

BOWDITCH

ATTORNEYS



MARCH 2026

TITLE IX COMPLIANCE TRAINING

WESTERN NEW ENGLAND UNIVERSITY



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INTRODUCTION

ROADMAP

- Introduction to Title IX
- Roles
- Policy and Defining Sexual Harassment
- Responding to Reports of Sexual Harassment
- Responding to Formal Complaints of Sexual Harassment
- Practice Tips
- Pregnancy and Related Conditions
- Disparate Treatment



TITLE IX

“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.”

TITLE IX TIMELINE

- 1972: Congress passes Title IX
- 1975: Title IX athletics regulations
- 2001: Revised Sexual Harassment Guidance
- 2011: Obama Dear Colleague Letter (DCL)
- 2017: Rescind DCL and Interim guidance
- **2020: Title IX sexual harassment regulations**
- 2024: New regulations (now vacated)



TITLE IX REQUIRES SCHOOLS TO:

- Designate a Title IX Coordinator
- Adopt a definition of sexual harassment for Title IX purposes
- Respond promptly to Title IX sexual harassment in a manner that is not deliberately indifferent, including by offering supportive measures and providing information about filing a formal complaint for investigation
- Adopt grievance procedures to resolve formal complaints through informal resolution and/or investigation and hearing



WNE 2024 CAMPUS CLIMATE SURVEY

- 88% of the students who responded agreed or strongly agreed that they feel safe on campus
- 23% reported stalking behaviors of some kind
- 7% reported experiencing dating violence
- 27% indicated they have perceived some type of harassment behavior
- 37% said they don't know where to go to make a report of sexual misconduct
- 82% agreed or strongly agreed about feeling safe from sexual violence



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ROLES

WHO TO CONTACT

Title IX Coordinator

- Sarah Butterick

Deputy Title IX Coordinators

- Lori Mayhew-Wood
- Michelle Clark
- Amy Burton
- Mike Vallee
- Tynisha Henderson-Mitchell
- Logan Florea
- Tiara Warren

Confidential Resource Providers

- Lauren Dansereau
- Ryan Berthiaume
- Caitlin Tanski



OBLIGATIONS TO NOTIFY TITLE IX COORDINATOR

REQUIRED FOR ALL EMPLOYEES

- Faculty
- Staff
- Administrators
- Students employed as RAs, advisors, peer advisors, supervisors, graduate assistants

NOT REQUIRED FOR CONFIDENTIAL EMPLOYEES

- Medical and mental health services
- Clergy providing religious counseling
- Confidential Resource Providers (“CRPs”) – Lauren Dansereau, Ryan Berthiaume, Caitlin Tanski

TITLE IX COORDINATOR AND DEPUTIES

- The Title IX Coordinator is charged with oversight and coordination of WNE's activities with respect to Title IX compliance and response to reports and complaints
- Must be unbiased and a resource for all parties
- Free from conflicts of interest
- Trained to serve impartially without prejudging the facts at issue

CONFIDENTIAL RESOURCE PROVIDERS

- MA Law requires each campus to have at least one
- CRPs cannot be required to provide information to a Title IX Coordinator and are expected to keep information shared with them about sexual misconduct confidential
- CRPs are a resource for all community members and can share information about reporting, resources, supportive measures, rights, etc.



EMPLOYEE REPORTING OBLIGATIONS

- All employees who are not identified as being a Confidential Employee are required to:
 - immediately report
 - all information obtained, whether directly or indirectly, about
 - incidents of sexual misconduct
 - to the Title IX Coordinator
 - including the names, if known, of the victim and all others involved in, or having knowledge of the incident.

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POLICY AND DEFINING SEXUAL HARASSMENT



WHAT DOES TITLE IX CONSIDER SEXUAL HARASSMENT?

SEXUAL MISCONDUCT POLICY

- WNE's Sexual Misconduct Policy reflects the jurisdiction, definition, and procedural requirements of the 2020 Title IX Regulations
- Under Title IX, “sexual harassment” is used as an umbrella term
- A determination of whether a related policy violation occurred must be done through the grievance procedures outlined in the Sexual Misconduct Policy

SEXUAL MISCONDUCT POLICY

- Western New England University Sexual Misconduct Policy applies:
 - to all members of the University community including students, employees, third parties and guests
 - regardless of the Complainant's or Respondent's sex, sexual orientation, or gender identity or expression
 - when the alleged misconduct:
 - occurs within the United States; and
 - occurs within the University's education program or activity; and when
 - at the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the University

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING

- Quid pro quo harassment by University's employee;
- Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity; or
- Any instance of sexual assault, dating violence, domestic violence, or stalking.

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

QUID PRO QUO SEXUAL HARASSMENT

- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- The quid pro quo nature of the incident can be implied by the circumstances, not just by express communications
- Complainant's subjective statement that they found the conduct unwelcome is sufficient

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

SEXUAL HARASSMENT

- Unwelcome conduct on the basis of sex determined by a reasonable person to be so:
 - Severe;
 - Pervasive; and
 - Objectively offensive
- That it effectively denies an individual equal access to the University's education program or activity.

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

SEXUAL ASSAULT

- Any forcible or nonforcible sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders.
- Includes: Rape, Criminal Sexual Contact, Incest, and Statutory Rape...

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

SEXUAL ASSAULT INCLUDES:

- Rape: 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, or by a sex-related object, without consent
 - Includes sodomy or sexual assault with an object as defined in the policy.
- Criminal Sexual Contact: The intentional, nonconsensual touching of any body part of another person for the purpose of sexual gratification, degradation, or humiliation
- Statutory Rape: Nonforcible sexual intercourse with a person who is under 16

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

DOMESTIC VIOLENCE

- A felony or misdemeanor crime of violence committed by:
 - Current or former spouse/intimate partner;
 - Person the victim shares a child with;
 - Person cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - Person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
 - Any other individual against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction where violent crime occurred.

SEXUAL HARASSMENT UNDER TITLE IX INCLUDES:

DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Existence of relationship based on reporting party's statement and consideration of relationship length, relationship type, and frequency of interaction between persons in relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

STALKING

- Engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

CONSENT DEFINITION

- Freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions
- May be withdrawn at any time through clear words or actions
- A person who initiates a sexual activity is responsible for obtaining consent for that sexual activity
- Lack of protest, lack of resistance, silence, and/or passivity do not constitute consent
- Consent to one form of sexual activity does not by itself constitute consent to another form or future sexual activity
- Consent is ineffective if someone is under 16, incapacitated, or when obtained by force, violence, threats, intimidation, or coercion

INCAPACITY DEFINITION

- Unable, temporarily or permanently, to give consent because they lack the ability to make informed, rational judgments. As a result of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place.
- Mental helplessness means a person who is incapable of appraising or controlling their own conduct.
- Physical helplessness means a person who is physically unable to communicate their willingness or unwillingness to engage in an act.
- A person may be incapacitated as a result of the voluntary or involuntary consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

INCAPACITY DEFINITION

- Incapacitation is an extreme form of intoxication.
 - The impact of alcohol and other drugs varies from person to person. A person's level of intoxication can change rapidly, and incapacitation can be reached within a short period of time.
 - Although every individual may manifest signs of incapacitation differently, typical signs include, but are not limited to, slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, outrageous or unusual behavior, and/or unconsciousness.

RETALIATION DEFINITION

- Prohibited under the Policy and addressed as a separate allegation or complaint
- Is defined as seeking retribution against an individual for exercising their rights under the Policy, or for making a report or complaint, testifying, assisting, conducting, participating in or refusing to participate in an investigation, hearing, or other proceeding under this Policy.
- Retaliation may include, but is not limited to, threats, coercion, verbal abuse, violence, and harassment, including knowingly making false statements about another person verbally or in writing.
- Retaliation will violate this Policy even where the underlying allegation(s) of Sexual Misconduct are dismissed or a finding of “no responsibility” has been made.

RELEVANT WNE POLICIES

STUDENT HANDBOOK

- Any harassment, discrimination, or unlawful bias based on sex, gender, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity will be handled pursuant to Western New England University's Title IX Policy & Grievance Procedures.
- All other forms of harassment, discrimination, or unlawful bias based on a legally protected status will be handled pursuant to Western New England University's Policy & Procedures Prohibiting Harassment and Discrimination.

POLICY PROHIBITING HARASSMENT AND DISCRIMINATION

- Applies to anyone participating or attempting to participate in the University's education program or activity.
- May occur on or off campus.
- Harassment (can be based on sex, sexual orientation, gender identity) is subjectively and objectively offensive and is severe or pervasive.

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RESPONDING TO REPORTS OF SEXUAL HARASSMENT

WHAT IS A REPORT?

- A report is information received by the Title IX Coordinator – either directly, indirectly, or through an employee's reporting obligations – about a concern of sexual misconduct impacting a community member.
- A report does not automatically trigger a formal complaint and investigation – however, in certain circumstances, the University may have an obligation to proceed regardless of the complainant's wishes.
- A report can be made anonymously to the University or without disclosing the names of the respondent or witnesses. The University's ability to respond to this type of report will be limited.
- An impacted party may also choose to report a concern of sexual misconduct to law enforcement for criminal action.

WHAT IS A REPORT?

- Under Title IX, a report triggers the University's obligation to respond
- A report can be oral or in writing
- A report can come from anyone who was participating or attempting to participate in the program or activity at the time of the conduct

HOW MUST THE TITLE IX COORDINATOR RESPOND TO REPORTS?

- Reach out to the impacted party/complainant, if known, to provide information about resources, including how to file a formal complaint and the availability of supportive measures
- Treat the complainant and respondent equitably
- Conduct a preliminary evaluation to determine if immediate action must be taken to protect the complainant or other members of the campus community
- Take other “appropriate prompt and effective” action to ensure that sex discrimination does not occur or recur



SUPPORTIVE MEASURES

- Implemented by the Title IX Coordinator or Deputies
- Designed to restore or preserve equal access to educational or employment programs or activities
- Cannot unreasonably burden a party; not punitive; no fee or charge
- Must be carefully documented
- Do not require a formal complaint

EXAMPLES OF SUPPORTIVE MEASURES

- Issuing mutual no-contact orders (i.e., an order directing one or both of the parties to refrain from contacting the other, directly or through proxies)
- Placing a non-student employee on administrative leave from employment during the pendency of investigation and resolution proceedings
- Arranging access to counseling services and assistance in setting up initial appointments for students, or providing contact information for available counseling services for employees
- Assistance in seeking academic assistance or modifications
- Assistance in modifying University housing arrangements, if available
- Assistance in modifying University employment arrangements, including changes in work schedules, job assignments, or work locations
- Changing an employee's phone number at work
- Arranging a meeting with Department of Public Safety or local police to discuss safety planning, the filing of a criminal complaint or request for a protective order
- Arranging a leave of absence

SUPPORTIVE MEASURES AND DISABILITY ACCOMMODATIONS

SIMILARITIES

- Interactive process
- Categorical limitations not permitted
- Individualized
- Likely neither permit an undue financial or administrative burden

DIFFERENCES:

- Section 504 tied to disability diagnosis, and the response will be much more structured
- Title IX has more flexibility and could alter or waive essential academic requirements or alter the nature of a program, and are often shorter-term

CONSIDER: KEEP THE ANALYSES SEPARATE BUT PARTNER CLOSELY

EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

- Whether or not a grievance process is underway, the University may remove a student from educational programs and/or activities on an emergency basis only:
 - After undertaking an individualized safety and risk analysis, and
 - Upon the determination that the individual poses an immediate threat to the physical health or safety of any student or other individual.
- The University may place an employees who is named as a Respondent in a formal complaint on paid administrative leave

ON CAMPUS RESOURCES

- Project Director of Safe Connect
 - Caitlin Tanski: Victim advocate, she can help connect impacted parties with resources on and off campus including a Victim Advocate in the District Attorney's Office and connection with the local YWCA.
- WNEU Center for Health and Wellness
 - 24/7 Crisis Line 413-310-5389
 - Health Service and Counseling Center
- WNEU Department of Public Safety
- Division of Student Life
- Human Resources
- Resident Directors and Resident Assistants

OFF CAMPUS RESOURCES

- Rape Crisis Center of Hampden County at the YWCA of Western Mass
 - 800-796-8711 Hotline
- Medical Facilities with SANE (Sexual Assault Nurse Examiner) nurses
 - Baystate Medical Center
 - Mercy Medical Center
- Community Legal Aid
- Massachusetts Office for Victim Assistance
- Victim Rights Law Center

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RESPONDING TO FORMAL COMPLAINTS OF SEXUAL HARASSMENT

WHAT IS A FORMAL COMPLAINT?

- A formal complaint is:
 - A document filed by a complainant
 - Contains the Complainant's physical or digital signature
 - Alleging that a respondent(s) has engaged in conduct prohibited under the University's Sexual Misconduct Policy and
 - Requesting that the University investigate the allegation.
- A formal complaint cannot be made anonymously.
- The Title IX Coordinator may also initiate a formal complaint.
 - The Title IX Coordinator will consider the potential Complainant's request, the University's obligations to address sexual misconduct, safety concerns the interests of others involves, and the interests of the University community.



INITIAL ASSESSMENT

- Discuss process for making a formal complaint (if one has not been made)
- Assess the complaint to determine if the conduct reported would constitute prohibited conduct under Title IX
- Dismiss, discuss informal resolution, discuss investigation and hearing

NOTICE

- Goes to parties after the receipt and review of the formal complaint by the Title IX Coordinator
- Includes:
 - Identities of the parties
 - Concise summary of the alleged conduct
 - Advisor of choice
 - Respondent is presumed not responsible
 - Informal resolution

INFORMAL RESOLUTION

- Requires consent of both parties and approval of Title IX Coordinator
- Can be offered at any time up to 48 hours before the hearing
- Not allowed in student vs. employee cases of alleged sex-based harassment



INVESTIGATION

- Appointment of investigator
- Interviews with parties and witnesses
- Preparation of case file
 - Parties can review and respond
- Finalization of investigation report
 - Parties can review and respond

HEARING

- Hearing Panel
 - An attorney chair
 - Two trained faculty/staff
- Purpose is to ask clarifying questions the panel has after reviewing the report
- The panel will ask questions of the parties and witnesses
- Parties' advisors may also conduct cross-examination of other party & witnesses
- Only relevant questions may be asked and answered

WRITTEN DETERMINATION AND SANCTIONS

- Preponderance of the evidence standard
- Written determination by the Chief Hearing Officer
- Sanctions by the appropriate university administrator

APPEAL

- The Title IX Officer, investigator(s), the Hearing Officer or any member of the Hearing Panel, or Sanction Officer had a conflict of interest or bias
- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made which could affect the outcome of the matter

Why may a community member choose to engage in informal resolution, to file a formal complaint, or not?

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PRACTICE TIPS

INITIAL MEETINGS

- Provide uniform information about resources (often by email)
- Provide options for meeting location, method, and/or accompaniment
- Set expectations for the meeting ahead of time
- An initial meeting is typically not an investigation meeting
- Introduce yourself and your role clearly at the beginning of the meeting
- Always mention: your role, supportive measures, other resources, and how to file a formal complaint
- Follow up

IMPARTIALITY, CONFLICT OF INTEREST, BIAS

CONFLICT OF INTEREST

- When an individual's knowledge of the matter or relationships with parties or witnesses (personal or professional) would preclude impartiality

BIAS

- An unfair prejudice for or against a party or complainants / respondents generally

UNCONSCIOUS BIAS

- May be contrary to our conscious beliefs
- Influenced by background, personal experiences, societal stereotypes, cultural context
- “Like me”/affinity bias
- Confirmation bias
- Cognitive bias may also include assumptions about motivation or intent or assuming common past experiences/knowledge

HOW TO REDUCE UNCONSCIOUS BIAS?

- Evaluate information shared based on objective criteria, not demeanor
- Use inclusive language
- Use the parties' words and ask for definitions
- Be curious and engaged
- Focus on relevant information
 - Building rapport vs. identifying with a party
- Respect boundaries

EXPERIENCES IMPACT ACCOUNTS

DISABILITY

CULTURAL

SOCIETAL

TRAUMA

ROLE OF TRAUMA

- Presence of trauma is not a substitute for the absence of evidence and cannot bolster credibility in the absence of evidence
- Be aware that the research is developing on how an experience of trauma may impact an individual's account of the experience. Ex:
 - May be fragmented or “sketchy”
 - May enhance and/or disrupt memory formation and retrieval
 - Lack of narrative coherence may not indicate trauma
- Be aware and do not judge counter-intuitive behaviors. Ex:
 - No typical or right reaction
 - Limited or no verbal physical resistance
 - Processing of the incident may not be linear

ROLE OF ALCOHOL AND OTHER SUBSTANCES

- Incapacitation is not the same as intoxication
- Alcohol and other substances may impact both your ability to gather or know information, as well as the reliability of that information
- The substance's impact on parties' and witnesses' decision-making capacity, awareness, and ability to communicate may all be relevant

INVESTIGATION QUESTIONS

- Short, neutral, non-judgmental, and open-ended questions and avoid speculating questions
- Who, What, Where, When and How (sometimes “Why”)
- Establish chronology
- Ask varied questions on same subject, and allow time to respond
- Ask for clarification of unfamiliar words or phrases
- When consent is at issue, probe conclusory statements
 - What is it that led you to believe they consented to sex?
 - What did the Complainant do that led you to believe they consented?
- Ask for clarification about material inconsistencies

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PREGNANCY AND RELATED CONDITIONS



STUDENTS EXPERIENCING PREGNANCY AND/OR RELATED CONDITIONS

- Reasonable accommodations
- Voluntary leaves of absence
- May need access to lactation spaces

REASONABLE ACCOMMODATIONS & LOA PROCESS

- Employees notify students that they can seek accommodations
- Students contact the Director of Student Accessibility Services (SAS)
 - SAS meetings with student – interactive process for accommodations
 - SAS meets with the student to discuss LOA (if requested)
- Consult with Title IX Coordinator as needed

DIFFERENCES FROM DISABILITY ACCOMMODATION PROCESS

- Students contact the Director of Student Accessibility Services (SAS)
- Best practice not to ask for medical documentation if the need is obvious. Ex:
 - Bigger uniform
 - Student previously provided with sufficient supporting documentation
 - Modification is:
 - Carry/keep water nearby and drink
 - Use a bigger desk
 - Sit or stand
 - Take breaks to eat, drink, or use the restroom
 - Lactation needs

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DISPARATE TREATMENT

DISPARATE TREATMENT

- A school's response to disparate treatment is not governed by the same 2020 Title IX Sexual Harassment Regulations
 - Same applies to Athletics!
- Disparate treatment is related to treating a person differently from others similarly situated because of their sex or related characteristics
- Disparate treatment prohibits unjustified sex-based distinctions regardless of the motivation behind those distinctions.
- Examples: Sex-based scholarships



QUESTIONS?