EMPLOYEE TRAINING

Title IX – Sexual Misconduct

OFFICE OF DIVERSITY & EQUAL OPPORTUNITY

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These are the laws that provide protections to students and employees. Today’s presentation is focused on Title IX.
Title IX of the Education Amendments of 1972

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

The law itself consists of only one sentence. It is best known for the law that created equality in sports. However, it is much broader than that and continues to expand.
R04.02.022. B
Sexual Harassment. Definition

"It's not just the law...it's our policy" Chancellor Brian Rogers

"Sexual Harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:

a. submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or education; or
b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting that individual; or

c. such conduct has the purpose or necessary effect of unreasonably interfering with an individual's work or creating a hostile, intimidating or offensive working or learning environment; and

(1) such conduct is known by the offender to be unwelcome, harmful or offensive; or

(2) a person of average sensibilities would clearly understand the behavior or conduct is unwelcome, harmful or offensive.

It is not just the law, it is our policy and our standard here at UAF. It is our expectation that all will fully comply and support equality.
The 2011 Dear Colleague Letter from the Dept of Education, Office of Civil Rights expands the definition of sexual harassment to include sexual violence.

The 2012 Center for Disease Control study found that in the 12 months prior to the study:

- Nearly 1 in 5 (18.3%) women reported experiencing rape at some time in their lives.

- Approximately 1 in 20 women and men experience sexual violence other than rape such as being made to penetrate someone else, sexual coercion, unwanted sexual contact, non-contact unwanted sexual experiences
When it comes to sexual assault, the reported victim is in control and decides their destination.

Remember the last time you had sex. The smells in the room, where you were touched, how you were touched, what was said, the very intimate details. Then find a partner and share that experience. Uncomfortable? How much more uncomfortable do you think it would be if it had been not pleasant, if it had been nonconsensual, if it had been violent and you were telling a total stranger?

Additionally, the reported victim can file both a criminal and civil complaint. If you remember back to OJ Simpson, he was not found criminally responsible for the death of Nicole but he was found responsible under civil law. That’s because the evidentiary standard is different. For civil cases it is by preponderance which means “more likely than not” or sometimes referred to 50% and a feather.
Most sexual assault is committed by someone you know. Outing a supposed friend/lover/family member and giving details of the assault is not easy.

Sometimes, individuals need a place to go without involving the police or administrators. Here are the sources that are available.

UAF offers confidential reporting which is important because the reported victim can get assistance without filing a complaint. Those resources are:
• UAF Health & Counseling
• The D&EO website and file a report anonymously.

Also, in Alaska an individual can go to the hospital and get a rape test. If later you decide you want to file a complaint, the evidence will be preserved.
Students and employees have a right to assistance in resolving harassing behavior. When harassing behavior is reported to any UAF employee, that employee is required to take the following actions:

- Ensure the safety of all concerned. If there is risk, immediately call 911.
- If the incident is of a violent or criminal nature, immediately call the UAF Police Department at 474-7721.
- Within 24 hours of learning of an incident, contact a Title IX Team Member.
There are a lot of questions regarding a UAF employee’s obligation to report incidents that been confidentially told to you.

First, never promise confidentiality, it is not a right you have as an employee.

It’s all about the perception of the student. If they perceive you can be of help and tell you, UAF has been legally put on notice. Therefore, you must notify a Title IX Team Member.
Title IX Coordinator is the central repository for all sex based complaints.

- David Liska’s research on serial sexual offenders wasn’t about the rapist that is in jail, it was about the undetected rapist.
  - The individuals that are extremely adept at identifying “likely” victims
  - The individuals who plan and premeditate their attacks but use only as much violence as is needed to terrify and coerce
  - The individuals who use psychological weapons - power, control, manipulation and threats
  - The individuals who use alcohol deliberately to render victims more vulnerable or completely unconscious

What we have learned is that the majority of undetected rapist also commit other forms of serious interpersonal violence. We are building a system that will provide the evidence and allow UAF to pick up on the signs of predation. The more of this work I do, the more I am able to tap into what I call the ‘creep factor.’ Something is just not quite right. Something is creepy.

Having a central system allows our investigations to be informed about the personality characteristics.
As I mentioned before, the definition of sexual harassment has been broadened.
• Before sexual assault was only thought to be criminal.
• Before relationship violence was a ‘personal matter.’
• Before using gender stereotyping to motivate a sports team was an okay practice.
• Before professors having sex with their students was viewed as a professional benefit.

The OCR 2011 guidance basically said, There’s a new sheriff in town. This guidance expanded the responsibility of the institution and broadened the definition of sexual harassment to include all of these.
TITLE IX
Quid Pro Quo or Tangible Employment Action

• Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature and
• Submission to or rejection of such conduct results in adverse educational or employment action

Under the law there are two types of sexual harassment. The first is quid pro quo or under Title VII it is called tangible employment action. It means this for that.

This type is power driven. Someone with power offers something in exchange for sexual favors
  Better grade
  A recommendation
  Class notes
  Job opportunity

• A professor suggests that a grade could be better if the student is more interested in him/her.
• A supervisor suggest you have sex with him/her they will make sure you get that promotion

It can also take the form of a threat.
• If you don’t have sex with me, then I’ll ensure you never graduate.
• If you don’t have sex with me, ours is a small field and I’ll use my power and status to destroy you and your reputation.
TITLE IX
Power Differential

P04.02.022. Sexual Harassment. Faculty members or staff who engage in sexual relations with students enrolled in their classes or subject to their supervision, even when both parties have consented to the relationship, will be engaging in unprofessional behavior.

B. Supervisors who have authority or control over employees and engage in sexual relations with those employees, abuse their power, even when both parties have consented to the relationship.

It is against UAF policy to have a sexual relationship
• When there is an inherent power differential
• When there is a minor involved

If you supervise the individual or have a power differential - do not have sex! Even if it is consensual, it is against UAF policy and you can be sanctioned.
• A teaching assistant with someone in their class
• An RA with someone in their dorm
• An advisor with someone you advise or mentor
• A professor with a student.

The other side of this is to protect yourself. When you enter a sexual relationship, you set yourself up and become vulnerable. That student could not get the grade they wanted and come back and say you forced them to have sex.
Hostile environment is when we are dealing with serial harasser or offenders or rapist.

- Someone keeps badgering you
- Unwanted propositions
- Unwelcome comments or gestures pertaining to your body or gender
  - Compliments of a sexual nature
  - Repeatedly asking for a date
  - Sexual and off-color jokes
  - Comments about someone’s body

Unwanted and inappropriate sexual advances that result in a stressful environment
  - A professor tells a student that she wishes you liked older women, she wishes you were her age

If a student has been molested, fondled, raped - it is pervasive because that individual relives that moment over and over again.
TITLE IX
Not a purity meter...

• Petty slights and trivial annoyances are not actionable
• Not a hostile environment if it was
  – Avoidable
  – Not pervasive
  – No impact/effect
  – Not based on a protected category

I’m offended because I went to that website. Could you have avoided that?
An atmosphere of degrading and intimidation by use of gender or sexual references to control or manipulate another party.

A professor who makes sexually offensive jokes towards women. He doesn’t speak about anyone within the class in particular, but his jokes are always about sex and women.

A coach uses gender stereotypes to put down and “motivate” the players
- You run like a girl.
- You are such a sissy
- Quit acting like a little pussy
- You need to be a real man

These types of comments make the inappropriate behavior actionable under Title IX

These are prevalent with individuals that are gay and lesbian. This results in individuals being limited because of their sexual preferences.

Bobby Knight put a tampon in a players locker indicating he thought the player was a wimp.
I’m going to introduce some additional acts that are Title IX violations.
TITLE IX
AK Domestic /Dating/Relationship Violence

Domestic violence occurs when you are physically, sexually, or emotionally abused by another person who is related to you as
• A spouse or former spouse
• A person you have dated, or are presently dating
• A person with whom you have had sex
• A person who lives, or has previously lived with you, in the same household
• A parent, stepparent, grandparent, child or grandchild, aunt, uncle, cousin, second cousin or children of any of these persons.

The first is Domestic Violence. It can also be called dating or relationship violence.

It is when one person maintains control and power over another in a dating, marital, or live-in relationship.

The individuals have a social relationship of a romantic or intimate nature, therefore, it is based on gender/sex and falls within Title IX

Analyze using
Reporting parties statement
Length of relationship
Type of relationship
Frequency of interaction
TITLE IX
Relationship or Dating Violence

Types of violence include, but not limited to

- Physical abuse
- Sexual abuse
- Emotional abuse
- Economical abuse

The means of control include physical, sexual, emotional and economical abuse, threats and isolation. While most domestic violence survivors are women, both men and women can experience domestic violence.

- Physical - hitting, restraining, pushing, kicking, blocked your way, cornered you or followed you in a sexual way
- etc.
- Sexual - Forced to do something sexual, participate in a threesome, provide oral sex, look at porn
- Emotional - Can be the most damaging because there is psychological control, there is no physical evidence, it leaves the victim confused, feeling responsible. It happens over a period of time and the victim is conditioned and doesn’t really notice it.
  - In one case the accused took a Roofing hammer and said - “I like to use this when I get frustrated.”
  - In another the case was public and the accused said, “Before you say no, you had better google me.”
- Economical abuse - controlling the money to gain dominance over the partner.
TITLE IX
Stalking

• Engaging in conduct that would cause a reasonable person
  – Fear for safety of self or others
  – Suffer substantial emotional distress
• Two or more acts
  – Directly
  – Indirectly
  – Through third parties

You come out of work and they are present, you go to Fred’s and they show up in your aisle.

If the conduct consists of two or more acts and cause a reasonable person fear for safety or substantial emotional distress, it could be stalking.

The contact can also be directed through a third party.
• Tell Susan I love her
• Deliver these flowers to her
• Take this note to her

One of the things UAF can do is to issue a no contact order.
TITLE IX
Bullying & Cyber-bullying

- Repeated and/or severe aggressive behaviors that intimidate or intentionally harm or control another person physically or emotionally [and are not protected by freedom of expression]
- Includes comments about race, color, national origin, sex, sexual orientation or disability
- Often involves an imbalance of power, aggression, and a negative repeated behavior

Someone posted sexual messages about you on the internet, websites, blogs
Someone repeatedly e-mailed or instant messaged sexual messages to you.
Someone blogged sexual messages about you.
TITLE IX
Hazing

• Acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity

Hazing Facts by noted hazing expert Hank Nuwer

Fact #1: 82% of deaths from hazing involve alcohol

Fact #2: Hazing is often about power and control. Hazers have a need to feel powerful and in control

Fact #3: Just because a majority of the members of an organization are not involved in a hazing incident does not mean the organization is not responsible

Fact #4: Hazing is not just associated with athletes and Greek-letter organizations. It occurs across a wide spectrum of organizations including military units, performing arts groups, religious groups, and other types of clubs and organizations. Hazing occurs in high schools as well as on college campuses

Fact #5: You can never be sure you know the physical or mental background of an individual and what the effects of hazing for that person might be

For instance a Univ of Tenn a fraternity used a tube to analy insert alcohol. Because there was anal penetration, this fell under Title IX.
TITLE IX
Sexual Exploitation

- Occurs when a person takes non-consensual or abusive sexual advantage or another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses

Examples include.
Being flashed or mooned
Permitting someone to hide in a closet and watch during consensual sex
Someone taking photos or videoing consensual sex without your knowledge or permission
Someone engaging in voyeurism - obtaining sexual gratification by looking at sexual objects or acts, especially secretively)
Someone writing another's phone number on walls and prostituting another
Knowingly transmitting an STD or HIV to another person
TITLE IX
Sexual Contact

Intentional contact with the breasts, buttock, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts;

OR

Any other intentional bodily contact of a sexual manner

A one time accidental touching is not the same as sexual contact. Sexual contact is intentional. “Oh, I didn’t mean to bump up against your boob repeatedly.”

It is grabbing, groping, rubbing. - The Gym Guy
• Told one woman she had nice boobies
• Rubbed his genitals against another when she bent over to pick up a towel
• Said to the third, let me see your hand. He took her hand a put it on his crotch.
TITLE IX
Non-Consensual Sexual Intercourse = RAPE

• Any sexual intercourse
  – However slight
  – With any object
  – By one person upon another person
  – That is without consent and/or by force

• Intercourse includes
  – Vaginal penetration by a penis, object, tongue or finger,
  – Anal penetration by a penis, object, tongue, or finger, and
  – Organ copulation (mouth to genital contact or genital to mouth contact,

This includes vaginal and anal penetration.

The penetration, however slight and with any object.

OCR says when there is non-consensual sexual intercourse - otherwise known as rape - there is automatically a hostile environment.
TITLE IX
Retaliatory Harassment

- Adverse employment or educational action taken because of a person’s participation in complaint or investigation
- Retaliation against victim by accused or by accused friends or others who are sympathetic to the accused
- Retaliation directed toward a 3rd party because of their participation in complaint or supporting a complainant

Someone refers to you in a derogatory manner because you filed a complaint

Someone tells other to not associate with you because you were a witness in a Title IX investigation

Someone attempts to coerce you into dropping a complaint
TITLE IX

Risk Analysis
to determine
if UAF must conduct an
independent
Title IX investigation
TITLE IX
Investigate if there was Force

- Physical violence (hitting, restraint, pushing, kicking, etc.)
- Threats (anything that gets the other person to do something they wouldn’t ordinarily have done absent the threat)
- Intimidation (an implied threat that menaces and/or causes reasonable fear)
- Coercion (the application of an unreasonable amount of pressure for sexual access)

There are some instances that may require UAF to conduct an investigation, absent the participation of the reported victim.

The Title IX coordinator conducts a risk assessment analysis to make that determination. If these factors are present, an investigation may be required to ensure campus safety.
TITLE IX
Investigate if there was Incapacitation

- Forms
  - Alcohol or drugs
  - Mental/cognitive impairment
  - Injury
  - Sleep
- Reported Victim
  - Could s/he make rational, reasonable decisions?
  - Could s/he appreciate the situation and address it consciously such that any consent was informed (knowing who, what, when, where, why and how)?
- Accused Individual
  - Did s/he know of the incapacity (fact)?
  - Should s/he have known from all circumstances (reasonable person)?

I often hear from the accused that they too were incapacitated. Saying, I was drunk so I didn’t know I had sex is like saying I was drunk and didn’t know I was driving.
TITLE IX
Investigate if there was not Consent

• What clear words or actions by the complainant gave the accused individual permission for the specific sexual activity that took place?
  – Informed (knowing)
  – Voluntary (freely given)
  – Active (not passive)
  – Clear words or actions
  – Indicating permission to engage in mutually agreed upon (sexual) activity

We are creating a shared definition of what constitutes consent.

I once had a conversation with a young man and asked, “If a woman comes to your room and takes off all of her clothes, what does that entitle you to?” He said if that happened he would think the woman wanted sex. I responded, “No, that entitles you to look at a naked woman, that’s all unless you have consent.”
### TITLE IX

**Consent**

<table>
<thead>
<tr>
<th>University of Arkansas Published in the Journal of Sex Research</th>
<th>How Women Say They Gave Consent</th>
<th>How Men Interpret a Woman's Consent</th>
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<tr>
<td>Body Language</td>
<td>10%</td>
<td>61%</td>
</tr>
<tr>
<td>Verbal Cues</td>
<td>50%</td>
<td>9%</td>
</tr>
<tr>
<td>Verbal and Nonverbal</td>
<td>23%</td>
<td>22%</td>
</tr>
<tr>
<td>Just let it happen or not say no</td>
<td>14%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Women and men have very different perceptions on consent. There is a gender divide.

While 50% of women said they gave consent verbally, 61% of men said they used body language to interpret a woman’s consent.
TITLE IX  
Rules of Consent  

• No means no  
• Nothing also means no  
• Silence and passivity do not equal permission  
• Must be given prior to or contemporaneously with the sexual activity  
• Consent can be withdrawn at any time, as long as that withdrawal is clearly communicated by the person withdrawing it

These are the rules of consent.

Exercise using $20.
<table>
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<th>Reported Victim</th>
<th>Accused</th>
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<tr>
<td>• An advisor or support</td>
<td>• An advisor or support</td>
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<tr>
<td>• Confidential counseling</td>
<td>• Confidential counseling</td>
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<tr>
<td>• Name and details kept as confidential as</td>
<td>• Name and details kept as confidential as</td>
</tr>
<tr>
<td>reasonable possible</td>
<td>reasonable possible</td>
</tr>
<tr>
<td>• Prompt, fair &amp; impartial investigation</td>
<td>• Prompt, fair &amp; impartial investigation</td>
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When we conduct our investigations, it is important that we remain neutral and impartial. Therefore, we inform both the reported victim and the accused of their rights.
## TITLE IX

### Rights

<table>
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<th>Reported Victim</th>
<th>Accused</th>
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<tbody>
<tr>
<td>• Know the outcome of investigation</td>
<td>• Know the outcome of investigation</td>
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<tr>
<td>• Appeal</td>
<td>• Appeal</td>
</tr>
<tr>
<td>• Resolution help</td>
<td>• Know the charges</td>
</tr>
<tr>
<td>• File criminal &amp; civil complaint</td>
<td>• To know the potential sanctions</td>
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<tr>
<td>• Request remedies</td>
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TITLE IX
Consequences – Administrative Action

R04.02.020. Discrimination
5. Any person who:
   a. commits discrimination; or
   b. fails to perform his or her investigatory or supervisory responsibilities; or
   c. makes false claims or provides false testimony against another will be subject to appropriate disciplinary action including, but not limited to, verbal and written reprimands, probation, suspension or termination.

6. When a preponderance of the evidence is found to substantiate a complaint, disciplinary action may be taken. In determining what disciplinary action may be appropriate, the extent to which the respondent knew or reasonably should have known that his or her conduct was harmful or offensive will be considered. Sanctions for conduct will be based upon all facts and circumstances of each case.

When policy is violated, disciplinary action may be taken. The facts of the incidents will determine what disciplinary action is appropriate.

• For employees, the possible sanctions include verbal and written reprimands, probation, suspension and/or termination.

• For students the possible sanctions include warning, probation, denial of benefits, restitution, discretionary sanction, restricted access, suspension, expulsion and/or revocation of a degree.
It is important to take issues of sexual misconduct seriously, to be trauma informed, and to understand how it impacts the victim.

Here are some typical responses taken from a study performed by the American Association of University Administrators.

Here at UAF we are building a welcoming environment and would never want a student to feel belittled, alone, disempowered.
TITLE IX
What are remedies?

Examples include but are not limited to:

- Classroom adjustments or changes
- Housing adjustments or changes
- Academic support such as tutoring, mentoring, flexible time, make-up work
- Re-take a course and/or withdrawing from a class without penalty
- Campus escort
- Free Counseling
- No contact order

When harassment is reported, UAF faculty and managers, in conjunction with the Title IX team, will take action to stop the behavior, investigate the incident, remedy the reported victim and prevent its reoccurrence.

Examples of remedies we can provide include but are not limited to these items.
Creating a Positive Environment

UAF R04.02.020.C. Roles and Responsibilities

1. The university administration is responsible for promoting a positive working and learning environment where all persons are free to discuss any problems or questions they may have concerning discrimination at the university, without fear of intimidation or reprisal.

2. All university employees are responsible for maintaining a positive working and learning environment. Supervisors and faculty will promptly respond to complaints of discrimination to determine what, if any, remedial action may be warranted. In resolving these complaints, supervisors and faculty will seek advice and guidance from the affirmative action officer or advisors. University employees and students must cooperate fully with efforts to resolve complaints brought to their attention.

It is the responsibility of everyone to create an environment the student excel and employees flourish.
If you see or know about any form of sexual harassment...

Do an intervention
Stop the behavior
Contact your Title IX Coordinators - Mae Marsh or Ana Richards
TITLE IX
What else should you do or know?

• Get as much information as possible to provide to the Title IX Coordinator
  ✓ What happened?
  ✓ When did it happen?
  ✓ Where did it happen?
  ✓ Who was involved?
  ✓ What is the contact information?
  ✓ Who else may have witnessed this?

• UAF is obligated to offer remedies even if the incident occurred off-campus and the accused is not affiliated with UAF.

We are not asking you to conduct an investigation, but we are asking you to listen carefully to the details and report to Mae Marsh or Ana Richards
TITLE IX

Questions?
TITLE IX

To obtain credit and get your certificate,
Go to:
http://www.uaf.edu/safety/training/

Click on blue link titled
Title IX/Sexual Misconduct
Thank You!

UAF