

Wilson Community College

Title IX / SaVE Grievance Procedure

Purpose: Describes the procedure to be followed when a student, employee, visitor, or other member of the College community files a Title IX complaint with the College. Title IX prohibits discrimination, harassment, or violence based on the sex or gender that is sufficiently severe, persistent, or pervasive to deny or limit an individual's participation in any program, service, or activity offered by the College.

Process: After a written complaint is filed, the Title IX Coordinator will assign one or more Title IX investigators to determine if a violation of policy is determined to have taken place. Once the investigation is complete, the investigator(s) will report his or her findings to the appropriate adjudicator. The adjudicator will make a decision regarding appropriate sanctions.

Anyone who believes they have been subjected to gender-based or sexual discrimination or harassment ("sex and gender-based misconduct") is encouraged to report these incidents. Upon receiving a report, Wilson Community College ("the College") will respond promptly, equitably, and thoroughly. In addition, the College will take steps to prevent the recurrence of the alleged sex and gender-based misconduct and correct its effects, if appropriate. The College is committed to providing a learning environment free from gender-based discrimination or harassment.

Consistent with its commitment to addressing sex and gender-based misconduct, the College complies with Title IX of the Higher Education Amendment of 1972, which prohibits discrimination on the basis of sex in education programs and activities. Sex and gender-based misconduct, as defined within the Non-discrimination and Title IX Policy ("Policy") is a form of sex discrimination prohibited by Title IX. With respect to statements, discussions, or written materials that are germane to classroom or educational subject matter, any reports of discrimination or harassment will be considered in context. The College is committed to encouraging meaningful, candid dialogue. A discussion on the Concept of Academic Freedom and Harassment can be found in the Policy.

The grievance procedures below are specifically for the adjudication of complaints of sex and gender-based misconduct when such complaints involve Wilson Community College students, faculty, staff, administrators and/or third parties.

Important Note About Confidentiality

Any College official (e.g., faculty member, staff member, dean, etc.) informed of an allegation of sex and gender-based misconduct involving students or other members of the College community is expected to file a report with the Title IX Coordinator.

When a report of sex and gender-based misconduct is investigated, the Complainant[1], the Respondent[2] and all identified witnesses who are interviewed in the investigation, will be notified of the College's expectation of confidentiality/privacy. The College will make all reasonable efforts to maintain the confidentiality/privacy of the parties involved in sex and gender-based misconduct investigations. The College will disclose information about such a report only to those individuals who are responsible for handling the College's response to such a report. Breaches of confidentiality/privacy will be reviewed and may be considered a violation of the Policy and may result in additional disciplinary action. Any action that could be deemed retaliatory will be dealt with according to this procedure (see 'Retaliation').

In compliance with SaVE, the College will assist any individual who reports such misconduct to find confidential support services in the community. Such services include advocacy, counseling, academic support, or medical or mental health services. See below some sources of confidential support that are available to talk with a Complainant without triggering an investigation by the College:

Confidential Community Resources

- NC Coalition Against Sexual Assault – Wesley Shelter (252) 291-2344
- NC Victim Assistance Network – Wilson Crisis Center (252) 237-5156

Definitions and Examples

Gender-based misconduct. Gender-based misconduct comprises a broad range of behaviors focused on sex and/or gender discrimination that may or may not be sexual in nature. Sexual harassment, sexual assault*, gender-based harassment, stalking*, and intimate partner violence* are forms of gender-based misconduct under the policy. Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship (current or former). Sex and gender-based misconduct can be committed by men or by women, and it can occur between people of the same or different sex. (See the Non-discrimination and Title IX Policy for full definitions)

Examples of sex and gender-based misconduct

- Pressure for a date or a romantic or intimate relationship

[1] A Complainant is the individual who files a report or the person who a report is filed on behalf of by a third party.

[2] A Respondent is the person against whom a report has been filed.

- Unwelcome touching, kissing, hugging, or massaging
- Unnecessary and unwelcome references to various parts of the body
- Belittling remarks about a person's gender or sexual orientation
- Inappropriate sexual innuendoes or humor
- Videotaping and photographing someone or people without consent
- Obscene gestures of a sexual or gender-based nature
- Offensive sexual graffiti, pictures, or posters
- Sexually explicit profanity
- Use of email, the Internet, or other forms of digital media to facilitate any of the above referenced behaviors

*Sexual violence, Intimate Partner Violence, and Stalking are covered under the Campus SaVE Act. Defining possible criminal acts will rely on North Carolina General Statute's definitions as they may apply.

The use of alcohol and other drugs

The use of alcohol and other drugs can have unintended consequences. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of alcohol and other drugs on another person's ability to give consent. The use of alcohol and other drugs never makes someone at fault for being sexually assaulted.

The College's primary concern is the safety of its community members and guests. Sometimes students, in particular, are reluctant to report instances of sexual assault because they fear being charged with policy violations, such as underage alcohol consumption. To encourage reporting, any other policy violations may be addressed (if necessary and/or informally, if appropriate) separately from a sexual assault allegation. The College alcohol policy can be found in the College catalog.

FILING A REPORT

Any report of alleged sex and gender-based misconduct by a student, member of the faculty, staff or administration of the College or a person who is not a member of the College community can be filed with the Title IX Coordinator, (252) 246-1263, C-106 or other designated contact noted in the College catalog or student handbook. All members of the College community should be advised that the Title IX Coordinator is obligated to act on any report of alleged sex and gender-based misconduct, to ensure measures are taken to stop adverse behavior and prevent its recurrence, as appropriate. It is important to note, however that not every report leads to a disciplinary process. Each report is reviewed individually. The College makes every effort to protect the privacy of all individuals involved in such reporting or investigation.

Campus SaVE Act /Violence Against Women Act (VAWA) Reporting Options

SaVE covers sexual assault, domestic violence, dating violence, and stalking.

In compliance with SaVE, individuals have a range of options for reporting criminal acts of sexual or gender-based misconduct, including:

- Off-campus community support services, OR
- To the College for an administrative Title IX /SaVE response, OR
- To the campus police department, OR
- To a local law enforcement agency, OR
- SaVE gives the victim the option to decline to notify such authorities.
- SaVE gives a victim the right to be assisted by campus authorities in notifying a law enforcement authority if the victim so chooses.
- SaVE requires the College to honor and enforce lawful orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.

Any victim of a SaVE crime who wishes to report the crime to any law enforcement agency should be aware of the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or that may be helpful in obtaining a protective order through law enforcement and the courts.

The College will protect the confidentiality and personally identifying information of victims and other necessary parties including in publicly available records and Clery reporting and disclosures. The College will also maintain as confidential any accommodation or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

Reports can be filed in writing or in an interview with the Title IX Coordinator. A Title IX Report form will be completed by the Complainant or the Title IX Coordinator with the assistance and agreement of the Complainant. Using a form will better assure consistency.

Individuals reporting criminal acts of sexual or gender-based misconduct may also choose to file a report with the Campus Police or another local law enforcement agency with jurisdiction. The College system and police/legal system work independently from one another. Individuals can file reports with the College, with law enforcement, or with both systems. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports are not determinative of whether or not gender-based misconduct, under this policy, has occurred.

The College does not limit the time frame for filing a report of sex and gender-based misconduct. Reports can be submitted at any time following an incident, although the College's ability to take any action may be negatively affected by the length of time between the alleged incident and the report. The College will notify the Complainant and the Respondent of the time frames for all major stages of the investigation.

**Complaints against Students, Faculty, Staff, or Third Parties
Regarding Sex and Gender-based Discrimination and/or Harassment
(NOT Including Sexual Violence, Intimate Partner Violence, or Stalking)**

Reports of alleged sex or gender-based misconduct by a student should be filed with either of the resources below:

Ms. Kathy Williamson
Title IX Coordinator
C-106
(252) 246-1263
KWILLIAMSON@wilsoncc.edu

OR in Mrs. Williamson's absence

Mr. Joshua Harris
Deputy Title IX Coordinator
F-100c
(252) 246-1257

Such reports will be processed using Title IX Policy and procedures.

**Complaints against Students, Faculty, Staff, or Third Parties
Regarding Sexual Violence, Intimate Partner Violence, or Stalking
Covered by the Violence against Women Act and SaVE**

Reports should be filed with one of the resources below:

Ms. Kathy Williamson
Title IX Coordinator
C-106
(252) 246-1263
KWILLIAMSON@wilsoncc.edu

OR in Mrs. Williamson's absence

Mr. Joshua Harris
Deputy Title IX Coordinator
F-100c
(252) 246-1257

OR

[See range of reporting options on pages 2 and 4.](#)

The Title IX Coordinator can also accept reports of sex and gender-based misconduct when the identity of the alleged perpetrator is unclear.

JURISDICTION

The College is able to respond formally to alleged incidents of sex and gender-based misconduct:

- that occurred on campus,
- that were part of official College programs (regardless of location), or
- where the Complainant and Respondent are a student, faculty, or staff member

If the offender is unknown or is not a member of the College community, the Title IX Coordinator (or designee) will assist students in identifying appropriate campus resources or local authorities if the student would like to file a report. In addition, the College may take other actions to protect the student and the community.

THIRD PARTY REPORTS

In cases where the sex and gender-based misconduct is reported to the Title IX Coordinator by a third-party, the Complainant will be notified by the Title IX Coordinator that a report has been received. The Title IX Coordinator will meet with the Complainant to discuss her/his options and available resources at the College and in the community.

SELF HELP

An individual who believes that she or he is the subject of discriminatory or harassing behavior may choose to deal with the alleged offender directly through a face to face discussion, a personal telephone conversation, e-mail correspondence, or other written correspondence. In some cases, this approach may resolve the situation; in others, it may be ineffective or place the individual in an uncomfortable, insecure, or compromised position. Under no circumstances should an individual feel pressured to address the alleged offender directly or otherwise handle the matter alone, and a decision not to confront an individual she or he believes to be discriminatory or harassing will not be viewed negatively. Self-help is never an appropriate course of action in matter of sexual assault or violence. If self-help measures prove unsuccessful or impractical, an individual may choose to report the situation and pursue other methods of resolution as described in these procedures.

COMPLAINANT REQUEST FOR ANONIMITY

A Complainant may make a request for anonymity. This type of request means that the Complainant does not want his/her identity known to the respondent or witnesses, or that the Complainant wishes to withdraw a report. In these situations, the College will make all reasonable attempts to comply with this request; however, the College's ability to investigate and respond may be limited.

In addition, the College is required by Title IX to weigh the Complainant's request for anonymity with the College's commitment to provide a reasonably safe and non-discriminatory environment. If the College cannot maintain a Complainant's request for anonymity she/he will be notified by the Title IX Coordinator. In situations where a member of the College community becomes aware of a pattern of behavior by a single Respondent, the College will take appropriate action in an effort to protect the College community.

RETALIATION

Any attempt by a member of the College community to penalize, intimidate, or retaliate in any way against a person who makes a report of or who is otherwise involved in an investigation of discrimination or harassment is completely prohibited. Any person who believes that he or she has been the victim of retaliation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the Title IX Coordinator. Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of policy and will be subject to the appropriate discipline process.

INTERIM MEASURES

During the investigation and until resolution of the matter, interim measures may be issued, including but not limited to: restrictions on contact between the Complainant and the Respondent, bans from areas of campus, and/or appropriate changes in academic scheduling, office location, or employment schedule. Failure to adhere to the parameters of any interim measures is a violation of policy and may lead to additional disciplinary action.

MEDIATION

Mediation is not an option for resolution in cases involving allegations of sexual assault or violence. In cases involving other forms of alleged sex and gender-based misconduct, the Title IX Coordinator (or designated contact in collaboration with the Title IX Coordinator) will determine whether mediation is an appropriate mechanism of resolution based on information provided about the incident.

In cases where mediation is deemed to be an option, parties wishing to pursue this form of resolution will confirm such request in writing addressed to the appropriate adjudicator. The parties should not contact each other to discuss mediation. Mediation will be pursued only with the consent of both parties. If the mediation results in a resolution, the formal disciplinary procedure will be concluded and the case will be closed. If the parties are unable to reach a resolution, or if either party requests to terminate mediation, the investigation and disciplinary process will proceed.

INFORMAL RESOLUTION

In instances where it is deemed possible and safe, the College may choose to resolve reports through informal means. If it is determined that an informal resolution may be appropriate, the Title IX Coordinator will speak with the Complainant about this option. If the Complainant agrees, the Title IX Coordinator (or designee) will speak with the person alleged to have engaged in misconduct. If a satisfactory resolution is reached through this informal conversation, the matter will be considered completed. If these efforts are unsuccessful, a formal investigation process may commence. The Complainant may request that an informal resolution process cease and become a formal resolution process at any time. Informal Resolution is never an appropriate response to a report of sexual assault or violence.

INVESTIGATION

All parties are entitled to a prompt, fair, and impartial process from the initial investigation to the final result. Both the accuser and the accused must be provided with the same opportunities to have others present during any institutional disciplinary hearing or process, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The College may not limit the choice of an advisor or presence for either party; however, the College may establish

restrictions regarding the extent to which the advisor may participate in the meeting or proceedings, as long as the restrictions apply equally to both parties.

In compliance with SaVE, officials conducting the process must, at minimum, receive annual training on issues related to sexual violence, dating violence, domestic violence, and stalking and how to properly conduct the investigation and deliberative process in a manner that protects the safety of victims and promotes accountability.

Reports of alleged sex and gender-based misconduct will be investigated in a thorough and prompt fashion. Following the receipt of a report, if it is determined that there may be a reason to believe that the policy may have been violated, a formal investigation will commence. Once an investigation commences, the Respondent will be notified that a report has been filed and he/she will have the opportunity to submit a written statement within five (5) business days, whenever possible. The Respondent and Complainant will be given the opportunity to meet separately with the Title IX Coordinator (or designee) to review the Policy and procedure and will be given a Know Your Rights: Title IX Requires Your School to Address Sexual Violence document and/or a summary of Victim's Rights under SaVE/VAWA.

The College Title IX trained investigator(s), or independent investigator, will separately interview the Complainant, Respondent, and, as applicable, any witnesses. The Complainant and Respondent may each have a "support person" [3] present at all interviews in which they participate.

[3] Under Title IX, the "support person" must be a current member of the College community, not otherwise involved in the incident or investigation. The "support person" may attend, but shall not participate, in the interview / process. For minors, the support person may be a parent, guardian, or immediate family member. Under the SaVE procedure, the Complainant and Respondent may chose an Advisor of their choice.

The Investigator will also gather any pertinent evidentiary materials (this may include, but is not limited to, emails, written documents, or photographs). The Complainant and the Respondent will have an opportunity to present evidence, testimony, and witnesses as a part of the investigation. The Investigator will then prepare a report detailing the relevant content of the interviews and the relevant documentation materials gathered.

Directly following the conclusion of the investigation, a determination of whether or not to proceed to the next step will be made by the Title IX Team, composed of the Title IX Coordinator and the Title IX Investigators. This determination will be based on whether reasonable cause exists to believe that a policy violation may have occurred.

If reasonable cause does not exist, the report will not be forwarded to the Adjudicator (as defined below). However, the College will institute other forms of remedial, community-based efforts such as educational initiatives and/or trainings, as appropriate. .

INDEPENDENT INVESTIGATION

The College, at the discretion of the College President, may conduct an investigation independent of, or in addition to, the procedures provided herein at any time. Such an independent investigation may involve complaints or allegations concerning gender-based misconduct against the College, or any of its employees or students.

ADMINISTRATIVE RESOLUTION

If sufficient information exists to proceed to the next step, the Respondent and Complainant will have the opportunity to review the investigative report on which the decision to move forward was based.

Following this review, the Respondent will be given the opportunity to respond to the alleged violation of policy in the following ways: 1) No response; 2) Not Responsible; or 3) Responsible.

If the Respondent accepts responsibility, the appropriate “Adjudicator” [4] will be notified. Based on the information provided by the investigative materials, the Adjudicator (or designee) will determine the appropriate sanctions and will make that recommendation to the College President. The Complainant and Respondent will be made aware of the sanctioning decision. The sanctioning outcome will be communicated simultaneously to both parties within five (5) business days of receipt of the investigation report, whenever possible. Any reasonable delay will be communicated to both parties.

If the Respondent declines responsibility, or chooses not to respond, the case will be forwarded to the appropriate Adjudicator for review and adjudication.

[4] An “Adjudicator” is the College Official designated, and trained, for decision making.

ADJUDICATION PROCESS

The Adjudicator is charged with determining, based on a preponderance of the evidence, whether or not policy has been violated upon a review of the investigative materials. If a violation is found, the Adjudicator will then determine or recommend the appropriate sanction to be imposed.

The Adjudicator will be the College Vice-President for Academic Affairs or the Executive Dean of Student Development. In the event either the Vice-President or Executive Dean of Student Development has a conflict of interest, or if a conflict of interest will likely be seen by others, the Vice-President may defer to the Executive Dean of Continuing Education.

REVIEW OF INVESTIGATIVE MATERIALS

The Adjudicator will review the materials within five (5) business days of delivery. If the Adjudicator requires clarification on any of the materials, the Investigator and/or Title IX Coordinator will assist the Adjudicator in obtaining such clarification. Though it is typically not necessary, the Adjudicator may consult with the Title IX Coordinator to request to meet with the Respondent, Complainant and/or any of the witnesses (separately) in order to clarify information in the investigative materials. However, if

the Adjudicator requests to meet with either the Complainant or the Respondent, the other party will also be given an opportunity to meet with the Adjudicator.

ADJUDICATOR FINDINGS

The Adjudicator will decide, based on a preponderance of the evidence, whether there has been a violation of any sex and gender-based misconduct policies upon a complete review of the investigative report and materials. Preponderance of evidence means that the adjudicator is convinced based on the information provided that a violation of policy was more likely to have occurred than not have occurred.

The Adjudicator will render a decision within fifteen (15) business days following the delivery of the investigative materials.

If the Adjudicator determines that a violation has occurred, the Adjudicator, in consultation with the other Vice President and the President, will then determine the appropriate sanctions. Consideration may be given to the nature of and the circumstances surrounding the violation, prior disciplinary violations, precedent cases, College safety concerns and any other information deemed relevant by the Adjudicator. The Adjudicator will render a sanctioning decision, or recommendation in the case of a College employee, within five (5) business days of the date the decision is rendered.

The Adjudicator will simultaneously notify the Complainant and the Respondent, in writing, of the outcome/findings of the investigative and deliberative process, including any sanctions that apply directly to each.

RANGE OF SANCTIONS AND REMEDIES

Faculty, staff or administrators who are found in violation of any sexual or gender-based misconduct policy are subject to disciplinary action, up to and including dismissal. Students who are found in violation of any sexual or gender-based misconduct are subject to disciplinary action, up to and including suspension or expulsion. In any case, educational programming may be required. Guests and other persons who are alleged to have engaged in sex or gender-based misconduct are subject to corrective action, which may include removal from campus and termination of contractual arrangements. Vendors or other agencies in contract with the College will be promptly notified if any of their employees are alleged to have violated policy, and such employees may be banned from any or all college properties and may also be subject to action deemed appropriate by their respective employer. Restrictions regarding access to College property or events may also be imposed.

If the investigative and deliberative processes reveals that sexual misconduct has created a hostile environment, the College will take prompt and effective steps reasonably calculated to end the offending action, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Appropriate remedies will generally include disciplinary action against the perpetrator, but may also include remedies to assist the Complainant get their education back on track. Such appropriate

remedies may also include remedies for the broader College community such as training or consideration of a change in College policies or procedures to prevent such incidents from repeating.

Resources for Anyone Who Experiences Gender-Based Misconduct

The College's primary concern is with the health, safety, and well-being of the members of the College community. If you or someone you know may have experienced any form of gender-based misconduct, we urge you to seek immediate assistance. The College can help you contact:

Community Resources

- NC Coalition Against Sexual Assault – Wesley Shelter (252) 291-2344
- NC Victim Assistance Network – Wilson Crisis Center (252) 237-5156
- Wilson Medical Center (252) 399-8832
- The Beacon Center (800) 893-8640
- Professional Counselors & Mental Health Services

Law Enforcement / Public Safety

- College Police Department (252) 246-1393
- Wilson Police Department (252) 399-2323
- Wilson County Sheriff's Office (252) 237-2118

Relevant Government Resources

Inquiries concerning the application of Title IX and its implementing regulations may be referred to the Title IX Coordinator(s) and to OCR. The below government agencies may provide additional resources for anyone wishing to file a complaint of gender-based misconduct:

<http://www.ed.gov/ocr>

US Department of Education

Office of Civil Rights

Lyndon Baines Johnson Department of Education Building

400 Maryland Avenue – SW

Washington, DC 20202-1100

Phone 800-421-3481

FAX 202-453-6012

TDD 800-877-8339

Email OCR@ed.gov

U.S. Department of Justice, Office on Violence against Women

<https://www.justice.gov/ovw>

Addendum - **UNITED STATES DEPARTMENT OF EDUCATION** *Office for Civil Rights*

Know Your Rights: Title IX Requires Your School to Address Sexual Violence*

* This document outlines your rights under Title IX. You may have additional rights under other federal and state laws.

Title IX of the Education Amendments of 1972 prohibits sex discrimination—which includes sexual violence—in educational programs and activities. All public and private schools, school districts, colleges and universities receiving federal funds must comply with Title IX. If you have experienced sexual violence, here are some things you should know about your Title IX rights:

Your School Must Respond Promptly and Effectively to Sexual Violence

- You have the right to report the incident to your school, have your school investigate what happened, and have your complaint resolved promptly and equitably.
- You have the right to choose to report an incident of sexual violence to campus or local law enforcement. But a criminal investigation does not relieve your school of its duty under Title IX to respond promptly and effectively.
- Your school must adopt and publish procedures for resolving complaints of sex discrimination, including sexual violence. Your school may use student disciplinary procedures, but any procedures for sexual violence complaints must afford you a prompt and equitable resolution.
- Your school should ensure that you are aware of your Title IX rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.
- Your school must designate a Title IX coordinator and make sure all students and employees know how to contact him or her. The Title IX coordinator should also be available to meet with you.
- All students are protected by Title IX, regardless of whether they have a disability, are international or undocumented, and regardless of their sexual orientation and gender identity.

Your School Must Provide Interim Measures as Necessary

- Your school must protect you as necessary, even before it completes any investigation. Your school should start doing this promptly once the incident is reported.
- Once you tell your school about an incident of sexual violence, you have the right to receive some immediate help, such as changing classes, dorms, or transportation. When taking these measures, your school should minimize the burden on you.
- You have the right to report any retaliation by school employees, the alleged perpetrator, and other students, and your school should take strong responsive action if it occurs.

Your School Should Make Known Where You Can Find Confidential Support Services

Your school should clearly identify where you can go to talk to someone confidentially and who can provide services like advocacy, counseling, or academic support. Some people, such as counselors or victim advocates, can talk to you in confidence without triggering a school's investigation.

Your School Should Make Known Where You Can Find Confidential Support Services (cont.)

- Because different employees have different reporting obligations when they find out about sexual violence involving students, your school should clearly explain the reporting obligations of all school employees.

- Even if you do not specifically ask for confidentiality, your school should only disclose information to individuals who are responsible for handling the school's response to sexual violence. Your school should consult with you about how to best protect your safety and privacy.

Your School Must Conduct an Adequate, Reliable, and Impartial Investigation

- You have the right to be notified of the timeframes for all major stages of the investigation.
- You have the right to present witnesses and evidence.
- If the alleged perpetrator is allowed to have a lawyer, you have the right to have one too.
- Your school must resolve your complaint based on what they think is more likely than not to have happened (this is called a preponderance-of-the-evidence standard of proof). Your school cannot use a higher standard of proof.
- You have the right to be notified in writing of the outcome of your complaint and any appeal, including any sanctions that directly relate to you.
- If your school provides for an appeal process, it must be equally available for both parties.
- You have the right to have any proceedings documented, which may include written findings of fact, transcripts, or audio recordings.
- You have the right not to “work it out” with the alleged perpetrator in mediation. Mediation is not appropriate in cases involving sexual assault.

Your School Must Provide Remedies as Necessary

- If an investigation reveals that sexual violence created a hostile environment, your school must take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.
- Appropriate remedies will generally include disciplinary action against the perpetrator, but may also include remedies to help you get your education back on track (like academic support, retaking a class without penalty, and counseling). These remedies are in addition to any interim measures you received.
- Your school may also have to provide remedies for the broader student population (such as training) or change its services or policies to prevent such incidents from repeating.

If you want to learn more about your rights, or if you believe that your school is violating federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481 or ocr@ed.gov. If you wish to fill out a complaint form online, you may do so at <http://www.ed.gov/ocr/complaintintro.html>.

Addendum – Victim’s Rights under SaVE / VAWA – American Council on Education

New Requirements Imposed by the

Violence Against Women Reauthorization Act

The Violence Against Women Reauthorization Act (“VAWA”), which President Obama signed into law on March 7, imposes new obligations on colleges and universities under its Campus Sexual Violence Act (“SaVE Act”) provision, Section 304. Those obligations—which to some extent refine and clarify, and to some extent change, existing legal requirements and government agency enforcement statements—likely will require revision of institutional policy and practice. Counsel should be consulted on this complex, sensitive area of institutional law compliance.

Under VAWA, colleges and universities are required to:

- Report domestic violence, dating violence, and stalking, beyond crime categories the Clery Act already mandates;
- Adopt certain student discipline procedures, such as for notifying purported victims of their rights; and
- Adopt certain institutional policies to address and prevent campus sexual violence, such as to train in particular respects pertinent institutional personnel.

The interplay of VAWA and other pronouncements—notably the April 4, 2011 Dear Colleague Letter under Title IX issued by the Office for Civil Rights of the Department of Education (“ED”) (“OCR Guidance Letter”) and prevailing institutional policy—warrants legal risk management judgment by institutional counsel and compliance officers, and implicates a range of management steps. Here we identify some key points.

I. New Reporting Requirements

VAWA’s SaVE Act provision imposes new reporting requirements:

A. The Clery Act requires annual reporting of statistics for various criminal offenses, including forcible and non-forcible sex offenses and aggravated assault. VAWA’s SaVE Act provision adds domestic violence, dating violence, and stalking to the categories that, if the incident was reported to a campus security authority or local police agency, must be reported under Clery. Parsed for clarity, these offenses are defined:

1. “Domestic violence” includes asserted violent misdemeanor and felony offenses committed by the victim’s current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
2. “Dating violence” means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.
3. “Stalking” means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others’ safety, or to suffer substantial emotional distress.

B. The provision adds “national origin” and “gender identity” to the hate crime categories, involving intentional selection of a victim based on actual or perceived characteristics that must be reported under the Clery Act.

C. The provision requires, with respect to the “timely reports” the Clery Act mandates for crimes considered a threat to other students and employees, that victims’ names be withheld.

D. The Campus SaVE Act takes effect with respect to the Annual Security Report that must be issued by each institution no later than October 1, 2014. Final regulations to implement statutory changes to VAWA will not be effective until after ED completes the rulemaking process. Until regulations are issued,

ED expects institutions to “to make a good faith effort to comply” with the requirements. For more information, see ED’s electronic announcement May 29, 2013, on this issue.

II. New Student Discipline Requirements

A. Current requirements in the Clery Act are that institutions inform students of procedures victims should follow, such as preservation of evidence and to whom offenses should be reported. VAWA adds that institutional policy must also include information on:

1. Victims' option to, or not to, notify and seek assistance from law enforcement and campus authorities.
2. Victims' rights and institutional responsibilities regarding judicial no-contact, restraining, and protective orders.

B. VAWA prescribes standards for investigation and conduct of student discipline proceedings in domestic violence, dating violence, sexual assault, and stalking cases.

1. Institutional policy must include a “statement of the standard of evidence” used. Unlike some earlier drafts of the legislation, VAWA does not prescribe the evidentiary standard. The OCR Guidance Letter, at page 11, directs a standard of “preponderance of the evidence.” That letter, although not positive law, authoritatively represents OCR enforcement policy. Whether OCR's position would withstand judicial review is an open question.
2. Institutional officials who conduct the proceeding must be trained on how to investigate and conduct hearings in a manner that “protects the safety of victims” and “promotes accountability.”
3. Institutional policy must identify “sanctions or protective measures” the institution may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking.
4. “[T]he accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice....”
5. Accuser and accused must be notified “simultaneously” and “in writing” of: the outcome of the proceeding; appeal procedures; any change to the result before it becomes final; and when the result becomes final. The OCR Guidance Letter, at page 13, merely “recommends” that the parties be provided the determination “concurrently.”
6. Institutional policy must address how victims' confidentiality will be protected, including record-keeping that excludes personally-identifiable information on victims. OCR's Guidance Letter, at page 5, encourages institutions to be cognizant of victims' confidentiality, but does not mandate that institutional policy address it.

III. New Requirements to Educate Students and Employees on Sexual Violence

Under VAWA, new students and new employees must be offered “primary prevention and awareness programs” that promote awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The OCR Guidance Letter, at pages 15-16, “recommends” that institutions implement preventive education programs; VAWA is more prescriptive in its requirements.

The training programs must include:

- A. A statement that the institution prohibits those offenses.

- B. The definition of those offenses in the applicable jurisdiction.
- C. The definition of consent, with reference to sexual offenses, in the applicable jurisdiction.
- D. “Safe and positive” options for bystander intervention an individual may take to “prevent harm or intervene” in risky situations.
- E. Recognition of signs of abusive behavior and how to avoid potential attacks.
- F. Ongoing prevention and awareness campaigns for students and faculty on all of the above.

Conclusion

VAWA’s ramifications include that institutions will need to review and modify policies and procedures for handling asserted sexual offenses, and train carefully personnel responsible in this area. This memo primarily addresses VAWA. Requirements under the OCR Guidance Letter, the Clery Act, Title IX, Title VII, State employment laws, local human rights ordinances, or the sundry apposite regulations and agency pronouncements are also relevant and should be reviewed. College and university counsel expert on those and on faculty, student, and staff rights under institutional handbooks, manuals, and other policies should be consulted. In light of acute sensitivities on campus in this sphere, and by parents of students involved in these situations, and the common prospect of related civil and criminal litigation as well as often extensive publicity, university leadership should give close reading and attention to VAWA and its requirements. **(Updated April 1, 2014)**