting.



Investigation Requirements

- Preponderance of the Evidence*
- Neutral, Unbiased, Trained Investigator*

Case Studies & Hypotheticals



QUIZ

Hypothetical Scenerio

Julian is a student worker who tutors part-time for the University. After work, his supervisor, Jennifer, a University employee, asked if he wanted to stop off for a beer at the pub. Julian really likes Jennifer and agreed. They had three beers each at the pub. While the two were waiting for an Uber Jennifer was slurring her words. Julian leaned in and hugged Jennifer, letting his hands wander down to Jennifer's lower back, slightly touching her bottom for several seconds. Jennifer stumbled away, the Uber pulled up and she got in alone. On Monday Jennifer reports to T9 that she was assaulted by a student.

Did a policy violation occur?



Hypo Questions

1. Is this the University's educational program or activity?

2. Which bucket are we in?

3. Who is the responsible administrator?

4. Who is responsible to make a report?

The Faculty Lounge

Professor Lee and Professor Simmons eat lunch together in the faculty lounge most days. They are long-time friends. They went to college at the University together years ago. Professor Joh also usually lunches around the same time and overhears their conversations. Sometimes they talk about other female employees in ways that make Professor Joh uncomfortable.

Alex, a program manager also lunches at the same time and hears the conversations taking place. Professor Joh comments to Alex “I just don’t think I can take their dirty comments much longer” and hurries out of the room with a sad look on her face.



The Pregnant Professor

Professor Smith is 5 months pregnant. She told her students at the beginning of the semester that she plans to be available through final exams and has a back-up plan should she unexpectedly need to be out sooner than that to have her baby. Michael, a student, raised concerns during the first week of class via the classroom chat about Professor Smith not being able to do her job while pregnant. During online class sessions he routinely makes derogatory comments about Professor Smith. On several occasions Michael states that she should be at home with her children while her husband works. Professor Smith gets fed up and reports it to the Dean of Campus Life for help managing the student.



Movie Assignment

The T9 Coordinator receives a report from a student about a professor who required their students to watch a film that depicts nudity and marital infidelity and included a diverse cast. The Complainant states that the film offended her as a Christian and as a woman of color.

The T9 Coordinator follows up with the program director and is informed that the film did not meet any learning objectives and there were plenty of other films that could have been selected via university resources. The program director wishes to handle the matter directly and never reported it to HR or Title IX.



Nursing Student Internship

Jenni is a nursing student and is assigned to a local Urgent Care facility as part of the internship requirements to complete her program. The Office Manager at the Urgent Care, Brian, routinely keeps Jenni after her shifts in his office asking her about her dating life. Brian tells Jenni she should dump her boyfriend and date an older man. Brian touches Jenni on the arm from time to time. Brian also makes comments about Jenni being Asian.

The program manager for nursing internships is doing routine check-ins with students to evaluate internship sites. During the routine check-in, the program manager speaks to Jenni. Jenni discloses the above situation.



The Role of a Hearing Advisor

Regulatory Language

At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Regulatory Language

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Regulatory Language

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

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