



FRESNO PACIFIC
UNIVERSITY

Board Training: Harassment and Discrimination Prevention & Title IX Compliance

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AGENDA

1. Basic Definitions – California & Federal; Religious Exemption

2. FPU's Policy

3. Case Stats

4. Examples

5. Q/A



In the news...

- Fresno Bee: Fresno State President Establishes Task Force In Wake of Sexual Harassment Scandal (2.8.2022)
- New York Times: CSU Chancellor Resigns After Report He Mishandled Complaints (2.18.2022)

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.*

Sexual Harassment, Discrimination & Misconduct

CALIFORNIA LAW

- Government Code
- Education Code (To Retain Student State Financial Aid)
- Case Law
- DFEH

FEDERAL LAW

- Title IX (To Retain Student Federal Financial Aid)
- Title VII
- Case Law
- OCR
- EEOC

Title IX Religious Exemption:

Permits Modified Response Under Federal T9 Consistent with Religious Beliefs

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 Hostile Environment



“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**

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...”*

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.**

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%



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 (limited cases, requires RA 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.



Role of the Title IX Coordinator

- *Policy establishes the Office of the Title IX Coordinator*
- *Responsible for ALL sex-based complaints (employees and students)*
- *Duties Include:*
 - *Primary Compliance Administrator*
 - *Develops Reporting Practices; Advises EEs on Reporting*
 - *Manages Complaint Process & Case Load*
 - *Oversees investigators, hearing officers, appeal adjudicators, and others involved in case processing.*
 - *Coordinates with HR, Student Life, Disability Services, IT & Legal Counsel and Others*
 - *Trains Campus Community*
 - *Supports Pregnant & Parenting Students*
 - *Maintains Expertise in Regulations, New Laws, Trauma-informed Practices*
 - *Prepares All Case-Related Correspondence*
 - *Creates Awareness and Prevention Programming*
 - *Implements Supportive Measures*
 - *Implements Informal Resolution*
 - *Implements Corrective Measures*
 - *Manages Data Tracking of Case Status & Outcomes*
 - *Analyzes Program and Addresses Systemic Problems/Patterns*
 - *Responds to Questions/Inquiries Regarding Program*

FPU Case Stats

Semester	Cases	Investigations	Adjudications	Support Only	Corrective Measures	Student Respondent	Employee Respondent
Fall 2019	16	2	2	14	2	0	2
Spring 2020	13	3	3	10	3	0	3
Summer 2020	2	0	0	2	0	0	0
Fall 2020 (New Regulations)	16	2	2	13 (1 IR)	2	1	2
Spring 2021 (New Training Begins)	11	5	5 (1 live hearing)	6	1 (4 NR)	0	5
Summer 2021	6	0	0	6	0	1	0
Fall 2021	27	3	2 pending (live hearing)	24	2 pending	4 (1 EE)	
Spring 2022	11	0	0	11	0	0	0



Hypothetical Scenario

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?

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.





Coming Soon...

- Late February 2022: Biden Administration Has Submitted Two Regulatory Changes for the Department of Education: (1) Title IX Reg Changes; (2) Religious Liberty & Free Inquiry Rule
- Not Yet Public; Will Be Issued for Public Comment
- T9 Biden's Signature Issue as Vice President

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Thank You



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