



Title IX and  
FERPA  
RA Training  
Fall 2020

# Location



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# About Title IX

- ▶ Title IX states, *“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.”*
- ▶ Some key issue areas in which recipients have Title IX obligations are: recruitment, admissions, and counseling; employment; financial assistance; athletics; single-sex education; treatment of pregnant and parenting students; discipline; and sex-based harassment.

# Key Topics

## ▶ TITLE IX

- ▶ KSU's Interim Policy and Procedures on Sexual Harassment as Defined Under Title IX and Other Sexual Misconduct
- ▶ Sexual Harassment, Sexual Assault, and other Sexual Misconduct Defined
- ▶ Consent
- ▶ Duties of a "Responsible Person"
- ▶ Reporting a Title IX Violation

## ▶ FERPA

- ▶ Student Privacy
- ▶ Parent Requests

# Sexual Harassment

- ▶ KSU's Policy and Procedures on Sexual Harassment defined under Title IX and Other Sexual Misconduct prohibits sexual harassment and sexual misconduct, which includes:
  - ▶ Sexual Harassment means conduct on the basis of sex that occurs in the University's education program or education activity and satisfies one or more of the following:
    - ▶ An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct. This type of sexual harassment is also referred to as Quid Pro Quo.;
    - ▶ Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity. This type of sexual harassment is also referred to as Hostile Environment.; or
    - ▶ "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
- ▶ Prohibits Retaliation
- ▶ You do not have to define it, you should report it.

# Sexual Misconduct and Violence

- ▶ Sexual misconduct, under KSU policy, includes sexual assault, dating violence, domestic violence, stalking, and sexual exploitation when that behavior does not meet the jurisdictional requirements to constitute Sexual Harassment under Title IX.
  - ▶ Example Sexual Exploitation:
    - ▶ Photos, videos, prostitution, peeping-toms

# Prevalence of Sexual Misconduct

Since 1987, six national studies – including one released in early 2016 by the Department of Justice – show that as many as 1 in 4 college women are sexually assaulted in college.

## National Institute of Justice (NIJ) (2016)

15,000 women in 9 institutions.

25% of undergraduate women sexually assaulted while in college.

5-6% of men will experience sexual assault during college.

78% of campus sexual assaults are committed by perpetrators that the survivor knows.

Approximately 1 in 6 women and 1 in 9 men will be stalked in their lifetime.

College students are twice as likely as non-college students to be stalked.

# Consent

- ▶ What is consent?
  - ▶ An informed-decision, freely given, made through mutually understandable words or actions that indicates a willingness to participate in mutually agreed upon sexual activity.
- ▶ I.e., informed and freely given permission to engage in a specific sexual act.



# Consent – How do I get it?

- ▶ Ask!
- ▶ Clear verbal and physical cues.
- ▶ When do I not have it?
  - ▶ Consent cannot be given by an individual who is asleep, unconscious, or mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, or is under duress, threat, coercion, or force.
  - ▶ Past Consent does not imply future Consent, and Consent to one type of sex does not constitute or imply consent for another type of sex, whether during a sexual encounter or from a previous sexual encounter.
  - ▶ Silence or an absence of resistance does not imply Consent.
  - ▶ Consent can be withdrawn at any time.
  - ▶ Consent cannot be obtained with Force (e.g., violence, threats)

# Consent – Who can consent?

- ▶ Adults, generally
- ▶ Minors
  - ▶ 26/27 years old = nobody 10 or more years younger than you
  - ▶ 21 years old = 16 years or older
  - ▶ 18 years old = 15 years or older

# Reporting a Title IX Violation

- ▶ Who has to report Title IX Complaints?
- ▶ What do I do?
- ▶ How do I do it?
- ▶ When do I do it?
- ▶ What do I report?

# Reporting – Who has to report?

- ▶ All “Responsible Employees” must report Title IX violations.
- ▶ (Almost) Every employee at KSU is a Responsible Employee.
  - ▶ Responsible Employees are any KSU employee except:
    - ▶ Nurse Samantha Todd – Old Rosenwald
    - ▶ Center for Emotional Wellness Counselors – Student Center
    - ▶ Baptist Campus Ministry and Wesley Foundation

# Title IX and RAs

- ▶ **RAs are Responsible Employees:**

- ▶ You are required to report all allegations of sexual harassment or misconduct
- ▶ Report them to the Title IX Coordinator and your supervisor within 72 hours.
- ▶ Do NOT promise a student you can “keep whatever they tell you a secret.”

- ▶ **KSU:**

- ▶ We, as a university, have a duty to respond when the University has actual knowledge of an alleged violation.

# Reporting – How do I report, and when?

- ▶ How?

- ▶ Email, in person, call, or snail mail (USPS):

- ▶ Hannah Hale - hannah.hale@kysu.edu – 502-597-6138 – ASB Room 537

- ▶ When?

- ▶ As soon as possible and within 72 hours. Failure to report can result in adverse employment actions.

# Reporting – What do I report?

- ▶ **Who** – Provide first and last names (not just nicknames) and KSU ID #s (if known).
- ▶ **What** – Provide as much detail as possible. Were alcohol or drugs involved? How much? Who was there? Were they there the whole time or did they leave? Did it happen on or off campus? When did it happen?
- ▶ **When** – Did it happen before they were a KSU student and they are sharing it with you, or did it happen once they were a KSU student? What month did it happen? What day? What time?
- ▶ **Where** – Where were you when they told you? Where did it happen – on or off campus? What residence hall? What building?

# Title IX Procedures

- ▶ Report vs. Formal Complaint
- ▶ Supportive Measures
- ▶ Retaliation



# Report vs. Formal Complaint

- ▶ A report and formal complaint are two distinct documents.
- ▶ Any person may file a report of an alleged policy violation
  - ▶ Upon receipt of a report, the Office of Title IX will contact the Complainant (if known) and offer supportive measures and go over the Title IX process.
- ▶ Only the Complainant, legal parent/guardian, or the Title IX Coordinator may file a formal complaint.
  - ▶ A formal complaint initiates an investigation.

# Supportive Measures

- ▶ Upon receipt of a report of an alleged Title IX policy violation, the Office of Title IX will contact the Complainant and offer supportive measures. Supportive measures are intended to restore and or preserve a parties' equal access to the University's educational program or activities. Supportive Measures include, but are not limited to:
  - ▶ Referral to counseling and health services;
  - ▶ Referral to the Employee Assistance Program;
  - ▶ Education to the community; d. Alteration of the housing situation of Respondent (resident student or resident employee);
  - ▶ Alteration of the housing situation of the Complainant (resident student or resident employee), if desired;
  - ▶ Limitations of contact between the parties, up to and including issuance of a no contact order;
  - ▶ Adjustments to academic deadlines and course schedules;
  - ▶ Altering work arrangements for employees; and
  - ▶ Other remedies appropriate to each individual situation.

# Retaliation

- ▶ Adverse action by an individual against a party to a Title IX investigation.
- ▶ Retaliation is strictly prohibited and will not be tolerated.
  - ▶ Discipline up to Suspension or Administrative Leave,
  - ▶ Expulsion or Termination.
- ▶ Report retaliation to the Title IX Office immediately.

# Discipline

- ▶ Will students be disciplined?
- ▶ What type of discipline can students receive?
- ▶ Can they fight it?

# Discipline – Will students be disciplined, and how?

- ▶ If the Title IX Office determines there has been a violation of the Title IX Policy, there will be discipline.
  - ▶ “Preponderance of the evidence”
- ▶ Discipline may be administered and is determined on a case-by-case basis.
  - ▶ Warnings,
  - ▶ Probation,
  - ▶ Loss of Privileges,
  - ▶ Suspension or Administrative Leave,
  - ▶ Expulsions or Termination.
- ▶ Students can appeal disciplinary determinations.

# Discipline – Can students fight it?

- ▶ Yes.
- ▶ A party who disagrees with the decision or discipline resulting from an investigation may appeal the findings.
  - ▶ Must appeal within 2 business days.
  - ▶ Appeals are submitted to the Title IX Coordinator and forwarded to the Appellated Officer.

# Campus Resources

- ▶ Confidential Resources:
  - ▶ Center for Emotional Wellness Counselors– Student Center
  - ▶ Medical Assistance – Nurse Samantha Todd – Old Rosenwald
  - ▶ Religious – Baptist Campus Ministries or Wesley Foundation
- ▶ Non-Confidential Resources:
  - ▶ Title IX Office
  - ▶ KSU Police
  - ▶ RDs and RAs
  - ▶ Responsible Employees

# Off Campus Resources

- ▶ Frankfort Regional Hospital – 2 Sexual Assault Nurse Examiners (“SANE”)
- ▶ Legal Aid of the Bluegrass
- ▶ & “Ampersand” Sexual Violence Resource Center of the Bluegrass (formerly Bluegrass Rape Crisis Center)



# FERPA

- ▶ Family Education Rights and Privacy Act
- ▶ Protects the privacy of student education records.
  - ▶ Almost all student information is confidential except “directory information”:
    - ▶ Contact information: Student’s Name, Address, Telephone Number, E-mail Address, Photo
    - ▶ Enrollment information: Major, Dates of Attendance, Classification, Degree(s) Earned, Previous Institutions Attended
    - ▶ Extra curricular activities: Participation in Student Organizations, Participation in University Recognized Organization and Activities
    - ▶ Achievements: Honors and Awards, Dean’s/President’s List
    - ▶ Weight and Height of Athletic Team Member
  - ▶ Confidential and Personally Identifiable Information is protected:
    - ▶ Social security number, birthday, financial information.
      - ▶ Can it be used to steal their identity? It’s confidential or PII.
    - ▶ Grades, class attendance, GPA.
    - ▶ Disciplinary Records, ongoing investigations.

# FERPA

- ▶ Who can access confidential student data?
  - ▶ Certain University employees with a “legitimate educational interest.”
    - ▶ These are work related interests, rather than personal or private interests.
    - ▶ Example: Me vs. another RA
  - ▶ A few other entities you’ll probably never hear from.

# FERPA

## ▶ Parents and FERPA

- ▶ FERPA rights transfer to students at the age of 18 or at the time they begin college, regardless of age. Parents do not have a right to their child's information.
- ▶ Unless a student has signed a FERPA waiver with the Registrar's Office, do not share confidential information with a parent.
- ▶ To be safe, direct parent questions to other areas (Registrar, Bursar, Title IX, etc.).

# Questions?

- ▶ Hannah Hale, Title IX Coordinator
  - ▶ [Hannah.hale@kysu.edu](mailto:Hannah.hale@kysu.edu)
  - ▶ 502-597-6138