



FRESNO PACIFIC
UNIVERSITY

Student Leader Policy Review: Illegal Harassment and Discrimination Prevention & Title IX Training

Presented by

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Agenda

1. Illegal Harassment & Discrimination

1.FPU's Policy: The Three Buckets Model

2.Reporting Obligations

3.Case Studies & Hypos

4. Q/A

What is Illegal 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



1. Quid Pro Quo

2. Hostile Work Environment

California Hostile Environment



➤ 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

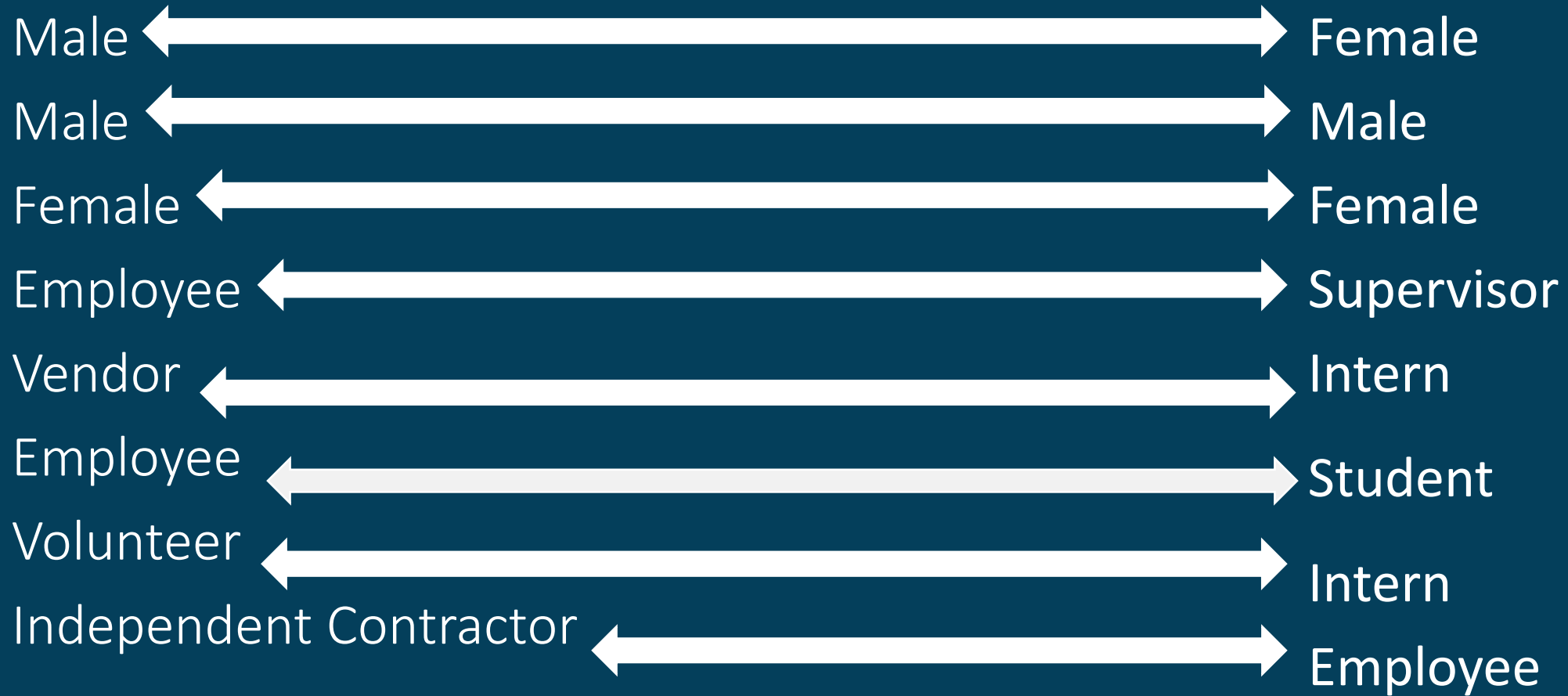


“Severe or Pervasive” Considerations

- 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

Who Can be the Harasser?



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 (including student employees);*

✓ *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.*

Title IX: Pregnant & Parenting Students

The Pregnant Scholar

Reasonable Accommodations for Pregnancy, Childbirth & Related Conditions: Refer to the Office of Disability Access & Education for Individualized Accommodations Based on an Interactive Process

- Extended Due Dates
- Extended Time on Exams
- Modified Attendance
- Accessible Work-Station
- Permission to stand/move/leave during class
- Access to a Lactation Room
- Virtual Participation/Home Study
- Make up Missed Exams/Quizzes
- Leave of Absence

Title IX provides that any special services or accommodations provided to students with temporary disabilities be provided to pregnant students. Their right to accommodation may also be protected under the ADA.



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.

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%

FPU's Policy



FPU Discrimination, Harassment, Sexual Misconduct & T9 Policy

1. Comprehensive Single Policy Covering All Forms of Discrimination/Harassment

2. Covers Students & Employees

3. Covers applicants for admission or employment.

4. Protects Pregnant & Parenting Students



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
(limited cases, 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 - Informal Resolution

If the respondent (alleged offender) is a university student and not an employee, information resolution may an option.

If the respondent is a university employee (including student employees) an investigation will take place and informal resolution is not an option.

What happens after I report?

A Responsible Administrator will contact the complainant to follow up on your report and will discuss their options within the policy.

They will be asked what supportive measures they need.

If on its face it meets Title IX criteria, they will be asked if they want to file a Title IX Formal Complaint.

Supportive Measures

- *Counseling*
- *Extensions or other course related modifications*
- *Modification of class or work schedules*
- *Change of housing location*
- *Escorts to and from campus locations*
- *No-Contact restrictions*
- *Increased security or monitoring of certain areas of campus*

How to Receive a Complaint

Do's

- ✓ Listen first.
- ✓ Tell them I am required to report this.
- ✓ Tell them who they can talk to confidentially.
- ✓ 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.

Reporting Obligations: Policy Requirements

- *All employees (including student employees) are responsible for reporting complaints, concerns or allegations raised of policy violation.*
- ***Few Exceptions:, Campus Chaplain, Mental Health Counselors, or Campus Nurse.***
- ***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>*



FRESNO PACIFIC
UNIVERSITY

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



Hypotheticals

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. What are the protected classes?

3. Who is responsible to make a report?

4. Who is the responsible administrator?

Virtual Game Night

Mark is a freshman. Due to the pandemic, the entire semester is scheduled to be online. Mark joins a student organization that helps new students get acclimated to the college campus and meet new friends. The organization hosts a virtual game night on the first Friday of every month and the theme is "Casino Night."

Shortly after logging into the meeting, Mark realizes the group is playing strip poker. Uncomfortable with the situation, Mark immediately logs off. The next day, Mark receives an e-mail from the organization, stating that he is not a good fit for the group.

Later that day, Mark mentions what happened to his faculty mentor. The faculty mentor tells the Dean what happened via email.



The Library



Sally has been spending lots of time in the library with her friends for study group. One group member, Joe, seems to like Sally because he always manages to sit beside her, he plays with her books and pens, draws silly pictures of her on his study notes and has even asked her for her phone number, which Sally politely declined. Sally has become more and more uncomfortable with Joe's attention because her friends have told her that Joe seems to flirt with a lot of other female students in the library too and he says things which seem harmless but they make people feel uncomfortable. Sally caught the flu one day and Joe offered to get her cold medicine and Gatorade. Sally thanked him and told him that she already had some. But when Sally got back to her on-campus housing, she found cold medicine and Gatorade by her door. Later that evening when she went to the dining hall to get dinner she noticed Joe watching her from the forest. After dinner when she was back in her room, she received a text message from Joe saying that he hoped she felt better. She didn't message back. The next day, when she went to her car to go to see the doctor there was a note on her car from Joe. Sally started to feel afraid so she decided to talk to her roommate who also works on the Student Activities Board.

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.



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.



The Long-Term Relationship

Jenni and Carlos are students in the same program at the University and they have two classes together this semester. Carlos lives at home and Jenni lives at an apartment down the street from the university. They have been dating for two years. Early on in their relationship, Carlos it made clear that he does not believe in sexual intercourse before marriage. In the last six months or so, Jenni has been pressuring Carlos to engage in different sexual activities. Carlos has agreed to some sexual activities but not to sexual intercourse, which he is uncomfortable with. Just before the holidays, Carlos proposes to Jenni. One night while out on a date at a nice restaurant, they both have a few drinks and Carlos agrees to have sexual intercourse with Jenni later that night. When they get back to her apartment she tells Carlos to relax on the bed. Carlos lays down and then wakes up the next morning. Carlos has vague memories of kissing and snuggling with Jenni. Before leaving, Carlos sees a used condom in the trash can in the bathroom. Carlos isn't sure what happened that night and he starts to avoid Jenni as much as possible, including attending their classes together.



What are some key take aways?

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