

# TITLE IX TRAINING

## SESSION #3:

### The Confidential Advisor



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# OVERVIEW OF TITLE IX

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## Overview of Title IX:

### Title IX of the Education Amendments of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681 et seq.

-Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964



## Overview of Title IX: What does it prohibit?

- Discrimination, whether intentional or unintentional, by a recipient of federal funds on the basis of gender in education programs and activities.
- Sex-based employment discrimination, whether intentional or unintentional, by a recipient of federal funds in education programs and activities.
- Discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.
- Sexual harassment, including forms of sexual violence such as rape, domestic violence, dating violence, sexual assault and stalking.
- Retaliation against persons who report or file a complaint alleging sex discrimination in education programs and activities.



## Overview of Title IX: What does it cover?

- Employment practices and assistance
- Housing policies
- Access to course offerings
- Financial assistance
- Benefits and leave
- Recruitment & admissions
- Marital & parental status
- Health & insurance benefits and services
- Athletics
- Textbook & curricular material

**SOURCE:** Title IX Legal Manual, U.S. Department of Justice, <http://www.justice.gov/crt/about/cor/coord/ixlegal.php#B>.



## Overview of Title IX:

Why and how does it affect Southern University?

- Title IX applies to all “recipients” of Federal funds.
- Many Southern University students fund their education by applying for and receiving Federal student financial assistance.
- **THEREFORE, THE ENTIRE SOUTHERN UNIVERSITY SYSTEM, INCLUDING EACH CAMPUS COMMUNITY, IS REQUIRED TO COMPLY WITH TITLE IX!**



## Overview of Title IX: Consequences for Noncompliance

- Loss of federal funding;
- Lengthy state and/or federal investigations;
- Loss of due process for the accused;
- Negative media exposure;
- Penalties for University violations; and
- Private lawsuits that may result in substantial damages and attorney's fees.



# WHO IS A CONFIDENTIAL ADVISOR?

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# Who Is a Confidential Advisor?

## Definition

- Designated individuals who have been trained to aid a student involved in a sexual misconduct complaint in the resolution process as a confidential resource.
- Confidential communications with the advisor will be kept confidential in all circumstances except where the institution or advisor may be required to disclose the communications under state and federal laws (e.g., court proceedings).
- Responsible employees must promptly report incidents of alleged sexual harassment and sexual violence to the Title IX Coordinator. But confidential advisors are EXEMPT for purposes of Title IX!
- There *may* be situations in which counselors are in fact under a legal obligation to report a crime.

**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education; Office of Postsecondary Education of the Department of Education, Handbook for Campus Safety and Security Reporting (2011).



# Who Is a Confidential Advisor? Definition

Excerpt from the Louisiana Board of Regents Uniform Policy on Sexual Misconduct  
(amended August 26, 2015)

## **CONFIDENTIAL ADVISOR**

“The confidential advisor primarily serves to aid a student involved in a Sexual Misconduct complaint in the resolution process as a confidential resource. As suggested by the term “confidential advisor,” confidential communications with the advisor will be kept confidential in all circumstances except where the institution or advisor may be required to disclose the communications under state and federal laws. For example, an institution may be compelled by law to disclose communications between the student and his/her confidential advisor if directed by the court in civil litigation. Each institution shall designate individuals who shall serve as confidential advisors.”



# Who Is a Confidential Advisor?

## Definition (continued)


Pastoral Counselor	Professional Counselor*
<ul style="list-style-type: none"><li>• Associated with a religious order or denomination.</li><li>• Recognized by that religious order or denomination as someone who provides confidential counseling.</li><li>• Functions within the scope of that recognition as a pastoral counselor.</li></ul>	<ul style="list-style-type: none"><li>• Official responsibilities include providing mental health counseling to members of the institution's community</li><li>• Functions within the scope of his or her license or certification.</li><li>• Applies to professional counselors who are not employees of the school, but are under contract to provide counseling at the school.</li><li>• Includes individuals who are not yet licensed or certified as a counselor, but are acting in that role under the supervision of an individual who is licensed or certified (e.g., PhD counselor-trainee)</li></ul>

**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education.



# Who Is a Confidential Advisor?

Definition (continued)

	On-Campus	Off-Campus
<b>SUBR</b> 	<b>University Counseling Center</b> (225) 771-2480 --- <b>Student Health Center</b> (225) 771-4770 --- <b>Office of Disability Services</b> (225) 771 – 3546	<b>Sexual Trauma Awareness &amp; Response (STAR) Center</b> (225) 383-RAPE



# Who Is a Confidential Advisor?

## Definition (continued)

- To be exempt from disclosing reported offenses, pastoral or professional counselors must be acting **“in the role of pastoral or professional counselors.”**

- Example:



- A dean of students who has a professional counselor’s license, but is employed by the institution only as a dean and not as a counselor, is not exempt from reporting under Title IX.
- If that same dean is employed by the institution as *both* a professional counselor and an academic counselor, and she learns of a criminal incident while she is engaged in academic counseling, she is not exempt from reporting that incident.

- In these circumstances, **before the student discloses an incident of sexual misconduct**, be sure to inform the student of your official role at the University, any reporting obligations you may still have and his or her option to report the incident to a confidential resource.

**SOURCE:** Office of Postsecondary Education of the Department of Education, Handbook for Campus Safety and Security Reporting (2011).



# DUTIES OF THE CONFIDENTIAL ADVISOR

## #1 - Knowing Southern University's Policies

# DUTIES OF THE CONFIDENTIAL ADVISOR: Knowing the University's Policies



## READ THE POLICY!





## DUTIES OF THE CONFIDENTIAL ADVISOR : Knowing the University's Policies (continued)

### Excerpt from Southern University's Gender-Based Sexual Misconduct (Title IX) Policies

#### “GENDER-BASED SEXUAL MISCONDUCT”

- Used to encompass all behaviors that involve gender-based violations of an individual's rights specifically manifested by sexual behavior and actions.
- Includes conduct considered to constitute sexual harassment, non-consensual sexual contact or intercourse, sexual exploitation, stalking, intimate partner violence, and other forms of inappropriate behavior that are linked with the sex/gender of the Complainant and/or Respondent.

#### **SOURCE(S):**

Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Nov. 2, 2015); Southern University at New Orleans Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 2 (Nov. 3, 2015).





## DUTIES OF THE CONFIDENTIAL ADVISOR : Knowing the University's Policies (continued)

### Excerpt from Southern University's Gender-Based Sexual Misconduct (Title IX) Policies

Members of the various campus communities, which include students, faculty, administrators, guests, and visitors, have the right to be free from sexual misconduct of any type. Therefore, the various campus communities are firmly committed to maintaining a climate of respect and safety for everyone. All members of the various campus communities are expected to conduct themselves in a manner that does not infringe upon the rights of others. As a result, this campus has a zero tolerance policy for gender-based sexual misconduct . . . .

#### **SOURCE(S):**

Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Nov. 2, 2015); Southern University at New Orleans Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 2 (Nov. 3, 2015).



## DUTIES OF THE CONFIDENTIAL ADVISOR : Knowing the University's Policies (continued)

### Excerpt from Southern University's Gender-Based Sexual Misconduct (Title IX) Policies

....When an allegation of sexual misconduct is brought to the attention of the appropriate Campus Representative, and a Respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions cease and are never repeated. In addition, the response will provide individuals who bring forth complaints with reasonable remedies that will insure full participation in their educational and/or employment activities. Nothing in this policy shall abridge academic freedom or the institutions' respective educational missions.

#### **SOURCE(S):**

Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Nov. 2, 2015); Southern University at New Orleans Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 2 (Nov. 3, 2015).



# DUTIES OF THE CONFIDENTIAL ADVISOR

## #2 – Responding to Reports of Sex/Gender Discrimination



## DUTIES OF THE CONFIDENTIAL ADVISOR :

### Responding to a Report: Overview of the Confidential Advisor's Duties

# #1 – Inform the Victim

- The rights of the alleged victim under federal and state law and the policy;
- The reporting options, including the option to notify the school, the option to notify local law enforcement, and any other reporting options;
- If reasonably known, the potential consequences of the reporting options;
- The process of investigation and disciplinary proceedings;
- The process of investigation and adjudication of the criminal justice system;
- The limited jurisdiction, scope, and available sanctions of student disciplinary proceedings, and that it should not be considered a substitute for the criminal justice process;
- Potential reasonable accommodations the school may provide to an alleged victim;
- The name and location of the nearest medical facility where an alleged victim may have a rape kit administered by an individual trained in sexual assault forensic medical examination and evidence collection, and information on transportation options and available reimbursement for a visit to such facility.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).



## DUTIES OF THE CONFIDENTIAL ADVISOR :

### Responding to a Report: Overview of the Confidential Advisor's Duties (continued)

Also be sure to:

1. Inform students of their right to file a Title IX complaint with the school and a separate complaint with campus or local law enforcement.
2. Indicate to the students that the confidential advisor is available to assist students in filing such complaints.
3. Explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.



**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education.



DUTIES OF THE CONFIDENTIAL ADVISOR :  
Responding to a Report: Overview of the Confidential Advisor's Duties  
(continued)

## #2 – Serve as a liaison, when directed.

*When directed to do so in writing* by an alleged victim who has been fully and accurately informed about what procedures shall occur if information is shared, the confidential advisor must serve as a liaison between the alleged victim and the campus or local law enforcement, and assist the alleged victim in contacting and reporting to a responsible employee or local law enforcement.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).



## DUTIES OF THE CONFIDENTIAL ADVISOR :

Responding to a Report: Overview of the Confidential Advisor's Duties  
(continued)

### #3 – Communicate about reasonable accommodations.

The confidential advisor must liaise (i.e. communicate) with appropriate campus staff (i.e. the Title IX Coordinator) to arrange reasonable accommodations through the University to allow the alleged victim to change living arrangements or class schedules, obtain accessibility services, or arrange other accommodations.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).



## DUTIES OF THE CONFIDENTIAL ADVISOR :

Responding to a Report: Overview of the Confidential Advisor's Duties  
(continued)

### **#4 – Accompany the alleged victim to hearings, etc., when requested.**

***When directed to do so by the alleged victim***, the confidential advisor must accompany the alleged victim to interviews and other proceedings of a campus investigation and institutional disciplinary proceedings.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).





DUTIES OF THE CONFIDENTIAL ADVISOR :  
Responding to a Report: Overview of the Confidential Advisor's Duties  
(continued)

## #5 – Provide information about orders of protection and no-contact orders.

The confidential advisor must advise the alleged victim of, and provide written information regarding, the alleged victim's rights and the University's responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar lawful orders issued by a court of competent jurisdiction or by the University.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).



DUTIES OF THE CONFIDENTIAL ADVISOR :  
Responding to a Report: Overview of the Confidential Advisor's Duties  
(continued)

## #6 – Provide counseling.

- The confidential advisor must, to the extent authorized under law, provide confidential services to students.
- **HOWEVER:** The confidential advisor shall not be obligated to report crimes to the University or law enforcement in a way that identifies an alleged victim or an accused individual, unless otherwise required to do so by law.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 16 (Nov. 2, 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 15 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 13 (Nov. 3, 2015).



## DUTIES OF THE CONFIDENTIAL ADVISOR :

### Responding to a Report: Overview of the Confidential Advisor's Duties

# SUMMARY

1. Inform the student of his or her rights under the policy, his or her reporting options and other key topics.
2. In limited circumstances, serve as a liaison between the alleged victim and your respective campus or local law enforcement.
3. Communicate and coordinate with the Title IX Coordinator to arrange reasonable accommodations for the alleged victim pending an investigation.
4. Accompany the alleged victim to interviews, etc., when requested.
5. Advise the alleged victim and provide written information about his or rights and the University's responsibilities under the campus's sexual misconduct policies, orders of protection, no-contact orders, restraining orders, or similar lawful court orders.
6. Counsel the student.



## DUTIES OF THE CONFIDENTIAL ADVISOR : Responding to Reports: Reporting Requirements

Is a

### CONFIDENTIAL ADVISOR

required to report incidents  
of sexual misconduct?

**NO**

Is a

### NON-PROFESSIONAL COUNSELOR OR ADVOCATE

required to report incidents  
of sexual misconduct?





# DUTIES OF THE CONFIDENTIAL ADVISOR :

## Responding to Reports: Confidentiality Concerns





# DUTIES OF THE CONFIDENTIAL ADVISOR

## #3 – Assisting With Student Reporting



## *To Whom Should the Student Make a Report?*

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# DUTIES OF THE CONFIDENTIAL ADVISOR :

## Assisting With Student Reporting (continued)



**SUBR**

If Sexual Misconduct by:	Faculty, Staff, or Third-Party	Another Student
<p><b>Then Report to:</b></p>	<ul style="list-style-type: none"> <li>Title IX Coordinator;</li> <li>Office of the Dean of Students – (225) 771 – 3922;</li> <li>Office of Human Resources – (225) 771 – 2680; and/or</li> <li>Any Other Responsible Employee.</li> </ul>	<ul style="list-style-type: none"> <li>Title IX Coordinator;</li> <li>Office of the Dean of Students – (225) 771 –3922;</li> <li>Office of Residence Life and Housing - (225) 771 – 3590; and/or</li> <li>Any Other Responsible Employee.</li> </ul>

**SOURCE(S):** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 17 (Nov. 2, 2015).





# OTHER CONSIDERATIONS

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## OTHER CONSIDERATIONS: Identifying Categories of Sexual Misconduct

**SEXUAL  
HARASSMENT**

**SEXUAL  
VIOLENCE**





## OTHER CONSIDERATIONS:

Identifying Categories of Sexual Misconduct (continued)

# SEXUAL HARASSMENT

Conduct that is sexual in nature, is unwelcome, and denies or limits a student's ability to participate in or benefit from a school's education program.

**SOURCE:** Revised Sexual Harassment Guidance: Harassment of Students by School Employee, Other Students, or Third Parties, January 18, 2001, Office for Civil Rights of the Department of Education.



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

Excerpt from the Louisiana Board of Regents Uniform Policy on Sexual Misconduct  
(amended August 26, 2015)

## SEXUAL HARASSMENT

“Unwelcome conduct of a sexual nature when i) submission to such conduct is made either explicitly or implicitly a term or condition of a person’s employment or education; ii) submission to or rejection of such conduct by a person is used as the basis for a decision affecting that person’s employment or education; or iii) such conduct has the purpose or effect of unreasonably interfering with a person’s employment or education, or creating an intimidating, hostile, or offensive employment or educational environment, and has no legitimate relationship to the subject matter of a course or academic research. Sexual Harassment also includes non-sexual harassment or discrimination of a person because of the person’s sex and/or gender, including harassment based on the person’s nonconformity with gender stereotypes.”



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

#### Conduct That Could Be Sexual Harassment\*

- Making sexual propositions or pressuring students for sexual favors;
- Touching of sexual nature;
- Using derogatory gender-specific slang, even if joking;
- Telling sexual or “dirty” jokes;
- Spreading sexual rumors or rating other students as to sexual activity or performance; and
- Circulating or showing emails or websites of a sexual nature.

#### Conduct That Is NOT Sexual Harassment

- Legitimate nonsexual touching or contact (e.g., a coach hugging a student), **so long as it does not take on sexual connotations**

\* This is a non-exhaustive list of instances in which sexual harassment exists.



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

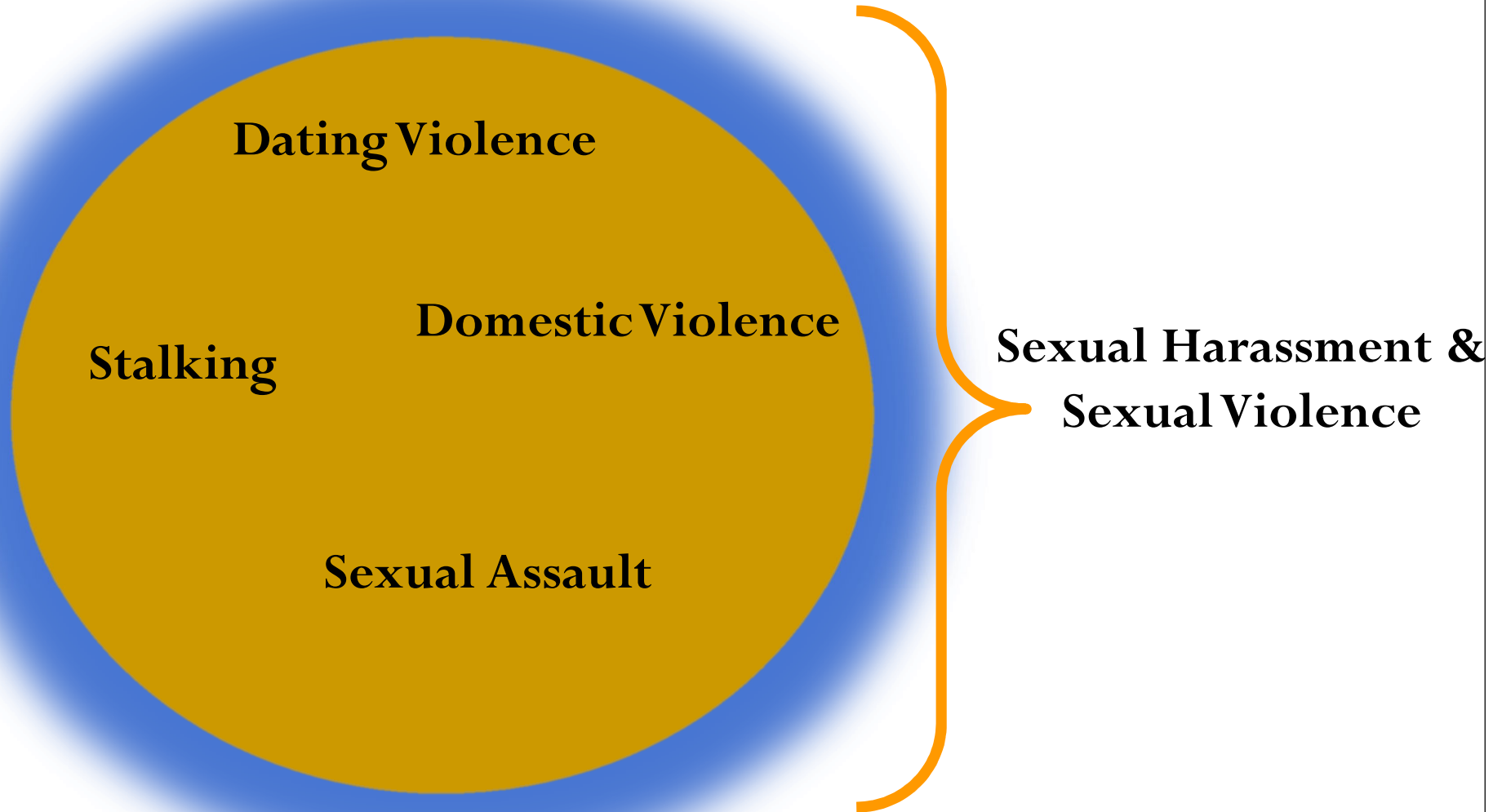
# SEXUAL VIOLENCE

- Refers to physical sexual acts committed against a person's will or where a person is incapable of giving consent.
- Includes rape, sexual assault, sexual battery, sexual abuse, sexual coercion, and other forms of non-consensual sexual contact.
- Can be carried out by school employees, other students, or third parties.

**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education.



## OTHER CONSIDERATIONS: Identifying Categories of Sexual Misconduct (continued)





## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

## Sexual Assault

- Any type of sexual contact/behavior that occurs without the explicit consent of the recipient of the unwanted sexual activity.
- Includes forced sexual contact or intercourse, sodomy, child molestation, incest, fondling, rape, attempted rape, sexual battery and aggravated sexual battery.

**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education.





## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

Excerpt from the Louisiana Board of Regents Uniform Policy on Sexual Misconduct  
(amended August 26, 2015)

### Sexual Assault (continued)

- Non-Consensual Sexual Intercourse: Having or attempting to have sexual intercourse, cunnilingus, or fellatio without Consent. Sexual intercourse is defined as anal or vaginal penetration by a penis, tongue, finger, or inanimate object.
- Non-Consensual Sexual Contact: Any intentional sexual touching, or attempted sexual touching, without Consent.

**OTHER SOURCE(S)**: Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 9 (Nov. 2, 2015); Southern University at New Orleans Gender-Based Sexual Misconduct (Title IX) Policy, p. 5 (Oct. 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 9 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 8 (Nov. 3, 2015).



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

# Sexual Assault

(continued)

## The University's Definition

Engaging or attempting to engage an individual in one or more of the following sexual actions with or directed against another person:

- a) Sexual penetration without the consent of the other person;
- b) Sexually explicit touching through the use of coercion or where the person is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity; and/or
- c) Sexual penetration through the use of coercion or where the person is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

**SOURCE:** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 9 (University Definition); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 8 (Nov. 3, 2015).



## OTHER CONSIDERATIONS: Identifying Categories of Sexual Misconduct (continued)

### Examples of Sexual Assault

- Unwanted kissing, touching or rough or violent sexual activity.
- Actual or attempted rape, aggravated rape, forcible rape, or simple rape.
- Keeping someone from protecting themselves from unwanted pregnancies, STIs or STDs.
- Sexual contact with someone who is very drunk, drugged, unconscious or unable to give a clear and informed “yes”.
- Threatening or pressuring someone into sexual activity.
- Non-consensual sexual contact.
- Sexual battery and aggravated sexual battery.
- Carnal knowledge of a juvenile (i.e. “statutory rape”).

**SOURCE:** Questions and Answers on Title IX and Sexual Violence, Press Release, April 29, 2014, Office for Civil Rights of the Department of Education; State v. Layton, 168 So.2d 358 (La. 2015)(defining “sexually assaultive behavior”).



## OTHER CONSIDERATIONS: Identifying Categories of Sexual Misconduct (continued)

	<b>Dating Violence</b> (La. RS § 46:2151)	<b>Domestic Violence</b> (La. RS § 46:2121.1)	<b>Domestic Abuse</b> (La. RS § 46:2132)
<b>Persons Involved</b>	<ul style="list-style-type: none"> <li>Dating partners only.</li> </ul>	<ul style="list-style-type: none"> <li>Family members or household members only.</li> </ul>	<ul style="list-style-type: none"> <li>Family members, household members, or dating partners.</li> </ul>
<b>Conduct Included</b>	<ul style="list-style-type: none"> <li>Physical abuse, sexual abuse, and other offenses against the person.</li> <li>Does <u>not</u> include negligent injury and defamation.</li> </ul>	<ul style="list-style-type: none"> <li>“Any assault, battery, or other physical abuse.”</li> </ul>	<ul style="list-style-type: none"> <li>“Physical or sexual abuse and any offense against the person, physical or non-physical”</li> <li>Does <u>not</u> include negligent injury and defamation.</li> </ul>
<b>Residency Status</b>	<ul style="list-style-type: none"> <li>Individuals do <u>not</u> have to be current or former co-residents.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals must reside together or formerly resided together.</li> </ul>	<ul style="list-style-type: none"> <li>Individuals could reside or have formerly resided together</li> </ul>



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

## Stalking

- The intentional and repeated **following** or **harassing** of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress.
- Alarm or distress can be caused by verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom s/he is acquainted.
  - "**Harassing**" means the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures.
  - "**Pattern of conduct**" means a series of acts over a period of time, however short, evidencing intent to inflict a continuity of emotional distress upon the person.

**SOURCE:** La. RS § 14:40.2; Louisiana Board of Regents Uniform Policy on Sexual Misconduct (amended August 26, 2015).



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

#### Examples of Stalking

- Intentional and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress.
- Following, placing under surveillance, or contacting another person without the consent of the other person for the purpose of harassing and intimidating the other person.
- **HOWEVER:** Constitutionally protected activity is not included within the meaning of pattern of conduct.

**SOURCE(S):** La. RS § 14:40.2; La. RS § 14:40.2; Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 11 (Nov. 2, 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 10 (Nov. 3, 2015).



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

#### Other Categories of Sexual Misconduct (Examples)

- Bullying
- Cyber-bullying
- Intimate Partner Violence
- Rape
- Reproductive Coercion
- Non-Consensual Sexual Contact
- Non-Consensual Sexual Intercourse
- Sexual Exploitation



## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

## Consent

“The affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter.”

**SOURCES :** 34 C.F.R. Part 668; 79 Fed. Reg. 62752 (Oct. 20, 2014).





## OTHER CONSIDERATIONS:

### Identifying Categories of Sexual Misconduct (continued)

#### Excerpt from the Louisiana Board of Regents Uniform Policy on Sexual Misconduct (amended August 26, 2015)

### Consent

(continued)

“Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate Consent. Consent must be knowing and voluntary. To give Consent, a person must be of legal age. Assent does not constitute Consent if obtained through Coercion or from an individual whom the Alleged Offender knows or reasonably should know is incapacitated. The responsibility of obtaining Consent rests with the person initiating sexual activity. Use of alcohol or drugs does not diminish one’s responsibility to obtain Consent. Consent to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of Consent has been expressed, the sexual activity must cease. Consent is automatically withdrawn by a person who is no longer capable of giving Consent. A current or previous consensual dating or sexual relationship between the persons involved does not itself imply Consent or preclude a finding of responsibility.”



## OTHER CONSIDERATIONS: Identifying Categories of Sexual Misconduct (continued)

# Consent

### Overview of Policy Expectations With Respect to Physical Sexual Misconduct

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent must be a clear and sober “YES”. Non-verbal consent is not as clear as discussing what is or isn’t sexually permissible. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence—without actions demonstrating permission—cannot be assumed to show consent. Consent can also be withdrawn at any point during sexual activity.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent into question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if he/she cannot fully understand the details of a sexual interaction (who, what, when, where, why, how or how long) because he/she lacks the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Anything but a clear, knowing and voluntary “YES” to any sexual activity is equivalent to a “No”.

**SOURCE(S):** Southern University and A & M College Gender-Based Sexual Misconduct (Title IX) Policy, p. 4 (Nov. 2, 2015); Southern University at New Orleans Gender-Based Sexual Misconduct (Title IX) Policy, p. 4 (Oct. 2015); Southern University at Shreveport Gender-Based Sexual Misconduct (Title IX) Policy, p. 4 (Oct. 2015); Southern University Law Center Gender-Based Sexual Misconduct (Title IX) Policy, p. 3 (Nov. 3, 2015).



## OTHER CONSIDERATIONS: Prevention: Practical Tips

- Be well-versed in your respective campus's policy on prohibited discrimination, harassment and related gender-based misconduct.
- Listen when you receive a report.
- Encourage your students to be responsible and alert at all times.