

Training for Kaskaskia Community College Title IX Personnel – Session I

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September 18, 2020

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Background on New Title IX Regulations



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Background

- September 22, 2017: U.S. Department of Education released a Dear Colleague Letter formally withdrawing two key Obama-era guidance documents:
 - 2011 Dear Colleague Letter on Sexual Violence
 - 2014 Q&A on Title IX and Sexual Violence

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Current Status

- Proposed Title IX Regulations released in November 2018
 - 60-day public comment period yielded over 120,000 comments
- Proposed Final Rules released on May 6, 2020 and published in Federal Register on May 19, 2020
- Effective date: August 14, 2020



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Impact on Higher Education Institutions

- The new Regulations require:
 - Revisions to institutional policies and procedures
 - Staffing determinations
 - Training for all personnel involved in an institution's investigation and grievance process, including:
 - Title IX Coordinator(s),
 - Investigators
 - Decision-makers
 - Appellate decision-makers
 - Informal resolution facilitators
 - Publishing of information and training materials on the institution's website

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Overview of Relevant Laws



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Relevant Laws

- The relevant requirements of the below laws have been incorporated into the College's proposed Sex-Based Misconduct Policy and Procedures:
 - Title IX of the Education Amendments of 1972 ("Title IX")
 - Title VII of the Civil Rights Act of 1964 ("Title VII")
 - Preventing Sexual Violence in Higher Education Act ("PSVHEA")
 - Illinois Human Rights Act ("IHRA")
 - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act")
 - Violence Against Women Act ("VAWA")

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Relevant Laws

- **Title IX:** Prohibits sex-based discrimination, including sexual harassment, in educational programs and activities receiving federal financial assistance.
- **Title VII:** Prohibits discrimination, including discrimination based on sex, in employment.

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Relevant Laws

- **Preventing Sexual Violence in Higher Education Act:** Requires Illinois higher education institutions to adopt comprehensive policies concerning sexual violence, domestic violence, dating violence and stalking.
- **Illinois Human Rights Act:**
 - Prohibits discrimination in Illinois, including in employment.
 - Also prohibits sexual harassment in elementary, secondary and higher education.



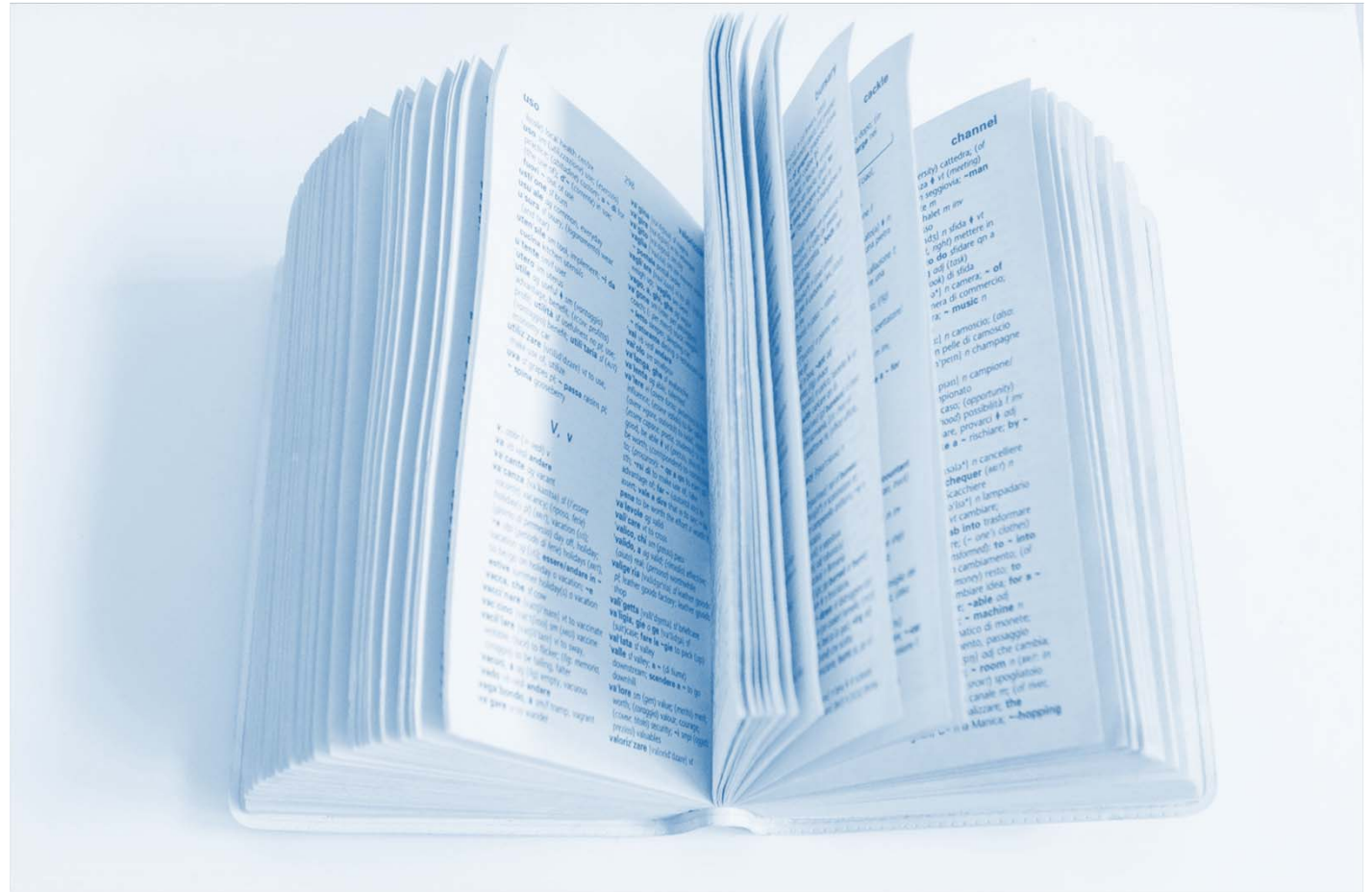
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Relevant Laws

- **Clery Act:** Requires institutions to maintain and disclose crime statistics and security information.
- **Violence Against Women Act:** Expands the rights afforded to campus survivors of sexual assault, domestic violence, dating violence, and stalking.

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Key Definitions



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Title IX Sexual Harassment

Sexual harassment includes:

1. **Quid pro quo** harassment by a college employee
2. Unwelcome conduct that a reasonable person would find **so severe, pervasive and objectively offensive** that it **denies** a person equal educational access
3. Any instance of **sexual assault, dating violence, domestic violence or stalking** (as defined in Clery Act/VAWA)

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Title IX Sexual Harassment: Quid Pro Quo

- When an employee of the college conditions aid, benefits, pay, a position or other opportunities for advancement on an individual's submission to unwelcome sexual conduct.
 - Example: Professor Jones promises his student, Jane, that he will give her an A on her midterm if she engages in sexual conduct in his office after class.

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Title IX Sexual Harassment: “Hostile Environment”

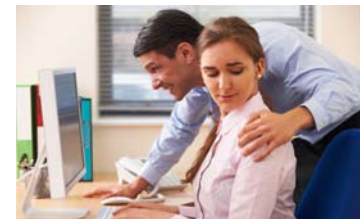
- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access
 - Severe and pervasive and offensive
 - Denial of equal educational access

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Title IX Sexual Harassment: “Hostile Environment”

- Compare with Title VII definition for workplace hostile environment claims:
 - Unwelcome sexual advances and other conduct of a sexual nature having the purpose or effect of **interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.**

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Title IX Sexual
Harassment:
“Hostile
Environment”

- Compare with IHRA definition:
 - Any conduct of a sexual nature exhibited by an education representative toward a student, when such conduct has the purpose of **substantially interfering with the student's educational performance or creating an intimidating, hostile or offensive educational environment.**

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Title IX Sexual Harassment: Other Categories

- Title IX's definition of sexual harassment also includes:
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

As defined under Clery Act/VAWA

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Sexual Assault, Dating Violence, & Stalking

Sexual Assault:

- An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting program.

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

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Domestic Violence

- A felony or misdemeanor crime of violence committed:
 - By a current or former spouse or intimate partner of the victim;
 - By a person with whom the victim shares a child in common;
 - By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
 - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - By any other person against an adult or youth victim who is protected.

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Preventing
Sexual Violence
in Higher
Education Act:
Sexual Violence

- Physical sexual acts attempted or perpetrated against a person's will or when a person is incapable of giving consent, including without limitation:
 - Rape;
 - Sexual assault;
 - Sexual battery;
 - Sexual abuse; and
 - Sexual coercion.

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Preventing Sexual Violence in Higher Education Act: Sexual Violence and Consent

- The PSVHEA requires that institutions adopt a policy which includes a definition of consent consistent with the Act, 110 ILCS 155/10.
- **Consent:**
 - Must be freely given
 - May not be inferred from lack of verbal or physical resistance, from submission resulting from the use of threat or force, from a person's manner of dress, from a person's consent to past sexual activity, or from a person's consent to engage in sexual activity with another person
 - May be withdrawn at any time
 - Cannot be given by a person who is unable to understand the nature of the activity or give knowing consent due to circumstances (i.e. incapacitation due to alcohol or drugs, age, incapacitation due to mental disability)

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Key
Definitions:
Hypothetical

- You receive a report of a student being sexually assaulted by another student on campus.
- Do you need to evaluate the severity, pervasiveness, and offensiveness of the sexual assault?



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Key
Definitions:
Hypothetical

- You have been assigned to investigate a formal complaint alleging that a student was sexually harassed by his sociology instructor.
- What types of evidence/information would be relevant to determining whether the alleged harassment was severe, pervasive and objectively offensive?

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Jurisdiction



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Jurisdiction Under Title IX

- Institutions must respond when sexual harassment occurs “in the institution’s education program or activity, against a person in the United States.”

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Title IX
Jurisdiction:
Scope of
College's
Education
Program or
Activity

- Includes:
 - Locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurred; and
 - Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

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**Title IX
Jurisdiction:
Scope of
College's
Education
Program or
Activity**

- Kaskaskia Community College examples for discussion:
 - The Lifelong Learning Center?
 - Local hospital where students are participating in clinical rotations?
 - Faculty member's home?
 - Social media?

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Jurisdiction:
“... in the
United States”

- To fall under Title IX, the alleged misconduct must have occurred in the United States.
- If not, look to other applicable laws (e.g., PSVHEA)
- Example: sexual assault that occurs during study abroad program?

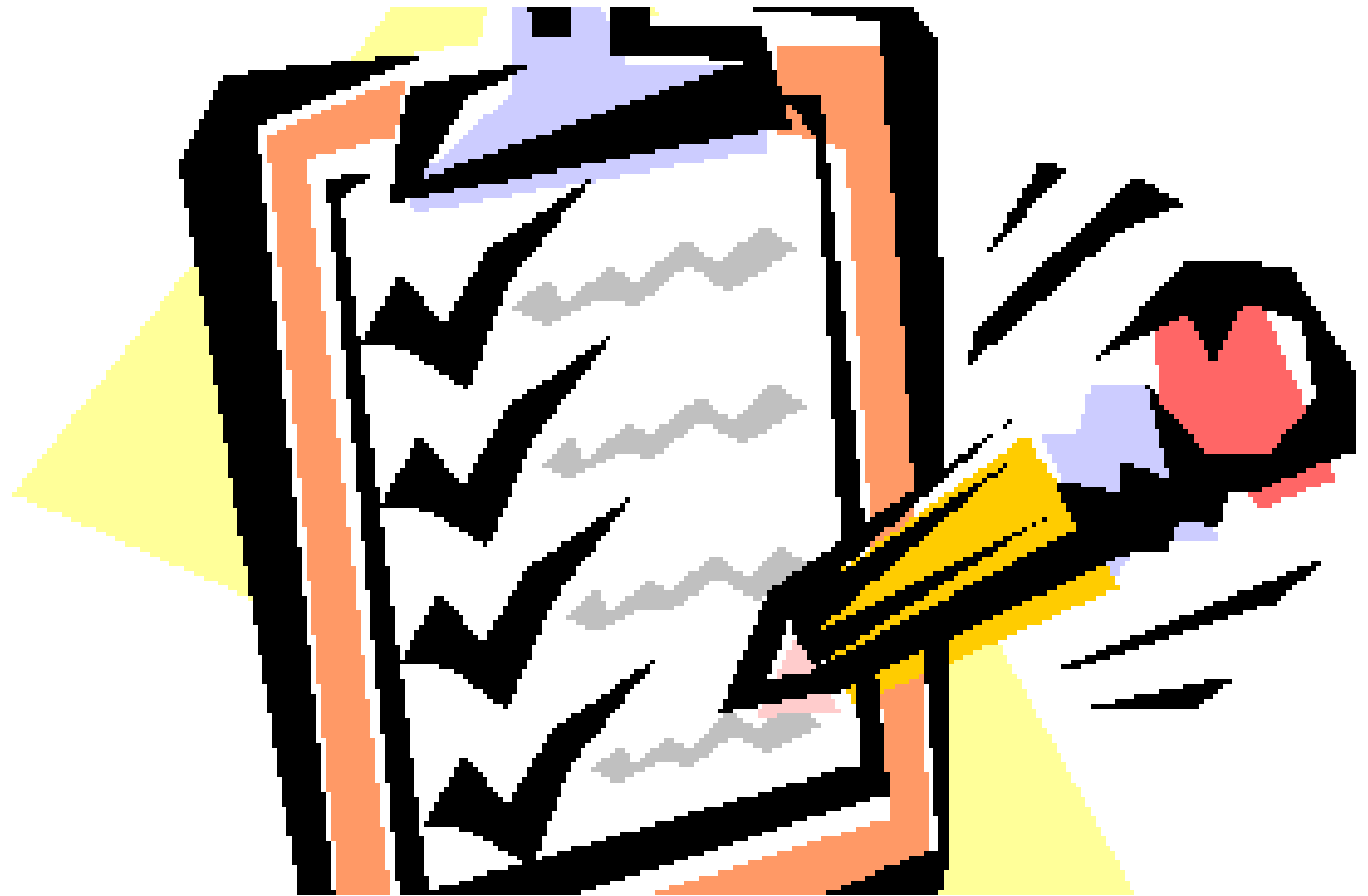
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Jurisdiction: Hypothetical

- Compare:
 - A student athlete allegedly sexually assaults another student athlete while off-campus at a sporting event with their team and coach
 - A student athlete allegedly sexually assaults another student athlete while at a friend's off-campus apartment
- Which type of alleged misconduct falls under Title IX?
- What are the College's response obligations with regard to each type of alleged misconduct?

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Proposed
Sex-Based
Misconduct
Policy



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Proposed Sex-Based Misconduct Policy

- Prohibits all forms of “sex-based misconduct,” including but not limited to:
 - Sex discrimination
 - Sexual harassment
 - Sexual violence
 - Domestic violence
 - Dating violence
 - Stalking

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Proposed Sex-Based Misconduct Policy

- Applies to:

- Students
- Employees & independent contractors
- Volunteers
- Visitors
- Board members



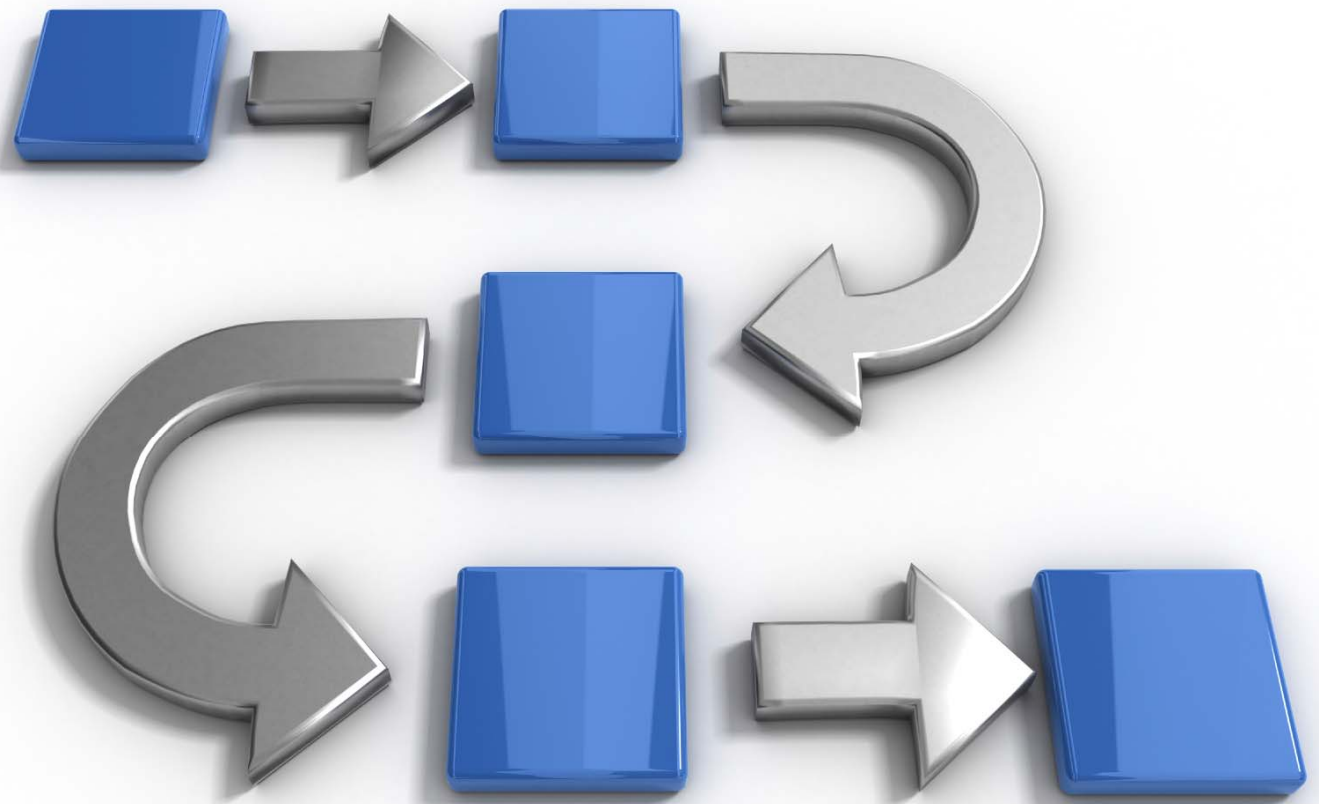
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Proposed Sex-Based Misconduct Policy

- **Prohibits retaliation** against any person reporting alleged sex-based misconduct or participating in an investigation of alleged sex-based misconduct
- Directs the College administration to **establish, maintain and publish procedures** implementing the College's Sex-Based Misconduct Policy.

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Sex-Based Misconduct Procedures



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Purpose of Procedures

- Implement the College's proposed Policy Prohibiting Sex-Based Misconduct and the College's Discrimination and Harassment Policy.
- Ensure a safe and healthy educational and employment environment.
- Meet relevant legal requirements.

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Jurisdiction

- Procedures apply to alleged sex-based misconduct whenever the alleged misconduct occurs:
 - On campus; or
 - Off campus property if:
 - The conduct was in connection with a College or College-recognized program or activity; or
 - The conduct may have the effect of creating a hostile environment for a member of the College community.
- Broader than Title IX jurisdiction



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Role of Title IX Coordinator

- Coordinate College's compliance with Title IX and related laws.
- Oversee College's response to all reports of alleged sex-based misconduct.
- Analyze reports to determine appropriate method for processing and reviewing.
- Oversee grievance process for formal Title IX/PSVHEA complaints.
- Coordinate the provision of supportive measures and implementation of remedies.
- Ensure adherence to policies/procedures.
- Ensure appropriate training is provided to students, faculty and staff.

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Options for Assistance Following Incident of Sex-Based Misconduct

- Healthcare
 - Fayette County Hospital
 - Holy Family Hospital
 - St. Joseph Hospital
 - Salem Township Hospital
 - SSM Health St. Mary's Hospital
 - Washington County Hospital
- Off-campus advocacy and support
 - SAFE (Sexual Assault and Family Emergencies)
- Illinois Department of Human Rights sexual harassment and discrimination helpline

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Reporting
Alleged Sex-
Based
Misconduct



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Reporting Generally

- Who can report?
 - Anyone – including students, employees and community members
 - Need not be the person who is alleged to be the victim of the misconduct
- To whom should reports be made?
 - Title IX Coordinator
 - Deputy Title IX Coordinator
 - College administrator
 - Any responsible employee (students only)

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Student Reporting

- Reporting to Responsible Employees
 - The College's REs include:
 - Title IX Coordinator(s)
 - College Administrators
 - Supervisors and Managerial Staff
 - Faculty*
 - Campus Police
 - Coaches
 - Advisors of student clubs/organizations
 - REs must report all relevant details to the Title IX Coordinator, if known.

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Student Reporting

- Confidential Reporting
 - The College's designated Confidential Advisors include:
 - SAFE (Sexual Assault and Family Emergencies)
 - Confidential Advisors are not required to report any information about an alleged incident to the Title IX Coordinator without the student's permission.

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Student Reporting

- Anonymous and/or Electronic Reporting
 - Students may report anonymously online.
 - Before the student enters information, the system will notify the student that entering personally identifiable information may serve as notice to the College for purposes of triggering an investigation.

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Employee Reporting

- Employees should report to:
 - Title IX Coordinator(s)
 - Chief Human Resources Officer

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Questions?



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