

Title IX Training

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The Basics

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What is Title IX?

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.)

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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*)

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What Constitutes an 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

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What Constitutes an Education Program or Activity?

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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

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What Does our 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

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What Does our SSMP Prohibit?

When a student-respondent is involved, allegations of the below 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

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What Does our PADH Prohibit?

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

- Sex Discrimination
- Sexual Harassment
- Retaliation

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Definitions

of Title IX Prohibited Conduct

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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

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Reminder

The definition of Sexual Assault used in the on-campus Title IX process is from Title 20 of the U.S. Code ("Education"), specifically the Jeanne Clery Campus Safety Act. To define Sexual Assault, the Clery Act refers to the FBI's Uniform Crime Reporting definitions, published in the National Incident-Based Reporting System (NIBRS) User Manual.

Dating Violence, Domestic Violence, & Stalking definitions come from Title 34 of the U.S. Code, titled "Crime Control and Law Enforcement."

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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 (Clery) – the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person.
3. Sexual Contact (NIBRS)–
   - The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
   - The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
   - This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.
4. Incest – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
5. 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

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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.

NOTE: This definition from NY Education Law Article 129-B, § 6441 will be applied in all formal complaints alleging Sexual Assault.

See Section IV(b) of the Title IX Policy

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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

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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

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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 [the Title IX] policy or a law related to sex-based harassment.

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

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The University's Obligations Regarding Reports of Title IX Sexual Harassment

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Overall Obligations for Title IX Reports

- Treat parties equitably
- Inform Complainants about the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, and inform the Complainant that such measures are available with or without a formal complaint
- Explain the process for filing a formal complaint
- Before the conclusion of the grievance process, refrain from imposing disciplinary sanctions on or taking actions against a Respondent that are not supportive measures
- Comply with the record-keeping requirements of the regulations and Policy

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Outreach & Options + Intake

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Outreach and Options

- Title IX staff review reports to determine whether the alleged conduct falls within the Title IX Policy or another university policy
  - If obviously not Title IX-eligible, the report is referred elsewhere, as appropriate
- If it seems Title IX applies, staff in the Title IX Office send an outreach email to the person alleged to have been subject to sexual misconduct (affected individual) to provide information about resources and options, and to request an intake meeting to learn more about the report
- The decision to schedule a meeting with Title IX staff is entirely up to the affected individual(s)
- Making a report does not automatically initiate an investigation
- An affected individual can reply months or even years later and may still have the same rights and options, provided we retain jurisdiction over the individual alleged to have engaged in sexual misconduct

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Intake Meeting

Typically during intake meetings, additional detail about the situation is gathered, which helps determine the available options to resolve the reported concern. Options include:

- Formal Process
- Informal Resolution
- Supportive Measures, including connection to resources

We offer information about the above so the affected individual can make an informed decision. Absent a “plus factor,” we respect the affected individual’s wishes about next steps, if any.

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Supportive Measures

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Obligation to Offer Supportive Measures

- In evaluating potential supportive measures, the Title IX Office must make an individualized determination of what is reasonably available
- Supportive measures may be designed:
  - to restore or preserve equal access to the University's Education Programs or Activities without unreasonably burdening the other party;
  - to protect the safety of the Parties;
  - to protect the safety of the University's educational and/or working environment;
  - to provide support during the University's Grievance Process, including an Informal Resolution process; or
  - to deter further Title IX Sexual Harassment

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Obligation to Offer Supportive Measures (cont'd)

Supportive measures:

- are provided without fee or charge
- may place a burden on Parties
- must not:
  - unreasonably burden either party
  - be imposed for punitive or disciplinary reasons
- must be kept confidential, except for disclosures:
  - necessary to effectuate the supportive measure
  - with the relevant party's permission
  - for use in a Grievance Process, as applicable; or
  - as permitted or required by law

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Obligation to Offer Supportive Measures (cont'd)

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Examples of Supportive Measures include, but are not limited to:

- counseling;
- extensions of deadlines and other course-related adjustments;
- campus escort services;
- increased security and monitoring of certain areas of the campus;
- restrictions on contact applied to one or more parties;
- leaves of absence;
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- training and education programs related to Sex-based Harassment

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Obligation to Offer Supportive Measures (cont'd)

The University may, as appropriate, modify or terminate Supportive Measures at the conclusion of a Grievance Process, at the conclusion of an Informal Resolution process, or may continue them beyond conclusion of either process.

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Emergency Removal
&
Administrative Leave

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Emergency Removal

- The Title IX Coordinator may implement emergency removal of a Respondent from the Education Program or Activity based on an individualized safety and risk analysis resulting in a determination that:
  - (1) there is an immediate threat to the physical health or safety of any student or other individual
  - (2) arising from the allegations of Title IX Sexual Harassment
  - (3) that justifies removal
- The analysis includes an assessment whether partial removal or appropriate Supportive Measures would preserve the Complainant's access to the University's Education Programs or Activities while allowing the Respondent to continue participation in Education Programs and Activities
- We also consider Respondent's rights pursuant to relevant disability laws (IDEA, Sec. 504, ADA)
- The regulations require that a Respondent be provided notice and an opportunity to challenge the decision immediately following the removal
- An Emergency Removal is **NOT** a determination of responsibility for a policy violation and will not result in a presumption of responsibility in any subsequent Grievance Process

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Administrative Leave

As an alternative for employees, when there is a formal complaint alleging conduct that could rise to the level of Title IX Sexual Harassment, the Title IX Office may impose an administrative leave.

- Allows a temporary separation of the employee while the Grievance Process is ongoing
- Terms and conditions are determined on a case-by-case basis
- Respects employee's rights under Title VII, Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and all other applicable employment laws

The Title IX Coordinator may also place a student-employee on administrative leave from on-campus employment in a non-emergency situation as a supportive measure for a Complainant

- The University will fully evaluate whether there are alternative and less restrictive measures that would preserve the Complainant's access to the University's Education Program or Activity
- In most situations, a student-employee placed on administrative leave from on-campus employment as a Supportive Measure will continue to receive pay until the conclusion of the Grievance Process

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Q&A

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Grievance Process Overview

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Overarching Principles

Presumption of Non-Responsibility

The regulations require that the process be conducted with a presumption that a respondent is not responsible until the conclusion of a full grievance process

Voluntary Nature of Participation in Grievance Process

- Neither parties nor witnesses are required to participate in the Grievance Process; we have no power to compel them
- This underscores that it is the University's burden to respond appropriately based on the circumstances to STOP > PREVENT > REMEDY
- The voluntariness of participation is foundational to our approach to working with involved parties

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Overarching Principles (cont'd)

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Right to Advisor of Choice

- Advisors of choice are permitted in a formal Grievance Processes or an Informal Resolution process
- The Advisor role is different in the investigation and hearing phases of the Grievance Process

Overarching Principles (cont'd)

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

Repeated throughout the regulations is 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

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

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Overarching Principles (cont'd)

Cont'd: How do we serve impartially and avoid prejudgment, conflicts of interest, and bias?

- 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 a reasonable and articulable conflict of interest

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Overarching Principles (cont'd)

Relevance

- The regulations "require an objective evaluation of all relevant evidence—both inculpatory and exculpatory evidence[…]"
- Parties must see all evidence "directly related" to the allegations at the evidence share phase, which may encompass more than what is admissible or relevant
- Investigation report must summarize relevant evidence
- Decision-maker makes on-the-spot determinations regarding relevance of advisor-led questions in hearing—acting as a referee

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What is Relevant?

- 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

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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

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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)

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What is Not Admissible? (cont'd)

Pursuant to NY Education 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, Article 129-B 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

Prohibitions on what is admissible are equally applicable in the investigation, hearing, and appeal phases of the Grievance Process.

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Length of Process

- Section VI(B)(j) of the Policy is dedicated to setting out predicted timeframes for each stage of the Grievance Process
- 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 will be notified in writing of the modified timelines

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Informal Resolution

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Informal Resolution

When

(1) a formal complaint has been submitted and

(2) the Title IX Coordinator deems it appropriate,

the parties may be offered the option to participate in an Informal Resolution process.

The offer to engage in this process can be made at any time before the conclusion of a Grievance Process resulting in a determination whether Sexual Harassment occurred.

Participating in an Informal Resolution process requires the parties' voluntary, written consent.

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Informal Resolution (cont'd)

If Parties agree to attempt Informal Resolution, the process is initiated by providing a written notice including the following:

- The allegations;
- The requirements of the Informal Resolution process;
- A statement that, prior to agreeing to a resolution, any party has the right to withdraw from the process and to initiate or resume the Grievance Process;
- That an agreement to a resolution would prohibit the parties from initiating or resuming a Grievance Process arising from the same allegations; and
- Information learned during the Informal Resolution process that the University will maintain and whether and how the University might disclose and use the information if the Grievance Process is initiated or resumed

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Informal Resolution (cont'd)

- If the Parties reach an agreement, the process will conclude with the Parties signing a written agreement listing the terms of the Informal Resolution.
- This process is not available when a formal complaint alleges that an employee sexually harassed a student.

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Investigation Process

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Initiating an Investigation

An investigation is initiated by issuing a Notice of Allegations, which includes several legally-required elements. Key notifications to parties:

- the existence of the grievance process and assigned investigator(s);
- the specific allegations of Sexual Harassment, including the specific policy provisions alleged to have been violated and possible sanctions;
- sufficient details known at the time and with sufficient time to prepare before any initial interview;
- reference to the applicable University prohibition on knowingly making false statements or knowingly submitting false information during the Grievance Process;

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

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Initiating an Investigation (cont'd)

Content of NOA:

- a statement that the respondent is presumed not responsible until a determination is made at the conclusion of the grievance process;
- parties' right to an advisor of their choice throughout the process, who **may** be an attorney, and who will have the opportunity to inspect and review evidence;
- availability of informal resolution, if deemed appropriate and agreed upon by all; and
- opportunities to review and respond to (1) evidence and (2) investigation report

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

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Initiating an Investigation (cont'd)

The NOA sets the scope of the investigation. If during the investigation the University decides:

(1) to investigate additional allegations not included in the initial notice, or

(2) to pursue investigation of the conduct under other policies

we issue an amended notice of allegations to the parties, advisors, and investigator(s).

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

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Advisor Role

- May attend all meetings, interviews, and hearings related to the Grievance Process
- Do not serve as a proxy voice for the party, and may not make statements or arguments or answer questions on behalf of parties during meetings or interviews
- Will be given access to the evidence share and the preliminary investigation report
- Will be copied on all process-related communications, including the relevant notices of determination
- Are subject to Rules of Decorum

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Investigation Process

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

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

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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(s) will decide which individuals to interview based on the information the investigator(s) gathers as part of the investigation
- Interviews will be supplemented by gathering any physical, documentary, and other evidence, as appropriate and available

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Investigation Process (cont'd)

The parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence

- Disclosures that amount to retaliation will be addressed, including potential expansion of investigation scope
- 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(s), conduct charges may result

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Evidence Share

- The investigator(s) 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(s) may redact information that is unrelated to the allegations of the formal 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
  - Good cause extensions are available 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

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Preliminary Investigation Report

- The investigator(s) 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(s) 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(s) may redact from the evidence information that is not relevant and/or unrelated to the allegations of the formal complaint, or that is otherwise not admissible

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

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Finalizing the Investigation Report

- The investigator(s) 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(s) 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

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Q&A

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Hearing Process

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Initiating Hearing Process

The hearing phase is initiated by issuing a Notice of Hearing (not legally required but logistically practical) and includes the following information:

- the decision-maker and date(s) and time(s) of the hearing;
- details of the conduct alleged to have violated the Policy (and any other potentially applicable University policy);
- 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 share with the Title IX Coordinator their advisor's identity or that they do not intend to select an advisor;

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Initiating 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

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

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The Hearing

- The Title IX Coordinator oversees all hearings as a process and policy advisor
- The decision-maker is an external, Title IX-trained attorney; we refer to them as the hearing officer
- If a party does not have an advisor when we reach the hearing stage, the University must appoint one for the purpose of advisor-led questioning
- Each party and their advisor will be invited to a pre-hearing conference with the Title IX Coordinator and the hearing officer 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

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The Hearing (cont'd)

- Hearings are conducted in a virtual format (Zoom videoconference) with the parties physically present in separate locations
  - The Title IX Office Department 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, which is required by the regulations

- 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 applicable policies

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The Hearing (cont'd)

- The hearing will be recorded and the University will create and retain a written transcript
- Parties and advisors will be given electronic access to the final investigation report and evidence before the hearing, with continued access throughout the hearing
- The hearing officer will be afforded access to the same final investigation report 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
  - If the party's advisor doesn't appear, we must appoint one for advisor-led questioning

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The Hearing (cont'd)

Hearing Officer Questioning of Parties and Witnesses

- Involves focused questioning in areas needing clarification or more information, as well as information that helps with determining credibility of parties and witnesses

- The hearing officer will likely revisit territory addressed and information gathered in the investigation, and 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

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The Hearing (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
- Before a party or witness answers a question posed by an advisor, the hearing officer must determine and communicate whether the question is relevant and admissible, and thus permissible
- To the extent the hearing officer 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 officer may, at their discretion, offer the non-questioning advisor the opportunity to state their position on the relevance determination
  - The hearing officer will then state on the record whether the prior relevance determination will be modified or maintained

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The Hearing (cont'd)

Effect of Not Answering Questions Posed at a Hearing

- Parties and witnesses are not required to answer questions posed by the hearing officer or an advisor
- The hearing officer 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 hearing officer 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 hearing officer may not draw an inference as to responsibility based solely on a party's or witness's refusal to answer such questions

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The Hearing (cont'd)

Hearing Officer Deliberations

- The hearing officer will engage in closed deliberations
- In order to make findings of fact, the hearing officer 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

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The Hearing (cont'd)

Hearing Officer deliberations

- The hearing officer 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 hearing officer will consider appropriate consequences
  - A non-exhaustive list of potential sanctions is captured in Section VI(B)(h) of the Policy.
- Hearing officers 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

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Hearing Notice of Determination

The Title IX Coordinator will simultaneously issue the hearing officer's notice of determination to each party and their advisor, with content required by the regulations:

- Procedural history;
- Summary of allegations;
- 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;

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Hearing Notice of Determination (cont'd)

Contents:

- 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; 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

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What are Remedies?

- Measures provided by the University to a complainant, as appropriate, 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

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What are Remedies? (cont'd)

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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

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Hearing Notice of Determination (cont'd)

The hearing notice of determination is final after:

- expiration of the period to file an appeal; or
- an appeal notice of determination is sent to the parties

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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 are decided by a three-person panel that is not composed of any of the individuals who made the initial determination

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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(s) or hearing officer 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

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Appealing Outcome (cont'd)

Actions upon receipt of a timely appeal:

- After at least one appeal has been timely submitted and the appeal deadline has passed, the Title IX Coordinator will give 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 explaining the result and the rationale for that result, which is delivered simultaneously to the parties

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Appealing Outcome (cont'd)

- As with investigation timeframes, the parties will be notified if any of 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
- All decisions made by the appeal decision-makers are final

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Q&A

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Thank you!

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