Title IX and Sexual Misconduct

Developed By
The University at Texas at Dallas
Office of Institutional Equity and Compliance
Title IX is a federal law that prohibits sex-based discrimination in education programs or activities that receives federal financial assistance.

**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.”

For the first 25 years or so after its passage, Title IX was primarily associated with providing female students with equal access to academic and athletic programs. Thanks to Title IX, there has been a significant increase in the number of female athletes participating in high school and intercollegiate sports.
In the 1990s, the U. S. Supreme Court issued several decisions finding that Title IX requires schools to take action to stop sexual harassment of students.

Since then, the Department of Education has published several guidance documents explaining schools must address all forms of sexual and gender-based harassment, including acts of sexual violence, to comply with Title IX.
• On May 1, 2014, when the Department of Education first published a list of higher education institutions under Title IX investigations, there were 55 investigations on that list.
• As of June 2016, the list has topped 300.
• Title IX issues are making headlines every day, and there is increased public discussion and debate over the handling of sexual assaults on college campuses.

What’s at stake when schools fail to comply with Title IX?
• Costly and time-consuming investigations (in 2014, Title IX investigations took an average of 1,469 days to complete)
• Loss of federal funding
• Litigation
• Negative public image and low campus morale
• Most significantly: a less safe and welcoming learning and working environment for students and employees

Individually, employees and students who violate university Title IX policies are subject to discipline, up to and including separation from the university (i.e., termination or expulsion).

FSU settles for $950,000
University of Tennessee settles Title IX Lawsuit for $2.48 million
Head coach fired over Title IX issue
Expelled Yale player says decision was unfair and excessive
Fallout from sexual assault scandal is far from over at Baylor
Title IX protects everyone from sex-based discrimination and sexual misconduct, regardless of the gender or sexual orientation of the complainant (alleged victim) or the respondent (accused person).

Title IX protects students, employees, contractors, and visitors.

Title IX applies to all aspects of federally funded educational programs and activities:

- Learning, working, living environments
- Academic programs
- Athletics
- Career and technical education
- Access to education for pregnant and parenting students
- Student organizations
- Extracurricular activities
- Campus housing
- Technology
- Internships
- Employment
- Summer camps
- Domestic travel and study abroad programs
In 2013, the Campus Sexual Violence Elimination (SaVE) Act was signed into law as part of the Violence Against Women Act (VAWA) Reauthorization Act of 2013. The Campus SaVE Act became effective on July 1, 2015. It imposes several new requirements regarding sexual violence, domestic violence, dating violence, and stalking. Among other things, the Campus SaVE Act requires schools to provide primary prevention and awareness programs for all incoming students and new employees and ongoing prevention and awareness programs for students and faculty.
In 2015, the UT System drafted a model policy for UT schools that addresses sex-based discrimination and all forms of sexual misconduct. The policy was designed to ensure compliance with all applicable laws, including Title IX and the Campus SaVE Act.

UT Dallas adopted the model policy in Fall 2015. UT Dallas’s policy is titled “Prohibited Discrimination and Sexual Harassment Sexual Misconduct Policy - UTDBP3102”

The policy applies to both students and employees. Among other things, the Policy defines the term “Responsible Employees” and their duty to report.
The Title IX Coordinator:

– Is the senior university administrator who oversees the University’s compliance with Title IX, including the administrative investigation of reports of sexual misconduct.

– Monitors outcomes of investigations, identifies and addresses any patterns of misconduct, and assesses effects on the campus climate.

– May delegate responsibilities to the Deputy Title IX Coordinator under his supervision.

James Dockery, Assistant VP for Institutional Equity and Compliance, is UTD’s Title IX Coordinator.

Brandy Davis, Director of Title IX Initiatives, is the Deputy Title IX Coordinator.
Prohibited Conduct

- **Sex Discrimination**
  - Including discrimination on the basis of sexual orientation, gender identity, or pregnancy
- **Sexual Harassment** (*Quid Pro Quo* or *Hostile Environment*)
- **Sexual Violence** (rape, sexual assault, sexual battery, sexual coercion)
- **Domestic Violence** and **Dating Violence**
- **Stalking**
- **Sexual Exploitation**
- **Other Sexual Misconduct**

*Such conduct denies or limits a student’s or employee’s ability to participate in university programs and activities.*
Sexual Harassment

• **Quid Pro Quo**: Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in university activities.

• Occurs when there is a power imbalance:
  – Student and professor or teaching assistant
  – Employee and supervisor
  – Athlete and coach
  – Research assistant and faculty member

**Example**: Sarah is a student in Dr. Smith’s class. After weeks of being flirtatious and paying extra attention toward Sarah, Dr. Smith asks Sarah to dinner and a movie. Dr. Smith tells Sarah that she is a beautiful and smart young woman and he would like to get to know her better. He comments that he would like to see her do well in his class. While Sarah is uncomfortable with the idea of going on a date with Dr. Smith, she is afraid that if she declines, her grade in his class will suffer. *Dr. Smith is subjecting Sarah to quid pro quo sexual harassment.*

Prohibited Discrimination and Sexual Harassment Misconduct Policy [https://policy.utdallas.edu/utdbp3102](https://policy.utdallas.edu/utdbp3102)
• **Hostile Environment:** Exists when unwelcome sexual conduct or sex-based harassment is sufficiently severe or pervasive to deny or limit the individual’s ability to participate in or benefit from the University’s programs or activities or an employee’s terms and conditions of employment.
  
  – Can be created by anyone involved in a University’s program or activity (e.g., administrators, faculty members, employees, students and University visitors).
  
  – Can be created by unwelcome verbal or physical conduct

**Example:** Jim is a student in Dr. Johnson’s class. Jim often makes jokes in class that are sexual in nature, including numerous remarks about Dr. Johnson’s appearance and her clothing. Dr. Johnson has asked Jim to stop making the inappropriate jokes, but Jim says that he is only having fun and that she should consider his comments to be compliments. Now each time the class meets, Dr. Johnson is so uncomfortable and nervous about what Jim will say or do that it is interfering with her ability to teach the course. *Jim is sexually harassing Dr. Johnson; his conduct has created a hostile environment that is limiting her ability to do her job.*

Prohibited Discrimination and Sexual Harassment Misconduct Policy [https://policy.utdallas.edu/utdbp3102](https://policy.utdallas.edu/utdbp3102)
Sexual Violence

• Sexual Violence is defined as “physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent.” The term includes, but is not limited to, rape, sexual assault, sexual battery, and sexual coercion.

• Sexual Assault includes:
  • Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
  • Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  • Incest and statutory rape are also forms of sexual assault.

Did you know...

A 2007 study on campus sexual assault found that:

• 1 in 5 women and 1 in 16 men are sexually assaulted while in college.
• Among the college women who reported experiencing completed and/or attempted rape, the perpetrator (most commonly a classmate, friend, boyfriend or ex-boyfriend, or acquaintance) was known to the victim in nearly 90% of cases.
• Among college students who reported experiencing completed and/or attempted rape, less than 5% reported the incidents to law enforcement officials.


Prohibited Discrimination and Sexual Harassment Misconduct Policy https://policy.utdallas.edu/utdbp3102
UT Dallas policy defines “consent” as:

A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.
• Consent to one act does not imply consent to another, and past consent does not imply future consent.
• Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
• Consent may not be inferred from silence, passivity, or lack of active resistance alone.
• A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. *Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.*
• Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.
• Consent can be withdrawn at any time.
• Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.
Understanding Consent

- Consent is **not effective** if it results from:
  - The use of physical force or a threat of physical force
  - Intimidation
  - Coercion
  - Incapacitation* or
  - Any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

*Incapacitation*: A state of being that prevents an individual from having the capacity to give consent. For example, incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability.

An incapacitated person can NEVER give consent.
Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes, but is not limited to, sexual or physical abuse or threats of such abuse.

The existence of such a relationship is determined by the victim with consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

Domestic/dating violence can affect anyone. Both men and women can be victims, and both men and women can be abusers. Violence and abuse occur within heterosexual and same-sex relationships.
Domestic Violence includes felony or misdemeanor crime of violence committed by

- A current or former spouse or intimate partner of the victim;
- A person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner;
- Someone with whom the person has a child;
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of Texas; or
- A person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Texas.

Such crimes of violence include any act that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself.

See Tex. Family Code Section 71.004.
When you hear the word stalking, you may think of someone being followed or monitored. Stalking may involve following or surveillance, but a person’s conduct does not have to include those actions to be considered stalking. **Stalking** is defined as:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others; or suffer substantial emotional distress.

Stalking may involve:
- Direct or indirect actions by the stalker
- The use of third parties
- The use of technology
- Following or surveillance
- Threats
- Verbal or written communications to or about the victim
- Interference with the victim’s property
- Unwanted gifts
Does it involve a course of conduct (two or more acts)?

Is the conduct directed at a specific person?

Would the conduct cause a reasonable person to feel fear for his/her safety or the safety of others, OR to suffer substantial emotional distress?

Did you know...

• 1 in 6 women and 1 in 19 men have experienced stalking victimization at some point during their lifetime in which they felt very fearful or believed that they or someone close to them would be harmed or killed.

• Eighteen- to 24-year-olds have the highest rate of stalking victimization. More than half of female victims and more than one-third of male victims of stalking indicated that they were stalked before the age of 25.

The University has an obligation to maintain an environment free of sex discrimination, thus many University employees have mandatory reporting and response obligations and may not be able to honor a complainant's (victim’s) request for confidentiality.

A **Responsible Employee** is a University employee who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or an employee whom an individual could reasonably believe has this duty.

At UT Dallas, Responsible Employees include all: administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations (counselors and healthcare professionals).

**Are you a Responsible Employee?**

*If you have questions or would like more information on your reporting obligations, contact the Title IX Coordinator or Deputy Title IX Coordinator.*
Confidentiality

• “The University has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Coordinator and/or a Deputy Coordinator. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant’s request for confidentiality.”

• Individuals who have questions about confidentiality are encouraged to contact the

- UTD Prohibited Discrimination and Sexual Harassment Sexual Misconduct Policy - UTDBP3102
Responsible Employees should make every effort to ensure that the complainant (victim) understands:

– The employee’s reporting obligations (i.e., that the employee must report the names of the complainant and respondent, as well as relevant facts regarding the alleged incident to the Title IX Coordinator or Deputy Title IX Coordinator)

– The complainant’s option to request that the school maintain his or her confidentiality (and/or to request that no action be taken regarding the report); and

– The complainant’s ability to share the information confidentially with confidential resources such as a counselor or healthcare professional.
Students and employees can share information with the following resources in strict confidence (they do not report to the Title IX Coordinator):

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<tr>
<th>Campus Resource</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Counselors at the Student Counseling Center</td>
<td>972-883-2575</td>
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<tr>
<td></td>
<td>After hours helpline: 972-UTD-TALK</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.utdallas.edu/counseling">www.utdallas.edu/counseling</a></td>
</tr>
<tr>
<td>Counselors at the Galerstein Women’s Center</td>
<td>972-883-6555</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.utdallas.edu/womenscenter">www.utdallas.edu/womenscenter</a></td>
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<tr>
<td>Healthcare Professionals at the Student Health Center</td>
<td>972-883-2747</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.utdallas.edu/healthcenter">www.utdallas.edu/healthcenter</a></td>
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<tr>
<th>Community Resource</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td>Dallas Area Rape Crisis Center</td>
<td>972-641-7273</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.dallasrapecrisis.org">www.dallasrapecrisis.org</a></td>
</tr>
<tr>
<td>The Turning Point (Rape Crisis Center of Collin County)</td>
<td>800-886-7273</td>
</tr>
<tr>
<td></td>
<td>(800-886-RAPE)</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.theturningpoint.org">www.theturningpoint.org</a></td>
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<tr>
<td>Genesis Women’s Shelter &amp; Support</td>
<td>214-946-4357</td>
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<tr>
<td></td>
<td>(214-946-HELP)</td>
</tr>
<tr>
<td></td>
<td><a href="http://www.genesisshelter.org">www.genesisshelter.org</a></td>
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There are numerous other confidential resources available in the community, including but not limited to: private counselors and healthcare providers, members of the clergy, support groups, resources centers, and advocacy organizations. See [www.utdallas.edu/oiec/title-ix/resources](http://www.utdallas.edu/oiec/title-ix/resources) for additional resources.
Interim Measures by the University

In addition to the services provided by on- and off-campus providers, the University will take immediate and interim measures to assure the safety and well-being of the complainant, to maintain an environment free from harassment, discrimination or retaliation, and to protect the safety and well-being of community members.

Examples Include:

- Suspension of a student or employee pending an investigation, if the individual may pose a threat to the campus
- A “No Contact” order
- Changing living arrangements
- Modifying a course or work schedule
- Modifying other aspects of the educational environment
Bystander Intervention

• All members of our University community share in a collective responsibility to make our campus peers feel welcome, safe and comfortable. The goal of Comet Voice, the bystander intervention initiative of UT Dallas, is to empower students with the confidence and skills to stand up and step in when needed.

• Bystander intervention means recognizing a potentially harmful situation and choosing to respond in a way that could positively influence the outcome.

• Steps to Intervention:
  – Recognize the potential harm
  – Choose to respond
  – Take action
Barriers to Intervention

• The “Bystander Effect” is a social phenomenon where the more witnesses there are to a violent act, the less likely the witnesses are to intervene. There are several theories as to why this occurs, including the following:
  – Diffusion of responsibility: “I’m sure someone else will do something, so I don’t need to.”
  – Pluralistic ignorance (or social influence): “No one else thinks this is a problem, so it’s not a big deal.”

• Other barriers:
  – Fear of retaliation: “I’m afraid of what will happen to me if I do anything.”
  – Fear of negative attention: “I’ll be embarrassed if I do anything.”
Forms of Intervention

• **Direct action** is an approach to intervening that requires articulation or expression of concern with the situation.
  – Ask questions/get clarity.
  – Create a distraction.
  – Talk/address the situation directly.

• **Indirect action**, also known as a ‘detour’ approach, involves less visible forms of intervening.
  – Get other people involved.
  – Call 911 or the [UTD Police](tel:972-883-2222).
  – Report behaviors to the [Behavior Assessment and Intervention Team](#) (BAIT).
  – Report on-campus crimes or crimes involving/among UT Dallas students that happened off-campus to Campus Security Authorities (CSAs).
  – Call attention to the situation to those around you who may be able to help.
“It’s On Us” is an initiative launched by the White House in 2014 to raise awareness and help put an end to sexual assault on college campuses. UT Dallas has participated in “It’s On Us” with a student-led awareness campaign. In 2015, over 1,000 UT Dallas students took the pledge to do their part to end sexual violence. For more information and to take the pledge, visit www.itsonus.org/#pledge
Anti-Retaliation Policy

Any administrator, faculty member, student or employee who knowingly and intentionally retaliates in any way against an individual who has brought a complaint under these policies, participated in an investigation or disciplinary process of such a complaint, or opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.

Nondiscrimination Policy https://policy.utdallas.edu/utdbp3090;
Prohibited Discrimination and Sexual Harassment Misconduct Policy https://policy.utdallas.edu/utdbp3102
Important Contacts in Case of Sexual Violence

James Dockery, JD  
AVP, Institutional Equity & Compliance and Title IX Coordinator  
james.dockery@utdallas.edu;  
(972) 883-2292

Brandy Davis, JD  
Director, Title IX Initiatives and Deputy Title IX Coordinator  
brandy.davis@utdallas.edu;  
(972) 883-5202

For Sexual Assault Reporting:  
• UT Dallas Police, x911 or non-emergency 972-883-2222  
• UT Dallas Title IX Coordinator TitleIXCoordinator@utdallas.edu (see individual contacts above)

For Confidential Support and Resources:  
• Dallas Area Rape Crisis Center 24 hour hotline: 972-641-RAPE (7273) Emergency advice & counseling  
• UT Dallas Counseling Center (Students Only): (972) 883-2575 Emergency advice & counseling  
• UT Dallas Student Health Center (Students Only): (972) 883-2747  
• Employee Assistance Program (Employee Only): (214) 648-5330

For more University and Community Resources:  
www.utdallas.edu/oiec/title-ix/resources
Visit [www.utdallas.edu/titleix](http://www.utdallas.edu/titleix)

For More Information

**Laws and Policies**

- Prohibited Discrimination and Sexual Harassment Sexual Misconduct Policy
- Nondiscrimination Policy
- Consensual Relationships Policy
- Student Code of Conduct
- Policy on Discipline and Dismissal of Classified Employees
- University Policy on Faculty Conduct
- Department of Education Office for Civil Rights (OCR): Title IX and Sex Discrimination
- OCR: How to File a Discrimination Complaint
- Title IX Regulations
- Clery Center for Security on Campus: The Campus Sexual Violence Elimination (SaVE) Act

Follow UTD Title IX Initiatives on social media:

[www.twitter.com/UTDTtitleIX](http://www.twitter.com/UTDTtitleIX)
[www.facebook.com/UTDTtitleIX](http://www.facebook.com/UTDTtitleIX)
Concerns, Questions, Comments?

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