Worcester Polytechnic Institute
Manager Training

January 2016
under Title IX
Responsible Employees
Supervisors as
employees.

WPI considers all employees to be responsible.

- Duty
- A student could reasonably believe has this authority or violence or any other misconduct by students' or has been given the duty of reporting incidents of sexual violence.
- Violence
- Has the authority to take action to redress sexual violence.
- Responsible employee is any employee who:

  a. Violence
  b. Knows or reasonably should know of possible sexual student sexual violence when a responsible employee OCR deems a school to have direct notice of student on

Responsible Employees
Responsible Employee

Reporting Obligations:

A responsible employee must report to the Title IX coordinator all relevant details about the alleged sexual violence that the student or another person has shared including:

- Name of the alleged perpetrator (if known)
- Name of the student who experienced the alleged sexual violence
- Other students involved in the alleged sexual violence
- Date, time, and location of alleged sexual violence
- All other relevant facts regarding the alleged sexual violence
Student Health and Wellness Office.

Within the Student Development and Counseling Center and the셀링 컨센터 and the
students' ability to share the information confidentially with staff
and Confidentially, which the school will consider;
the student's option to request that the school maintain his or her
other appropriate school officials;
the student's knowledge that the alleged incident to the Title IX Coordinator or
facts regarding the alleged incident to the alleged SV, and all relevant
perpetrator and student involved in the alleged SV, and all relevant
employee's obligation to report the names of the alleged

that the student understands that
Confidential, a responsible employee should make every effort to ensure
before a student reveals information that he or she may wish to keep

BUT
"Doing nothing is always the wrong response" from reporting sexual violence (984).

Disregarding requests for confidentiality can have a chilling effect and discourage other students.

There are situations in which a school must override a student's request for confidentiality in order to meet its Title IX obligations (984).

OCR strongly supports a student's interest in confidentiality in cases involving sexual violence (984).

Schools should inform and obtain consent from the complainant before beginning an investigation (82).

**Continuity and Confidentiality**
including the student who reported the sexual violence.

3. Determine if it can honor the request while still providing a safe and nondiscriminatory environment for all students.

If the student still insists, the school must:

2. Explain to the student that Title IX includes protections against retaliation, and that school officials will not only take disciplinary action against the alleged perpetrator.

1. Inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator or that the school not investigate or seek action against the alleged perpetrator if the student requests his/her name not be revealed to the alleged.
The respective ages of the parties

- or personal, physical evidence.

- Other means to obtain relevant evidence (e.g., security cameras

  The SV was perpetrating with a weapon

  The SV was perpetrating by a particular

  use of drugs or alcohol) at a given location or by a particular

  Students report reveals a pattern of perpetration (e.g., "via illicit

  The SV was committed by multiple perpetrators

  The SV perpetuated against the student or others

  Alleged perpetrator threatened further SV or other violence

  Prior school indicating a history of violence

  Alleged perpetrator has a history of arrests or records from a

  Prior to complaints against the alleged perpetrator

  Factors WPI will consider in weighing a student's request:

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Confidentiality Complexity
 Victimization/survivor and arrange to reach out to her.

Ask the assistant coach for the identity of the alleged perpetrator so you can determine whether there is anything to the story.

Confront the alleged perpetrator, but not to tell anyone. The assistant coach corroborates that he has heard similar rumors about the alleged perpetrator. The assistant coach did not specifically say when the alleged assault took place and asked her to keep the information confidential.

Nothing because it is third-hand, inconclusive information and the female student asked her friends to keep the information confidential.

What should the coach do?

By a well-known male athlete who is a senior and about to graduate. She did not specify where or when the alleged assault occurred and asked her friends to keep the information confidential.

Group reported that she was date drugged and thinks she was sexually assaulted by five friends (male and female). The previous evening, a male athlete had with a small group of four or five before.

An assistant coach has a cup of coffee with a male athlete who informs the
Help? "I'm sorry this happened to you," or "How may I help?" A promise you cannot make. What can you say?

Tell the student, "It will be okay." Might come across as having a lack of understanding, and is minimizing or trivializing their experience.

May easily be interpreted as suggesting that you may have been worse. Saying things such as, "It could have been worse." Resist the impulse to reassure or minimize.

Feelings. Strong, and sometimes overwhelming.

In distress and will be dealing with a wide array in distress and will be dealing with a wide array.

Listen, support and understand that she may be.

You get the green light.
Don't promise an outcome. Saying things like "We'll get him expelled, I promise", might set the expectation that is not met.

Don't tell anyone? "Why have you waited so long to tell anyone?" "Why didn't you just run out?" "Why didn't you wake me up?" "Why didn't you wake the victim?" "Why didn't you wake the victim?" "Why didn't you wake the victim?"

Don't blame the individual for her decisions!

You Get the Green Light (cont.)
- Ability to make informed judgments
- Awareness
- Decision-making capacity

substances affect: should be measured by evaluating how the

When drugs or alcohol are involved, incapacitation
decisions

Inability to make informed, rational judgments and

Intoxicated ≠ Incapacitated

Alcohol (Drugs)

participate in specific sexual activity

Words or activities which indicate a willingness to

Consent Complexities
Consent Complexities (cont.)

(emphasis added)

persons academic or employment environment
indirect power or control over any aspect of the other
may not be valid where either person has direct or

Consent to a Romantic Relationship

those whom they supervise there is always an element
positions of authority that in their relationships with
area of professionalism is the recognition by those in
are inappropriate and should be avoided. Implicit in the
supervisor/supervisee, coach/athlete, advisor/student
responsibility (for example, professor/student,

he or she has a professional, supervisory or advisory
WPI faculty or staff member and any person for whom
Amorous Relationships - even if consensual - between a

Is this:  
(a) Sexual Assault  
(b) Sexual Violence  
(c) Consensual Sex  
(d) Can't Tell

She became angry or felt his friends about the incident. Him at the time but was too afraid to say "no" because he might incident. She reported that she did not want to have sex with that both she and he were drinking alcohol before and during the met at a party that evening through a mutual friend. She admits she had sexual intercourse with a male resident whom she had conflicts in the supervisor that, approximately one week earlier, work-study becomes friendly with one of her supervisors. She

A female student working in the Facilities Department on

Definitions Check
does the Supervisor do now?ANN wonders whether to make an issue of it. What's her anything, drinking, but she is now upset and embarrassed, and Elle acknowledges that both she and Mike had been in the Registrar's Office, tells the story to her Supervisor.

Elle expresses her desire to continue their relationship. Mike is cool to the idea. Five days later, Elle, a work study student minutes later, she knocks on his door. The two have sex.

The next day Elle texts Mike and invites him to dinner. Elle come visit him at his dorm room if she is interested. Thirty Elle back to her dorm. Before leaving, he invites Elle to friend's out for an evening of drinking. After, Mike walks

Mike and Elle, both freshmen, are part of a group of

Part 1.

Common Title IX Scenario
What does the supervisor do now?

because he believed there was consensual sex.

did not report his earlier conversation with Elle

to report this to anyone. The supervisor

drank to protest. Mike wonders out loud whether

took advantage of him when he was too

and reports that Elle used to like him and one

with him. Mike confides in the same supervisor

notices that Elle is refusing to talk or interact

Mike also works in the Registrar's Office and

Part 2:

Common Title IX Scenario (cont.)
Prevention and Awareness of Harassment
• You can be sued individually.

• Workplace morale affects everyone.

• and the first line of defense.

• You are the eyes and ears of the University.

• can result in termination.

• discrimination and harassment, violations

• Workplace policies prohibit unlawful

WHY SHOULD YOU CARE?
(Chaplin v. University of Massachusetts at Lowell).

"In sexual harassment or discrimination with impunity, creating an impression that employees may engage to and encourage the hostility of the workplace, "A dear ear from management may contribute"

basis for Chapter 151B Liability. However, non-action by a supervisory employee can be a.

obviously actionable.

Active harassment/discrimination by a supervisor is.

Section 4(5).

Massachusetts discrimination statutes, G.L. c 151B, employer to aid or abet any acts forbidden under the.

It is unlawful for any person, whether an employee or an.

Managers/Supervisors

Individual Liability of
Title VII and state equivalents performancer unreasonable interference with work the terms or conditions of employment or a protected class that negatively impacts conduct in the workplace based on membership Federal and State Law protect individuals from

WHAT IS DISCRIMINATION?
Examples of Protected Classification

- National Origin
- Religion/Creed
- Disability (actual or perceived)
- Sexual Identity
- Sexual Orientation
- Military Service
- Age (40 and over)
- Gender
- Color
- Race
Complaints Filed With the MCAD - By Protected Category
Focus on behavior and language – get details

Collect evidence (e.g., documents)

Interview complainant

Investigate promptly

Contact HR

INVESTIGATION AND RESPONSE
Inform Complainant

Take Appropriate Corrective Action

Reach a Conclusion

Document Investigation

Interview Witnesses

Emphasize non-retaliation

Interview Alleged Harasser

INVESTIGATION AND RESPONSE
Communicate to your boss and Human Resources complaints of sexual or other harassment and any concerns or actions.

Communicate engaging in objectionable conduct to others when they are.

Communicate workplace and report trouble and some conduct.

Observe what is going on in your workplace.

Observe should you be stepping in?

Observe how conduct is being received.

Prevention
discrimination policies

Remind employees of harassment and expectations for professional behavior

Talk with employees privately about inappropriate conduct

Express immediate disapproval of immediate disapproval of inappropriate standards of behavior

Enforce appropriate standards of behavior

Set the example

PREVENTION
Document your steps

harassment

all alike there could be sexual or other

Respond to information that sounds at

Respond to information

Respond regardless of the source of the

receive an explicit complaint

Respond regardless of whether you

RESPONDING
Can't you accept a compliment?

He puts his arms around everyone.

Just ignore it.

You need to learn to handle these things.

It's your fault for dressing so provocatively.

I know he/she didn't mean anything like that.

It's just a joke. Lighten up!

Responding - What NOT to Say
We'd never get anything else done.

If we had to discipline everyone who did that, we'd never get anything else done.

We are not in an office environment, you have to expect gruff behavior.

This kind of behavior is all part of growing up.

We've never had a complaint, so we don't have a problem.

That's how we do things around here.

RESPONDING - WHAT NOT TO SAY
Why does it need to be said at all? Would you say/act the same way to a member of your same gender? Would you say it if you were going to be quoted on the front page of the newspaper? Would you say it in front of your spouse, parent, or child? Harassing behavior on the part of others? Could this behavior be sending out signals that invite harassment? Could this behavior hurt my colleagues or employees? Does this behavior contribute to achieving our goals? 

Behavior:

The following checklist can be used to examine

Preventing Unlawful Conduct

Protecting Yourself and
RETALIATION
The law and WPJ policy also protects activity from retaliation—a form of discrimination. Individuals who engage in protected activity are protected.
4. A causal connection existed between the protected conduct and the adverse action.

3. An adverse employment action;

2. The university knew of the protected activity;

1. Protected activity;

Plaintiff must show: Retaliation Repeated
unsafe work conditions, whistle blower activity.
Opposing or reporting an illegal or fraudulent practice,
Disability or religion; and
Requesting reasonable accommodation of a
one self or others;
Complaining to anyone about discrimination against
employment discrimination;
Investigation, proceeding, or hearing concerning an
assisting, or participating in any manner in an
filling or threatening to file a claim, testifying,
Protected Activity includes:

Protected Activity
- Calling them stupid
- Treating them in an angry or hostile manner
- Cold shoulder
- Avoiding, ignoring or giving the employee the negative evaluations
- Any form of discipline or reprimand

Examples
Causal Connection

Employment Action is Evidence of a Causal Proximity Between the Employee's Protected Activity and the Adverse Temporal Proximality

Circumstantial Evidence is Enough. NOT Required.

Direct Evidence of the Causal Connection is Timing is Everything
Employees are protected from retaliation even if their complaint, "I.e.," retaliatory activity is found to be baseless.

Despite ruling Of No Bias, Claim Succeeds

IMPORTANT

Retaliation

of discrimination that the failure to promote him was based on discrimination.

The employee argued that this termination has resulted from retaliation. The record of bias, an MWDP commission for retaliation even though there was no evidence of discrimination that he did not get promoted a black employee who was hired after

BY MECHAN'S LASKA
- Do you give Sarah the PIP? Why or why not?
  - Give to her today.

You finally finished yesterday and had planned to
you never got around to issuing her a PIP, which
about needing to improve her performance, though
months prior to her report, and you spoke to her
Sarah's performance had been declining over the

- Has Sarah engaged in protected conduct?

complainant with OSHA the day before.

works. Unbeknownst to you, she has also filed a
about the air quality in the building where she
archives, reports to you that she is concerned
Sarah, an employee working in the Library
("ADA")
Disabilities Act
Americans with
An employer is not required to eliminate an essential job function as an accommodation.

An accommodation is not a qualified employee.

Performing essential functions of a job with or without an accommodation would cause an undue hardship.

Qualified employees with disabilities unless it

Employers must provide accommodations to

ADA - Duty to Accommodate
The function is identified in the written job description.

- The function is highly specialized.
- The function can be distributed.
- There are a limited number of other employees available to perform the function, or among whom the position exists to perform that function.

Some indications that a function is essential are:

- The duties that are fundamental and not marginal.
- The duties the employee is required to actually perform.

Essential functions of a job are defined as:

ADA - Essential Job Functions
Futility.
Violation even though it would have been an exercise in
Failure to engage in the interactive process may be a

accommodation.

that the employee is disabled and requires
trigged if the employer knows or should have known
accommodation and engage in the interactive process is
accommodation, an employer's duty to offer an
Even if an employer has not requested a reasonable

accommodation.

dialogue with a disabled employee who requests an
requirements an employer to participate in an interactive
The duty to provide a reasonable accommodation

ADA - Interactive Process
COMMON SUPERVISOR ISSUES

- DOCUMENTATION
- DISCIPLINE
An employee will be subject to disciplinary action, compensation or the possibility that the employment, promotion, transfer, additional qualification will be negatively affected. The employee’s information is used or may be used, record any information to the extent that the employee placing in the employee’s personnel database within 10 days of the notification of employment. Under Massachusetts law, an employer must

Personnel Records Law
an employee’s employment.

employer regarding terms and conditions of
record is used, or may be used, by an
employer - even supervisor notes - if the

It may include any record kept by an

employer’s Human Resources Department.

just an employee’s personnel file kept by the

A "personal record" under the statute is not

Remember...
Enforcement/Penalties

proceedings if there is a violation. Subsequent court, agency, or arbitration employer from using such records in. But plaintiffs will seek to prevent an.

$2,500 for each violation. and can seek fines of between $500 and.

The Attorney General enforces the statute.
Six Steps to Success in the Handling of Discipline

1. Knowledge of Rules
2. Reasonable Rules
3. Fair Investigation Before Discipline
4. Consistency
5. Reasonableness of Discipline
6. Progressive Discipline
I. Knowledge of Rules

Conduct?
Disciplinary consequences of the employee's case have known of the possible or probable forewarning or should the employee in any adequate employer give the employee and understood by employees. Did the ensure that all policies are communicated?
of the employers’ business?
related to the orderly, efficient and safe operation
written rule or order or assignment, reasonably
was the supervisor’s directive, whether an oral or

2. Reasonable Rules
Before administering discipline to an employee, ensure that (a) there has been a full and fair investigation and (b) there was substantial evidence or proof that the employee did, in fact, commit the alleged offense.
4. Consistency

Has the employer applied its rules, orders and penalties evenly and without discrimination to all employees? Enforce rules uniformly and consistently.
5. Reasonableness of Discipline

Was the degree of discipline administered by the employer in a particular case reasonably related to the seriousness of the employee’s proven offense under all of the circumstances of the case?
6. Progressive Discipline

Penalties to the traditional system of ever-increasing incorporate a constructive or positive approach
Positive Discipline

before taking adverse action. Afford employees a reasonable opportunity to correct any deficiency cited
WPI. The principles of Progressive Discipline apply at
Progressive Discipline
Follow-up discussion.

Document the specific problem, the history of the situation, and the key points that arose during the discussion.

To change: Discuss the problem and gain the employee's commitment.

Analyze the problem in terms of the good business actual behavior.

Identity the specific problem in terms of desired and

Positive Discipline Steps
Key Points of Documentation

1. Describe the Problem.
2. Describe the History.
3. Describe the Discussion.
Describe the Problem

1. Describe the Problem

- Compare and contrast to desired performance.
- Judgments.
- Use facts and specifics, not generalities or

When describing the problem:
situation.

Indicate that the employee has failed to live up to the agreement made earlier to correct the discussion with the employee.

Disciplinary steps that preceded the current disciplinary steps that preceded the current.

State how long the problem has existed.

When describing the history of the problem:

2. Describe the History
3. Describe the Disciplinary Conversation:

When describing the disciplinary conversation:

- Indicate the date, time and location of the conversation.
- Reflect the employee's agreement to change.
- Record specific comments and statements made by the employee.
- In those rare instances where you are unable to gain the employee's agreement to change, indicate what compliance standard you mandated.

Indicate how performance will be evaluated after the conversation.