

TITLE IX

ANNUAL EMPLOYEE TRAINING



OVERVIEW:

Definition of Title IX

Reporting Requirements

Confidentiality

Pregnancy & Parenting Students

Retaliation

TITLE IX LAW

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 educational program or activity
receiving federal financial assistance.

Malone receives federal finances.

A FEW HIGHLIGHTS OF THE TITLE IX TIMELINE

- **1972:** Title IX is enacted prohibiting sex discrimination in any educational program or activity receiving any type of federal financial aid.
- **1975:** Dept. of Health Education & Welfare clarifies that Title IX required equal athletic opportunities for men and women.
- **1990:** Clery Act requires federally funded schools to report crimes on campus and encourage reporting to police.
- **1994:** Violence Against Women Act requires schools to define consent and assault and have prompt investigations.
- **2011:** TIX expanded to include a lot more. Title IX now ensures fair treatment in matters of sexual harassment, discrimination based on sex, sexual assault, pregnancy, and parenting.
- **2013:** Retaliation is a violation of federal law.
- **2015:** Universities have to designate a Title IX Coordinator.
- **2020:** several changes to Title IX enacted regarding sexual harassment and sexual misconduct that threaten to discourage reporting by survivors.
- **January 2021**
President Biden releases [Executive Order 13988](#), "Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation," which states, "All persons should receive equal treatment under the law, no matter their gender identity or sexual orientation." According to the order, laws that prohibit sex discrimination, including Title IX, "prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary."³⁸
- **March 2021**
President Biden releases [Executive Order 14021](#), "Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity." It states the Biden Administration's objective to guarantee to all students "an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity," citing Title IX as applicable governing law.

TITLE IX PROHIBITS

1. Sex Discrimination: Title IX requires that each school publish a policy that it does not discriminate on the basis of sex in its education programs and activities. This notice must be widely distributed and available on an on-going basis.

2. Sexual Harassment: unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.

SEXUAL HARASSMENT

Direct or implied threats that submission to sexual advances will be a condition of advancement or promotion in any endeavor, including but not limited to employment, work status, promotion, or academic grades;

Direct propositions of a sexual nature;

Unnecessary touching, hugging, or brushing against another person's body;

Sexually explicit statements, questions, or jokes;

Remarks of a sexual nature about a person's clothing or body, sexual activity, sexual orientation, gender identity, or previous sexual experience.

2 TYPES OF SEXUAL HARASSMENT:

Quid Pro Quo

“Employment or education decisions based on a request for sexual favors.” (i.e. This for that.)

Hostile Environment

Unwelcome conduct that unreasonably interferes with an employee’s ability to work or a student’s ability to learn, OR creates an intimidating, hostile, or offensive work or learning environment.

RESPONDING

Sexual harassment is unlikely to stop until confronted.

In some cases, this may mean informing the person directly that his or her actions are offensive and unwelcome.

Other situations may require an informal talk from a supervisor, a formal reprimand, or a disciplinary hearing.

SEXUAL MISCONDUCT

- Unwelcome sexual advances
- Sexual jokes, gossip regarding another's sex life, sexual orientation, or gender identity
- Leering, whistling, obscene gestures
- Sexual assault, violence, threats, stalking
- Insults or threats based on sex or gender
- Change of academic or employment responsibilities based on sex, gender identity or expression, or sexual orientation
- Quid pro quo: "This for that"

Not all reports need to lead to an investigation.

If you are unsure or uneasy, report it.

SEXUAL VIOLENCE IS A FORM OF HARASSMENT.

This also includes same-sex sexual violence.

Sexual violence includes the following:

a) Rape, b) Sexual assault, c) Sexual battery, d) Sexual abuse, e) Sexual coercion; and

Retaliation: an adverse action taken against an individual who, in good faith, exercises his or her rights under federal civil rights laws such as Title IX.

INTERCONNECTION BETWEEN CLERY & VAWA

The Clery Act is a federal law that requires institutions to disclose information about crime reported on and around their campuses.

Violence Against Women Reauthorization Act of 2013 (VAWA) amended sections of the Clery Act.

The 2013 VAWA Amendments include:

- Domestic Violence
- Dating Violence
- Stalking
- Sexual Misconduct

DATING VIOLENCE

A violent act committed by:

- A person who is or has been in a relationship of a romantic or intimate nature with the victim; and the existence of the relationship shall be determined based on:
 - length of the relationship
 - type of relationship
 - frequency of the interactions between the persons involved in the relationship.

STALKING

Engaging in a course of conduct (two or more acts):

Directed at a specific person; and causes a reasonable person to fear for his or her safety or the safety of others, or causes that person to suffer substantial emotional distress.

CONSENT

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Consent is informed, freely given, and mutually understood.

NO CONSENT IF:

- coercion, intimidation, threats, and/or physical force are used;
- a person is mentally or physically **incapacitated**, or impaired by **alcohol or drugs** such that the person cannot understand the fact, nature, or extent of the sexual situation; or a person is **asleep or unconscious** or if the person is **UNDER AGE**.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn.
- Effective consent may not exist when there is a disparity in power. (supervisor/employee; faculty/student)

MORE ON CONSENT

- Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance.
- A person's manner of dress does not constitute consent.
- Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.

RIGHTS UNDER TITLE IX...

Students, Faculty & Staff have the right to:

- Be free from all types of sex discrimination including sexual misconduct, sexual harassment, and sexual violence
- Expect a complaint to be thoroughly investigated
- Bring forward a complaint in good faith
- Interim measures to ensure safety pending outcome of investigation
- Be informed of complaint procedures and options for resolution
- Be advised of outcome of investigation
- Be free from retaliation

MALONE UNIVERSITY RESPONSIBILITIES

- ❑ The university must take prompt and effective action to stop harassment, eliminate a hostile environment and address its effects
- ❑ Adopt equitable grievance procedures
- ❑ Use preponderance of evidence standard
- ❑ Conduct investigations separate from and independent of any criminal investigation or proceeding
- ❑ The university has 60 days from the time we learn about an issue to complete an investigation
- ❑ Conduct training
- ❑ Designate Title IX Coordinators

TITLE IX COORDINATOR

- Overseeing the University's response to all Title IX reports and complaints
- Identifying and addressing any patterns or problems revealed by such reports and complaints.
- Being informed of all reports and complaints raising Title IX issues
- Ensuring that adequate training is provided to students, faculty and staff on Title IX issues.
- With respect to Title IX complaints that relate to a University employee as the survivor and/or complainant or as the respondent, the Title IX Coordinator will partner with the Department of Human Resources which will manage the investigation into the allegations and which will recommend appropriate sanctions against the employee.
- Helping to determine appropriate interim measures for a survivor and/or complainant upon learning of a report or complaint of sexual violence.
- Ensuring that appropriate policies and procedures are in place for working with law enforcement and coordinating services with local victim advocacy organizations and services providers, including rape crisis centers.
- Promoting an educational and employment environment which is free of sexual discrimination and gender bias.

ESSENTIAL
COMPLIANCE
ELEMENTS

Once a **Responsible Employee** has either actual or constructive notice of sexual harassment or sexual misconduct, Malone must take action.

Who is considered a
Responsible Employee?

A RESPONSIBLE EMPLOYEE...

...is someone a student could reasonably believe has this authority or responsibility, and they have responsibility to report and remedy situations.

At Malone, every employee is expected to report incidents of sexual misconduct except designated confidential advisors.

Before a student survivor reveals any information, the employee should ensure that the student survivor understands the employee's reporting obligations – and, if the student survivor wants to maintain confidentiality, direct the student survivor to the confidential resource

MALONE MUST...

- take immediate and appropriate steps to investigate what occurred.
- take prompt and effective action to:
 - Stop the harassment
 - Remedy the effects
 - Prevent the recurrence



CONFIDENTIAL ADVISORS

Who can hold confidentiality?

- Licensed Professional Counselors
- Campus Clergy
- Medical Professionals

Everyone else is required to report incidents to the TIX Coordinator.

WHO TO REPORT TO:

- Title IX Coordinator – VP for Student Development
- Deputy Coordinator (Students) – Dean of Community Life
- Deputy Coordinator (Students) – Director of Student Success
- Deputy Coordinator (Athletics) – Athletic Director
- Deputy Coordinator (Employees) – Human Resource Director
- Deputy Coordinator (Safety) - Director of Campus Safety

REPORTING TO THE TITLE IX COORDINATOR

Reporting to the Title IX Coordinator ensures that information regarding resources, reporting options, and employee and student rights is provided to the alleged target of sexual misconduct.

RESPONDING TO ALLEGED INCIDENTS OF SEXUAL MISCONDUCT:

- Before an employee or student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the person understands...

YOUR RESPONSIBILITIES

1. Your obligation to report the names of the alleged perpetrator and the person involved in the alleged sexual misconduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX Coordinator;
2. The person's option to request that the University maintain his or her confidentiality, which the Title IX Coordinator will consider;
3. The person's ability to share the information confidentially with counseling, health, or sexual assault-related services.

INFORMATION REPORTED TO THE TITLE IX COORDINATOR:



DATE, TIME, AND LOCATION OF THE ALLEGED INCIDENT. NAME OF COMPLAINANT, ALLEGED PERPETRATOR(S), AND WITNESSES.



ANY DETAILS STATED BY THE COMPLAINANT .



WHETHER THE COMPLAINANT REQUESTED CONFIDENTIALITY.



WHETHER THE COMPLAINANT REQUESTED NO ACTION BE TAKEN. ANY OTHER RELEVANT FACTS.

CONSEQUENCES FOR FAILURE TO REPORT

- We want to do the right thing. Help stop sexual violence.
- Termination of all or part of Malone's federal funding. This includes grants, subsidies, and other program funds from the federal government. Malone may be sued by those seeking remedy for violations of Title IX. Students or employees can bring lawsuits against Malone, which can result in millions of dollars in judgments or settlements.

OTHER NUMBERS

- Emergency
 - Call 911
 - Safety (330)471-8111

- Anonymous Reporting
 - 911 Shield

Confidential Advisors

Compass - BCC

Counseling 330-471-8711

Student Health Services – Whittier 1

Dr. Rev. Linda Leon

INVESTIGATION

- Options for complainant
 - File a criminal complaint with Canton Police or Safety Office.
 - File a University (Institutional) complaint with Title IX Coordinator.
 - Refer to University's Sexual Misconduct Policy/Student Handbook
 - Student Code of Conduct
 - Employee Grievance Procedure
- Title IX Coordinator will review what most appropriate next steps are and put together an investigation team

UNIVERSITY COMPLAINT RESOLUTION PROCESS

- If the alleged violator of Policy is a student: File a Complaint with TIX Coordinator
- If the alleged violator of the Policy is a non-student: File a Complaint with the TIX Coordinator
- If the alleged violator of the Policy is an employee: File a Complaint with the Director of Human Resources
- If the alleged violator of the Policy is a non-employee: File a Complaint with the Title IX Coordinator



FORMAL VS. INFORMAL RESOLUTION PROCESS

Victims (students) of **Title IX** violations can file either a **formal or informal** complaint.

Both complaint **processes** have advantages **and** disadvantages.

The informal resolution process is an alternate resolution process available to students. This is a voluntary, structured interaction between involved parties (complainant and respondent) to resolve the allegations following the filing of a formal complaint and prior to a formal hearing on the allegations. The informal resolution process is intended to be flexible while also providing for a full range of possible outcomes.



What is an Informal Title IX Complaint Process?

Sex discrimination comes in a wide range of different forms from modest, but still impactful incidents, to felony criminal acts. Title IX allows certain acts of discrimination or harassment to be addressed through an informal resolution process and schools may define that informal process as each school prefers. Typically, an informal complaint process is a fully voluntary, structured interaction between the parties that is designed to help them address and resolve an issue at the earliest stage possible. Informal resolutions are flexible meaning the process can move forward in many different ways. As a general rule an informal complaint process:

- Will not receive a comprehensive investigation
- Can be kept confidential; and
- Will not be referred for official disciplinary action if an agreement between the parties and the school is reached.

Informal complaints may eventually result in counseling, education, or mutual avoidance as part of no-contact agreement. The remedy, which typically does not include official discipline, will be dependent on the specific nature of the case.



Not All Issues Can or Should be Handled Informally

To be clear, an informal process is not appropriate in all cases. Beyond that, the victims of sex discrimination or sexual harassment should never feel pressured into using the informal process. It is a voluntary process meaning you always retain the right to withdraw without an agreement or to proceed with an immediate formal process. That being said, if the informal complaint process does reach its completion, the matter will be deemed closed.



The Formal Process is Structured

One of the key differences between an informal and a formal process is that the formal process is far more structured.

Here are five key elements of the typical formal process under Title IX:

- 1. Complaint:** A written complaint must be submitted, and the respondent will receive notice of the allegations.
- 2. Investigation:** An investigator will be appointed to handle the matter and investigation will be conducted. In most cases, the investigation will include the gathering of evidence and the interviewing of witnesses.
- 3. Report:** The investigator's initial report will be shared with each party before it is finished. At that point, they will be given an opportunity to respond. After the responses are received and reviewed, a final report of the investigation will be issued.
- 4. Panel:** A panel will be convened to review the case. Parties will have an opportunity to provide statements and evidence to the panel.
- 5. Decision:** The hearing panel must determine if the respondent violated the institution's rules by a preponderance of the evidence. If the panel finds that a violation occurred, the panel will need to decide on the appropriate sanctions there will be the issuance sanctions.

TITLE IX & PREGNANCY

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- *A recipient (of federal funds) shall not apply any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex."*
 - Specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.
 - Illegal to exclude pregnant students from participating in any part of an educational program, including extracurricular activities.

TITLE IX & PREGNANCY

- School must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary. When a student returns to school, she must be allowed to return to the same academic and extracurricular status as before her medical leave began.
- Any special services provided to students who have temporary medical conditions must also be provided to a pregnant student. Therefore, if a school provides special services, such as homebound instruction or tutoring, for students who miss school because of a temporary medical condition, they must do the same for a student who misses school due to pregnancy or childbirth.
- A school may require a pregnant student or a student who has given birth to submit medical certification for school participation only if the school also requires such certifications from all students with physical or emotional conditions requiring the attention of a physician.

RETALIATION

- Unlawful for the school to retaliate against someone for bringing a complaint forward or participating in an investigation.
- Unlawful for respondent to retaliate against complainant or witnesses for bringing complaint forward or participating in an investigation.
- Easier to prove retaliation in many cases.

SUMMARY

- If you have knowledge of sexual harassment or sexual assault, you must report.
- MU has obligation to investigate.
- MU will take any and all appropriate actions to
 - Stop the harassment
 - Remedy the effects
 - Prevent recurrence
- Pregnant students are in a specialized circumstance and as such entitled to special Title IX protections
- All parties involved in a report and investigation are covered by federal protections from retaliation

RESPONDING TO INCIDENTS OF SEXUAL MISCONDUCT:

LISTEN

- It is critical that you listen, are present, avoid judgment, and do not blame the person for what happened.
- If the person prefers no action be taken at that time, he/she should be informed that his/her preference will be shared with the Title IX Coordinator.

UNDERSTAND CONFUSING EMOTIONS

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- The person may feel a variety of confusing emotions like panic, helplessness, guilt, shame, numbness, or denial.
 - The person's flat or emotionless display immediately after an incident of sexual misconduct strikes many as being an inappropriate response. However, such a reaction is the result of natural painkillers released by the human body in response to physical trauma

RECOGNIZE SECONDARY TRAUMA

- Questioning the person's credibility and engaging in victim blaming discourage reporting sexual misconduct in the first place because the person doesn't want to subject him/herself to the secondary trauma of not being believed.
- Research suggests that hesitancy or even inconsistency with which a person who reports an incident of sexual misconduct may be the result of the brain's natural response to physical trauma. The two structures in the brain responsible for memory creation are both highly sensitive to the flood of hormones released during an incident of sexual assault.

AVOID JUDGMENT

- Avoid statements that indicate that you do not believe the person.
- Avoid statements and comments about possible outcomes.
- Avoid potential revictimization by directing the person to Compass or the Counseling Center.


BYSTANDER- FOCUSED PREVENTION OF SEXUAL MISCONDUCT

- Bystanders are often unsure of themselves as responders.
- They are unclear about whether intervention is needed or welcome, or what they should do to help.
- The lack of awareness allows the sexual misconduct to continue.

BYSTANDER-FOCUSED PREVENTION OF SEXUAL MISCONDUCT (CONTINUED)

5 Steps for Bystander Intervention:

1. Notice the event
2. Interpret the event as a problem/emergency
3. Assume personal responsibility
4. Possess the skills to intervene. Make the intervention “Safe, Early, & Effective”
5. Implement the skills and help: STEP UP!



THANK YOU FOR HELPING TO
STOP SITUATIONS THAT LEAD TO SEXUAL VIOLENCE.