



Responding to Sexual Harassment

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Illinois State University Snapshot

Undergraduate 18,107

Graduate 2,528



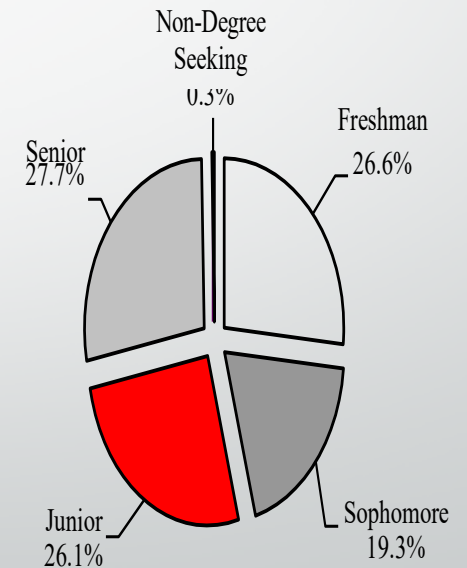
QUICK GLANCE

UNDERGRADUATE STUDENTS – FALL 2018

<u>Academic Level</u>	<u>Headcount</u>	<u>FTE¹</u>	<u>Average Age</u>
Freshman	4,808	4,507	18.4
Sophomore	3,488	3,279	19.7
Junior	4,728	4,348	21.1
Senior	5,020	4,391	22.6
Non-Degree Seeking Undergraduate	63	35	21.3
Total	18,107	16,559	

¹ Undergraduate Full-Time Equivalency (FTE) = Sum of Credit Hours / 15

**Undergraduate Students by Academic Level
Fall 2018**



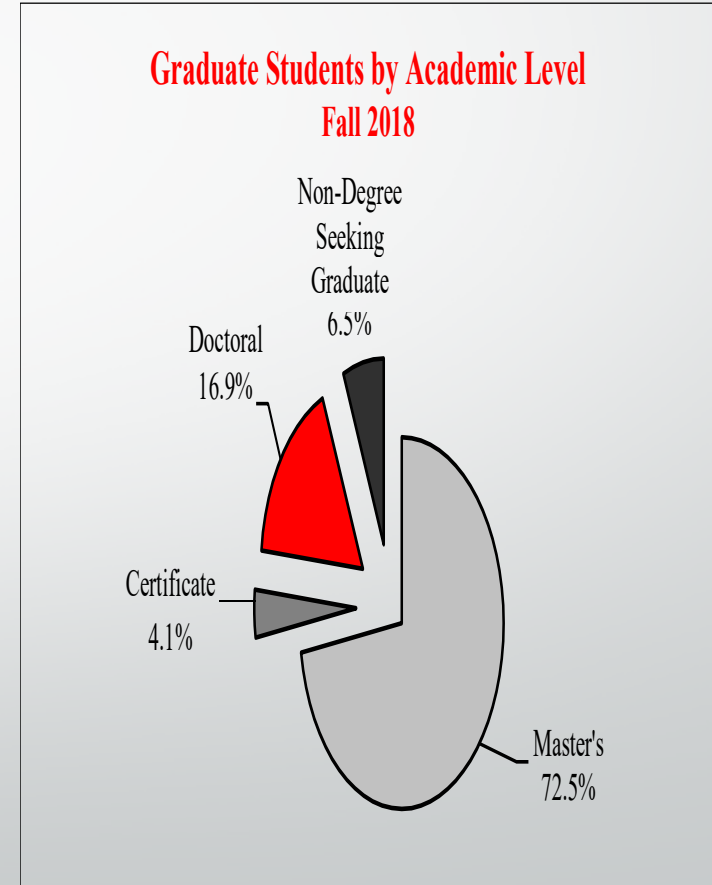


QUICK GLANCE

GRADUATE STUDENTS – FALL 2018

<u>Academic Level</u>	<u>Headcount</u>	<u>FTE¹</u>	<u>Average Age</u>
Master's	1,832	1,225	28.1
Certificate	104	51	34.9
Doctoral/First Professional	428	225	36.5
Non-Degree Seeking Graduate	164	56	36.2
Total	2,528	1,556	

¹ Graduate Full-Time Equivalency (FTE) = Sum of Credit Hours / 12



AGENDA

- Legal Landscape – Sexual Harassment Law
 - Office of Civil Rights Proposed Regulations
 - 2019 Case Law Review
 - How did the court decide?
- Lessons Learned
 - Follow your own policies/procedures/process
 - Make proper referrals
 - Document
- Scenarios



Legal Landscape

Legal Basis

- **Title IX's** relevant provisions state that “[n]o person in the United States shall, *on the basis of sex*, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” [20 U.S.C. § 1681\(a\)](#) (emphasis added).
- **Title VI** states that: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
- State laws



Office of Civil Rights – Title IX

- Proposed Regulations
 - Key Provisions
 - Timeline

OCR Proposed Regulations Key Provisions

- Response vs. Formal investigation
- Supportive measures
 - Supportive measures may include the following:
 - Academic course adjustments, counseling, No-contact orders, room reassignments, Leaves of absence, Class schedule changes
- Due Process
 - presumption of innocence throughout the grievance process;
 - written notice of allegations;
 - equal opportunity to review all evidence collected; and
 - the right to cross-examination, subject to "rape shield" protections.

OCR Proposed Regulations, cont...

- Live Hearings
 - cross-examination would be conducted through the parties' advisors
 - Personal confrontation between the complainant and respondent would not be permitted
 - School must provide advisor that is aligned with the party
 - Cannot consider statements if cross-examination is not available
- No "single investigator" or "investigator-only" model.
- Definitions
 - defines sexual harassment as unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity.

OCR Proposed Regulations Timeline

- Proposed Regulations
 - Released November 29, 2018
 - Comment period through February 15, 2019
 - Over 124,000 comments
 - <https://www.federalregister.gov/documents/2019/02/14/2019-02566/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
 - Final Rule expected in January 2020 with possible fall 2020 implementation date



2019

CASE LAW REVIEW

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- Lambert v. Board of Trustees of the University of Alabama, et al. (11th Cir. Nov. 28, 2019)
 - Dunn v. Mississippi State University (N.D. Miss. November 22, 2019)
 - Herman v. Ohio University, et al., (S.D. Ohio November 22, 2019)
 - Fryberger v. University of Arkansas, et al. (W.D. Ark. November 18, 2019)
 - **Hunt v. Board of Regents of the University of New Mexico, et al. (10th Cir. November 14, 2019)**
 - Smith v. Maryville University of Saint Louis, et al. (D. Minn. November 12, 2019)
 - L.M. v. S. Ill. Univ. at Edwardsville, et al. (S.D. Ill. November 6, 2019)
 - Griffin v. UW System Board of Regents (W.D. Wis. October 16, 2019)
 - Harnois v. University of Massachusetts at Dartmouth, et al. (D. Mass. September 30, 2019)
 - Hye-Young Park v. Secolsky and Hudson University of Illinois, et al. (7th Cir. September 19, 2019)
 - Rawls v. Institutions of Higher Learning, et al. (S.D. Miss. September 3, 2019)
 - Grigorescu v. Board of Trustees of the San Mateo Community College District (N.D. Ca. August 29, 2019)
 - Aslin et al. v. University of Rochester et al. (W.D. N.Y. August 28, 2019)
 - Shanmugavelandy v. University of Texas M.D. Anderson Cancer Center (S.D. Tex. Aug. 7, 2019)
 - Parish v. UPMC University Health Center of Pittsburgh (W.D. Pa. Apr. 10, 2019)
 - Klug v. Marshall University Joan C. Edwards School of Medicine, et al. (S.D. W.Va. Mar. 27, 2019)
 - **Skelton v. Arizona State University, et al. (D. Ariz. Mar. 7, 2019)**
 - **Oliver v. University of Texas Southwestern Medical School, et al. (N.D. Tex. Feb. 11, 2019)**
 - Jackson v. Trustees of the University of Pennsylvania (E.D. Pa. Jan. 22, 2019)
 - **Bussa v. St. John's University (E.D.N.Y. Jan. 8, 2019)**

What did the court decide?

- Graduate student applicant thought applying for admission was also applying for a graduate assistantship.
 - He asked two graduate admissions staff how to apply but neither followed up with the applicant to explain how
 - He also disclosed to the Graduate Admissions Director that he had a disability
- Plaintiff did not apply for an assistantship and claimed in the lawsuit that he thought applying for admission was applying for an assistantship
- He sued claiming discrimination based on disability and sex
 - His claim for sex was based on the fact that he saw more females in graduate assistantships.

Bussa v. St. John's University (E.D.N.Y. Jan. 8, 2019)

- The court held for St. John's University
 - Bussa did not apply and there was not enough evidence of informal application
 - Disability, even though disclosed to the Director, was not a factor because Bussa did not apply
 - Bussa could not show that a female received a GA that he applied for and had no specific data

What did the court decide?

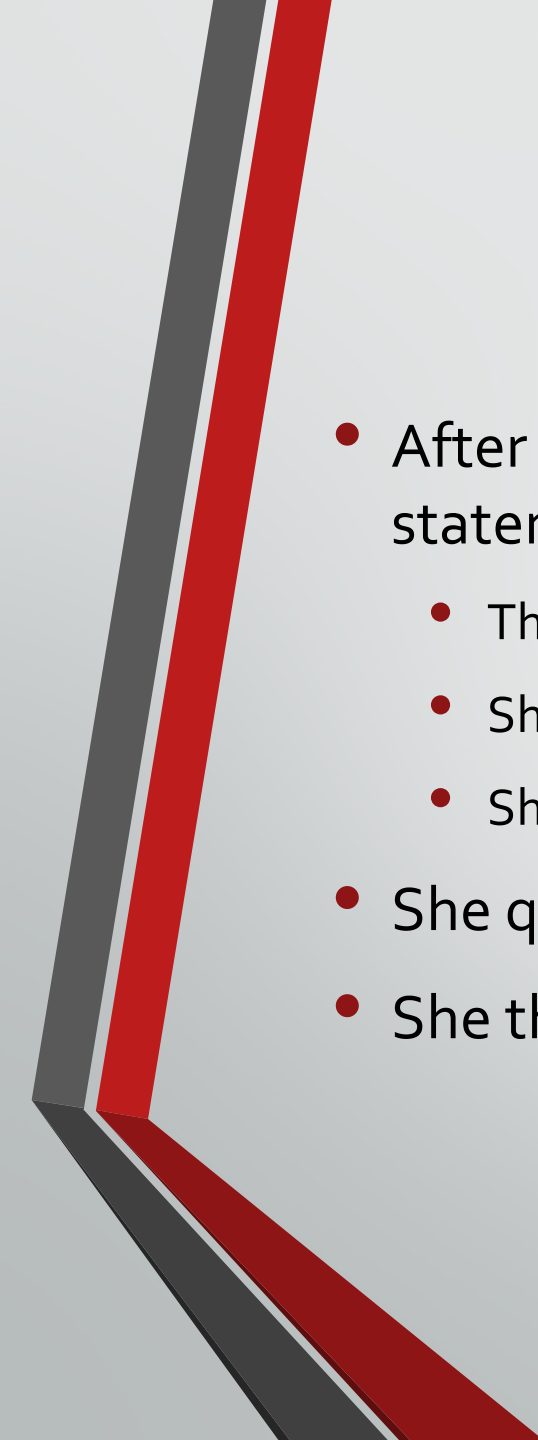
- Medical student was expelled for violating Title IX policies based on an allegation of a physical altercation with his former fiancé based on:
 - Statements made to the police and arrest records
 - An audio recording
 - A filed order of protection
- Student was expelled without reviewing any of this evidence
- Student alleged due process violations, gender discrimination, and first amendment violations

Oliver v. University of Texas Southwestern Medical School, et al. (N.D. Tex. Feb. 11, 2019)

- The court held that Oliver adequately stated a Title IX erroneous outcome claim based on gender bias
 - Statements made by University police about “males accused of domestic violence”
 - Did not follow the University process equally for both parties
 - Did not provide the evidence ahead of time to Oliver
 - Did not allow Oliver to question the other party
- DUE PROCESS required is dependent on the severity of the incident and the severity of the punishment

What did the court decide?

- A student was offered a teaching and research assistantship along with admission
- She was assigned a mentor and when she disclosed that she was pregnant she reported that the mentor was “shocked and taken aback” and stated that he would have to rethink her assistantships and she had a “problem to solve”
- When the concerns were reported it was referred to the equal opportunity office for review and investigation

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- After investigation the office met with the mentor and he apologized for his statements
 - The student was given a 3 week break to from the RA to focus on classes
 - She as allowed to drop a class
 - She was permitted to work from home after the baby was born
 - She quit her 2 positions and changes schools
 - She then sued for constructive discharge



Skelton v. Arizona State University, et al. (D. Ariz. Mar. 7, 2019)

- The court held that the actions and conduct was not extraordinary and egregious to meet the level of constructive discharge
- The court noted that the University followed its process and attempted to remedy the situation but the student still chose to leave
- Following the internal process and attempting to remedy the situation in this case was key in the court ruling for the University

What did the court decide?

The Policy: The Respectful Campus Policy noted, that

- (1) “UNM strives to foster an environment that reflects courtesy, civility, and respectful communication because such an environment promotes learning, research, and productivity”; and
- (2) “a respectful campus environment”—that is, one that “exhibits and promotes” professionalism, integrity, harmony, and accountability—is “a necessary condition for success in teaching and learning, in research and scholarship, in patient care and public service, and in all other aspects of the **University’s** mission and values.”

The Social Media Policy addressed the use of “sites like Facebook” and cautioned students, to:

- (1) “[e]xercise discretion, thoughtfulness and respect for your colleagues, associates and the **university’s** supporters/ community”; and
- (2) “[r]efrain from engaging in dialogue that could disparage colleagues, competitors, or critics

The Facebook Post

Shortly after the presidential election in **November** 2012, Mr. **Hunt**, then twenty-four years old, posted the following comment on his personal Facebook page:

- All right, I've had it. To all of you who support the Democratic candidates: The Republican Party sucks. But guess what. Your party and your candidates parade their depraved belief in legal child murder around with pride. Disgusting, immoral, and horrific. Don't celebrate Obama's victory tonight, you sick, disgusting people.
- You're abhorrent. Shame on you for supporting the genocide against the unborn. If you think gay marriage or the economy or taxes or whatever else is more important than this, you're fucking ridiculous.
- You're WORSE than the Germans during WW2. Many of them acted from honest patriotism. Many of them turned a blind eye to the genocide against the Jews. But you're celebrating it. Supporting it. Proudly proclaiming it. You are a disgrace to the name of human.

So, sincerely, fuck you, Moloch worshipping assholes

The University Response

ETHICS COMPONENT

For the ethics component, the mentor would “assign readings and supervise a reflective writing assignment on patient autonomy and tolerance.”

PROFESSIONAL COMPONENT

The professionalism component entailed:

- (1) a writing assignment on the public expression of political beliefs by physicians;
- (2) an apology letter that Mr. **Hunt** could present to his “classmates, select individuals or no one”;
- (3) rewriting the Facebook post in a passionate yet professional manner; and
- (4) regular meetings with the faculty mentor over the course of a one-year period. CSPE would need to approve final written products.

Hunt v. Board of Regents of the University of New Mexico, et al. (10th Cir. November 14, 2019)

- The court held that the speech violated professional standard and the University response was tailored and directly related to professional standards
- The court held that the very measured response in light of the stated policy and unique aspects of the medical profession did not rise to a First Amendment violation in this specific case
- The court warned of applying this in an overbroad manner or to other contexts – especially at a public institution

Lessons Learned

- Follow your own policies/procedures/process
 - Where to check
 - If none, provide at least minimum due process
- Make proper referrals
- Document
- Courts defer to University decisions when the process is followed



Policies/Procedures

- Check widely
 - Graduate School Policies
 - Graduate Assistant Policies
 - Human Resources
 - Department Handbooks
 - Catalog
 - Provost polices

No POLICY / PROCEDURE

- Make sure you provide at least minimum due process
 - Notice of intent to take action
 - Opportunity to respond to information and allegations
 - Decision in writing
- Consider an Appeal

Referrals Chart

Magic Words	Referral Source
Harassment Assault/Stalking/Dating/Domestic Violence Discrimination Accommodation/Disability Religion Hostile Environment Retaliation	Equal Opportunity Office Student Conduct Office General Counsel
Serious Threats Violence	University Police or Local Police
Non Emergency Threats Theft Odd behavior/ ideation/ change in behavior	Non emergency police Behavioral intervention teams

Small Group Discussion

- What do you do?
- What referrals would you make?
- With whom do you consult?
- What policies/procedures/principles of law apply?
- What would you document