



Title IX & SSMP Training

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(based on Title IX regulations issued in May 2020)

Starting at the Beginning...



**No 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.**

Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*)

Relevant University Policies



- Title IX Policy (last revised 6/21/23)
 - All UR community members
- Student Sexual Misconduct Policy (SSMP)
 - Student respondents (Art. 129-B)
- Policy Against Discrimination, Harassment, and Discriminatory Employment/Service Practices (PADH)
 - Employee respondents

Statement of Policy



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.

(University of Rochester Title IX Policy, p. 1)

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Statement of Policy



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. [...]

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.

(University of Rochester Title IX Policy, p. 1)

What Constitutes UR's Education Program or Activity?



“Program or activity means all of the operations of [...]

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; [...]

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship— [...]

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; [...]

“Postsecondary institution means an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education that serves postsecondary school students.”

34 CFR § 106.2

What Constitutes UR's Education Program or Activity? (cont'd)



More practically:

Academic, extracurricular, research, occupational training or other education program or activity operated by the University in the United States.

Conduct that occurs within the University's education program or activity includes, but is not limited to:

- locations, events or circumstances over which the University exercised substantial control over the respondent and the context; and
- any building owned or controlled by the University and/or by a student organization that is officially recognized by the University

34 CFR § 106.44

Title IX Policy Key Terms (Section III, p. 2)



- 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. [Title IX Coordinator information]
- d. 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.
- e. Hearing Officer: individual(s) who makes determinations regarding responsibility when a Formal Complaint is filed.
- f. Day: for the purposes of this policy the word “day” means a calendar day.
- g. 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.

What Does UR's Title IX Policy Prohibit?



- Sexual Harassment
 - Quid Pro Quo Harassment
 - Hostile Environment Harassment
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking
- Retaliation

See Section IV of the Title IX Policy

What Does UR's SSMP Prohibit?



When a student-respondent is involved, allegations of these behaviors may overlap the Title IX Policy's prohibitions:

- Sexual or Gender-Based Harassment
 - Hostile Environment Harassment
 - Quid Pro Quo Harassment
- Sexual Assault
- Dating Violence or Domestic Violence
- Stalking
- Retaliation
- Other prohibited conduct
 - Sexual Exploitation
 - Aiding or Facilitating
 - Failing to Control Guests

What Does UR's PADH Prohibit?



When an employee-respondent is involved, allegations of these behaviors may overlap the Title IX Policy's prohibitions:

- Sex Discrimination
- Sexual Harassment, inclusive of:
 - Sexual Assault
 - Sexual Violence
 - Sex Stereotyping
 - Stalking
- Retaliation



Definitions

of Title IX Prohibited Conduct

Title IX 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.

See examples at Section IV(a) of the Title IX Policy

Sexual Assault



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.

See Section IV(b) of the Title IX Policy

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.

See Section IV(b) of the Title IX Policy

NOTE: This definition from Article 129-B, § 6441 will be applied in all Complaints alleging Sexual Assault.

Affirmative Consent (cont'd)



There are several important principles to keep in mind:

- 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.
- 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.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- New York State law dictates that an individual cannot give valid consent if they are under 17 years old.

See Section IV(b) of the Title IX Policy

NOTE: This definition from Article 129-B, § 6441 will be applied in all Complaints alleging Sexual Assault.

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.

See Section IV(c) of the Title IX Policy

Domestic Violence



Domestic Violence

Felony or misdemeanor crimes 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, 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 family or domestic violence laws of the jurisdiction

See Section IV(d) of the Title IX Policy

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.

See Section IV(e) of the Title IX Policy

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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.

See Section IV(f) of the Title IX Policy for more + examples



Grievance Process Overview

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Preliminaries

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Voluntary Nature of Participation in Grievance Process



Neither parties nor witnesses are required to participate in the Grievance Process.

The University may not threaten, coerce or intimidate a party or witness into participating, nor may the University retaliate against a party or witness for declining to participate in any part of the Grievance Process.

Serving Impartially and Avoiding Prejudgment of Facts, Conflicts of Interest and Bias



The obligation to serve impartially and without prejudgment of facts, conflict of interest or bias against one party status, in general, or one or more parties involved in a specific matter is repeated throughout the regulations.

How do we do this?

- Treat involved parties equitably: identical opportunities to participate; simultaneous notices of process-related information or requirements; equitably evaluating and, if appropriate, granting requests that are similar in nature
- Abide by the required presumption of non-responsibility of a respondent
- Use a trauma-informed approach, remembering that there is no typical way for anyone to react to an alleged incident, to a complaint against them or to being asked to provide information as part of an official process

Serving Impartially and Avoiding Prejudgment of Facts, Conflicts of Interest and Bias



How do we do this? (cont'd)

- Use the standards set out in the Policy for making or reviewing decisions within your purview
- Truthfully evaluate your ability to serve without bias in a specific matter or in general
- Recuse yourself if:
 - You feel unable to act impartially
 - You are not comfortable due to a social relationship, working relationship or educational connection to a party in a case
 - You anticipate that a party can identify reasonable and articulated grounds of a conflict of interest

What is Relevance?



- Evidence and information related to the allegations under investigation
- Questions are relevant when they seek evidence and information that may aid in showing whether the alleged conduct occurred
- Evidence is relevant when it may aid a decision-maker in determining whether the alleged conduct occurred
- Evidence that is not admissible and questions seeking such evidence cannot be accessed, disclosed, considered or otherwise used even if relevant

What is Admissible?

Evidence that is relevant and not otherwise impermissible.

A non-exhaustive list of the format of admissible evidence includes:

- testimony by parties and witnesses
- documents
- recordings
- writings
- photographs
- screenshots
- video recordings
- audio recordings

What is Not Admissible?



Evidence is not admissible, and thus impermissible, if it constitutes:

- information protected by a legally recognized privilege, including any party's medical, psychological, and similar records, unless the party has provided voluntary, written consent for use of the information or documents in the Grievance Process;
- evidence about a complainant's sexual predisposition; and
- evidence about a complainant's prior sexual behavior unless offered to prove
 1. that someone other than the respondent committed the conduct alleged by the complainant or
 2. specific instances of the complainant's prior sexual behavior with the respondent and are offered to prove Consent

See Section VI(B)(f)(iv)(4) of the Title IX Policy; 34 CFR § 106.45(b)(5)(i) & (6)(i)

What is Not Admissible?



Pursuant to Article 129-B, Student parties can also prohibit admission of the following evidence during the stage of the Grievance Process that determines responsibility:

- prior sexual history with persons other than the other party/ies; and
- their own mental health diagnosis and/or treatment

After a finding of responsibility in the Grievance Process, NYS law permits a decision-maker to consider past findings of Sexual Assault, Dating Violence, Domestic Violence, and/or Stalking when determining the sanction.

See Section VI(B)(f)(iv)(4) of the Title IX Policy

Relevant, Admissible Evidence & Questions



In sum, investigators must not:

- ask questions or gather information or documents protected by a legally recognized privilege or confidentiality without written consent to use such documents in the Grievance Process from the person protected by the privilege; and/or
- seek information about a complainant's sexual interests

Information about a complainant's prior sexual conduct will only be allowed in the limited exceptions discussed in the prior slides.

Decision-makers are subject to the same restrictions when seeking and considering evidence at the hearing and deliberations stage of the process.

Length of Process



- Section VI(B)(j) of the Policy is dedicated to setting out predicted timeframes for each stage of the Grievance Process
 - Days = calendar days
 - Investigation = 45 days
 - Hearing = no more than 9 hrs/day for 3 days total
 - Hearing notice of determination = 21 days after conclusion of hearing
 - Appeal notice of determination = 14 days after appeal panel meets
- The University will inform the parties at regular intervals of the status of the process
- At the Title IX Coordinator's discretion, when circumstances arise that justify a good cause extension of anticipated timeframes—either at the University's initiative or at the request of a party—parties must be notified in writing of the modified timelines



Investigation Process

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Initiating an Investigation



An investigation is initiated by issuing a Notice of Allegations to known parties sufficiently in advance of any request to meet with an investigator.

The NOA will, at minimum, include:

- 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,

See Section VI(B)(a) of the Title IX Policy

Initiating an Investigation (cont'd)



The NOA will include:

- 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 offer to connect the party to a trained on-campus advisor.

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.

See Section VI(B)(a) of the Title IX Policy

Right to an Advisor of Choice & Advisor Role



- Each party has the right to choose an advisor (at their own expense, if the advisor is paid)
 - The University can connect a party with a trained on-campus advisor upon request
- Advisors may attend all meetings, interviews, and hearings related to the Grievance Process
- Advisors will be given access to the evidence share and the preliminary investigation report
- During the hearing, advisors will have the opportunity to engage in advisor-led questioning of the other party/ies and witnesses
- Advisors will be copied on all process-related communications, including the hearing notice of determination and appeal notice of determination

Right to an Advisor of Choice & Advisor Role (cont'd)



Advisors:

1. provide support to the party but do not serve as a proxy voice for the party;
2. can confer quietly with their party as needed, but if there is a need for an extended discussion, the party should ask for a break in the meeting, interview or hearing;
3. may not make statements or arguments or answer questions on behalf of parties during meetings, interviews or during the hearing;
4. may not speak during the hearing process, except in connection with advisor-led questions;
5. cannot direct the party how to answer a question; and
6. must conduct themselves quietly and professionally, must not disrupt any meeting, interview or proceeding, and must comply with the Rules of Decorum established by the University

An advisor who does not follow the Rules of Decorum and other guidelines above may be removed from the meeting, interview or hearing.

Investigation Process



- The investigator will conduct the investigation with a presumption that the respondent is not responsible, and will be free of bias and conflict of interest
- The burden of gathering relevant, admissible evidence and information—both inculpatory evidence and exculpatory evidence—rests on the University, but the parties will have an equal opportunity to submit evidence and suggest witnesses
- The investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the complainant, the respondent, and any witnesses
- The investigator will provide advance written notice to each party of the date, time, location, participants, and purpose of any meeting(s) the investigator requests with them

See Section VI(B)(f) of the Title IX Policy

Investigation Process (cont'd)



- Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect
- The investigator will decide which individuals to interview based on the information the investigator gathers as part of the investigation and, with respect to witnesses offered by a party, the investigator will ask the party to describe the information the party expects the witness to provide
 - The Title IX Coordinator may also direct that additional interviews be conducted
- Interviews will be supplemented by gathering any physical, documentary, and other evidence, as appropriate and available

Investigation Process (cont'd)



- The investigation will be conducted in a manner to maintain privacy, however, confidentiality cannot be promised because, for example, the investigator may need to speak with witnesses and others to gather evidence
- The parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence
 - When the investigation reveals intentional efforts by a party to fabricate or alter information they submit or to influence the information a witness provides to the investigator, conduct charges may result

Investigation Process (cont'd)



Expert Witnesses

The Title IX Coordinator has discretion to allow expert witness testimony on a case-by-case basis when such testimony is:

1. related to the allegations,
2. essential to fully understanding and/or resolving a material issue in dispute that could affect the outcome, and
3. which cannot be resolved through questioning parties or witnesses or collection or analysis of other information or evidence

The party who requests and obtains approval for an expert witness should expect that the expert will be interviewed by the investigator and may be called to the hearing to answer questions posed by the decision-maker and advisors.

The expert's testimony, report, and/or other analysis will be considered evidence in the Grievance Process to which both parties will have equal access in the normal course of the investigation.

Investigation Process (cont'd)



Expert Witnesses

- The investigator and/or decision-maker retains discretion to decide the relevance and weight to be afforded the expert's testimony and/or report
- Any costs associated with an expert witness's participation in the Grievance Process will be borne by the requesting party
- The Title IX Coordinator will also evaluate investigator or decision-maker requests for the assistance of an expert
 - In the event the Title IX Coordinator approves the request, the University will bear those costs, and the parties and advisors will have equal access to the expert report or testimony in the normal course of the investigation
- The University has no authority to require either party to produce information, documents or physical equipment/devices/ hardware to the other party's or the University's expert witness for analysis or evaluation

Evidence Share



- The investigator will assemble all inculpatory and exculpatory evidence and information directly related to the allegations and gathered during the investigation
 - If directly related to the allegations, this may include Complainant's sexual history for the limited purposes explained on an earlier slide
- The investigator may redact information that is unrelated to the allegations of the Complaint, including information the regulations deem irrelevant
- The assembled evidence and information will be shared with each party and their advisor in an electronic format with ten (10) calendar days to review and submit a written response
 - The time period for review may be extended for good cause at the request of a party, with the Title IX Coordinator's approval, or at the Title IX Coordinator's initiative

See Section VI(B)(f)(iv) of the Title IX Policy

Preliminary Investigation Report



- The investigator will review any written responses to the evidence submitted by the parties to evaluate whether further investigation may be required to ensure the investigation is thorough and complete
- The investigator will then draft the preliminary investigation report, incorporating party responses to the evidence share, as well as an explanation of any additional steps taken after receipt of party responses, and include any related materials
- The preliminary investigation report, attaching the relevant, admissible evidence, will be provided to each party and their advisor in an electronic format, with ten (10) calendar days to review and respond to the report in writing
 - The investigator may redact from the evidence information that is not relevant and/or unrelated to the allegations of the Complaint, or that is otherwise not admissible

See Section VI(B)(f)(iv) of the Title IX Policy

Finalizing the Investigation Report



- The investigator will review any written responses to the preliminary investigation report submitted by the parties to evaluate whether further investigation may be required to ensure the investigation is thorough and complete
- The investigator will incorporate party responses to the report, as well as an explanation of any additional steps taken after receipt and review of party responses, and include any related materials
- All of these written submissions and all relevant, admissible information gathered during the investigation will collectively be considered part of the final investigation report
- **NOTE:** Typically, parties will not be permitted to introduce for the first time at the hearing evidence and information known or suspected to exist during the Investigation



Hearing Process

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Hearing Process



The hearing phase is initiated by issuance of a Notice of hearing at least five (5) days before the hearing, which will include the following information:

- the decision-maker and date(s) and time(s) of the hearing;
- a brief summary of the conduct alleged to have violated the Policy (and any other potentially applicable University policy), including date(s), time(s), and location(s);
- the specific Policy provision(s) at issue (and any relevant provisions of any other University policy the alleged conduct, if proven, would violate);
- possible sanctions associated with a finding of responsibility for the alleged violation(s);
- the parties' right to be accompanied by an advisor at the hearing and the obligation to notify the Title IX Coordinator of: (1) the name, title, and contact information for their advisors, (2) whether they will continue to be advised by the same advisor as during the investigation (if applicable) or (3) that they do not intend to select an advisor;

Hearing Process (cont'd)



Notice of hearing (cont'd)

- a statement that there is a presumption of No Responsibility on the part of the respondent until a Determination regarding responsibility is made at the conclusion of the Grievance Process;
- reference to the applicable University prohibition on knowingly making false statements or knowingly submitting false information during the Grievance Process; and
- a web link to the Policy

The scope of the hearing will relate solely to the allegations and policy charges set out in the Notice of hearing.

Hearing Process (cont'd)



- The Title IX Coordinator oversees all hearings as a process and policy advisor
- The decision-maker may be referred to as the hearing chair. When more than one individual is convened as a panel of decision-makers, one member will be designated as the hearing chair
- Each party and their advisor will be invited to a pre-hearing conference with the Title IX Coordinator and the hearing chair to:
 - review the hearing process in detail;
 - discuss the final witness list for the hearing; and
 - answer party and advisor questions about the hearing process

Hearing Process (cont'd)



- Hearings will be conducted in a virtual format (Zoom videoconference) with the parties physically present in separate locations
 - The Title IX Office administrative coordinator runs the technology
 - Zoom enables the decision-maker and parties to simultaneously see and hear a party or witness while that person is speaking
- The hearing is not open to the public; advisors and parties may be present throughout; witnesses will be present only for their individual testimony
- Parties and other individuals who offer information at a hearing are expected to respond honestly and to the best of their knowledge
 - A party or witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies

Hearing Process (cont'd)



- The hearing will be recorded and the University will create and retain a written transcript
- If a party does not have an advisor at this stage, the University will appoint one for the purpose of advisor-led questioning
- Parties and advisors will be given electronic access to the final investigation report and evidence no later than ten (10) days prior to the hearing, with continued access throughout the hearing
- The decision-maker will be afforded access to the same final investigation report and evidence provided to the parties
- If a party, after having been given notice, does not appear at the hearing, the hearing will be conducted in their absence, and the party's advisor may appear and conduct advisor-led questioning

Hearing Process (cont'd)



Decision-maker Questioning of Parties and Witnesses

- Questioning should focus on areas needing clarification or more information, as well as information that helps with determining credibility of parties and witnesses, to the extent credibility is both in dispute and relevant to evaluating one or more of the allegations to be decided at the hearing
- The decision-maker may need to ask difficult or sensitive questions in order to understand the allegations, related information, and to gain a full understanding of the context
- The decision-maker may recall any party or witness for further questions and to seek additional information as they deem necessary
- Circling back to extraordinary circumstances in which relevant, admissible evidence would be allowed to be introduced for the first time at the hearing:
 - Will be determined by the decision-maker in consultation with the Title IX Coordinator
 - May result in pausing the hearing and reopening the Investigation to evaluate whether the evidence is relevant and admissible

Hearing Process (cont'd)



Advisor-led questioning

- Advisors will be given the opportunity to ask each party and witness questions seeking relevant, admissible evidence and information, including questions challenging credibility
- The requirement of relevancy applies throughout the hearing, including during questioning by advisors
- Before a party or witness answers a question posed by an advisor, the hearing chair must determine and communicate whether the question is relevant and admissible, and thus permissible
- To the extent the hearing chair determines a question should be excluded as not relevant or not admissible, that decision must be explained on the record
 - After a relevance determination is made, the questioning advisor may request an opportunity to articulate reasons that the relevance determination should be revisited
 - The hearing chair may, at their discretion, offer the non-questioning advisor the opportunity to state their position on the relevance determination
 - The chair will then state on the record whether the prior relevance determination will be modified or maintained

Hearing Process (cont'd)



Effect of Not Answering Questions Posed at a Hearing

- Parties and witnesses are not required to answer questions posed by the decision-maker or an advisor
- The decision-maker may rely on statements a party or witness made and offered as part of the Investigation and/or hearing whether or not that party or witness answers question(s) at the hearing
- But the decision-maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and admissible
- The decision-maker may not draw an inference as to responsibility based solely on a party's or witness's refusal to answer such questions

Hearing Process (cont'd)

Decision-maker deliberations



- The decision-maker will engage in closed deliberations
- In order to make findings of fact, the decision-maker must objectively evaluate all relevant, admissible evidence for weight or credibility, to the extent credibility is both in dispute and relevant to evaluating one or more of the allegations
- Determinations of credibility also must be based on objective evaluation of relevant, admissible evidence, not on party or witness status, or inferences from party or witness status
 - Factors for credibility are included in the template hearing notice of determination
 - Credibility assessments will include consideration of party and witness answers to questions, taking into account that a party or witness may experience stress while answering questions at the hearing

Hearing Process (cont'd)



Decision-maker Deliberations

- The decision-maker will apply the relevant provisions of the policy to their factual findings to determine any violation and/or remedies
- If there is a violation of policy, the decision-maker will consider appropriate consequences
- Decision-makers have the option to consult with the Title IX Coordinator or another appropriate administrator or senior leader to determine sanctions or remedies; in the latter scenario, the Title IX Coordinator will be present for the consultation

Hearing Notice of Determination



The decision-maker will issue a hearing notice of determination to each party and their advisor, which will include:

- Procedural history;
- Summary of allegations in notice of hearing;
- Applicable grievance process and prohibited conduct at issue;
- Findings of fact related to each allegation;
- Rationale (or evidentiary basis) for the findings of fact;
- A determination whether the conduct found to have occurred violates University policy;

Hearing Notice of Determination



Contents of the hearing notice of determination (cont'd):

- Rationale for the determination of responsibility or no responsibility;
- A statement of any disciplinary sanctions imposed on the respondent and the rationale for the sanctions;
- Whether remedies will be provided to the complainant or, if appropriate, other students identified as experiencing effects of the sexual misconduct; and
- Information about how to file an appeal and how to access the transcript of the hearing before the time to file an appeal lapses

A non-exhaustive list of potential sanctions is captured in Section VI(B)(h) of the Policy.

The hearing notice of determination is final after:

- (a) expiration of the period to file an appeal or
- (b) an appeal notice of determination is sent to the parties

What are Remedies?



Measures provided by the University, as appropriate, to a complainant or any other person the University identifies following a determination of responsibility that their equal access to the University's education program or activity was limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the education program or activity.

Remedies may be disciplinary or punitive and may burden the respondent.

Respondents are not notified of remedies that do not directly affect them.

What are Remedies? (cont'd)



Examples of remedies:

- strategies to protect the complainant and any witnesses from retaliation;
- providing counseling for the complainant;
- other steps to address any impact on the complainant, any witnesses, and the broader campus community; and
- any other necessary steps reasonably calculated to prevent future occurrences of harassment



Appeals

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Appealing Outcome

- The parties have equal rights to file an appeal
- An appeal is not intended to be a rehearing of the information presented at the hearing
- Appeals must be submitted to the individual identified in the notice of determination on or before the date specified in the written determination
- Appeals are decided by a three-person panel that is not composed of any of the individuals who made the initial determination

Appealing Outcome (cont'd)



An appeal may only be based upon one or more of the following grounds:

1. Procedural Irregularity that affected the outcome;
2. New evidence that was not reasonably available at the time of the determination that could have affected the outcome is now available;
3. The Title IX Coordinator, investigator or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome
4. The sanction(s) imposed was inappropriate

See Section VI(B)(i) of the Title IX Policy

Appealing Outcome (cont'd)



Actions upon receipt of a timely appeal:

- Upon receipt of an appeal(s), the parties will be given notice of the appeal, the appeal decision-makers, and a copy of the appeal submission(s)
- The party/ies will be afforded seven (7) calendar days to respond in writing to the other party's appeal
- Within fourteen (14) days of meeting and reviewing all appeal submissions and the record of the hearing, the appeal panel issues a written determination describing the result and the rationale for that result, which is delivered simultaneously to the parties

Appealing Outcome (cont'd)



- As with investigation timeframes, the parties will be notified if any if the appeal timeframes must be extended
- The parties will be notified if the time to file an appeal has expired without any appeal having been submitted
- A decision denying the entitlement to an appeal and all decisions made by the appeal decision-makers are final



Q&A

DUPLICATION PROHIBITED



UNIVERSITY of
ROCHESTER