

## **I. Prohibition of Sexual Harassment**

Sexual Harassment, including sexual assault and other forms of discrimination based on sex, is unacceptable and prohibited by the University of Rochester [University]. The University takes all complaints of this nature seriously and has several policies pertaining to or created for the purpose of ensuring all complaints of sex-based harassment are responded to efficiently, thoroughly, and in accordance with relevant laws. Together, these various policies reflect the University's strong commitment to preventing and appropriately responding to all complaints of sex-based harassment.

## **II. Scope of this Policy**

The University complies fully with Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex in connection with the University's education programs and activities. Regulations issued by the United States Department of Education require the University to adopt specific grievance procedures to address complaints of Sexual Harassment, as that term is defined in the Title IX Regulations (34 C.F.R. Part 106) and in this policy. The procedures described in this policy are intended to comply with those regulations.

In addition to Title IX, the University is governed by multiple state and federal laws that prohibit discrimination based on sex and this policy is intended to comply with all of them.

This policy describes how the University will respond to reports and Formal Complaints of Sexual Harassment as defined by Title IX. If a report filed under this policy cannot be addressed by this policy, it may be responded to with other University policies that address sex-based harassment.

This policy applies to all members of the University of Rochester community reported to be Complainants or Respondents involved in Sexual Harassment. As used in this policy, "members of the University of Rochester community" includes staff, faculty, students, contractors, visitors, and patients. As mentioned above, the University has multiple policies for addressing allegations of sex-based harassment. Many allegations of sex-based harassment, however, will be more appropriately addressed pursuant to the University's Policy against Discrimination, Harassment, and Discriminatory Employment/Service Practices ( e.g., for complaints by employees about other employees).

Examples of Sexual Harassment covered under this policy include sexual harassment, sexual assault, dating and domestic violence and stalking (as defined below in section IV(K)) ([Appendix A](#)).

Questions regarding the application of Title IX can be made to the Title IX Coordinator or the U.S. Department of Education's Office of Civil Rights (OCR) at:

Office for Civil Rights, National Headquarters  
(800) 421-3481; TTY:  
800-877-8339

[www.ed.gov/ocr](http://www.ed.gov/ocr)

[ocr@ed.gov](mailto:ocr@ed.gov)

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### III. Key Terms :

- a. Complainant: an individual who is alleged to have been subjected to conduct that could constitute Sexual Harassment. If the Title IX Coordinator submits a complaint on behalf of an individual alleged to have been subjected to conduct that would constitute Sexual Harassment, that individual, and not the Title IX Coordinator, is considered the Complainant for purposes of this policy.
- b. Respondent: an individual who has been reported to have engaged in conduct that could constitute sexual harassment.
- c. Party(ies): refers to the Complainant or the Respondent or both the Complainant and the Respondent.
- d. Title IX Coordinator: Catherine ("Kate") Nearpass serves as the University Title IX Coordinator and can be reached at:

Phone: 585-314-5723

Email: [titleix@rochester.edu](mailto:titleix@rochester.edu)

The Title IX Coordinator oversees and provides leadership for the staff members who carry out investigations, compliance-related responsibilities, and reporting of Sexual Harassment. Any student, applicant, faculty, or staff member who has concerns about Sexual Harassment is encouraged to seek the assistance of the Title IX Coordinator or a school's Deputy Title IX Coordinator.

In addition to the Title IX Coordinator, Deputy Title IX Coordinators have been designated in each of the schools of the University. Deputy Title IX Coordinators are chosen to reflect the diversity of University of Rochester community, and help increase access to University Title IX programs and processes.

Please see Appendix B for contact information for each of the Deputy Title IX Coordinators.

Information about the Deputy Title IX Coordinators can also be found online at:

<https://www.rochester.edu/sexualmisconduct/>.

The Title IX Coordinator works with other professionals in the Title IX Office to ensure institutional compliance with Title IX by ensuring effective and prompt response to reports as well as reviewing and implementing plans for education, prevention, and training. The term Title IX Coordinator in this document refers to Rachel Koegel or her designee.

- e. Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University in which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.
- f. Hearing Officer: individual(s) who makes determinations regarding responsibility when a Formal Complaint is filed.
- g. Day: for the purposes of this policy the word “day” means a calendar day.
- h. Employee: for the purposes of this policy the word “employee” includes regular, full-time and part-time faculty and staff, student employees, volunteers, TAR staff and officers, trustees and agents of the University.

#### IV. **Prohibited Behaviors**<sup>1</sup>

A Respondent found responsible for engaging in any of the following prohibited behaviors may be subject to discipline, up to and including permanent separation from the University.

- a. Sexual Harassment means conduct on the basis of sex that meets one or more of the following descriptors:
  - 1. Conduct by an Employee of the University that conditions the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct (quid pro quo harassment);
  - 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or
  - 3. Conduct that meets the definitions of sexual assault; dating violence; domestic violence; or stalking as indicated below.

#### Examples of behavior that could be considered Sexual Harassment

Behaviors which could constitute sexual harassment or lead to complaints of sexual harassment include, but are not limited to:

- Physical acts of a sexual nature, such as:
  - Sexual violence (as defined below) or attempts to commit sexual violence; ○ Unwanted and intentional touching, pinching, patting, kissing, hugging, grabbing, brushing against another person’s body or poking another person’s body or clothing.
- Sexual advances or propositions that are unwanted, such as:

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<sup>1</sup> In order to ensure compliance with various federal and state laws, the University has several policies prohibiting sex-based harassment and discrimination. Prohibited behaviors on the basis of sex may be defined slightly differently in each of those policies. The following definitions only apply in this, The University Title IX policy.

- Requests for sexual favors by an employee accompanied by implied or overt threats/promises that an individual's refusal or willingness to submit will impact the

individual's status, wages, advancement, performance evaluation, promotion, or other benefits or detriments;

- Subtle or obvious pressure for unwelcome sexual activities;
- Sexual flirtations (including leering or ogling);
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.
- Display of sexual or sexually demeaning material anywhere in the workplace. ○ Examples include (but are not limited to) pictures, posters, calendars, graffiti, objects, text or other materials that are sexually demeaning or pornographic.
  - This includes displays on workplace computers, cell phones, or any other area visible to other members of the University community.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity or expression, or the status of being transgender, either in person or through other means, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform their job or access the educational program;
  - Making comments about an individual's body, clothing or lifestyle that have ○ sexual implications or demean the individual's sexuality or gender; ○ Sabotaging an individual's work; ○ Bullying, yelling, or name-calling.

b. Sexual Assault is any sexual act directed against another person, without the consent of that person, including instances where the person is incapable of giving consent. Sexual assault includes:

1. Rape – the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of that person,
2. Fondling – the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person,
3. Incest – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law,
4. Statutory rape – sexual intercourse with a person who is under the statutory age of consent. In New York, the statutory age of consent is 17 years old.

### **Important Definition-Consent**

Consent as used in this policy, means affirmative consent. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Whenever the word "consent" is used in this policy, it should be understood to mean affirmative consent as defined here.

There are several important principles to keep in mind:

- Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions and if confusion or ambiguity on the issue of consent arises anytime during the sexual interaction it is essential that each person stops and clarifies, verbally, willingness to continue.
- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time and consent terminates upon the individual's loss of capacity to consent.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual cannot otherwise consent. Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.
- Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surrounds, or the inability to communicate for any reason. Among other circumstances, individuals may experience a blackout state in which they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication.
- When a person's incapacitation is in question, the relevant standard that will be applied is whether the individual(s) knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could not consent to the sexual activity.

- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. Coercion and intimidation include (1) using physically or emotionally manipulative conduct against the complainant or (2) expressly or implicitly threatening the complainant or a third party with negative actions that would compel or induce a reasonable person in the complainant's situation to engage in the sexual activity at issue. Examples of sexual coercive statements include those such as; "I will ruin your reputation"; "I will tell everyone"; "your education at UR will be over" or "I will post an image of you naked." Examples of force or a threat of harm include (1) using physical force or (2) a threat, express or implied, that would place a reasonable person in the complainant's situation in fear of physical harm to, or kidnapping of, themselves or another person. Coercion is evaluated based on the intensity, frequency and duration of the comments or actions.
  - When consent is withdrawn or can no longer be given, sexual activity must stop.
  - According to New York State law, an individual cannot give valid consent if the individual is under 17 years old.
- c. Dating Violence means violence committed by a person:
- who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship,
    - The type of relationship, and
    - The frequency of interaction between the persons involved in the relationship.
- d. Domestic violence includes felony or misdemeanor crimes of violence committed by
- a current or former spouse or intimate partner of the victim,
  - a person with whom the victim shares a child in common,
  - a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
  - a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
  - any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- e. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
- fear for their safety or the safety of others; or
  - suffer substantial emotional distress.
- f. Retaliation is adverse action taken against an individual by the University or by a member of the University community because the individual has engaged in protected activity. Protected activities are defined as the following: (1) personally complaining of or opposing perceived discrimination or harassment; (2) testifying, assisting, or participating in an investigation, proceeding, hearing, or legal action involving a claim of discrimination or harassment, or (3) exercising rights afforded to them pursuant to this policy or a law related to sex based harassment.

Retaliation includes actions that would dissuade a reasonable person from engaging in these types of protected activities. Retaliation can be committed by an individual or a group of individuals.

Retaliation can take many forms, including threats, intimidation, interference, continued abuse, violence, or other forms of harm to others, and in varying modes, including in person and in electronic and online communication.

Retaliation can also include adverse employment or educational actions made or taken against an individual because of their good faith participation in the reporting, investigation, and/or resolution of an alleged violation of this policy and/or any conduct that would discourage a reasonable person from engaging in further protected activity.

Depending on the circumstances, examples of retaliation could include, but are not limited to the following if taken because the individual engaged in protected activity:

- Threats of termination, transfers, and changes in work location, poor performance reviews, the denial of a promotion or tenure, denial of job benefits, demotion, suspension, or termination,
- An escalation of harassing behavior in response to a complaint,
- Making false reports to governmental authorities (e.g., law enforcement, licensing agencies),
- Threats of deportation, initiating action with immigration authorities,
- Adverse academic actions against a student could include a reduced grade, negative recommendation, negative comments about the student at academic meetings or conferences or limiting access to an academic opportunity.
- Adverse actions within co-curricular student life could include a student organization denying membership to an interested student due to their participation as a witness in a sexual harassment investigation process or, a



student starting an online petition encouraging other students to avoid another student because they made a sexual harassment complaint.

## V. Reporting Statement

The University regularly engages in activities to prevent Sexual Harassment in our educational programs and activities. If an incident of Sexual Harassment occurs the University can only act to prevent it from reoccurring, and to remediate the impact of the conduct, if it is made aware of it. The University encourages individuals to report incidents of Sexual Harassment so steps can be taken to remediate and prevent such conduct from occurring again.

All members of the University community are encouraged to report any instances or claims of Sexual Harassment, to the Title IX Coordinator. Responsible Employees who receive or learn of reports or concerns of Sexual Harassment as defined within this policy must promptly (as soon as practical as and no later than forty-eight hours) report to the University Title IX Coordinator.

**“Responsible Employees”** are student and non-student employees of the University who

- Supervise University employees, including student employees and faculty members,
- Have been designated as a Campus Safety Authority pursuant to the Clery Act<sup>2</sup>,
- Serve as a Deputy Title IX Coordinator at one of the University’s schools or within the Department of Athletics,
- Have a job title with the word “dean” in it, or
- Work in any of the following departments/offices:
  - Department of Public Safety, ○ Office of Equity and Inclusion, ○ Student life offices in each of the University’s schools, or ○ Department of Residential Life

Only the employees listed above are required by this Title IX Policy to report Sexual Harassment, but other University policies may mandate reporting by certain people and everyone is encouraged to report it.

## VI. Procedures

**A. Reports of Sexual Harassment:** Individuals have the right to file a report of sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking and to consult the Title IX Coordinator or any of the confidential or private resources included in Appendix C.

- a. Initial Assessment: Upon learning of a potential incident of Sexual Harassment the Title IX Coordinator will promptly reach out to the Complainant, if their identity is known, inform them of their rights and options, and request a meeting with the Complainant.

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<sup>2</sup> If you are unsure if you are a Campus Safety Authority please contact the Title IX Office via email at [TitleIX@rochester.edu](mailto:TitleIX@rochester.edu) to inquire about your designation.

During this meeting an initial assessment of the report will be made to determine whether the alleged behavior may be addressed utilizing the procedures in this policy or if another policy is more appropriate. For example if a report alleges behaviors that are not prohibited by this Title IX Policy but are prohibited by the University's Student Sexual Misconduct Policy or it's Policy against Discrimination, Harassment, and Discriminatory Employment/Service Practices ("Policy Against Discrimination/106"), the University will refer the report to the administrator/office responsible for implementing the policy that governs that behavior. If a request for a meeting is declined, the Title IX Coordinator will conduct an initial assessment utilizing the information available.

- b. Supportive Measures: During the initial assessment process conversation the Title IX Coordinator will share with the Complainant information regarding supportive measures that may be implemented. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. These measures are designed to restore or preserve equal access to the University's educational program or activity without unreasonably burdening the other Party.

Supportive measures include those designed to protect the safety of all Parties or the University's educational or work environment or deter sexual harassment. Supportive measures may include access to counseling, extensions of deadlines, or other course-related adjustments, modifications of work or class schedules, campus escort services, issuance of Active Avoidance Orders requiring mutual restrictions on contact between the Parties, changes in work or housing locations, leaves of absence, temporary reassignment of work, increased security and monitoring of certain areas of the campus, and other similar measures.

Any individuals who would like to request a supportive measure can contact the University Title IX Coordinator by e-mail at [titleix@rochester.edu](mailto:titleix@rochester.edu) or the Deputy Title IX Coordinator for their school. (See Appendix B for a list of Title IX Coordinators) The Coordinator assesses the request for a supportive measure and informs the individual whether it has been granted. If a request is denied, the requesting individual is afforded a prompt review, reasonable under the circumstances, of the need for, and terms of, the supportive measure and is able to submit evidence in support of their request. Information about how to make a request for a review of the decision is provided in the letter discussing the resolution of the request.

- c. Emergency Removal: When a Respondent is determined to be an immediate threat to the physical health or safety of any individual the University may, in its discretion, initiate emergency removal/temporary suspension of the Respondent from campus

and/or from other settings in which the Respondent poses such a threat. Prior to making any decisions about removal, the University conducts an individualized safety and risk analysis to aid in determining whether removal is an appropriate step. If the University decides to remove the Respondent, the University provides the Respondent and the Complainant with written notice of the removal decision and information regarding their opportunity to appeal the decision. Specific information about the appeal process is included in the written notice. If the emergency removal decision is altered both Parties will be notified in writing.

**B. Formal Complaints and Investigation:**

The Formal Complaint process articulated below only applies to members of the University of Rochester community (as defined above) when:

1. The Complainant has made an allegation of prohibited behavior defined above; AND
2. The Complainant is participating or attempting to participate in the University's educational program or activity; AND
3. The actions alleged occurred in a location, at an event, or in circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurred; AND
4. The actions occurred in the United States.

If a Formal Complaint does not contain all four elements, the University is required by law to dismiss the Formal Complaint. In such cases, the matter will be referred to another University policy/practice for resolution if one applies.

- a. Written Notice: Upon receipt of a Formal Complaint, the Title IX Coordinator ensures that notice is given, in writing, to the Complainant and Respondent of:
  - i. the existence of the grievance process,
  - ii. the allegations of Sexual Harassment, including a reference to the specific code of conduct provisions alleged to have been violated and possible sanctions with sufficient details known at the time (which include the identities of the Parties involved if known, the date and location of the alleged incidents, if known) and with sufficient time to prepare before any initial interview,
  - iii. a statement that the Respondent is presumed not responsible until a determination is made at the conclusion of the grievance process,
  - iv. the availability to each Party of an advisor of their choice, who may be an attorney (but is not required to be) and who may inspect, and review evidence gathered in the investigation. If a party does not have an advisor, the University will provide an advisor of its choice.

If, during the investigation, the University decides to investigate additional allegations not included in the initial notice or to pursue investigation of the conduct under other policies, it will give notice of additional allegations and the other relevant policies to the Parties.

- b. Dismissal of Complaint: At any time after a Formal Complaint is submitted, the University may dismiss the Formal Complaint if:
  - i. the Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Complaint (or withdraw the allegations that would require it to be investigated under this policy),
  - ii. the Respondent is no longer employed by or enrolled in the University, or

- iii. specific circumstances prevent the University from obtaining sufficient information to reach a determination of the Formal Complaint's truth. Examples of such circumstances include but are not limited to when the Complainant refuses to participate in the investigation process but has also not sent notice withdrawing their complaint and where the Respondent is not under the authority of the University (because they are not a student or employee).

As referenced above in Section II "Scope of the Policy" if a report made under this policy cannot be resolved pursuant to this policy due to a lack of jurisdiction the University is required to dismiss the Formal Complaint under this policy. In such cases, Parties may appeal the dismissal as noted in (c) below.

- c. Notice of Dismissal/Appeals: In the event of mandatory or voluntary dismissal, the Title IX Coordinator will promptly notify the Complainant and Respondent in writing. Either the Complainant or the Respondent may appeal the dismissal of the Formal Complaint. Information regarding how to appeal dismissal of the complaint is provided in the written notice of dismissal.
- d. Consolidation of Complaints: To the extent permitted by law, the University may consolidate multiple complaints where the allegations of Sexual Harassment arise from the same facts and circumstances. For example the University may consolidate a Formal Report with one Complainant and multiple Respondents, multiple Complaints against one Respondent and a Formal Report involving multiple incidents between one Complaint and one Respondent.
- e. Informal Resolution<sup>3</sup>: At any time after the filing of a Formal Complaint and prior to a determination being made, the University may facilitate an informal resolution, including but not limited to mediation; provided, that:
  - i. All Parties voluntarily consent to informal resolution, in writing;
  - ii. The University has given the Parties written notice disclosing the requirements of the informal resolution process and the extent to which a resolution reached through this process precludes the Parties from resuming a Formal Complaint arising from the same allegations; and
  - iii. At any time before agreeing to a resolution, any Party may withdraw from the informal resolution process and resume the grievance process to address the allegations stated in the Formal Complaint, as it may be amended.

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<sup>3</sup> Informal resolution is not be available for Formal Complaints alleging that a faculty or staff member has Sexually Harassed a student.

Note that individuals who facilitate informal resolution processes will not serve as witnesses in hearings on matter(s) in which they served in this facilitator role.

- f. Investigation of Formal Complaints: Investigations are conducted by individuals with appropriate training and experience investigating allegations of Sexual Harassment.
  - i. *Party Communication with Witnesses*: While the University is responsible for gathering sufficient evidence about the allegations in the Formal Complaint to reach a determination of responsibility, Parties may discuss the allegations, speak to potential witnesses, and gather evidence if they choose. Please note that any behaviors against witnesses that could be considered retaliation, as defined in this policy, are prohibited.
  - ii. *Meeting Notices*: Investigators provide Parties and witnesses written notice of the date, time, location, and purpose of any interviews or meetings related to the Formal Complaint at least one day prior to the interview or meeting to allow the witness/Party to prepare. Parties and witnesses can elect to waive the one- day notice so long as they do so in writing.
  - iii. *Advisors in Investigative Meetings*: Parties may have an advisor of their choice present during interviews or meetings, provided that the advisor may not speak for the Party nor disrupt the interview in any way.
  - iv. *Evidence*:
    1. Each Party is expected to provide the investigator with any evidence they wish to be considered within ten days after receiving the Written Notice (defined above) notifying the Party of the Formal Complaint.
    2. Before the investigator has completed the investigative report, each Party is given the opportunity to inspect and review all directly relevant evidence gathered, whether or not the University intends to rely on it at the hearing. The investigator will ensure evidence is shared in hard copy or electronic format and each Party has ten days to provide a written response regarding the evidence to the investigator for the investigator's consideration.
    3. After the period for Party evidence review has ended, the investigator prepares a report fairly summarizing the relevant evidence gathered and shares a copy of the report with each Party and their advisors (if any), in electronic or hard copy format. Each Party has ten days to provide a written response regarding the report for the investigator to consider before the report is finalized.
    4. Prohibitions on Inclusion of Certain Evidence
      - a. Evidence that is subject to a legally recognized privilege, such as the right of confidentiality in medical records, attorney-client privileged communications, and the like, cannot be included for consideration in the report unless the Party entitled to the privilege has waived their right.

- b. Parties can prohibit information about their own mental health diagnosis and treatment from inclusion in the investigation and adjudication process.
  - c. Evidence of a Party's prior sexual predisposition or history shall not be deemed relevant; however, evidence of the Complainant's prior sexual behavior may be offered to prove that someone other than the Respondent committed the alleged Sexual Harassment and evidence of the Complainant's prior sexual behavior toward Respondent may be offered to prove consent.
- g. Hearings: Hearings are conducted by a Hearing Officer responsible for reaching a determination regarding whether the alleged Sexual Harassment occurred and, if so, what the University's response should be.
- i. *Hearing Set Up*:
    1. The Title IX Coordinator will notify the Parties in writing of the time and location of the hearing at least five days prior to the hearing date.
    2. The Parties and the Hearing Officer are situated in different rooms and able to simultaneously see, hear, and otherwise perceive all questions, answers and statements of the participants, any advisors, and the Hearing Officer.
    3. All evidence directly related to the investigation (as determined by the investigator and articulated in the investigation report) is made available in hard copy or electronic format to the Parties and their advisors during the hearing.
    4. An audio recording of the hearing will be made by the University and made available to the Parties, Hearing Officer and Appeal Board for inspection and review. The audio recording is the property of the University.
  - ii. *Questioning*:
    1. In addition to the Hearing Officer, each Party's advisor is be permitted to ask questions of each witness and Party. No party may ask questions directly of the other Party or any witness; only the advisor may ask questions.
    2. To avoid unnecessary delays during the hearing, Parties are encouraged to submit a list of questions their advisor plans to ask the other Party and any witnesses to the Hearing Officer at least three days prior the hearing. Submitting questions in advance of the hearing allows time for the Hearing Officer to discuss with each Party separately any concerns about relevancy that may arise in the questions. No Party is permitted access to these questions submitted by another Party in advance of the hearing for the purpose of determining relevancy.

3. If questions have not been pre-submitted to the Hearing Officer during the hearing, after each question is asked, the Hearing Officer must determine whether it is relevant before the witness or Party answers. If the Hearing Officer determines that a question is not relevant the question may not be answered.
4. The Hearing Officer explains its reasoning when it determines that a question is not relevant.
5. There is no opportunity to object or further argue about the appropriateness of a question after the Hearing Officer has made and communicated its decision regarding the relevancy of a question.

iii. *Advisors:*

1. A Party may not serve as their own advisor during a hearing. If a Party does not have an advisor at the hearing, the University provides one of its choice to the Party, without charge. The University is not obligated to provide legal representation to any Party.
2. Advisors must refrain from asking questions in an abusive, intimidating, or disrespectful manner. The hearing officer is authorized to enforce this prohibition.
3. If a Party chooses not to attend a hearing, their advisor may still appear and question the other Party and witnesses on their behalf.
4. Advisors may only ask questions as described in section VI(B)(g)(iii)(2) above. They may not otherwise speak, object, or argue. The hearing officer can suspend a hearing if it determines that an advisor or any participant is disruptive or violating the above rules.
5. Advisors may have private conversations with the Party they are advising during the hearing. If an advisor seeks to have such a conversation, they may request a break from the Hearing Officer.

iv. *Statements*

1. Each Party may submit an impact statement for the Hearing Officer's consideration when the Hearing Officer is deliberating on sanction.

- h. Determinations, Remediation, and Corrective Measures: The Hearing Officer determines whether the alleged Sexual Harassment occurred using a preponderance of the evidence standard; that is, whether it is more likely than not that Sexual Harassment occurred. The hearing officer issues its findings in a written determination, provided



simultaneously to each Party no later than twenty-one days of the conclusion of hearing. The determination letter includes:

- i. the allegations potentially constituting Sexual Harassment,
  - g. a description of the procedural steps taken from the receipt of the Formal Complaint through the Hearing Officer's determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held,
  - h. findings of fact supporting the determination,
  - i. conclusion regarding the application of the Title IX Policy to the facts,
  - j. a statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and the rationale for the sanction imposed as well as whether remedies designed to restore or preserve equal access to the University's education program or activity are to be provided to either Party, and
  - k. the procedures and permissible bases for appeal.

If the decision maker determines that a Respondent is responsible for violating this Policy, the consequences imposed are dependent upon the specific findings and details of the case. Disciplinary, remedial, or corrective measures imposed can include, but are not limited to:

Staff

Termination

Demotion

Suspension without pay

Written warning

Mandatory training

Non-renewal of contract (if applicable)

Reporting a violation of this Policy to the appropriate grant making or licensing authority, if required

Faculty

Termination

Demotion

Presentation to the University Committee on Tenure and Privileges for revocation of tenure

or abrogation of contract

Non-renewal of contract  
Reassignment/change in assignment  
Revocation or suspension of clinical privileges  
Revocation of administrative duties or assignments  
Documentation of violation and consequences in faculty/employee file  
Mandatory training  
Supervision or ongoing monitoring  
Reporting a violation of this Policy to the appropriate grant making or licensing authority, if required

### Students

Expulsion  
Probation  
Suspension  
Revocation of privileges Restriction  
of privileges  
Mandatory training

- i. Appeals: Both the Complainant and the Respondent may appeal the determination of the Hearing Officer. Appeals must be submitted via email to [titleix@rochester.edu](mailto:titleix@rochester.edu) within seven days of the delivery of the notice of the determination.
- i. Permissible bases for appeal are:
  1. procedural irregularity that affected the outcome,
  2. new evidence that was not reasonably available at the time of the determination and could have affected the outcome is now available,
  3. the Title IX Coordinator, investigator, or any Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Parties that affected the outcome, or
  4. the sanction imposed was inappropriate.
- ii. Once either Party submits an appeal, the University notifies the other, providing a copy of the appeal submission, and allowing the other Party an opportunity to respond in writing, within seven days. Responses should be submitted to [titleix@rochester.edu](mailto:titleix@rochester.edu).
- iii. Appeals are decided by a three-person appeal board that is not composed of any of the individuals who made the initial determination.
- iv. Within fourteen days of meeting and reviewing all appeal submissions and the record of the hearing, the appeal board issues a written determination

describing the result and the rationale for that result and delivers it simultaneously to the parties.

j. Timeline

i. Formal Complaints of Sexual Harassment made under this policy are typically resolved within seventy-five days of the filing of the Formal Complaint. Specific timelines of the process are as follows

1. Written Notice of Allegations: Sent to Parties as soon as practical and within seven days after receipt of the Formal Complaint.
2. Investigations: Completed within forty-five days. If the investigation is not completed within the first forty-five days following the filing of the Formal Complaint, the investigator notifies the Parties of the delay and the expected date upon which the investigation will be completed.
3. Hearings: Hearings will last no longer than approximately nine hours on any given day and will last for no more than three days total.
4. Determinations: The Hearing Officer will deliver its determination simultaneously to each Party no later than twenty-one days after the conclusion of the hearing.
5. Appeal Determination: The appeal board delivers will deliver its determination simultaneously to each Party no later than fourteen days after the appeal board meeting.

k. Records

i. The materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, are maintained for a period of seven years and available on the University website for the same period.

ii. For each report of Sexual Harassment, the University creates and maintains for a period of at least seven years, records of any actions, including supportive measures, taken in response. These records document how the University's response was not deliberately indifferent to the report and that it has taken measures designed to restore or preserve equal access to the University's education program or activity. For Respondents who are employees of the University, records are be maintained for seven years or a period of six years from the end of employment, whichever is longer.

iii. Disclosure of Records: The University will only disclose information regarding the outcome of a Formal Complaint of Sexual Harassment under this policy as follows:

1. For allegations against students, as articulated in the Standards of Student Conduct section labeled "Conduct Records".
2. For allegations against employees, as articulated in University Policy 106.

**C. Fundamental Fairness in TIX Process**

- a. All rules and restrictions relating to the conduct of hearings, appeals, interviews, and witness gatherings apply equally to both Parties.

- b. All Parties have equal opportunity to present witnesses, fact and expert, and other inculpatory and exculpatory evidence.
- c. Investigators, Hearing Officers, facilitators of informal resolution processes and Title IX Coordinators are evaluated for potential conflicts of interest or general bias and precluded from participation in the process outlined in this policy if conflicts of interest or bias is found to exist.
- d. All individuals accused of violating this policy are presumed not responsible for violating the policy until determination is made at the conclusion of the process indicated in this policy.
- e. Temporary delay or extensions of time may occur. If a delay is expected, all Parties are given written notice explaining the delay, the reason for the delay and the period of time the delay will last. Delays may only be permitted if reasonable and for good cause. Examples of permitted delays include, but are not limited to, the impossibility of a Party, a Party's advisor, or a witness to be present, concurrent law enforcement activity, or the need for accommodation of disabilities.
- f. Parties may disclose the outcome of a hearing or appeal process to others. **D. Important Information for Students:**
  - a. University of Rochester Transcript Notation Policy: Any undergraduate or graduate student who is charged with a non-academic disciplinary violation may have the phrase "disciplinary charges pending" added to any transcript issued after charges are formally brought by the University. If the student is found not responsible for the violation, the notation will be removed. If the student is found responsible and suspended or expelled, the transcript will say the sanction was imposed "after a finding of responsibility for a code of conduct violation." Notations of expulsion shall be permanent. Notations for suspension may be removed one year after the suspension period has ended unless the suspension was for conduct that would be a "Crime of Violence" under the Clery Act (crime of violence definitions appear in the University publication Think Safe). Students who withdraw with pending, unresolved disciplinary charges will have a permanent notation on their transcript that they withdrew with conduct charges pending.
  - b. Alcohol and Other Drug Amnesty for Students: The health and safety of every student at the University of Rochester is of utmost importance. The UR recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incident due to fear of potential consequences for their own conduct. UR strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to UR officials or law enforcement will not be subject to UR's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

- c. Student Bill of Rights: Under New York State law, all students have the right to:
1. Make a report to local law enforcement and/or State Police;
  2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
  3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
  4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
  5. Be treated with dignity and to receive from the institution courteous, fair, and respectful healthcare and counseling services where available;
  6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
  7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
  8. Be protected from retaliation by the institution, any student, the accused, and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
  9. Access to at least one level of appeal of a determination;
  10. Be accompanied by an advisor of choice who can assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
  11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

### **Appendix A**

#### Examples of Prohibited Behaviors

- Alex meets Ryan at a social gathering on campus hosted by a student organization. Both individuals consume alcohol and smoke marijuana at the party, although Ryan consumes much more than they normally do when at parties and it is their first time combining both substances. Since Ryan lives off campus, Alex offers to have Ryan stay over in their room in Anderson. When they get to Alex's room, the two engage in sexual intercourse. Upon waking up

the following morning Ryan is disoriented, unsure of where they are, and does not recall anything after leaving the party. Ryan quickly leaves Alex's room and calls their friend to ask what happened the night before. Their friend describes to Ryan how Ryan was clearly intoxicated spilling their drink and tripped down the stairs at the party. Ryan's friend assumed they went home after they did not see Ryan at the party. *This is a violation of the Title IX policy if it is determined that Ryan was incapacitated due to alcohol and other drugs and was unable to consent to sexual intercourse. Ryan would not need to worry about being charged with student conduct violations based on their own consumption of alcohol and marijuana due to the University's Medical Amnesty Policy. As one of the options afforded to complainants, Ryan could choose to file a formal complaint and resolve this case through an investigation and hearing process.*

- A faculty member tells a student in their lecture, Riley, they will only allow them to make up a missed assignment if they agree to go out to dinner/drinks with them. Riley, uncomfortable with the situation, laughs and leaves the classroom. Riley then goes to his on-campus job where his supervisor, Amaya can tell that Riley is upset by something. Riley tells Amaya, about his interaction with his faculty member and how uncomfortable he is with this situation. Amaya expresses her concern and explains to Riley she must report this issue to the Office of Equity and Inclusion given their role as a mandated reporter. Amaya offers to fill out the form with Riley together or go to the Office together. Riley agrees to fill out the online reporting form with Amaya together. *This is a violation of the Title IX policy as the faculty member is engaging in quid pro quo sexual harassment. Amaya as a supervisor appropriately articulated their need to have to report this situation to the Office of Equity and Inclusion. Riley can evaluate their options after a meeting with the Office of Equity and Inclusion however Riley will not be able to handle this situation through mediation or an informal resolution.*

- Ramona is attempting to join an a cappella organization. The students representing the group tell Ramona they may not join because they are "not a good fit" for the organization. When Ramona presses the organization more, the students tell Ramona that they find them to be too "manly" and not "feminine" enough to really represent them. The group explains further that they have an image they try to project and just really don't think Ramona will live up to the image standard. Ramona is angry and upset by the groups comments and decides to post about their experience on social media. Ramona receives hundreds of demeaning and threatening messages about how they "don't look like a girl." *This is a violation of the Title IX policy because Ramona*

*was harassed and discriminated against due to their gender for failure to conform to societal expectations of gender/gender stereotypes. In reviewing their options Ramona decides to handle the complaint through an informal resolution with the acapella group leadership. The leadership voluntarily agrees to go through the informal resolution process as well.*

- Marco complains to his supervisor, Nadia, that he has been experiencing sexual harassment from his co-workers for the past three months and that he just had enough of it and needs her to help stop it. When asked for additional details, Marco shares that the women he works with are constantly commenting on his body and asking him out even though he has been very clear that he is in a relationship and not interested. Nadia responds by telling him that he really needs to dress more conservatively and be less friendly around the office. Marco is surprised and taken aback by Nadia's statement and asks her to elaborate on why she is engaging in this conversation. Nadia explains that since they work in a predominantly female department it would be in Marco's best interest to not distract his female colleagues by giving them attention and by dressing in tight outfits. Marco argues that it is unfair to ask him to change his behavior because the women in department are treating him like a sex object. Nadia says fine and backs down, and Marco thinks issue is resolved. Two weeks later Marco is abruptly transferred to a new position with a lower pay rate. *This is a violation of the Title IX Policy as Marco was sexually harassed by members of his department and may have been retaliated against for making a complaint. Marco decides to file a formal complaint with the Office of Equity and Inclusion and bring the matter to a formal hearing.*

**Appendix B**  
**Title IX Coordinators**



**Catherine ("Kate")  
Nearnpass**  
Title IX Coordinator and  
Assistant Vice President for Civil  
Rights Compliance  
585-314-5723  
[cnearnpass@ur.rochester.edu](mailto:cnearnpass@ur.rochester.edu)



**John Hain**  
Eastman School of Music -  
Deputy Title IX Coordinator  
26 Gibbs Street  
ESM 111  
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[jhain@esm.rochester.edu](mailto:jhain@esm.rochester.edu)



**Dawn Bruner**  
Arts, Sciences, and Engineering -  
Deputy Title IX Coordinator  
510 Wilson Commons  
585-275-4085  
[Dawn.Bruner@rochester.edu](mailto:Dawn.Bruner@rochester.edu)



**Evelyn Parker**  
School of Medicine and  
Dentistry - Deputy Title IX  
Coordinator  
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**Kristin Hocker**  
School of Nursing - Deputy Title  
IX Coordinator  
601 Elmwood Avenue, Box SON  
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**Karen Mach**  
Simon School of Business -  
Deputy Title IX Coordinator  
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**Mary Judge**  
Warner School of Education -  
Deputy Title IX Coordinator  
390 LeChase Hall  
585-275-2454  
[mjudge@warner.rochester.edu](mailto:mjudge@warner.rochester.edu)



**Kristine Shanley**  
Athletics - Deputy Title IX  
Coordinator  
1115 Goergen Athletic Center  
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[kristine\\_shanley@rochester.edu](mailto:kristine_shanley@rochester.edu)

**Appendix C**



### Confidential and Private Resources

#### Confidential Resources:

Individuals who are confidential resources can connect individuals to helpful resources and will not report information shared with them to law enforcement or college officials without the Complainant's permission, except in extreme circumstances, such as a health and/or safety emergency, imminent threat to self or others, or where there is a mandatory reporting of suspected child abuse. Accordingly, sharing information with a confidential resource will not result in an investigation or disciplinary action, except in such extreme circumstances. In order to initiate an investigation or disciplinary action, a report must be made through one of the non-confidential options described in this policy.

#### Private Resources:

University offices and employees that are not confidential resources can connect individuals to helpful resources and will maintain privacy at all times, meaning that the personally identifiable information you provide will be relayed only as necessary to investigate and/or seek a resolution or as required by law.

The University will seek consent from Complainants prior to conducting an investigation. Complainants may decline to consent to an investigation, and that determination will be honored unless the University determines that failure to investigate may result in harm to the Complainant or other members of the University community. **Please note that the University must respond to reports of sexual harassment involving employee Respondents.** If the University determines that an investigation is required, Complainants will be notified and immediate action necessary to protect and assist the Complainant will be taken.

If Complainants disclose an incident to a non-confidential resource, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator will weigh Complainants' request against the University's obligation to provide a safe, non-discriminatory environment for all members of our community, including the Complainant. The factors to be considered include, but are not limited to:

- whether the Respondent has a history of violent behavior or is a repeat offender,
- whether the incident represents escalation from previously noted behavior,
- the increased risk that the Respondent will commit additional acts of violence,
- whether the Respondent used a weapon or force,
- whether the Complainant is a minor,
- whether the University possess other means to obtain evidence such as security footage,
- whether the report reveals a pattern of perpetration at a given location or by a particular group, and

- whether the respondent is an employee of the University.

### **University of Rochester: Confidential Resources**

#### **University Counseling Center (UCC): 585-275-3113**

Third Floor, UHS building  
738 Library Road  
Susan B. Anthony Circle

#### **UCC Eastman School Office: 585-275-3113**

ESM Living Center, Room 107  
A limited number of appointments available.  
Call (585) 275-3113 to schedule an appointment.

#### **University Health Service (UHS)**

*Licensed medical professionals acting in accordance with their professional responsibilities*

UHS River Campus Office: **585-275-2662**

1st Floor, UHS Building  
738 Library Road, River Campus

#### **UHS Medical Center Office: 585-275-2662**

Room 1-5077, UR Medical Center (The entrance is at 250 Crittenden Blvd.)

#### **UHS Eastman School Office: 585-274-1230**

Room 106, ESM Student Living Center **Employee**

#### **Assistance Program: 585-276-9110**

496 White Spruce Blvd.

#### **Non-professional counselors and advocates**

*These individuals can also assist you without sharing information that could identify you. At the University of Rochester, they include:*

#### **University Chaplains: 585-275-4321 500**

Wilson Blvd.

### **University of Rochester: Private Resources**

Catherine ("Kate") Nearpass  
Title IX Coordinator and Assistant Vice President for Civil Rights Compliance  
585-314-5723  
cnearpass@ur.rochester.edu

**Deputy Title IX Coordinators in each of the schools**

**Center for Student Conflict Management:** 585-275-4085

**The Care Network:** [www.rochester.edu/CARE](http://www.rochester.edu/CARE)

**The Department of Public Safety:** 585-275-3333

**Human Resource Business Partners:**

[http://www.rochester.edu/working/hr/contact/  
contact\\_list.html](http://www.rochester.edu/working/hr/contact/contact_list.html)