

United States Senate

Committee on Health, Education, Labor and Pensions (HELP)

Hearing — Reauthorizing HEA: Addressing Campus Sexual Assault and

Ensuring Student Safety and Rights

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Overview

Over the past two decades, I served students at three institutions — Carson Newman University in Tennessee, The University of Virginia’s College at Wise, and at my own alma mater, East Tennessee State University (ETSU) in Johnson City, Tennessee.

I serve ETSU as the Associate Vice President for Student Life and Enrollment under Vice President, Dr. Joe Sherlin, who leads the Division and its 25 departments with a daily mission of promoting student success. As our President, Dr. Brian Noland, reminds us often, the institution was founded over 108 years ago with a singular purpose, to improve the lives of the people of the region.

Through our processes and campus partnerships, we strive to maintain a community of care on our campus. Embedded in that community is a commitment to a fair and equitable process to all parties involved in any student conduct matter.

We have three separate and distinct steps for any sexual harassment or misconduct review. Those include an intake, investigation, and hearing. The three steps and those staff members involved in each step are kept distinctively separate.

Intake

At the initial intake, a trained staff member meets with the complainant and the respondent individually. At this meeting, options, resources, and information each student needs to make informed decisions is shared. The staff member completing the intake will serve as a resource to the student throughout the process of an investigation and possible conduct hearing.

An important part of the intake is that each student is made aware of interim support measures that can be taken to assist in supporting their health, well-being, and continued enrollment. Those can include counseling, changing housing, class, and on campus work assignments.

In all but the most severe sexual assault cases, the complainant and respondent will be offered the opportunity to meet with a trained mediator to reach a mutually agreed conclusion to the matter in lieu of an investigation. That mediation process is predicated on a restorative justice model and is only implemented with both parties agree to do so.

(See Appendix A — Title IX Intake Form)

Investigation

If mediation is not an option, then two trained investigators are assigned to review the complaint. The complainant and respondent are given the opportunity to supply investigators with a written statement and any additional information they wish to provide.

ETSU has two full time trained investigators in our Compliance Office and an additional pool of fifteen trained professional staff members who assist with student complaints. Training is comprehensive, conducted annually, and includes information on trauma informed care.

The investigators offer in person meetings to the complainant, respondent, and any witnesses along with an advisor of their choosing.

Following the interview, the investigators will provide the individual with a written account of the meeting notes for review. In addition to interviews, the investigators may review other information provided or requested as part of the review that can be as varied as police reports, phone and text messages, student ID card usage, social media postings, video or security camera footage, and other evidence that may be relevant to their review.

Following completion of the investigation, a report is submitted for review through the Title IX Coordinator, University Counsel, and finally for review and adoption by the University President before being shared with the complainant and respondent. Both parties have the opportunity to appeal the investigators' findings with the President.

Based on the final recommendation of the report and following any appeals, the next step will mean one of two outcomes. Based on a preponderance of the evidence standard, the investigators find that University policy was or was not violated. If no policy violation was found, the matter is concluded. If a policy violation was found then the respondent will face a hearing and charges of the Institutional Disciplinary Rules, commonly called the Code of Conduct.

(See Appendix B – Investigation Flow Chart)

Hearing

The Code of Conduct is in effect on and off campus. The Code spells out expectations of members of the ETSU community for their own behaviors and governs their interactions with one another.

The Code outlines due process rights, board membership, possible violations or offenses, as well as possible sanctions. As an institution of higher education, it is important to note the goal of the Code of Conduct and Student Conduct process is to be educational in nature. Those involved in such process are still students and members of our community. Our initial aim is to change the behavior and hold students accountable for their actions. However, that outcome might need to include suspension or expulsion from the University community. Such sanctions are never considered lightly.

Charges for violating the Code of Conduct are placed by the Dean of Students Office and a hearing is scheduled with the University Judicial Board. The parties are reminded of their due process rights including ample and advanced notice of when and where the hearing will be held, copies of all materials that will be provided and reviewed by the Board, the ability to question one another and to call and question witnesses in a live hearing, and the ability to have an advisor of their own choosing. Details such as screening the complainant and respondent from viewing one another in the hearing room are arranged in advance.

Both parties can see and hear the board and witnesses and are able to directly question each person or offer questions through the board. Meaning the question is submitted verbally or in writing to the board chair and the response is given in a like manner. Each case is different as is each parties' comfort level with questioning/answering one another directly. The Board and the Board chair has leeway to make sure that all parties are able to actively participate in the manner in which they are most comfortable.

If the charges are of such a nature that suspension or expulsion are possible sanctions, then the respondent is also offered the option of selecting a Tennessee UAPA.

The Uniform Administrative Procedures Act (UAPA) from Tennessee Code Annotated Title 4 Chapter 5 is a more legalistic and lengthy process involving legal representation and an administrative law judge. We do not find that the UAPA is selected often and the overwhelming majority of cases proceed with the University Judicial Board. That Board is comprised of faculty, staff, and students who each receive ongoing training on student conduct, due process, as well as sexual misconduct matters.

ETSU continually reviews policy and processes to ensure individual rights, a fair process, and institutional compliance per state and federal law and decisions by the 6th Circuit of the US Court of Appeals.

Educational, Prevention, and Support Resources

In addition to maintaining a strong commitment to student rights and institutional compliance in an equitable and fair process, ETSU works daily to provide strong education, prevention, and support efforts and resources to the campus community.

The key to success within these efforts and been campus collaboration and partnerships.

ETSU has created certain structure's to support our efforts including the Sexual Misconduct Leadership Team (SMLT) and a Title IX Committee. Each group meets quarterly.

The Division of Student Life and Enrollment manages the Violence Free ETSU website to serve as an online, one stop shop resource for students. Online training for new students is coordinated by the Division. In 2017-2018 there were 2780 undergraduate, graduate, and professional students who completed the Sexual Assault Prevention program.

Educational efforts and resources is embedded in the online orientation (LAUNCH) and on ground new student orientation for students and for their parents, family, and guests. During our extended orientation Preview experience peer education and dialogue follows a performance of the Risqué Business skit.

We continually offer passive informational posters about resources (BucsCARE) and bystander intervention tips (Buccaneer Bystander Intervention and Let's Be Clear campaigns) throughout both our physical campus spaces and in the virtual world.

Major programming efforts are coordinated by the Counseling Center and their Outreach and Advocacy, Sexuality Information for Students (OASIS) component. This includes Take Back the Night events, Walk a Mile in Her Shoes, and Sober Sex education efforts.

BucsPress2 is a service coordinated by the Counseling Center and is available 24 hours a day, seven days a week. A student may call to talk to a counselor at any time.

Housing and Residence Life offers a residential curriculum that includes a focus on personal and community safety, healthy relationships, bystander affects, and sexual assault prevention.

Public Safety coordinates SafeVoyage campus escort service and Rape Aggression Defense (RAD) training which provides a 12-hour program teaching women realistic defenses and building confidence.

The College of Nursing operates an on campus Sexual Assault Nurse Examiner (SANE) program in the University Health Center. One of a handful of on campus SANE programs in the country.

The ETSU Office of Professional Development hosts an annual, regional conference entitled "Escape from Rape: A Cultural Change" which brings together campus and community partners to share information and bring awareness to issues involving sexual assault and community resources.

In person Title IX trainings are hosted on campus each year including by the Basler Center for Physical Activity, Intercollegiate Athletics, Fraternity and Sorority Life as part of Greek 101 training for all new members, and the School of Graduate Studies as part of the graduate student orientation.

These are some but not all of the programming and resources available to ETSU's faculty, staff, and students.