

Title IX

Overview of the Law

Overview of WCCCD's Updated Title IX Policy/Procedures

Your Obligations Under Title IX

Purpose of Title IX

Title IX of the Education Amendments of 1972 is a federal law which prohibits discrimination on the basis of sex in education programs or activities operated by recipients of federal financial assistance.

Said another way, Title IX seeks to reduce or eliminate barriers to educational opportunities caused by sex-based discrimination.

Wayne County Community College District is such a recipient and is thereby covered by Title IX.

WCCCD's Title IX Policy

WCCCD has, for many years, had policy statements that prohibit sex discrimination under various statutes, including Title IX.

WCCCD has an updated, comprehensive, Title IX Policy and Procedures it is unveiling.

The updated Policy/Procedures:

- Clearly state WCCCD's mission and purpose of its policy - to prohibit all forms of sex discrimination and sexual misconduct.
- Define important terms in the Policy such as sexual misconduct.
- Explains the responsibilities of the Title IX Coordinator.
- Identify the process for reporting sex discrimination and sexual misconduct to the College
- State obligations of individuals who receive reports.
- Inform individuals how a complaint will be reviewed and investigated.
- Inform individuals of the College's other obligations under the Policy.
- Provide a list of supportive measures and resources for victims of sexual misconduct/sexual violence

You should review the updated Title IX policy and procedures carefully.

Why? Because as you will hear later, you are an individual who has certain obligations under Title IX.

The U.S. Department of Education is currently investigating 284 sexual violence allegations at 215 colleges and universities. Fortunately, WCCCD is not one of them! Nor does it want to be included in these statistics.

WCCCD is committed to maintaining campuses free from sex discrimination. With updated policies in place and your assistance, it can stay ahead of the law and maintain campuses free from sex discrimination and sexual misconduct.

Who Does Title IX Protect?

Many people are under the mistaken impression that Title IX only protects students – this is not true.

The protections afforded by Title IX apply to:

- Students
- Employees of the College
- Visitors of the College

Does Title IX Only Cover Women?

Because Title IX prohibits discrimination on the basis of sex, does that mean it only covers women, or women harassed by men?

Even though Title IX claims have historically been asserted mostly by women, the answer is No.

Sex discrimination is conduct that denies or limits **an individual's** ability to benefit from or fully participate in educational programs or activities or employment opportunities because of an individual's sex, gender, or sexual orientation.

Title IX covers:

- ✓ Women
- ✓ Men

Regardless of whether they are straight, gay, lesbian, bisexual and/or transgender, part-time and full-time, with and without disabilities, and of different races and ethnicities, and regardless of national origin, immigration status, or citizenship status.

- ✓ Covers sex-based harassment by same, or opposite sexes.

May have heard on news, but courts are coming to different conclusions as to whether transgender individuals are covered under various anti-discrimination laws.

They are covered under Title IX!

The U.S. Department of Education's Office of Civil Rights' guidance states that Title IX covers transgender individuals.

For purposes of Title IX, you look to the way an individual presents themselves, i.e., look to their "identity," not their actual biological gender.

What Does Title IX Prohibit?

Many individuals also believe that Title IX only prohibits sex discrimination in regard to athletic programs.

This also is not true.

While athletics is one component of college activities covered by Title IX, the Act prohibits sex discrimination in all aspects of educational programs.

Other Aspects of Educational Programs Where Students Must Be Treated the Same Regardless Of Their Gender

Examples of the types of sex discrimination that are covered by Title IX, in addition to the failure to provide equal opportunity in athletics, include, but are not limited to:

- Discrimination in a school's classes and programs,
- Discrimination in regard to recruitment, admissions, counseling, financial assistance,
- Unequal discipline,
- Unequal, or denial of, participation in extra-curricular activities,
- Unequal employment opportunities and compensation,
- Disallowing a pregnant student from participating in activities, imposing different requirements or failing to provide her with certain reasonable adjustments (e.g., restroom trips).
- Harassing a pregnant student, and

- Applying any rule related to a student's parental, family, or marital status that affects the student differently based on their sex.

What Else Does Title IX Protect Against?

Sexual Misconduct – This is an area that has recently and continues to receive a great deal of attention in the media.

For purposes of the College’s Title IX procedures, it is critical that you understand what constitutes sexual misconduct.

What is Sexual Misconduct?

- It can be sexual harassment, gender-based harassment, and/or sexual violence.

What is Sexual Harassment? [same definition as in Title VII]

- It is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- For further definitions and examples of Sexual Harassment, you should also refer to WCCCD’s Equal Opportunity, Non-Discrimination and Anti-Harassment Policy (a new version of this is also being unveiled by the College).

What is Gender-Based Harassment [same definition as in Title VII]

- It is non-sexual harassment of a person because of the person's sex and/or gender, including, but not limited to, harassment based on the person's nonconformity with gender stereotypes. Examples:
 - Repeated comments that women do not have the technical knowledge to be engineers or be in certain male dominated classes or fields of study.

What is Sexual Violence?

- This refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery and sexual coercion, domestic violence, dating violence, and stalking. This includes same-sex sexual violence.
- All forms of sexual violence are considered to be sexual misconduct prohibited by Title IX and the College.

The definition of certain types of sexual violence are identified in WCCCD's updated Title IX Policy and Procedures.

Consent

In regard to sexual violence, **consent** has been an important and widely discussed issue as of late, especially when the victim has been using alcohol or drugs or consents to some sexual activity.

Consent is informed, freely given, and mutually understood.

It is important to remember several things in regard to consent.

There is no consent where:

- Coercion, intimidation or threats of physical force are used
- Where an individual is mentally or physically incapacitated so they cannot understand the nature of the sexual situation
- The victim is asleep or unconscious

- Effective consent may not exist where there is a disparity in power (e.g., supervisor/employee faculty/student)

Therefore,

- An individual should not be presumed to have given consent merely because she or he was intoxicated.
- Just because an individual consents to one (1) form of sexual activity, he or she does not necessarily mean they consented to other forms of sexual activity.
- If an individual gives consent to one (1) person, it does not necessarily mean he or she gave consent to others.
- Consent can be withdrawn.

Retaliation Is Also Prohibited By Title IX

Retaliation prohibited by Title IX has the same definition as in Title VII.

Retaliation is adverse treatment of an individual because she or she complains about sexual discrimination or sexual misconduct or cooperated with an investigation alleging such violations.

Is Conduct Which Only Occurs On WCCCD's Campuses Covered?

WCCCD's Title IX policy prohibits discrimination, sexual misconduct or retaliation if it occurs:

- a. On campus, or
 - b. Off campus, if the sex discrimination, sexual misconduct or retaliation takes place;
- ✓ In connection with a College-related program or activity, including College-sponsored study abroad, research or internship programs,

- ✓ In a manner that may pose serious threats of harm to any member(s) of the College community.

Who Can Be Accused Of Violating Title IX?

Alleged violators can be:

- Students
- WCCCD employees or officers
- Certain third parties (e.g., a vendor, visitor)

Who Can Report Claims Of Sex Discrimination Or Retaliation For Reporting Sex Discrimination to the College?

A report of sex discrimination against a student, employee, or third-party can be made by:

- An employee,
- Student,
- Third-party, or
- A witness.

Where Do Claims of Sex Discrimination Get Reported?

- Any sex discrimination against a student, employee or College visitor or guest can be reported to the Title IX Coordinator.
- An employee or third-party who observes discrimination against an employee can also file a report pursuant to the College's Equal Opportunity, Anti-Discrimination and Non-Harassment Policy.

Who Can Report Claims Of Sexual Misconduct Or Retaliation for Reporting Sexual Misconduct?

A report of sexual misconduct and/or claims of retaliation for reporting sexual misconduct, may be made by:

- A person who believes they experienced sexual misconduct. Under the WCCCD Policy, this individual can be:
 - ✓ a student,
 - ✓ an employee,
 - ✓ a third-party (subcontractor of the College, or a visitor/guest); or
- Witnesses or individuals who were told about the sexual misconduct including, but not limited to, other students, College guests, and other employees of the College.
- The College may also learn about sexual misconduct from an outside source such as the news or on social media.

Where Does An Individual Report Sexual Misconduct?

Reporting to Law Enforcement -

- The College encourages anyone who experiences sexual misconduct (especially sexual assault or violence) on any of the College's campuses to make a report to the Campus Police Authority. Prompt reporting allows law enforcement to collect and preserve evidence.
- Reports of sexual misconduct can also be reported to the Vice Chancellor for Student Services.
- An individual who wishes to pursue criminal action in addition to, or instead of, making a report to the College may also contact law enforcement directly.
- Sexual misconduct that occurs off campus should also be reported to the law enforcement agency for the city, township, or county in which the misconduct took place.

Reporting to the College -

Reports of sexual misconduct can be made to:

- Title IX Coordinator.

- Responsible Employees of the College.

Unlike Title VII, Title IX Has Mandatory Reporting Requirements In Cases Involving Sex Discrimination and Sexual Misconduct

Who must report sex discrimination or sexual misconduct to the Title IX Coordinator?

- Responsible Employees, as defined within Title IX, must report allegations of sex discrimination and sexual misconduct.

Who is a “Responsible Employee” ?

- A Responsible Employee, as defined in Title IX is,
 - ✓ Any employee who has the authority to take action to redress sex discrimination or sexual misconduct, or
 - ✓ Who has been assigned the duty/designated to report to appropriate officials of an educational institution about incidents of sex discrimination or sexual misconduct of which they are aware.

WCCCD's Responsible Employees Are

- Title IX Coordinator
- Vice Chancellor for Student Services
- The Chancellor
- College Presidents and Provosts
- Athletic Director
- Department Chairpersons
- Faculty members
- District Police Authority

Further information about Responsible Parties is also outlined in WCCCD's updated Title IX Policy/Procedures which will be placed on the College's website and in handbooks. In the interim, if you are not sure if you are a Responsible Employee, you should ask WCCCD's Title IX Coordinator.

Why Is It Important To Know If You Are A “Responsible Party”?

When a Responsible Employee knows, or in the exercise of reasonable care should have known, of possible sex discrimination or sexual misconduct, the U.S. Department of Education, Office of Civil Rights, deems a college to have notice of the discrimination or sexual misconduct.

Notice raises the College’s level of responsibility, duty requirements, investigatory requirements and potential liability for failing to act.

Duties Of A Responsible Party

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 individual reporting understands...

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

Reporting Matters To The Title IX Coordinator At WCCCD

Reporting to the Title IX Coordinator also ensures that appropriate and timely information concerning;

- ✓ available resources,
- ✓ reporting options, and
- ✓ rights of employees and students

is provided to the subject/target/victims of reported sexual misconduct.

What Information Should A Responsible Party Convey To The Title IX Coordinator?

- Name of the complainant, alleged discriminator/perpetrator, and witnesses.
- Date, time, and location of the alleged incident.
- Any details stated by the complainant.
- Whether the complainant requested confidentiality.
- Whether the complainant requested no action be taken.
- Any other relevant facts.

What A Responsible Party Should Not Do:

I just told you what you must do. There are also certain things you should not do.

There should be NO questioning the victim's credibility and/or engaging in victim blaming that could lead to discouraging the reporting of Sexual Misconduct in the first place. The victim does not want to subject him/herself to potential secondary trauma of, "not being believed, or alternatively, blamed."

- Avoid judging the victim.
 - Avoid statements and perceptions that indicate that you do not believe the person.
 - Avoid statements and/or comments concerning possible outcomes.
- Do not assume that someone else is aware of sexual misconduct taking place, and that they will make a report.

A Responsible Employee Should Not Investigate Any Reports of Sex Discrimination or Sexual Misconduct

You should never attempt to investigate the matter on your own.

- Not your responsibility (unless you are designated to do so by the Title IX Coordinator).
- Title IX states the investigation must be conducted by Title IX Coordinator or an individual designated by the Coordinator.
- The investigation must be conducted by an individual who is specially trained.

What If a Responsible Party Is Not Sure What To Do or Report?

- Not sure if the conduct is covered by Title IX
- Not sure about privacy concerns or if victim really wants you to report
- Err on safe side and just make a report.
- Remember, under the law

**Your knowledge = the College having
knowledge!**

What Happens Once Sex Discrimination Or Sexual Misconduct Is Reported To The Title IX Coordinator?

- Once a report is made to the Title IX Coordinator, the type and nature of any investigation will depend on;
 - who made the complaint,
 - the nature of the complaint, and
 - whether the complaint involved sex discrimination, sexual misconduct, or retaliation.
- WCCCD has certain duties and obligations regarding the investigation of complaints under Title VII and Title IX. However, there are some significant distinctions as to what is required of the College.

[For example, if sexual misconduct is alleged, there are certain additional procedural requirements such as participation and notice requirements]

The procedural requirements related to investigations are beyond the scope of this presentation, however, they are identified in WCCCD's updated Title IX Policy/procedures.

What Can Happen If Sex Discrimination or Sexual Misconduct Is Not Reported By Responsible Parties, Not Investigated Once It Is Reported, Not Investigated Properly Or If WCCCD Otherwise Fails To Comply With Title IX?

- The Office of Civil Rights (OCR) may become involved and open an investigation into the College's practices or programs.

Again, currently the OCR is investigating approximately 284 Title IX complaints involving allegations of sexual violence, including at least 3 in Michigan. Some reports say this number is actually higher, because some Colleges & Universities do not report claims of sexual harassment to the Department of Education.

- Although extreme, the termination of or negative impact on all or part of WCCCD's federal funding could occur. This includes grants, subsidies, and other program funds from the federal government. This would diminish the services to the communities, students, and others dependent on the College.

- WCCCD may have liability to those seeking redress for violations of Title IX.
- Students or employees might bring lawsuits against WCCCD, which could result in losses of thousands of dollars in judgments or settlements.

This can happen even where a Title IX investigation is conducted. **Florida State University** – This case has been all over the news. Here, a student alleged rape by the University's star quarterback. The student further alleged that the school obstructed a fair investigation. The football player claimed the sex was consensual. This year, the University settled a Title IX lawsuit for \$950,000. As part of the settlement, the University agreed to a 5 year commitment for prevention and training programs. This was despite the fact that the quarterback won at the Title IX hearing conducted as part of its grievance/complaint procedure. Importantly, even after the case resolved, the Office of Civil Rights continued its investigation of the University.

- It impacts WCCCD's efforts to maintain reputable and safe campuses for all. The failure to report places other individuals in harms way.

- Relying solely on the belief that the incident is being pursued through the criminal justice system could result in no action being taken against a perpetrator (for example, case gets dismissed due to lack of legally sufficient evidence). Title IX has different standards/burdens of proof.

- If the College is hampered, or could not undertake an investigation due to a Responsible Party's failure to report an incident, that individual may be subject to discipline or discharge.