



## Status Report of PEAFF Subcommittee on Title IX Policy Revisions to the Faculty Senate September 5, 2024

**Members of the Subcommittee:** Professors Sylvia Marotta-Walters, Jennifer Seager, Natalie Houghtby-Haddon

The PEAFF Title IX Subcommittee met on Monday, August 26, 2024, at 1:00pm via Zoom to discuss potential concerns and adjustments to the University's proposed revisions to the Title IX policy, as mandated by changes to the US Department of Education's current Title IX regulations. The subcommittee reviewed previously submitted responses to the changes by Prof. Marotta-Walters, sent to the Title IX Coordinator in July. The Subcommittee agreed that these questions and recommendations were still valid and should be forwarded to the entire PEAFF Committee as the Committee's recommendations to the Title IX Coordinator.

Below are the questions for follow up by the GW Title IX Office, and recommendations for additional clarifications within the policy.

### Questions for clarification:

1. **Management of Sex Discrimination and Sex-Based Harassment Reports:** What resources will be diverted to the Title IX Office now that the other offices mentioned in the text no longer have oversight?
2. **Grievance Procedures:** For informal resolutions, do both parties have to agree or only one? A glossary describing examples of safety concerns that might override a complainant's desires would help clarify this situation.
3. **Designated reporters:** Does the Title IX office have data to support the effectiveness of this change that was made in response to the last iteration of the title? In other words, have designated reporters commented on the efficacy of these reports and/or the reduction in reports being made to designated reporters? And yes, we're aware that the Title requires faculty to report.

### Recommendations

1. **Confidential Employee:** Add the definition of "confidential employee" to the Glossary
2. **Hostile environment vs. Sexual Harassment Hostile Work Environment:** The definitions of hostile environment and sexual assault have been aggregated under the new rules so that the terms are now so broad as to be meaningless. We recommend that a glossary be developed to include definitions for both hostile environment and sexual assault, along with specific examples of each to help readers understand the similarities and the differences.
3. **Reasonable Modifications:** Give examples in the glossary of "related conditions."

The Questions and Recommendations were submitted to the full PEAFF Committee and to the Title IX Office for comment. The Title IX Office responded with responses to the Subcommittee's questions on September 3, 2024; these have been shared with the entire PEAFF Committee and are currently under review by the Subcommittee for further consideration. It will submit its conclusions to the next full meeting of the PEAFF Committee. The Title IX Office's responses are attached to this report.

Respectfully Submitted on behalf of the Subcommittee

*Natalie Houghtby-Haddon*

PEAFF Co-Chair

## PEAF Committee Feedback on Draft Title IX Policy

PEAF Committee Feedback	Response
<p>Reasonable Modifications...: Give examples in the glossary of ‘related conditions’</p>	<p>The draft Policy defines “Pregnancy or Related Conditions”. <i>See</i> Section XI. “Glossary”, pg. 34. The Policy states that this means pregnancy, childbirth, termination of pregnancy, or lactation, as well as medical conditions and recovery related to each of these conditions.</p> <p>In the preamble to the 2024 regulations, the Department of Education noted that they specifically declined to include an exhaustive list of conditions related to pregnancy in the regulations to avoid confusion and the implication that a specific medical condition may not be covered. However, they referenced several examples which can be included on the <a href="#">Title IX Office’s website</a> including, but not limited to: pregnancy-related fatigue, dehydration (or the need for increased water intake), nausea or morning sickness, infertility, recovery from childbirth, miscarriage, or abortion, ectopic pregnancy, prenatal or postpartum depression, and lactation conditions such as swelling or leaking of breast tissue or mastitis.</p>
<p>Confidential Employee: Add the definition of “Confidential employee” to the Glossary</p>	<p>The draft Policy defines “Confidential employees”. <i>See</i> Section VI. “University Community Members’ Reporting Obligations”, pg. 21. The Policy states that confidential employees “will not report personally identifying information shared with them about sex discrimination to the Title IX Coordinator. A Confidential Employee is any employee whose communications are privileged or confidential; employees</p>

who are designated as confidential resources; and employees who are conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, but the confidential status is limited to information received while conducting the study.”

The Title IX Sex Discrimination Procedures describes that the following are confidential resources available to GW students: (1) The Student Health Center (SHC) and Counseling and Psychological Services (CAPS), (2) the Office of Advocacy and Support (OAS), (3) SAIV Helpline and (4) University Ombudspersons. *See* Section VII. “Resources”, pg. 23.

The Policy also defines “confidential resources”. The Policy states that, “Confidential resources ***will not disclose*** personally identifying information about you to the Title IX Coordinator without your permission. However, upon receipt of information about sex discrimination, confidential resources still must explain their confidential status; provide contact information for the Title IX Coordinator; explain how to make a complaint of sex discrimination; and inform the disclosing individual that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate a Negotiated Resolution or Investigative Resolution. Speaking with a confidential resource about sex discrimination will not constitute a report to the university or law enforcement. When an individual who otherwise is a confidential resource receives information outside of their professional role in the provision of services, the individual may be a Designated Reporter that is required to share that

	<p>information with the Title IX Coordinator. For example, a licensed psychologist in the Student Health Center who receives a disclosure in the context of speaking at a prevention program would be required to share the information with the Title IX Coordinator.” <i>Id.</i> at 25.</p>
<p>Management of Sex Discrimination and Sex-Based Harassment Reports: What resources will be diverted to the Title IX Office now that the other offices mentioned in the text no longer have oversight?</p>	<p>The Title IX Office has been given authorization to hire two Equity and Title IX Investigators as well as one Senior Equity and Title IX Investigator to manage increased responsibilities. Currently, Title IX has hired one Equity and Title IX Investigator. Title IX is still in the interview process for the remaining positions.</p>
<p>Grievance Procedures: For informal resolutions, do both parties have to agree or only one? A glossary describing examples of safety concerns that might override a complainants desires would help clarify this situation.</p>	<p>Informal resolution requires the voluntary written consent of both parties. <i>See</i> Section VI. “Negotiated Resolution”, pg. 44 (which provides that “Negotiated Resolution requires the mutual informed written consent of all parties, and the university must agree that Negotiated Resolution is appropriate under the circumstances”).</p> <p>According to the Policy, the Title IX Coordinator may initiate a complaint only after the careful consideration of the following factors (which are outlined in the 2024 regulations):</p> <ul style="list-style-type: none"> <li>● The Complainant’s reasonable safety concerns regarding initiation of a Complaint;</li> <li>● The risk that additional acts of sex discrimination would occur if a complaint is not initiated;</li> <li>● The severity of the alleged sex discrimination,</li> </ul>

including whether, if established, the university would require the removal of the Respondent from campus or impose another Disciplinary Sanction to end the sex discrimination and prevent its recurrence;

- The respective ages and relationship of the parties, including whether the Respondent is an employee;
- Whether there have been other reports of other sex discrimination or other misconduct by the Respondent;
- The scope of the alleged sex discrimination, including whether the report suggests a pattern, ongoing conduct, or conduct alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred;
- Whether the university could end the alleged sex discrimination and prevent its recurrence without initiating the Investigative Resolution Process; and
- Any other relevant information.

Prior to conducting an intake meeting with a Complainant, Title IX Office staff describe that there are aggravating circumstances that may require that the Title IX Coordinator move forward with either an investigative or a negotiated resolution. The purpose of describing these circumstances is to ensure that Complainants make informed decisions as to the information that they choose to share with the Title IX Office.

<p>Designated reporters: Does the Title IX office have data to support the effectiveness of this change that was made in response to the last iteration of the title? In other words, have designated reporters commented on the efficacy of these reports and/or the reduction in reports being made to designated reporters? And yes, I'm aware that the Title requires faculty to report.</p>	<p>Designated Reporters currently are responsible for 62% of the total reports to the Title IX Office. 60% of Complainants referred to the Title IX Office referred by Designated Reporters respond to Title IX outreach. Thus, Designated Reporters continue to serve as an important avenue to connect Complainants to Title IX support.</p>
<p>Hostile environment vs. Sexual Harassment Hostile Work Environment: The definitions of hostile environment and sexual assault have been aggregated under the new rules so that the terms are now so broad as to be meaningless. We recommend that a glossary be developed to include definitions for both hostile environment and sexual assault, along with specific examples of each to help readers understand the similarities and the differences.</p>	<p>Hostile environment sexual harassment is defined under the Policy as “unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the university’s programs or activities. Determining whether conduct has created a hostile environment is a fact- specific inquiry which may include many factors such as, but not limited to:</p> <ul style="list-style-type: none"> <li>● The degree to which the conduct affected the Complainant’s ability to access the university’s programs or activities;</li> <li>● The type, frequency, and duration of the conduct;</li> <li>● The parties’ ages, roles, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the alleged unwelcome conduct;</li> <li>● The location and context in which the conduct occurred; and</li> <li>● Other sex-based harassment in the university’s programs or activities.</li> </ul> <p><i>See Section II. “Prohibited Conduct”, pg. 11.</i></p>

Additionally, the Policy describes when a “single severe incident can be sufficient to constitute a hostile environment”. The Policy defines “sexual exploitation” as a form of hostile environment harassment that involves taking non-consensual or abusive sexual advantage of another person for the benefit of anyone other than the person being taken advantage of, when not otherwise addressed by the definition of quid pro quo harassment, sexual assault, dating violence, domestic violence, or stalking under this policy.

This may include, but is not limited to:

- Intentionally observing a person in a state of undress or engaging in sexual activity without their knowledge and consent (“voyeurism”);
- Taking or disseminating intimate images of another person without their knowledge and consent;
- Disseminating intimate images which were taken or received consensually but published, distributed or otherwise shared without consent, including by online “posting”;
- Prostituting another person;
- Dishonesty or deception regarding the use of condoms (including internal (“female”) condoms) during sexual activity (often referred to as “stealth”); and/or
- Threatening to disseminate intimate images in order to force a person to take or refrain from taking any non-sexual action.

*Id.* at 12.

In addition to the Policy definitions, the Title IX Office includes examples of hostile environment sexual harassment on our website at the following link:

<https://titleix.gwu.edu/defining-sexual-harassment>. We



	update our Learning Library periodically and will prioritize adding additional examples to this list.
--	---