WHAT SHOULD I DO IF I HAVE KNOWLEDGE THAT A STUDENT AT FGCU MAY HAVE BEEN SUBJECT TO SEXUAL VIOLENCE?
TRAINING OBJECTIVES

• What is Title IX and How is it Relevant to FGCU?

• What is its Relevance to Title IX in allegations of Sexual Violence?

• What is a “Responsible Employee” and Why am I Considered One?

• What Specifically Should I do if a Student Reports an allegation of Sexual Violence?

• Frequently asked Questions about Reporting
What is Title IX?

• Title IX is an important federal civil rights law that prohibits discrimination on the basis of sex with respect to schools that receive financial assistance from the U.S. Department of Education (US-DOE).

• Title IX protects against sex discrimination and sexual harassment in the educational environment including: harassment based on one’s gender identity, inequitable funding in Athletics based on sex, sexual harassment in the workplace, sexual assault, dating/domestic violence, stalking, or any other discrimination or harassment based on sex.

• Title IX is enforced by the US-DOE’s Office for Civil Rights (OCR).

• Each University is required to have a Title IX Coordinator to ensure its compliance with Title IX.

• Please Note: Title IX prohibits sexual violence as an extreme form of sexual harassment. The term sexual violence refers to physical sexual acts against a person’s will or where a person is incapable of giving consent. The term sexual violence includes: rape, sexual battery and sexual assault. We will use the term sexual assault for the duration of this presentation.
Title IX Coordinator Responsibilities

• Overseeing the University’s response to Title IX reports and complaints.

• Identifying and addressing any patterns or systemic problems revealed by such reports and complaints.

• Investigating, when appropriate, complaints of sex discrimination, sexual harassment (including sexual assault).

• Ensuring a prompt, thorough, and equitable investigative process for everyone involved.

• Training the campus community of the prohibitions of Title IX.
What is a “Responsible Employee” and Why am I Considered One?

• Responsible Employee - OCR defines a responsible employee as one who:
  1. Has the authority to take action to redress sexual violence; or
  2. Who has been given the duty of reporting incidents of sexual violence; or
  3. A student could reasonably believe had the authority to assist in addressing an allegation of sexual assault.

• As a University faculty or staff member, you are considered to be a “Responsible Employee” based on the fact that your job functions could require student interaction.

• Since you are considered a responsible employee, under Title IX, you are required to report incidents of alleged sexual assault to the Title IX Coordinator.
So What Should I Report and to Whom Should I Report it?

- If a student reports an incident of sexual assault, you should report it to the Title IX Coordinator as soon as possible.
- You should provide the Title IX Coordinator with any relevant details that you have (i.e. name of student(s) involved, location of incident, if physical violence was allegedly used, etc.).
- Once this information has been communicated to the Title IX Coordinator, you have fulfilled your responsibility as a “Responsible Employee”.
- The Title IX Coordinator will then involve the appropriate University officials and take steps to address the complaint.
- Again, the University only expects you to report what you have been told; you do not need to, and should not, mediate, investigate, or otherwise attempt to resolve the complaint.
I am NOT Sure if the Student is Alleging Sexual Violence/ Misconduct. Should I Still Report It?

- You should absolutely report anything that remotely resembles a possible sexual violence.
- It is the responsibility of the Title IX Coordinator or his or her Deputy Title IX Coordinators to determine if a particular set of facts equate to sexual violence.
- Examples of comments in which a report should be made:
  - During your office hours a student says “I had sex on Saturday night that I wasn’t “100 percent comfortable with”.
  - I blacked out at a party and woke up naked next to someone I have never met before. I am not sure what happened or how I got there.
  - A person kept pressuring me to have sex last night and I eventually did although I didn’t want to do so.

**NOTE:** It is important to remember that in some instances a student may not say I was raped or sexually assaulted; rather, he or she may describe a situation that they were uncomfortable with. As an Responsible Employee just be mindful that students may not necessarily always use the “buzz words”.
What Happens if I Don’t Report

• You could be subjecting a student to an unsafe learning environment.
• Your non-reporting could put FGCU in noncompliance with Title IX (which could ultimately cost FGCU its federal funding from the US-DOE).
• You could subject FGCU to major legal liability.
• You could face possible employment sanctions.

Note: If a University employee does not report information of a possible sexual assault, or any other type of sexual misconduct, and the student is under the age of 18, the University WILL face a fine of ONE MILLION DOLLARS PER OCCURRENCE OF NON-REPORTING.

You could also be PERSONALLY subjected to legal action for failure to report such conduct against a minor.
FREQUENTLY ASKED QUESTIONS
QUESTION: I am a licensed counselor, therapist, pastor, social worker, etc. Do I still have to report despite my licensure/position?

ANSWER: Most likely. Your reporting requirements will depend upon your predominant relationship with the student at the time you hear the information. For instance, if you work in Student Affairs, but happen to be a licensed therapist and a student approaches you because you’re in your Student Affairs role, then you would need to report. Conversely, if the student is a patient of yours and s/he discloses a sexual assault as a part of a therapy session, then you would not have to report.

Please note: In most cases, staff will fall into the first category. In most instances the student comes to an employee because there is a certain relationship between the two. The question to ask is, “What hat” does the student believe I am “wearing” when s/he told me the information?
QUESTION: Can I tell the student that the information is confidential?

ANSWER: No. As a “Responsible Employee” you are required to report the information, then do not promise confidentiality. A subsequent investigation may not be able to provide “complete confidentiality” (due to the fact that an investigation may include interviewing a witness or multiple witnesses that would have to be informed about the nature of the allegation in order to respond to it).

PLEASE NOTE: There is a difference between confidentiality and privacy. You can inform the student that you will keep the information private. Privacy suggests that you will only inform the persons to whom you are required to report, so that s/he can respond to the complaint. Inform the student that you will not repeat the information to colleagues, other students, or third parties, other than those who are required to know.
QUESTION: I know this student pretty well. Can I help them resolve the matter instead of reporting it?

ANSWER: ABSOLUTELY NOT! If you have a good relationship with the student and truly want to help, then report the matter to the Title IX Coordinator. Often times good intentions can quickly go awry when individuals attempt to handle such matters without proper training or experience. Also, the University would never want you to put yourself in a situation that could bring you or the student harm. The best thing you can do is to forward the information to the Title IX Coordinator.
QUESTION: I do not believe what the student is saying and thus I do not want to “get anyone in trouble”. In fact, I think the allegation is ridiculous. Do I still have to report?

ANSWER: ABSOLUTELY! Regardless of what you think about the merits of an allegation you MUST report it to the Title IX Coordinator. It is the responsibility of appropriate University officials (i.e. TIX Coordinator, UPD, Dean of Students’, etc.) to determine the merits of allegations of sexual violence. Report the matter to the Title IX Coordinator and let the appropriate officials do their job. A subsequent investigation can assist in determining the merits of an allegation and whether a sanction is required.
QUESTION: Sexual Assault is a crime. Shouldn’t I report it to local police or UPD instead of the Title IX Coordinator?

ANSWER: The report should be made to the Title IX Coordinator. The Title IX Coordinator will inform the student of their right to file a criminal complaint. It is important to note that the University is required to respond when it receives information about possible sexual violence, while students have the option to file a police report and sometimes elect not to do so.

Title IX has a different evidentiary standard than criminal cases. In order for there to be sufficient evidence of sexual violence under Title IX, the “preponderance of the evidence standard” has to be met. The criminal evidentiary standard for sexual battery (assault) is “reasonable doubt”. Sometimes there is insufficient evidence of criminal sexual battery (assault), but enough evidence under Title IX to meet the preponderance of the evidence standard.
QUESTION: What will happen after I report the information?

ANSWER: It depends on the nature of the allegations, the entities involved, the student’s level of cooperation, and several other factors. However, generally the Title IX Coordinator will initiate contact with the student and in consultation with other appropriate University offices (Dean of Students’ Office, UPD, CAPS, etc.) first ensure that the student is safe and determine what, if any, interim measures are necessary to ensure safety. Interim measures could include separating the accuser and the accused if they share the same residence hall, classes, student organizations, etc. Interim measures could also include interim suspension, a “no-contact order”, or other measures that are deemed appropriate given the situation and determined to be necessary to ensure safety for the accuser while also providing due process to the accused.
QUESTION: What should I disclose to the Student once the information is reported to me?

ANSWER:

1. That you are required to report the information to the Title IX Coordinator.
2. That the student can share any confidentiality concerns with the Title IX Coordinator.
3. That the information that the student shared with you will remain private.
4. Share information about the University's Counseling and Psychological Services (CAPS) Office or other off campus counselors (if you are comfortable doing so).
QUESTION: The student and I have a close relationship and that is why s/he came to me. I do not want to betray their trust and thus do not want to report. Do I still have to report?

ANSWER: Although this is a difficult situation, it is not a unique one. Students often come to faculty/staff members whom they’ve fostered a close relationship with in which the student and the faculty/staff members discuss issues beyond the scope of the classroom. However, the potential dangers of not reporting outweigh the (usually temporary) damage done to the student-employee relationship. There are 4 “scenarios” that could occur.
A student reports a sexual assault to Employee Washington but asks him NOT to report it because s/he does not wish to get the alleged assailter in trouble. Employee Washington honors the request. At this point, the “University” has been put on notice that one of its students may have been sexually assaulted. However, because of the student’s request, Employee Washington does not report the matter to the Title IX Coordinator. Subsequently, the same individual who the student accused of the sexual assault, is accused of three other sexual assaults. In this situation the University was on notice of a potential assailter on campus, did nothing about it, and the same person then subsequently hurt someone else. This is the worst case scenario and can be avoided by simply REPORTING.
SCENARIO 2
THE LEGAL SCENARIO

- Employee Washington from Scenario 1 does not report the allegation of sexual assault to the Title IX Coordinator.
- Again, the University has been put on notice that one of its students may have been sexually assaulted. Employee Washington did not want to “betray the student’s trust”.
- Six months later the student decides that although s/he initially wanted to “keep the information confidential” s/he now believes that Employee Washington who was told the information should have acted despite the student’s initial reservations. The student then subsequently files a lawsuit alleging that the University “willfully ignored” a student report of sexual assault.
- The University may be forced to pay a large sum, as well as be subjected to years of negative media attention. In such a case, it would be reasonable to assume that the “non-reporting” Employee Washington would be subject to some sort of University disciplinary action.
SCENARIO 3

THE COMPLIANCE SCENARIO

• Employee Washington AGAIN does not report the allegation of sexual assault to the Title IX Coordinator.

• The University has again been put on notice that one of its students may have been sexually assaulted and does not take action because Employee Washington did not want to “betray the student’s trust”.

• Six months later the student decides that although s/he initially wanted to “keep the information confidential” s/he now believes that the employee who was told the information should have known better and acted despite the student’s initial reservations. The student then subsequently files a complaint with OCR or a similar civil rights enforcement agency. OCR will (rightfully) find a violation of Title IX in that the University was on “notice” that a sexual assault may have occurred and did nothing to act on it.

• The University will likely be under years of monitoring for the Title IX violation which will include at minimum: multiple mandatory trainings (for all employees), random visits (to the University as a whole and to individual departments) for the purpose of monitoring the campus, and completion of multiple climate surveys over a period of years.
Employee Washington reports the sexual assault allegation to the Title IX Coordinator. When he makes the report, he informs the Title IX Coordinator of the person who made the allegation and who the allegation was made against.

Employee Washington also informs the student that he will have to report the sexual assault allegations despite the student’s objections.

The University takes any or all of the following actions: 1. Provides the student with on and off campus counseling services; 2) Provides interim measures to the student (i.e. organizing a test re-take, changing housing of the accused, etc.); 3) Informs the Complainant of their right to file a criminal report; 4) Investigates the complaint (to the extent the student participates in the investigation); and 5) Disciplines the Perpetrator if the evidence is sufficient to determine that more than likely a sexual assault occurred.

Sometimes students that initially do not want an allegation addressed subsequently change their mind and ask the University for assistance. If the University has been proactive (i.e. report), then assisting the student will be much easier and more importantly much more effective.
QUESTIONS

FOLLOW UP QUESTIONS CAN ALSO BE EMAILED TO BWASHINGTO@FGCU.EDU
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