

Santa Clara University

EO and TITLE IX

RIGHTS & RESPONSIBILITIES

Our Team

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PLEASE TAKE CARE OF YOURSELF

Some of the information in this training may be difficult.

It is ok to take a break and come back when you are ready.

Engage with the content as much as you are comfortable.






Sexual Violence & **Sexual Harassment Impacts Everyone**

Anyone can experience sexual harassment and/or perpetrate it.

Sexual violence **disproportionately impacts women and especially trans women.**

Consistent with other forms of oppression, POC, people who are undocumented, people who are disabled, and LGBTQIA+ are more likely to be victimized.
Communities who have been subjected to racism and oppression are less likely to report and/or receive the help they deserve.

Male victims are less likely to seek help or report, due to stigmas compounded by beliefs around masculinity.



While stares and glares do not meet threshold to become Formal Complaints…

What is Discrimination against someone based on their Protected Class Status?

…prejudicial slurs maliciously stated will always trigger an investigation.

Discrimination

Discrimination can take two primary forms: disparate treatment discrimination and disparate impact discrimination.

a. ***Disparate Treatment Discrimination***.

Disparate treatment discrimination is a **distinction, preference, or detriment** to an individual **as compared to others** that is **based on an individual's protected characteristic(s)** and that

(1) **excludes** an individual from participation in;

(2) **denies** the individual benefits of;

(3) **treats** the individual **differently** in; or

(4) **otherwise adversely affects** a term, condition, or benefit of an individual's employment, education, living environment, or participation in a University program or activity.

b. ***Disparate Impact Discrimination***.

Disparate impact discrimination occurs when there is **sufficient evidence** that policies or practices that are neutral on their face **disproportionately exclude or adversely impact** persons within a protected class, where the policies or practices are not:

(1) job-related and consistent with business necessity (for employees); or

(2) necessary to meet an important educational goal (for students).

In determining whether a facially-neutral policy or practice has a disparate impact on a protected class, the University will

consider whether there are alternative policies or practices that would meet the job requirements, business necessities, and/or education goals without resulting in disparate impact.

Harassment

Hostile Environment harassment is unwelcome conduct that, when viewed from both a subjective and objective perspective, is **sufficiently severe, persistent, or pervasive** that it unreasonably interferes with, limits, or effectively denies an individual's ability to participate in or benefit from the University's educational program or activity; employment access, benefits or opportunities; or other University programs or activities.

Establishing a Prima Facie Case: Four Part Test:

1. Complainant experienced unwelcome behavior.
2. The unwelcome behavior was based on a protected characteristic.

   ESTABLISHING A NEXUS: There must be a nexus "**causal link**" between the individual's characteristic and the action. A nexus is not established merely by the Complainant being a member in a protected class, but rather through consideration of express classifications (i.e. slurs/explicitly conditioned benefits or services based on protected characteristics) or circumstantial evidence (i.e. departures from normal procedures, similarly situated individuals who are not in the protected class are being treated more favorably).
3. The behavior was so **severe, persistent, OR pervasive** that a reasonable person would find the environment hostile.
4. Complainant subjectively found the environment hostile due to the behavior.

Quid Pro Quo harassment occurs when submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting the individual's education (e.g. admission, academic standing, grades, assignment); employment (e.g. hiring, advancement, or assignment); or participation in a University program or activity (e.g. campus housing).

What is Title IX?

Title IX is a Civil Rights Law which prohibits sex and gender-based discrimination.

Title IX requires universities to take actions to prevent and mitigate the impact of sexual violence and sexual harassment.



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 assistance.

Ensuring Access and Equity



Title IX protects pregnant and nursing students and student employees.

Title IX can help students find lactation rooms or other needs related to pregnancy and post-partum.



WHAT IS “PROTECTED CLASS” DISCRIMINATION?

IT IS AN ACT BASED ON A PERSON’S ACTUAL *OR PERCEIVED* MEMBERSHIP IN A PROTECTED CLASS:

- Race/ethnicity (including people who are white or European)
- National Origin
- Religion
- Age
- Gender/ Sex [TIX]
- Gender Expression [TIX]
- Gender Identity [TIX]
- Sexual Orientation [TIX]

- Disability (mental or physical)
- Medical conditions
- Marital Status
- Parenting status
- Veteran/military status
- Pregnancy + related conditions
- Registered Domestic Partner Status

Title IX Does NOT Report Citizenship Status

- We do NOT share the immigration status of anyone.
- We work with undocumented students to address safety concerns and provide honest information.



Title IX Protects Everyone

People of all genders have equal protections and responsibilities under Title IX.

Title IX protects trans, gender non-conforming students and cisgender students from harassment and discrimination.



Definitions & Reportable Misconduct

What is Reportable?

Generally, anything related to sex/gender is in our purview.

Sexual Harassment

Sexual Assault

Dating or Domestic Violence

Stalking

Sexual Exploitation



Pregnancy Discrimination

and Requests for Lactation

Accommodations

Retaliation

Violations of EO or TIX Policies

No Contact Directives

SEXUAL ASSAULT

Includes any sexual act directed against another person without that person's Consent, whether forcibly and/or against the person's will, or not forcibly and/or against the person's will where the victim is incapable of giving consent.

- **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 Consent
- **Sodomy :** Oral or anal sexual intercourse with another person, without Consent
- **Sexual Assault with an Object :** The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without Consent
- **Fondling :** The **touching of the private body parts of another person for the purpose of sexual gratification,** without Consent
- **Incest :** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- **Statuatory Rape :** Non-forcible sexual intercourse with a person who is under the statutory age of consent (18)
- **Sexual Battery :** The intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate parts to intentionally touch another person's body without consent.

STALKING

Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress.

SEXUAL EXPLOITATION

Taking sexual advantage of another person for the benefit of anyone other than that person without that person's Consent. Sexual Exploitation includes, without limitation:

- Causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person;
- The prostituting of another person;
- The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
- The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts without that person's Consent;
- The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the disclosure was without the Consent of the person depicted in the images or audio;
- The viewing (or allowing third parties to view) another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's Consent, for the purpose of arousing or gratifying sexual desire;

DATING/DOMESTIC VIOLENCE

Violence is the **use or attempted use** of **physical abuse** or **sexual abuse**, or a pattern of any other **coercive behavior** committed, enabled, or solicited to **gain or maintain power and control** over a victim, including **verbal, psychological, economic, or technological** abuse that may or may not constitute criminal behavior.

Dating Violence:

- Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.

Domestic Violence:

- Committed by a person who is a current or former spouse, intimate partner, or cohabitant of the Complainant;
- Committed by a person who is having or had a dating or engagement relationship with the Complainant;
- Committed by a person who shares a child in common with the Complainant;
- Committed by a person against a youth or adult victim who is protected from those acts under the family or domestic violence laws of California.

Affirmative Consent

It is an **affirmative, conscious, voluntary agreement** to engage in every step of sexual activity

Dating or past sexual history do **NOT** automatically mean consent.

Lack of protest, resistance, and silence do **NOT** alone mean consent.

No one can give consent when they are incapacitated.

Ongoing. Can be **revoked at any time during sexual activity.**

Intoxication of the accused is **NOT** a valid excuse for not obtaining consent.

No one can consent when:

Asleep or unconscious

incapacitated from alcohol and other drugs

Unable to communicate due to mental or physical condition

For example, when someone is stumbling, slurring their words, or throwing up, they are likely unable to consent and moving forward is sexual assault.

Benefits of a Title IX Report

Record of Report

Benefits of creating a record of report can be:

- If problem persists of escalates
- Repeated behaviors by the same respondent with others
- Complainant desires actions by Title IX in the future
- Impact of reported incident creates need for supportive measures in the future.

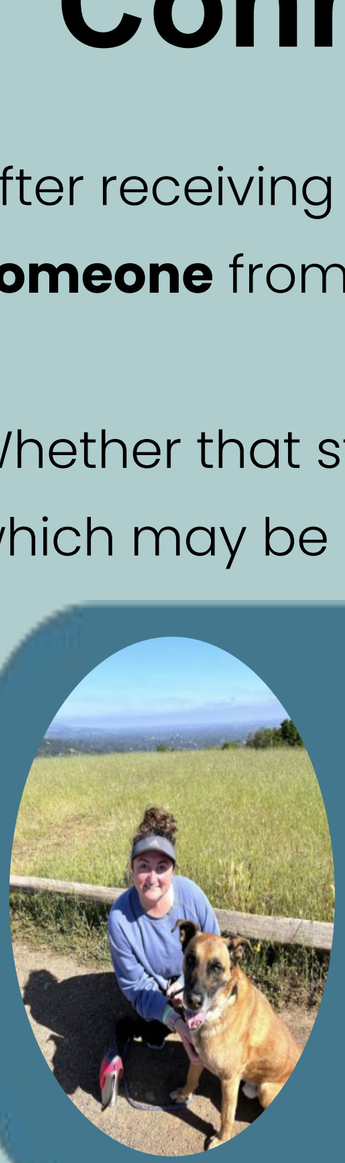




Connect with Resources & Support

After receiving a report, we email the complainant with an **invitation to speak/meet with someone** from Title IX.

Whether that student responds or not, we provide information about other resources which may be relevant and helpful, such as:



Student Survivor Advocacy and Campus Support

Ashley Pezzoni

Bronco Student Health Clinic (Sutter Health)

CAPS

Counseling & Psychological Services



Reporting is Protected

There is **amnesty for alcohol, and drug use** for complainants and witnesses

Anyone who reports, along with witnesses, are **protected from retaliation**



Reporting Can Lead to Prevention Efforts

- Targeted outreach
- Sharing of resources and information
- Educational conversations with students, staff, and faculty
- Passive programming—i.e. informational posters, emails, etc.
- Working with housing staff and other campus partners to engage the parties or community



Options after an EO or Title IX Report

Process flowcharts like these will be going up on our website- may be a helpful resource for walking through the process with a student.

Understanding the EO/TIX Process

1
Incident

An incident of misconduct occurs (on or off campus) that may be fall under the Sex-Based or Other than Sex-Based policies.

2

Incident Report

The incident is reported to the EO/TIX Office (via Maxient Report, email, phone call, or drop-in) by a Responsible Employee, witness, involved party, or reported anonymously (via EthicsPoint).

3

EO/TIX Outreach

The EO/TIX Office sends up to **3 outreach letters** via email to the Complainant and invites them to meet with the EO/TIX Office to discuss supportive measures and next steps. **This meeting is optional.**

4

Intake Meeting

The Complainant meets with a member of the EO/TIX team either virtually or in-person. The Complainant can choose to share additional information about the report. The EO/TIX team member will share information about the potential resolution options and supportive measures available through the office.

Investigation Process

Considered 'Formal Resolution'

Support-Based Resolution

A support-based resolution is an option when a Complainant does not wish the University to take any further steps to address their concern and the Director determines that another form of resolution, or further action, is not required. A support-based resolution does not preclude later use of another form of resolution. An example is if new information becomes available to the University, and the Director determines there is need for additional steps to be taken, or the Complainant later decides to pursue a Resolution Agreement or investigation.

Examples of supportive measures include:

- Email communication to faculty or supervisor(s)
- Mutual no-contact directives between parties
- Exploring adjustments or changes to course schedules
- Exploring changes in living and working arrangements
- Connecting to campus resources (CAPS, CSS, Wellness Center, etc.)

Resolution Agreement

Considered 'Informal Resolution'

A Resolution Agreement is a process where the Complainant and Respondent each voluntarily agree to resolve the complaint in a way that does not include an investigation, and does not include any finding of responsibility

Learn more at the SCU EO/TIX website: https://www.scu.edu/title-ix/

OPTIONS FOR RESOLUTION

Option #1: Supportive Measures

Report submitted to EO/Title IX Office

Initial Meeting/ Intake with Director or Deputy

Supportive Measures + Follow-up, as needed

Option #2: Informal Resolution*

Option #1 +

Formal Complaint + Notice to R

No/Partial/Full Investigation

Negotiation/ Mediation + Agreement of Parties

Option #3: Formal Resolution

Option #1 +

Formal Complaint + Notice to R

Investigation + Report + Evidence Review

Hearing

Appeal, if requested.

SUPPORTIVE MEASURES

- Issuing a mutual no-contact directive between the Complainant and Respondent
- Connecting to campus resources (CAPS, CSS, Wellness Center, etc.)
- Exploring changes in living and working arrangements
- Exploring changes in class schedules
- Exploring academic support options
- Assisting with communicating with faculty
- Support in reporting to law enforcement
- Requesting that publicly available directory information be removed from University sources

Complainants Can Choose If and How to Proceed

Resolution Agreement

Investigation

Supportive Measures

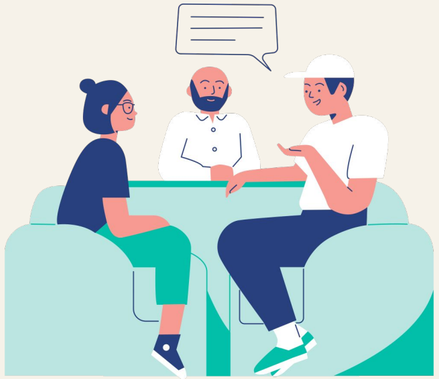


Resolution Agreement



- Developed with EO/Title IX staff
- Remedies centered on needs of Complainant (person filing the report)
- Both parties agree to participate and to the terms
- May include:
  - Restorative measures
  - Counseling
  - Separation of parties
  - Educational opportunities

Investigation



- Investigation to determine whether policy was violated
  - Interview witnesses
  - Gather evidence
  - Evidence review by both parties
- Notice of outcome
- Can lead to sanctions and discipline

What about respondents?



Title IX is **neutral and fair** to anyone in the process.

Will be notified by Title IX, **<u>if</u>** an RA is requested/ investigation is launched.

Right to an advisor and support person

Due process rights: Can provide witnesses & evidence; Can respond to evidence

May receive supportive measures.

Confidential Resources

Confidential Resources for Students and Employees



Ashleigh Pezzoni
Survivor Advocacy & Support
(408) 551-3307

YWCA (For Employees)
(800)572-2782
Off-Campus

Counseling & Psychological Services
24/7: (408) 554-5220
SCU Resource

thehotline.org - Chat Option

Responsible Employee Required Referral

WHO IS A RESPONSIBLE EMPLOYEE?

Under our policy, all SCU employees are **‘Responsible Employees’** when acting in their role, except those deemed confidential. Residential Life staff and Community Facilitators are also considered responsible employees.

Confidential Employees at SCU:

- CAPS Therapists
- Wellness Center Victim Advocates
- Clergy (when acting in their role)

Reporting to Title IX

Report Directly

Anyone can report directly.

Online

www.scu.edu/title-ix/

Phone

408-551-3043

In-Person

Suite 140 in Loyola Hall

-OR-



Student Employees

Student Employees may also:

- RDs/CFs are Responsible Employees
- Consult with their supervisor for support about how to respond and to determine who will file the Title IX report.

What are SCU's Required Referral Requirements?

All employees, unless designated confidential, must report to EO and Title IX when...

Upon learning about possible violations of our non-discrimination EO and TIX policies

involving a student or employee (either as complainant or respondent)

During the course of their employment

must report all details of any alleged discrimination, harassment, sexual harassment, and misconduct



How to Respond to Disclosures for Mandated Reporters



Evaluate Safety

Call 911 if there is imminent danger or medical emergency

Avoid questions about the incident

Instead focus on safety and what they need now

Provide Resources and Options Handout

Failure to Report is a violation of the EO and TIX policy

Listen and offer support

Ask, "How can I help?"

Explain that you will keep this private but must make your required referral

- Let them know about complainant choice
- Refer to confidential CARE & CAPS offices

Report to your supervisor/designated staff on duty if you are a student employee

Report directly to EO and Title IX

Offer a Warm-Hand off too

RELEVANT REVIEW

1. Is off-campus misconduct covered under SCU policy?

2. Does making a report initiate an investigation?

3. Is the Respondent automatically notified if a report is made about them?

4. Who makes the final decision about a Respondent's responsibility and sanctions?



Still Report If:



Incident took place off campus

Alleged misconduct is related to a non-affiliate but impacted an affiliate

You believe it was already reported

You are unsure whether it happened

Party does not want to work with Title IX or is working with CAPS or Advocacy note in report

Party is unsure about how they want to handle the situation

An impact to employment, housing, student organization, or academics exists

You don't have the name of all of the parties involved.

Whether behavior took place in person, DM, email, social media, phone, text, Zoom, or through a third party