

Title IX and Campus Sexual Misconduct Overview

House Appropriations: Higher Education Subcommittee

March 8, 2018

Felicia Crawford

Western Michigan University



WESTERN MICHIGAN UNIVERSITY

Institutional Equity

Title IX and Campus Sexual Misconduct

- Legal and Political Landscape Evolves
- University Responsibilities
- Criminal Process
- Basic University Investigation Process
- Environmental Considerations

Legal and Political Landscape Evolves

U.S. Department of Education, Title IX of the Education Amendments Act, 1972:

"No person in the United States shall, on the basis of sex [or gender], 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."

1972
Title IX

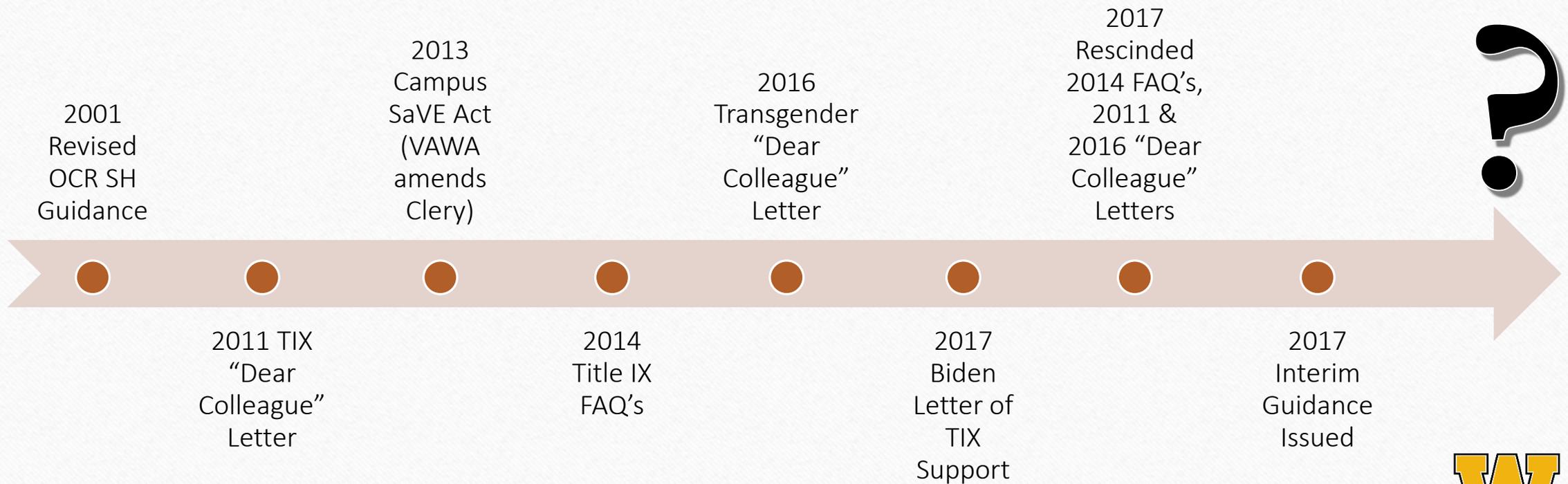
1992
Victim's Bill
of Rights
(Clery)

2000 Clery and
Violence Against
Women Act (VAWA)

1990
Clery Act

1997 OCR
Sexual
Harassment
Guidance

Legal and Political Landscape Evolves



Lens: Case Law/Resolution Agreements

University Responsibility

- **What** – Provide an environment free of discrimination, including sexual and gender-based harassment and violence, intimate partner violence and stalking. This includes discrimination based on a pregnancy-related condition, parental, family or marital status.
- **Who** – Faculty, staff, students and visitors.
- **When** – During University activities and programs, or anytime faculty, staff and students are involved
- **Where** – Both on and off campus, even on study abroad

University Responsibility

PROHIBITED BEHAVIORS

- Sexual harassment
- Sexual assault
- Non-consensual sexual contact
- Sexual exploitation
- Harm to others
- Stalking
- Intimate partner violence
- Retaliation

(PER WMU SEXUAL MISCONDUCT POLICY)

The University is responsible for responding if it knew, or **should have known**, about sexual misconduct.

We must respond
promptly, effectively, and equitably to:

- Assess and investigate
- Stop the behavior
- Remedy the effects
- Prevent the recurrence

University Responsibility

Report Sexual Misconduct

Simple approach:

- Report crimes to the police
- Report sexual misconduct to the Title IX Coordinator or designee
- Some incidents may be both

University Sexual Assault and Misconduct Policy

HOME
ABOUT
SCOPE
REPORT AN INCIDENT
PRIVACY AND CONFIDENTIALITY
RESOURCES
PREVENTION, EDUCATION AND TRAINING
CONTACT

Western Michigan University encourages all members of our community to participate in the process of creating a safe, welcoming and respectful environment on campus. With the Sexual and Gender-Based Harassment and Violence, Intimate Partner Violence, and Stalking Policy and Procedures, we affirm the commitment of the university and our community to the values of transparency and timely communication, and accountable and responsible behavior within an ethical, compassionate, diverse and respectful environment.

If you are in danger or in need of immediate assistance, call 911.

Read the [full policy](#) in its entirety.

Sexual Misconduct and Safety - [Campus Resource Guide](#).

Report an incident using the online form

INCIDENT REPORTING FORM

Office of Institutional Equity
Western Michigan University
Kalamazoo MI 49008-5405 USA
(269) 387-6316

Criminal Process

The criminal process is completely separate from the Title IX process

- Different process – subpoenas, search warrants
- Different behavior is covered
- Different standard of proof applies
- Prosecutor has discretion – Universities do not



A complainant may elect to participate in the criminal and/or the university processes. They may elect not to participate in either.

Basic University Investigation Process

- Meet with the complainant (may bring a support person).
- Discuss the incident and available support resources. Offer interim safety measures such as issuing a “no contact” order, changes in the work environment, housing or classes if needed. Discuss resolution options (police, informal, investigation). For sexual assault, consider options for a certified Sexual Assault Nurse Exam, sexually transmitted infections and pregnancy.
- Meet with the respondent (may bring a support person)
 - Discuss the incident and available support resources.
- Meet with any witnesses, collect and review evidence.

ASSESSMENT

Basic University Investigation Process (cont.)

- Create an investigative report and give the complainant and respondent an opportunity to review and respond to it.
- Determine, using the preponderance of evidence standard, whether the respondent is responsible for violating the Sexual Misconduct Policy.
- If responsible, student cases go to Student Conduct for sanctioning, faculty and staff cases go to HR/Administration for disciplinary action process based on employee classification.
- While the sanction or disciplinary action may be appealed, the finding is final.

Environmental Considerations

- May have one very unhappy and motivated party at the end of the process
 1. No action taken/Not responsible = swept under the rug
 2. Action taken/Responsible = steamrolled by Title IX
 3. Enforcement of privacy rights = cover up
 4. Growing lobbying groups and activism on all fronts
- Multiple constituencies: complainants, respondents, governmental oversight (DOE/OCR, MDCR), advocates, parents, press



WESTERN MICHIGAN UNIVERSITY

Institutional Equity

Questions?

Presentation content from:

WESTERN MICHIGAN UNIVERSITY

CARRICK D. CRAIG, GENERAL COUNSEL

FELICIA CRAWFORD, DIRECTOR TITLE IX COMPLIANCE