



COLORADO MESA
UNIVERSITY

SART TRAINING

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, Education Amendments of 1972
Implementing Regulations at:
20 U.S.C. § 1681 & 34 C.F.R. Part 106

Title IX

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education
 - Applies to discrimination based on sex and gender to all recipients of federal funds, both public and private institutions
 - Applies to issues of *program equity*, such as athletics, and also to *sexual harassment*
 - Penalty for non-compliance is withdrawal of federal funds
- The guidelines for compliance with Title IX are provided by the U.S. Department of Education, Office for Civil Rights (OCR)

Sexual Harassment Under Title IX

- Sexual discrimination and harassment
 - Verbal
 - Physical
 - Electronic
- Sexual violence
 - Rape
 - Sexual Assault
 - Exploitation
- Stalking
 - Cyberstalking
- Interpersonal violence
 - Intimate partner violence
 - Domestic violence
 - Dating violence
 - Relationship violence
- Retaliation
- Gender-based discrimination and harassment
- Bullying/hazing

The big picture at CMU:
Get things right for students.

Defining sexual misconduct:

CMU Student Code of Conduct

- The term “Sexual Harassment” is defined as:
 - - An employee of the University conditioning the provision of aid, benefit, or service from the University on participation in unwelcome sexual contact (“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 educational programs and activities, and
 - - Sexual assault, dating violence, domestic violence, and stalking.

Student Code of Conduct CMU Policy – Sexual Assault

Colorado Mesa University is committed to providing a living environment in which students can live, work, and study free from sexual harassment, sexual assault, sexual intimidation, sexual exploitation, domestic violence, dating violence, and stalking.

Non-Consensual Sexual Contact (NCSC) is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force

Sexual Contact includes:

- intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- any other intentional bodily contact in a sexual manner, or for the purpose of sexual gratification or abuse.

Non-Consensual Sexual Intercourse (NCSI) is:

- any sexual intercourse,
- however slight,
- with any object,
- by a person upon another person
- that is without consent and/or by force

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

Sexual Consent

Sexual activity requires consent, which is a voluntary, positive agreement between the participants to engage in specific sexual activity. Any sexual contact without consent (which includes NCSC and NCSI) is prohibited.

“Consent” means cooperation in act or attitude pursuant to be an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent. Submission to sexual activity because of fear does not constitute consent. A previous sexual relationship does not indicate consent to future sexual activity.

The Bottom Line for Title IX

Sexual activity is a violation of the Student Code of Conduct under the following circumstances:

- When it is forced; or
- When the complainant is incapacitated, and that incapacity is known to or should have been known to the respondent; or
- When it is non-consensual

Jurisdiction

CMU is required to respond to **all** instances of sexual harassment, when it is known or should have been known.

CMU Process is a civil process.

A student may also pursue criminal consequences.

Changes to Title IX

US Department of Education issued additional Title IX Regulations which went into effect on August 14, 2020.

Specific Changes

- A formal procedure for filing a complaint and a formal hearing process. Title IX now requires separate investigators and adjudicators which is already a party of the CMU model.
- Use of advisors for complainant and respondent, which may or may not be a lawyer.
- Title IX now requires designation of standard of proof. At CMU preponderance of evidence.

Changes to the Maverick Guide

- Change from the term “support services” to “supportive measures.” The services are the same, but the change in term is consistent with the terminology in Title IX.
- Supportive Measures that are appropriate to the situation shall be offered whether a formal complaint is opened or not.

Changes to the Maverick Guide

- Definition of Educational or Activities has been added to include all locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurred.
- Not defined previously.
- Even if not considered Title IX, incidents may still be addressed via Student Code of Conduct.

Changes to the Maverick Guide

- Cross-examinations may be allowed as part of the hearing, which shall not be conducted by the respondent.
- Availability of the hearing being conducted being conducted by video, as well as the requirement that all hearings be recorded maintained.

Process After Report

- Title IX Coordinator Contact
 - Determination of whether this is a Title IX case
 - Meet with Complainant
 - Offer Supportive Measures
- Formal Complaint
 - Appoint Advocates for both Parties
 - Offer Supportive Measures to Respondent
 - Appoint Investigator

Process After Report (2)

Investigation – Thorough, reliable and impartial

- Interview parties

- Interview witnesses

- Site visit

Investigative Report

- Copies to Complainant and Respondent

- Both parties can submit comments

The Hearing - *Overview*

- CMU has a “panel hearing” model → the investigator will make a determination of whether it is reasonably probable that the conduct occurred, and then the case will go to the Campus Student Conduct Board
- The Campus Student Conduct Board is composed of six individuals: two students, two faculty members, and two staff members
- The Board’s role is to review the investigative report, hear all evidence presented, hear from both parties, and make a determination of responsibility
- The hearing is similar to a criminal trial, but far more informal and with far fewer rules of procedure
- Both students may bring an advisor, but must speak for themselves, with the exception of questioning the other student, which is specifically precluded.

Process After Report - Hearing

Three big Issues

- Standard of proof – Preponderance
“More likely than not”
- Cross-Examination
- “Relevant Questions”—Questions are submitted ahead of time in writing.
 - Evidence of prior sexual conduct only permitted in limited circumstances.
- Attorney representation

Hearing - Sanctions

- Wide Range
- Expulsion – permanent record
- Letter notifying the parties of result often times the same day

Final Considerations

The assignment of sanctions is a determination by the Conduct Board once a determination of responsibility has been made.

The range of options include Warning through Expulsion.

As a practical matter, the Board has generally removed students (Suspension or Expulsion) found Responsible for sexual assault, with more education-focused outcomes for lesser findings.

Questions?

Thank you!