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High Point University Title IX Training

Annual Training for Title IX Coordinators and Deputies

July 2026

Stephen Vaughan



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Agenda

- Introduction and Training Goals
- Title IX Overview and Application
- Non-Title IX Sexual Harassment
- Title IX Policies and Procedures
- Oversight of University Response and Grievance Process
- Decision-Making Phases

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The Womble Way

- Collaboration
- Honor institutional mission and values
- Practicality
- Draw upon on first-hand experience from team members who work in this area and have served in these roles

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Training Requirements

- Training Requirements for Coordinators & Deputies, Investigators, Decision-Makers, Facilitators of Informal Resolution
 - Definition of sexual harassment
 - Institution's Policies and Procedures
 - Scope of your programs/activities
 - How to conduct an investigation and grievance process, including hearings and appeals
 - How to serve impartially and without bias and without prejudice
 - Relevant evidence and how it should be used during a proceeding
 - Proper techniques for questioning witnesses
 - Issues of relevance to draft reports that fairly summarize evidence*
 - Conducting hearings that protect complainant's safety and promote accountability (impact of trauma)
 - Technology to be used at any hearing (hearing decision makers)

Maintain training records (7 years) and post on website

**VAWA only*



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Title IX



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Legal Requirements – Title IX (20 U.S.C. § 1681)

“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”

and

34 CFR Section 106, last amended on July 1, 2026, contains the regulations that effectuate Title IX. Those regulations establish that Title IX:

- Applies to all institutions that receive federal funds, including financial assistance.
- Covers students, employees, and third parties.
- Includes all forms of discrimination based on sex such as sexual harassment and differential treatment.
- Is enforced by the Office for Civil Rights and courts.

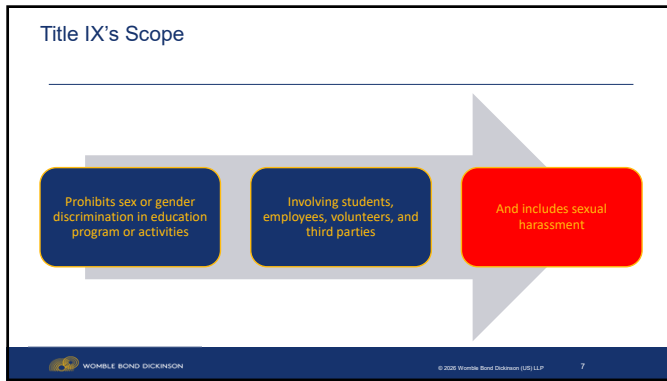


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Other Authorities and Legal Obligations – HPU Policies

- Procedures for Sexual Misconduct (for conduct that does not meet the Title IX requirements)
- Student Guide to Campus Life
- Faculty Handbook & Employee Handbook
- Other policies

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Other Key Terms

- Complainant and Respondent
- Witness
- Reports and Third-Party Reports
- Formal Complaints
- Grievance Process
- Interim and Supportive Measures

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General Title IX Regulations & VAWA Requirements

"Recipients" of federal funds must:

- Disseminate a policy that includes a Notice of Nondiscrimination
- Designate a Title IX Coordinator
- Adopt, publish, and follow grievance procedures that are equitable, prompt, and effective and provide for adequate, thorough, reliable, fair, and impartial investigations and adjudications
- Take action to address and prevent sex-based discrimination
- **Train individuals serving in specified roles**



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Title IX Coordinator's Role beyond Sexual Harassment

- Sex discrimination, including in recruitment, admissions, financial aid, and counseling
- Gender equity in athletics, including student interests and abilities, athletic benefits and opportunities, athletic facilities, and athletic financial aid
- Pregnant and parenting students
- Discipline
- Employment



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Related Legal Requirements – Clery Act

- Requires the reporting of accurate, timely, and complete information;
- For certain types of crimes or incidents;
- Occurring on or adjacent to campus ("Clery geography")

The Clery Act also requires that colleges and universities publish an annual security report ("ASR") that reflects campus crime statistics, attempts to improve campus safety, and institutions' relevant policy statements, such as their policy on crime reporting, alcohol and drug use, and prevention of/response to sexual assault.

- Clery Act Enforcement is conducted by the Clery Compliance Group of the US Department of Education's Office of Federal Student Aid.



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Related Legal Requirements – Violence Against Women Act (“VAWA”)

- Amended Clery Act through the Campus Sexual Violence Act (“SaVE Act”) provision, Section 304
- Added domestic violence, dating violence, and stalking to the Clery crimes (which already included sexual assault)
- Requires adoption of institutional policies, procedures, and programs to address and prevent campus sexual violence.
- Requires training of institutional personnel and students and prevention and awareness programs
- Requires that participants have an Advisor of choice; Notice of meetings; Access to information used in process; and a Written decision, including rationale



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Related Legal Requirements – Violence Against Women Act (“VAWA”)

- Amended Clery Act, Clery Act Enforcement
- Added domestic violence, dating violence, and stalking to the Clery crimes (which already included sexual assault)

Requires:

- Adoption of institutional policies and procedures to address and prevent campus sexual violence
- Advisor of choice
- Notice of meetings
- Access to information used in process
- Written decision, including rationale
- Requires training of institutional personnel and students
- Requires prevention and awareness programs for administrators, students, and employees



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Interplay



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Enforcement

Title IX enforced by:

- Department of Education's Office for Civil Rights (primary government office for enforcement)
- Lawsuits
- Court of public opinion



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Other Applicable Laws

- Family Educational Rights and Privacy Act (FERPA)
 - Exceptions under Title IX and VAWA for files shared during the process that permit disclosure of materials the laws require to be shared
 - Remedies are not shared except as necessary to enforce them (Title IX exception is for sharing the fact remedies were provided but not the details)
- Title VII
- Disability and Accommodations
- Mandatory reporting laws requiring the reporting of child abuse and neglect
- State laws



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When Does Title IX Apply?



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Legal Requirements: The Fundamental Obligation

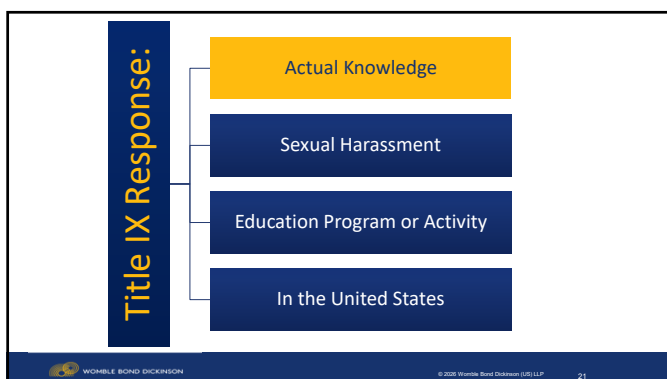
Under **Title IX**, an institution is obligated to respond when: it has "**actual knowledge**" of "**sexual harassment**" involving a person who is participating or attempting to participate in an "**education program or activity**" of the institution and when the sexual harassment is directed against a person **in the United States**.

VAWA:

- Allegation of sexual assault, dating violence, domestic violence, or stalking
- Involving student or employee
- Regardless of location and participation in program/activity

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Legal Requirements: Actual Knowledge and Officials with Authority

“Means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the university who has the authority to institute corrective measures on behalf of the recipient”

- Notice need not be in the form of a Formal Complaint
- Constructive notice or vicarious liability “are insufficient to constitute actual knowledge”
- Mere ability or obligation (by policy) to report sexual harassment does not make you an official with authority
- Having been trained to report sexual harassment does not make you an official with authority

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Legal Requirements: Actual Knowledge and Officials with Authority (cont.)

- Having been trained to report sexual harassment does not make you an official with authority

BUT (separate from whether it's "Actual Knowledge"):

- High Point University employees (faculty, staff, administrators), except for on-campus confidential resources, are expected to report sex-based discrimination, harassment, and/or retaliation to the Title IX Coordinator. HPU employees who are required to report to the Title IX Coordinator include, but are not limited to, the following:

Faculty, Office of Student Life Staff, Resident Assistants, Athletic Coaches, Campus Security, Graduate Assistants, Faculty Advisors, Success Coaches, and Learning Excellence Specialists

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Title IX Response Required:

Actual Knowledge

Sexual Harassment

Education Program or Activity

In the United States

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HPU Policy: Title IX Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo;**
- **Hostile environment;**
- **“sexual assault,” “dating violence,” “domestic violence,” or “stalking”**



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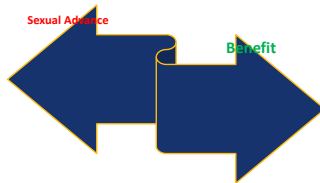
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Title IX Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo:** Conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct. Such unwelcome sexual conduct could include, but is not limited to, sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature.



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Title IX Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

Hostile environment: Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to High Point University's education program or activity.

Considerations:

- Positions/roles of parties, ages, and abilities
- Equal access does not require that the activity or benefit be completely denied—would a similarly situated reasonable person be denied equal access to that of someone not harassed

Commonly: verbal, visual, physical, and digital or technology-based



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Does Title IX apply?

Jordan reported that Casey, a teammate on the university's club flag football team, has repeatedly made comments and engaged in behavior over the past semester that have made him feel uncomfortable. Jordan reported that Casey has asked why Jordan paints his fingernails and mimicked the way Jordan walks in front of other teammates. Casey has refused to pass to Jordan during scrimmages because of how Jordan runs. Jordan said Casey keeps calling him "sweetie" in front of other players in the locker room and is constantly making jokes about how Jordan speaks.

Jordan stated that he initially tried to ignore Casey's behavior, hoping it would stop on its own, but it has escalated to the point where Jordan dreads attending practice and team events. Jordan stated that he has skipped several optional team activities and has considered leaving the team altogether, which would affect his eligibility for an athletic scholarship when flag football becomes an NCAA sport.



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HPU Policy: Title IX Sexual Harassment Defined

- Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (a) the degree to which the conduct affected the Complainant's ability to access the University's education program or activity; (b) the type, frequency, and duration of the conduct; (c) the Parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct; (d) the location of the conduct and the context in which the conduct occurred; and (e) other sexual harassment in the University's education program or activity.
- For the purposes of the definition of Title IX Hostile Environment Harassment, a determination about whether conduct is subjectively and objectively offensive includes consideration of whether a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident, would deem the conduct offensive.



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HPU Policy: Title IX Sexual Harassment Defined

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment Harassment:

- Repeated and unwelcome sexual flirtations, advances, attention, or propositions;
- Requests for sexual favors;
- Verbal abuse of a sexual nature, obscene language, off-color jokes, unwelcome verbal commentary about an individual's body, sexual innuendo, and gossip about sexual relations;
- The display of derogatory or sexually suggestive pictures, posters, cartoons, drawings, objects, notes, letters, emails, or text messages;
- Visual conduct such as leering or making gestures;
- Unwanted kissing;
- Unwelcome touching of a sexual nature such as patting, pinching, caressing, or brushing against another's body; and
- Cyber or electronic harassment.



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HPU Policy: Title IX Sexual Harassment Defined

The more severe the conduct, the less need there is to show multiple incidents or a pattern of incidents to prove a hostile environment, particularly when the alleged conduct is physical. A single verbal or written act on the basis of sex, standing alone, is typically not sufficient to constitute Hostile Environment Harassment.



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Title IX Sexual Harassment Defined

Conduct on the basis of sex that satisfies one or more of the following:

- (1) "sexual assault,"
- (2) "dating violence,"
- (3) "domestic violence," or
- (4) "stalking"



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Legal Requirements: Title IX Sexual Harassment Defined

Sexual Assault: sexual contact with another person who does not or cannot give consent. This may or may not include force. Sexual assault includes, but is not limited to:

- **Rape:** penetration, regardless of how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another individual, or by a sex-related object, without consent. A Complainant may be a person who is penetrated without consent or a person who is forced to penetrate another person without consent.
- **Sexual Assault (Touching):** the intentional or forced touching of clothed or unclothed body parts without consent for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This most commonly involves the touching of intimate body parts, including the genital area, groin, inner thigh, buttocks or breast.
- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
- **Statutory rape:** sexual penetration or other form of sexual contact with a person who is under the statutory age of consent.



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Legal Requirements: Title IX Sexual Harassment Defined

- **Dating violence:** Violence on the basis of sex committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship; type of relationship; and frequency of interaction between the persons involved in the relationship.
- **Domestic violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.
- * *The VAWA crimes as defined in the Clery Act*



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Legal Requirements: Title IX Sexual Harassment Defined

- **Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress
 1. **Course of conduct:** two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
 2. **Substantial emotional distress:** significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling
- *Stalking includes cyber stalking*
- *The VAWA crimes as defined in the Clery Act*



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Other Definitions?

- Consent? { • Not required by statute or regulation, but
- Incapacitation? { • Not required by statute or regulation, but



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HPU Policy: Related Definitions

- **Consent** is a clear expression in words or overt actions by a person affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in the mutually agreed-upon sexual contact. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent.
- All parties to a particular form of sexual contact must provide consent, and such consent must be present throughout the activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not, by itself, sufficient to constitute consent. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- Silence or the absence of resistance alone is not consent. Although resistance is not required, it is a clear demonstration of a lack of consent.



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HPU Policy: Related Definitions (Consent)

- If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.
- Even when consent is given, it may be withdrawn at any time. When consent is withdrawn, the sexual contact for which consent was initially provided must stop immediately. Any words or overt actions can communicate withdrawal of consent. As is the case with communicating the existence of consent, verbal communication is usually the clearest way of communicating withdrawal of consent.
- Consent cannot be obtained, expressly or implicitly, by use of physical force, threats, intimidating behavior, or coercion, as defined by the Policy.
- An individual known to be—or who should be known to be—incapacitated, as defined by this Policy, cannot consent to sexual activity.



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HPU Policy: Related Definitions (Consent)

- Consent can be given by clear words or actions that create clear permission regarding willingness to engage in the sexual activity.
- Consent can be revoked at any time. Sexual contact must cease immediately once consent is withdrawn and clearly communicated.
- Consent cannot be inferred from silence, passivity, or lack of verbal or physical resistance. Relying on nonverbal communication alone may result in a determination that consent was not obtained. Lack of protest or resistance does not mean consent, nor does silence mean consent.
- Consent cannot be inferred from an existing or previous dating relationship. The existence of a prior or current relationship does not, alone, constitute consent; even in the context of a relationship, there must be mutual consent to sexual activity in the moment.
- There must be mutual consent to engage in the sexual activity each time it occurs.
- Consent to one form of sexual activity does not imply or constitute consent to another form of sexual activity.
- Consent to engage in sexual activity at one time is not consent to engage in the same or different sexual activity at a different time.
- Consent to engage in sexual activity with one individual is not, alone, consent to engage in sexual activity with another.



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HPU Policy: Related Definitions (Consent – Coercion/Force)

- Coercion or Force includes **conduct, intimidation, and expressed or implied threats of physical or emotional harm that would reasonably place an individual in fear of immediate or future harm** and that are used in order to compel someone to engage in sexual contact.
- Any sexual contact occurring after a person has engaged in coercion or force will be presumed non-consensual, even if the particular sexual contact that occurs is different from the form of sexual contact in which the individual was attempting to engage, and even if the other individual uses words or actions that would otherwise appear to convey consent.
- Examples of coercion or force include causing the deliberate incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personally sensitive information if the other party does not engage in the sexual contact.



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HPU Policy: Related Definitions (Incapacitation)

- Incapacitation** means the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the influence of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the Respondent or a reasonable, sober person in the Respondent's position. Use of drugs or alcohol by the Respondent is not a defense to any violation of this Policy.



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HPU Policy: Related Definitions (Incapacitation)

- Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is incapacitated can be difficult.
- There are common signs that should alert a reasonable sober person as to whether an individual might be incapacitated.
- Those signs might include slurred or incomprehensible speech, disorientation of time, place, or location, clumsiness, difficulty walking, combativeness, emotional volatility, vomiting, or incontinence.
- A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know who I am?"
- If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo all sexual contact.



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Violation of HPU Policy?

Roger broke up with his girlfriend, Sam, at the end of last semester. At the time of their breakup, Roger told Sam that he needed space and did not want any further contact. Roger stated that Sam was emotional but ultimately respected his request.

Roger stated that this semester, he began volunteering at the University's library help desk as part of a work-study program and, about a week into his shifts, Sam started coming to the library regularly and sitting at a table with a clear line of sight to the help desk. Roger stated that he found this unusual because Sam had always preferred studying in her apartment and had never used the library when they were together. He tells you he thinks he is being stalked by Sam.



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Violation of HPU Policy?

Roger stated that when Sam came to the library, she would sometimes wave or nod but did not approach him or try to start a conversation. However, Roger stated that Sam would frequently stare for extended periods and would remain at the library for the entirety of his shift, leaving shortly after he did.



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Violation of HPU Policy?

Roger stated that on his birthday, he arrived at work to find a handwritten note and a gift card to his favorite coffee shop left at the help desk with no name attached. Roger believed Sam left it because he noticed Sam was already seated at her usual table when he arrived and appeared to be watching for his reaction. Roger stated that he felt uneasy and decided to swap his shift the following day. Roger stated that his coworker later mentioned that someone matching Sam's description had come to the desk and asked what time Roger would be working next. Roger stated he is now anxious about going to work because it feels like Sam is monitoring his schedule and presence.

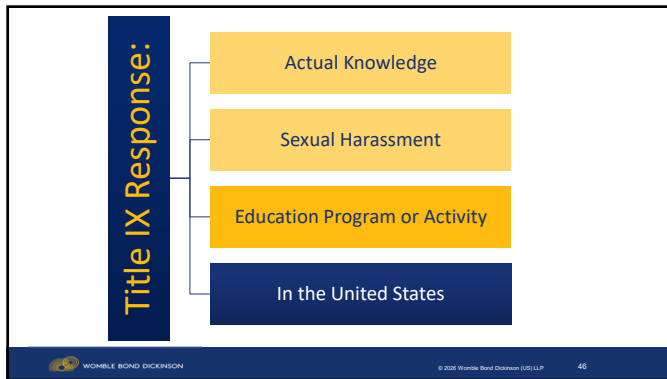


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Legal Requirements: Education Program or Activity

- Locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs
 - On campus or
 - Off campus, when:
 - Part of the recipient's operations
 - Occurs at any building owned or controlled by an officially recognized student organization (e.g., fraternities and sororities)

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Does Title IX Apply?

Neil, a student, reported that he attended an off-campus event at an arts center near campus. Neil reported that during the party, he had a THC edible "gummy" and several drinks and blacked out.

Neil stated that he vaguely remembered a girl he thought was named Lynn coming up to him as he was leaving. Neil reported that Lynn kissed him and grabbed squeezed his buttocks. Neil said he did not know Lynn and did not consent to her kissing or touching him. Neil said he felt completely violated.

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Legal Requirements: Education Program or Activity?



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Important Notes

- Complainant/Reporting Party must be **"participating or attempting to participate"** in the institution's education program or activity at the time the Formal Complaint is filed
- If Respondent is not affiliated with the institution, then HPU has limited ability to take action under Title IX
 - But HPU can still actions to ensure Complainant is able to participate in education programs and activities
- Ask yourself:** who was involved, how are they related to HPU, what was the nature of the conduct, and where did it occur



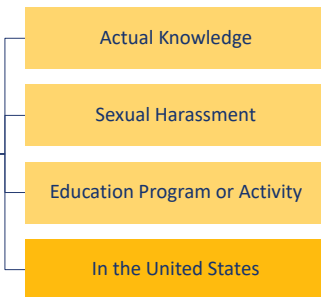
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Title IX Response:



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Legal Requirements: Response to Sexual Harassment

Framework:

- **Title IX:** actual knowledge, sexual harassment, in education program or activity, directed against someone in the US
- **VAWA:** sexual assault, dating violence, domestic violence, or stalking; involving a student or employee; regardless of participation in program/activity
 - Some cases will involve both
- Others could be neither (e.g., hostile environment-type sexual harassment that is not severe, pervasive, **and** objectively offensive) and are governed by the Sexual Misconduct section of your Policy
 - E.g., VAWA offenses occurring off-campus and outside programs or activities and "Sex/Gender-Based Harassment" (severe, or pervasive, or objectively offensive)



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Legal Requirements: Response to Sexual Harassment

If recipient has actual knowledge, Recipient/Title IX Coordinator must:

- Respond promptly in a manner that is not **deliberately indifferent**, meaning the response cannot be clearly unreasonable in the known circumstances
- Follow the Title IX Regulations "Grievance Process"
- Promptly contact the Complainant to discuss availability of **supportive measures**
- Consider Complainant's wishes with respect to the supportive measures
- Inform Complainant of availability of supportive measures regardless of whether a formal complaint is filed
- Explain the process of filing a Formal Complaint
- Provide written notice of rights and options for allegations of sexual assault, dating violence, domestic violence, and stalking (VAWA)
- Notify Complainant of right to report to law enforcement and offer assistance (VAWA)



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What if Title IX Does Not Apply?



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HPU Policy: Sexual Misconduct

- HPU Policy also applies even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States. This Policy also applies to online conduct when the Title IX Coordinator determines that the conduct affects a substantial HPU interest.
- Regardless of where the conduct occurred, a substantial HPU interest may include the following:
 - Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeated violations of any local, state, or federal law;
 - Any situation in which it is determined that there may be an immediate threat to the physical health or safety of any student or other individual;
 - Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace or causes social disorder;
 - Any situation that is detrimental to the educational interests or mission of HPU; and
 - Any situation where the conduct that occurs off HPU property and/or outside of a HPU-related program or activity, including off-campus or online conduct that is not part of a HPU program or activity if the alleged prohibited conduct is contributing to a hostile environment that occurs within a HPU program or activity.



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HPU Policy: Sexual Misconduct

"HPU also prohibits unwelcome conduct of a sexual nature or based on sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above); (2) that did not occur in the University's education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption or interfere with an individual's right to a non-discriminatory educational or work environment, or (3) occurs outside of the United States," as well as:

Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature when:

- Submission to or rejection of that conduct or communication is made a term or condition, either explicitly or implicitly, of an individual's educational experience or employment; (Quid Pro Quo);
- Submission to or rejection of that conduct or communication is used as the basis for an educational program decision or employment decision affecting that individual; (Quid Pro Quo)
- Unwelcome conduct determined by a reasonable person to be so severe or pervasive or objectively offensive that it unreasonably interferes with an individual's functioning or creates an intimidating, hostile, or abusive working or learning environment. (Hostile Environment).



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HPU Policy: Sexual Misconduct

Sexual Exploitation is taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, including extending the bounds of consensual contact without the knowledge or consent of the other person. Sexual Exploitation is conduct that does not otherwise constitute Prohibited Conduct under this Policy. Examples of Sexual Exploitation include, but are not limited to:

- Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity.
- Allowing third parties to observe private sexual activity from a hidden location or through electronic means.
- Engaging in voyeurism (e.g., watching private sexual activity without the consent of the participants or viewing another person's intimate parts (including genitalia, groin, breasts, or buttocks) in a place where that person would have a reasonable expectation of privacy).
- Recording or photographing private sexual activity and/or a person's intimate parts, including genitalia, groin, breasts, or buttocks, without consent, or reviewing such content without consent.



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HPU Policy: Sexual Misconduct

Sexual Exploitation (cont.):

- Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts, or buttocks) without consent.
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Using artificial intelligence or other technology to create realistic images of another's intimate parts, including genitalia, groin, breasts, or buttocks, without consent.
- Publishing, viewing, or disseminating images of another's intimate parts, including genitalia, groin, breasts, or buttocks, created by using artificial intelligence or other technology to create realistic images of another's intimate parts, including genitalia, groin, breasts, or buttocks, without consent.
- Prostituting or sex trafficking another person.
- Exposing another person to a sexually transmitted infection or virus without the other person's knowledge.



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HPU Policy: Sexual Misconduct (and for Title IX Matters)

Interference with Procedures: Interference includes, but is not limited to, the following:

- Knowingly falsifying, distorting, or misrepresenting information provided to the Title IX Coordinator, an investigator, hearing decision-maker(s), executive council, or appeal official; or
- Knowingly instituting a complaint without cause and in bad faith.



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Developing Title IX (and Sexual Misconduct) Policies and Procedures



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General Principles (not requirements)

- **Stay current:**
 - Ensure updated policy and procedures are published broadly to: students, employees, applicants (admissions and employment), referral sources, and other organizations
 - Ensure team members and contact information on website and posted internally are accurate
 - Update any changes to resources or supportive measures
 - **Verify that cross-references in handbooks, catalogs, and policies are up-to-date**
 - Maintain consistency with handbooks, catalogs, and policies
 - Remove prior versions from website and elsewhere
- **Be Effective:**
 - Use clear and plain language intended to be understandable from the perspective of those who are least familiar with such policies and procedures (typically students)
 - Make policies and procedures available in format accessible to the entire community, including English language learners and those with disabilities



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General Principles (not requirements)

- **Be Prepared to Make Policy and Procedural Changes, as Necessary:**
 - Maintain prior versions
 - Understand who in your community is required or should be chosen to participate in the development of your policies and procedures
 - Determine who is responsible for drafting
 - Is it more effective to collect higher-level or issue specific feedback from those in campus leadership?
 - Work to obtain input from key stakeholders and engage with a range of administrators in the process (ambassador effect)
 - Receive and engage with those community members providing feedback in the midst of a process
 - Provide opportunities for feedback prior to finalizing changes
 - Coordinate revisions with changes to other, related policies and procedures
 - Take stock of issues that arise over the course of the year



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Some Important Policy Decisions to Consider

- **Required Policy Definitions for Sexual Harassment:** *Quid pro quo; hostile environment; sexual assault (multiple); dating violence; domestic violence; and stalking*
- **How will you address Non-Title IX Sexual Harassment and VAWA crimes?**
 - Definitions?
 - Same or similar process from notice through appeals for Title IX, Non-Title IX, and VAWA?
- **Decision Points for Non-Title IX:**
 - Title IX requirements regarding sharing of evidence and hearing with cross-examination
 - Length of process
 - Desire to use a single, uniform process affording the most process/due process
 - Desire to exercise more/less discretion
 - FERPA concerns for non-Title IX sexual harassment
 - Interplay with other campus processes, especially student conduct and employment



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Typical Policy Framework

- Introduction and Scope
- Notice of Nondiscrimination
- Title IX Team and roles (and conflict interest/bias)
- Definitions (required and beyond)
- Reports and Complaints
- Resources and Supportive Measures
- Emergency Removal/Administrative Leave
- Grievance Process (informal, investigations, determinations, and appeals)
- Timelines for the phases and good cause for delay
- Parties' Rights (written notices, presumption of non-responsible, advisors, permissible evidence, access to evidence, review investigative report, response to report, and written decisions with rationale)
- Potential Sanctions and Remedies



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Typical Policy Framework

- Parties' Rights:
 - Written notices
 - Presumption of non-responsible
 - Advisors
 - Permissible evidence
 - Access to evidence
 - Review and response to investigative report
 - Written decisions with rationale
- Potential Sanctions and Remedies



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Other Content for Consideration

- Reservation of flexibility
- Participation in good faith
- Nondisclosure and advisor agreements
- Amnesty
- Process for alleged violations of no-contact orders, remedies, sanctions, and good faith
- Process for allegations of retaliation
- Consensual Relationships Policy
- Applicable substantive definitions and procedures to use for delayed reports
- Evidentiary issues for non-Title IX matters, including expert reports, medical and privileged information, character evidence, and lie detector results
- How the institution will handle investigation information from those who do not testify at the hearing



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Title IX Team and Coordinating the Process



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High Level Roles and Responsibilities

Title IX Coordinator

Position of authority, autonomy, and seniority

Implements legally compliant policy and procedures
Oversees response to reports and formal complaints
Supportive measure/Resources
Oversees grievance process
Role in sanctions and remedies
Delineating roles and responsibilities
Training and programming
Climate surveys
Recordkeeping
Non-sexual harassment duties
Annual training

Investigator

Employees or external

Conduct fair, prompt, and impartial investigations
Identify fact issues
Collect sufficient evidence
Compile evidence, including interviews, data, and documents
Draft investigative report
Recommendations?
Maintain records during investigation
Work with Title IX Coordinator throughout the process
Impartial and bias free
Annual training

Hearing Officer

Employees or external

Review investigative report and responses
Participate in live hearing
Determine whether Policy has been violated using preponderance of the evidence standard
Issue a notice of determination that includes rationale for the findings and any sanctions
Make credibility determinations
Impartial and bias free
Annual training



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More Process Duties for the Title IX Coordinator (or Designee)

- **Calling all deputies and team members!**
- Intake/information meetings
- Evaluate report/complaint
- Safety and risk assessment
- Outreach
- Process determination (Title IX/Non-Title IX)
- Dismissals
- Notice of allegations and investigation
- Evaluating requests from parties, witnesses, and advisors
- Adherence to accommodations and coordination of supportive measures
- Communication strategy during investigation, determination, and appeals
 - Timelines, delays for good cause, and supportive measures



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More for the Title IX Coordinator (or Designee)

- **Calling all deputies and team members!**
- Obtaining nondisclosure and advisor agreements
- Adherence to Policy and grievance process steps throughout the process
- Considering applicability of informal resolution
- Evaluating allegations of other violations or related complaints
- Impartiality: maintaining a process with participants who are free from bias and conflicts of interest
- Training community members
- Spreading the word and Programming



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Easing the Burdens—Recommended Tools

- Checklists and scripts for conversations/communications with parties, witnesses, and other community ("concerned" faculty) and non-community members (Mom?)
- Templates for communications during the process:
 - Outreach
 - Initial meeting requests
 - Notices to parties (investigation, meetings, delays for good cause, case events, close of evidence)
 - Communications to campus partners (e.g., accommodations requests)
 - Advisor agreements
 - Nondisclosure agreements
 - FERPA waivers
 - Notifications for reviews and determinations
 - Informal resolution
- Internal communication protocols
- Use of case management and tracking system
- Confidential resources
- Flip it



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High Level Roles and Responsibilities

Appeal Officer

Employees or external
Review pertinent investigative and hearing materials
Determine whether Policy appeal grounds have been met by preponderance of the evidence standard
Issue written decision that includes the rationale for the findings
Impartial and bias free
Annual training

Facilitator of Informal Resolution

Employees or external
May be the Title IX Coordinator
Coordinate appropriate process with Title IX Coordinator in conjunction with Policy requirements
Participate in creation of written agreement, as applicable
Impartial and bias free
Annual training



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High Level Roles and Responsibilities—Advisors

- Parties have the right to an **advisor of choice** in any meeting and throughout the process
 - Can be attorneys, advocates, family, friends, employees, and other students
 - Employees **not** required to accept
- Institution required to provide advisor at hearing to conduct cross-examination if the party does not have one (no training requirement, no requirement regarding bias/conflict)
- Advisors can be removed or disqualified based on conduct—consider having guidelines/advisor agreements to set parameters



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Understanding Roles — Title IX Dividing Lines

- Title IX Coordinator can be an investigator but cannot be a decision-maker
 - Can make recommendations regarding findings
- Investigator cannot be a decision-maker (no single investigator model)
 - Can make recommendations regarding findings
- **BUT** decision-maker, regardless of recommendations, must **independently and objectively evaluate the relevant evidence** (no deferential treatment)



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Decisions on Bias and Conflict of Interest

- Serving impartially: avoiding prejudgment of facts and disclosing conflicts of interest
- Implicit and explicit
- Common biases (often protected categories):
 - Gender, Gender Identity, Gender Expression
 - Sexual orientation
 - Race
 - Ethnicity
 - National origin
 - Culture
 - Religion
 - Age
 - Disability
 - Pregnancy
 - Marital or relationship status
 - Veteran status



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Problem?

- You are asked to serve as a decision-maker in a case involving Harper and Noah. When the Title IX Coordinator shares the party names with you, you recall that Harper was a student in one of your classes last year. You decide not to say anything to the Title IX Coordinator because the experience was uneventful; you do not even remember what grade Harper received in your class. Any concerns?
- You recognize Noah's name because one of his teammates on the swim team came to you and told you that he was worried about his friend Noah. When asked, he told you Noah was going through a hard time because Noah recently had sex for the first time with a girl who he caught feelings for, but she was "pretty horrible" to him and was trying to extort him. He said Noah was thinking about leaving school. Any concerns?



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Decisions on Bias and Conflict of Interest

- Case-by-case examination of the "particular facts"
- Recipients are encouraged to "apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased."
- If someone has a material connection to a dispute, or the parties involved, and a reasonable person would question that person's ability to be impartial
- Could be** based on a number of factors or connections, including prior or existing relationships, past advocacy (survivor or respondent groups), prior interactions or involvement, professional experience and activities, areas of study, the decision-maker's position on campus, or financial and reputational interests of employee that aligns with the institution
 - "assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents" is unreasonable
- Cannot make decisions based on characteristics of the parties—must be based on the facts of the case



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Response Requirements



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Legal Requirements: Response to Sexual Harassment

If recipient has actual knowledge, Recipient/Title IX Coordinator must:

- Respond promptly in a manner that is not **deliberately indifferent**, meaning the response cannot be clearly unreasonable in the known circumstances
- Follow the Title IX Regulations "Grievance Process"
- Promptly contact the Complainant to discuss availability of **supportive measures**
- Consider Complainant's wishes with respect to the supportive measures
- Inform Complainant of availability of supportive measures regardless of whether a formal complaint is filed
- Explain the process of filing a Formal Complaint
- Provide written notice of rights and options for allegations of sexual assault, dating violence, domestic violence, and stalking (VAWA)
- Notify Complainant of right to report to law enforcement and offer assistance (VAWA)



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Recordkeeping — Title IX

Must maintain certain records for seven years, including:

- For each sexual harassment investigation including: any determination regarding responsibility, any audio or audiovisual recording or transcript required by the Regulations, any disciplinary sanctions imposed on the Respondent, any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity
- Any appeal and the result
- Informal resolution
- Supportive measures
- Training materials for Title IX Coordinators, Investigators, decision-makers, and those who facilitate informal resolution (and post on website)
- Actions taken in response to a report or formal complaint sufficient to document why the response was not deliberately indifferent



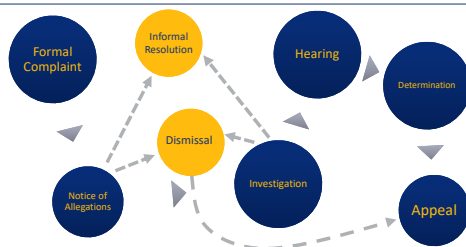
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Formal Grievance Process



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Reports vs. Formal Complaints

Some process begins upon the receipt of information containing allegations of sexual harassment, a "report"

- Institution obligated to respond when Coordinator or "officials with authority" to institute "corrective measure" receive report
- Often made to others outside the Title IX team
 - Faculty, staff, employees, and student employees ("Responsible employees" under your policy)
 - Confidential resources
 - Friends, fellow students, and family members
 - Anonymous?
- Do we emphasize the benefits of online reports
(https://cm.maxient.com/reportingform.php?HighPointUniv&layout_id=20)?
- How do we respond to a report?



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Response

Varies by Role:

- Title IX Coordinator/officials have a legal duty
- Responsible or Designated Employees are required by Policy to report
- Confidential Resources
 - Not required to report details to institution (may have state law or Clergy obligations)
 - Licensed counselors and medical providers
 - Pastoral counselors
 - Others with state law privilege
- Should provide information to potential complainant, including: reporting options, Title IX rights, rights to law enforcement, available medical services, retaliation protections, supportive and interim measures, the importance of identifying and preserving evidence, and a handoff to the Title IX office



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Title IX Coordinator Response

Ground level, upon receipt of a report/complaint:

- Review of report and/or formal complaint (or explain process for filing formal complaint)
- Outreach and meeting with Complainant
- Safety and risk analysis (Complainant and community)
 - Removal process, if applicable (very rare)
- Written notice of rights to Complainant and preservation of evidence (VAWA compliant)
- Notification of right to contact law enforcement (and note differences in that process)
- Notification of right to obtain medical treatment
- Supportive/Interim measures
- Evaluate availability of informal resolution
- Evaluate potential grounds for dismissal
- Upon receipt of Formal Complaint, decision about whether to move forward with an investigation
- Determination of which policy/process will be followed for any investigation

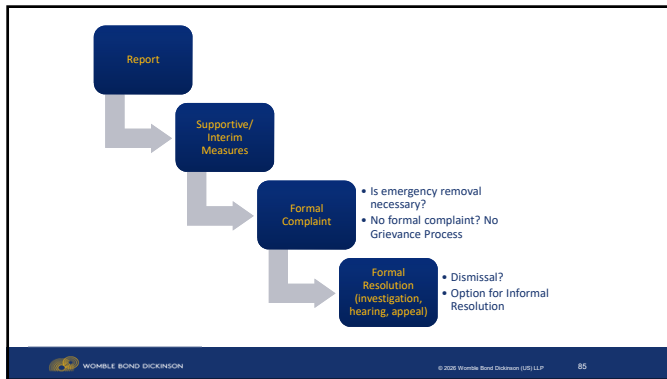


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Outreach and Meeting with Reporting Party

Tips for Outreach:

- Send form outreach letter offering an initial meeting or conversation
- Identify reason for contacting them
- Include resources
- Explain policy against retaliation
- Address confidentiality
- Explain impact of delay
- Let them know you will be there if they need additional time

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HPU Policy Addresses Time Limits and Delays

- "Although there is no time limit for reporting Title IX Sexual Harassment and Sexual Misconduct to the University under this policy, the University's ability to effectively respond or investigate may diminish with the passage of time, as evidence may not be preserved, memories may fade, and Respondents may no longer be affiliated with the University."
- "If the Respondent is no longer a Student or an Employee of the University, the University will provide reasonably appropriate Supportive Measures, assist the Complainant in identifying external reporting options, and take reasonable steps to eliminate Title IX Sexual Harassment and Sexual Misconduct, prevent its recurrence, and remedy its effects."
- "Beyond losing the ability to preserve important evidence and to effectively address potential Policy violations by a Respondent, delays in reporting can cause Complainants to not obtain important resources or Supportive Measures that the University has reasonably available to assist them."

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Hands tied?

At the end of the Spring 2026 semester, Harper told her academic advisor that another student, who had recently graduated, had been making inappropriate jokes to her in class and via text messages. Harper stated that she stopped attending class because of the jokes, which negatively impacted her grade. Harper did not share the context of the jokes and text messages.

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Outreach and Meeting with Reporting Party

Initial Meeting/Conversation

- Use your established checklist, covering:
 - Right to report to law enforcement
 - Available grievance process (including informal) or other applicable process
 - Rights afforded by process
 - Details about formal complaints
 - Time to decide (and available confidential resources)
 - Preservation of evidence
 - Supportive measures and resources and how to obtain them
 - Plan for follow-up
 - If going forward with no-contact order or process, outreach to Respondent
- Determine whether you need to notify others: campus safety/security, Clery reporting, BIT or TAT teams, or whether Emergency Removal is necessary

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Supportive/Interim Measures

Non-disciplinary, non-punitive, individualized services offered, as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where none has been filed.

- Designed to restore or preserve equal access to the recipient's program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment
- Must maintain as confidential to the extent that doing so would not impair the ability to provide them
- Also known as "interim measures" for sexual assault and VAWA crimes
- *If the action is listed in your policy as a **sanction**, it is likely **disciplinary or punitive** (EXCEPTION: administrative leave for employee)*

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Supportive/Interim Measures

Pursuant to Title IX Regulations, they may include:

- Mutual no contact orders—*most common*
- Counseling and other health resources
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Changes in work or housing locations
- Changes to parking or transportation
- Leaves of absence
- Increased security or monitoring of certain areas of the campus
- Or other similar measures chosen by recipient
 - Or third parties who can provide services (MOUs)
- **Must consider Complainant's desires for the options**



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HPU Policy— Supportive Measures

- Referral to counseling, medical, and/or other health care services;
- Referral to community-based service providers;
- Visa and immigration assistance;
- Student financial aid counseling;
- Education to the community or community subgroup(s);
- Altering campus housing assignment(s);
- Altering work arrangements for employees or student-employees;
- Safety planning;
- Providing campus safety escorts;
- Providing transportation accommodations;
- Implementing contact limitations (No Contact Orders) between the parties;
- Academic support, extensions of deadlines, or other course/program related adjustments;
- Timely warnings;
- Class schedule modifications, withdrawals, or leaves of absence;
- Increased security and monitoring of certain areas of the campus; and
- Any other actions deemed appropriate by the Title IX Coordinator.



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Grievance Process



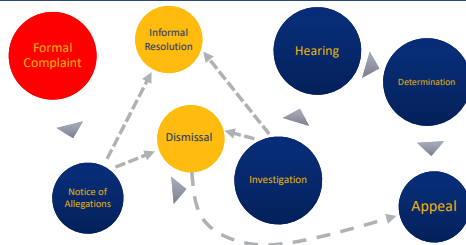
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Formal Grievance Process



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Title IX "Formal Complaint" Initiates Grievance Process

Formal Complaint under Title IX (but not required by VAWA):

1. Document;
2. Filed by a Complainant (or parent/guardian with legal right to do so) or signed by the Title IX Coordinator;
3. Alleging Sexual Harassment against a Respondent; **and**
4. Requesting an investigation of an allegation of Sexual Harassment

Important!

- Cannot be filed anonymously
- Can be filed in person, by mail, email using Title IX Coordinator's contact information or any other method designated (e.g., online reporting form)
- Must have digital signature or other confirmation for Complainant
- Title IX Coordinator who signs a Formal Complaint is not a "party"
- Complainant's identity, if known, must be disclosed to Respondent (in contrast to a "report")
- Complainant must be participating/attempting to participate in program or activity
- No statute of limitations
- Consolidation of Formal Complaints permitted for cases arising out of same facts or circumstances

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Title IX "Formal Complaint" Initiates Grievance Process

Decision points for Formal Complaints brought by Title IX Coordinator:

- Availability of evidence
- Will reporting party/person affected participate
- Severity of alleged conduct
- Risk factors, including threats of harm, use of weapons, history of conduct, and community risks
- Pattern evidence
- Use of weapon
- Relationship of the parties to each other (Peers? Supervisory relationship? Student and staff/faculty?)

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Get Him Out?

Hailey calls the police to report that Mike sexually assaulted her dorm room. She reported that she had only gone out with Mike one time and then he randomly came over to her room and walked right inside. Hailey reported that she told Mike he could come inside but had to leave by 11 pm because she had an early class in the morning. She stated they kissed for a little while before he started begging her for sex. She stated that she repeatedly told him know before he "just did it."



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Get Him Out?

Hailey's mom has called and emailed you all day demanding that Mike be immediately removed from campus. She said that he is in two of Hailey's classes and he's a menace to Hailey and all females on campus. Mom said everyone knows Mike has done this before and every minute he is on campus is a risk.



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Emergency Removal/Administrative Leave

Emergency removal process is permitted, when:

- after an individualized safety and risk analysis, recipient determines there is an *immediate threat* to the *physical health* or *safety* of any students or other individuals *arising from* the allegations of sexual harassment
 - Must provide Respondent notice and opportunity to immediately challenge decision
- *May place a non-student employee on administrative leave during the pendency of a grievance process.*



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Formal Grievance Process

Basic Requirements:

- No bias or conflicts of interest (as to party type generally or individuals)
 - Training required for all roles!
- Treat parties equitably
 - Participation in process and submission of evidence
 - Advisors and limits to participation (cannot limit cross-examination)
 - Access to directly related and relevant evidence
- Follow Grievance Process before imposing sanctions or other non-supportive measures
- Remedies designed to restore or preserve access to education or activity (need not be non-disciplinary or non-punitive) – occurs **after** a determination of responsibility



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Formal Grievance Process

Basic Requirements (cont.):

- Describe range of supportive measures
- Remedies are often extensions of supportive/interim measures
Complainant received during process
- Presumption of not responsible
- State the standard of evidence and use the same one for all Formal Complaints regardless of who the parties are
 - Preponderance (HPU's standard) or clear and convincing
- Cannot seek to collect information protected by legally recognized privilege unless the privilege has been waived
- Same for medical treatment records unless voluntary, written consent



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Formal Grievance Process

Basic Requirements (cont.):

- Reasonably prompt timeframes (temporary delays for good cause)
 - For each phase of the process (some are specified in the Regs)
 - With written notice to the parties citing reasons for delay and upon resuming investigation
 - **Good cause** includes: absence of party, advisor or witness unavailable; language assistance/disability accommodation; or concurrent law enforcement activity (brief, for fact gathering, not criminal prosecution)—workload of DM is **not** included as an example
- Objective evaluation of all evidence, inculpatory and exculpatory
 - Credibility determinations cannot be based on status as Complainant, Respondent, or witness
- Describe range of sanctions and remedies
- Procedures and grounds for appeals
- **Plus any provisions, rules, or practices adopted by institution**



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More on the Right to an Advisor

- Both parties have the right to be accompanied by advisor to any meeting or proceeding during the investigation (Title IX and VAWA)
- Recipient may not limit the presence or choice
- But may establish restrictions around advisor participation in meetings or proceedings, as long as applied equally to both parties
 - Gag orders NOT permitted
 - May set parameters through advisor agreements
 - Nondisclosure agreements (NDAs)
 - Potted plant during process and interviews and no direct communication with recipient
 - Avoid direct engagement with advisor, address party and advise party of consequences
 - Involve Title IX Coordinator in decisions about advisor conduct
 - Take the same approach for all advisors, in all cases
- Recipient not required to provide an advisor at any time prior to hearing
 - May not restrict advisor's role in cross-examination



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HPU Policy on Advisors

- Both the Complainant and Respondent have the right to be accompanied to meetings by an advisor of their choice, who may be, but is not required to be, an attorney. Generally, the advisor selected by the Complainant or Respondent should be readily available to participate in an efficient Grievance Process and be free of conflicts of interest.
- If a member of the HPU community, the advisor should be free of conflicts in his or her position in the community. Parties must notify the Title IX Coordinator, in writing, of their advisor of choice and the parties and their advisors must complete HPU's advisor agreement in advance of any meeting related to HPU's Policy.
- The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with throughout the Resolution process. The parties may choose Advisors from inside or outside of the HPU community.
- Advisors should not have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor or implement sanctions.
- Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.



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HPU Policy on Advisors

- The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the university, the Advisor will have been trained by the university and be familiar with the university's Resolution Process.
- If the parties choose an Advisor from outside the pool of those identified by the university, the Advisor may not have been trained by the university and may not be familiar with university policies and procedures.
- Choosing an Advisor who is also a witness in the process creates potential bias which will be explored by the hearing decision-maker(s).



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HPU Policy on Advisors

- The purpose of the advisor is to support a Party in the Grievance Process.
- During the investigation phase of the Grievance Process or in any other meeting, advisors may confer with their advisee, but they may not speak on behalf of their advisee, advocate for their advisee, or otherwise actively participate in the process.
- The advisor may accompany their advisee to all meetings relating to the Grievance Process, including the Informal Resolution Process if applicable.
- While advisors may assist their advisee in drafting written communications to the University, they may not directly or indirectly communicate with the University in the Grievance Process, including with the Title IX Coordinator, the investigator, any decision-maker (including appeals), or any witnesses except as specifically outlined in the Grievance Process.
- Advisors may not interrupt or otherwise unduly delay the Grievance Process. The University will strive to accommodate advisors' schedules; however, if an advisor is not reasonably available to participate in and throughout the Grievance Process, HPU reserves the right to move forward with its process in order to ensure its prompt completion.



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HPU Policy on Advisors

- With the permission of their advisee, advisors will be provided access to the same investigation materials and permissible evidence that is available to their advisee. This information frequently includes student records of participants beyond just their advisee and other confidential and highly sensitive information. Advisors' access to such information is conditioned upon their agreement to maintain the confidentiality of these records, except when disclosure is legally authorized. Advisors may only discuss information disclosed through the investigation process with their advisee. For example, if a party's advisor is an attorney, the attorney may not share any information obtained during the investigation process with other attorneys or staff associated with the attorney.
- Violations of confidentiality or other forms of interference with the Grievance Process by the advisor may result in disqualification of an advisor, in addition other available actions.
- The parties should expect that the University will disclose information about the identity of one party's advisor to the other party in a Grievance Process.



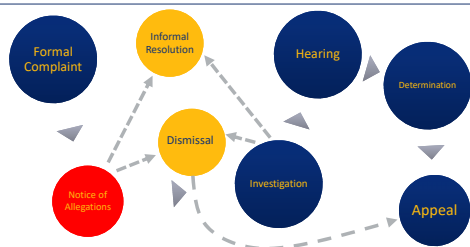
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Formal Grievance Process



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Notice of Allegations and Investigation

Upon receipt of the Formal Complaint, must send parties

Written Notice:

- Explaining grievance process
- Containing sufficient details known *at that time* (and supplement later as necessary) and provided with sufficient time to prepare a response before any interview, including:
 - identities of the parties (if known)
 - conduct constituting sexual harassment
 - date and location of alleged incident(s) (if known)
- Stating that respondent is presumed not responsible until a determination



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Notice of Allegations and Investigation

- Determination regarding responsibility is made at conclusion of the process
- Informing parties of any policy provision that prohibits participants from knowingly making false statements/submitting false information
- Informing parties of their right to an advisor of their choice and that the advisor may, but need not be, an attorney
- Right of advisor to inspect and review evidence as stated in the applicable policy (most institutions have a branched approach, one for Title IX and one for non-Title IX allegations)
- Appeal rights



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Consolidation Guidance

"An institution may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances."



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HPU Policy – Definition of Retaliation

Retaliation: Intimidation, threats, coercion, or discrimination against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege secured by this Policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution process, in grievance procedures, and in any other actions taken by the University under this Policy.

Retaliation is prohibited under HPU's Title IX and Sexual Misconduct Policy.



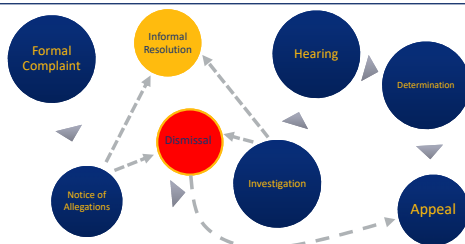
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Formal Grievance Process — Dismissals

Two types:

1. Mandatory dismissal of Title IX Formal Complaint, when:

- the allegation, even if proved, would not need meet sexual harassment definition;
- did not occur in education program or activity; or
- did not occur against a person in the U.S.

2. Discretionary dismissal (*at any time*), if:

- Complainant provides written notice to Title IX Coordinator of withdrawal of Formal Complaint or allegations
- Respondent no longer enrolled in or employed by recipient
- specific circumstances prevent recipient from gathering sufficient evidence to reach a determination as to the Formal Complaint

In either case, recipient must promptly send a written notice of dismissal and the specific reasons for it, simultaneously to the parties (appealable)



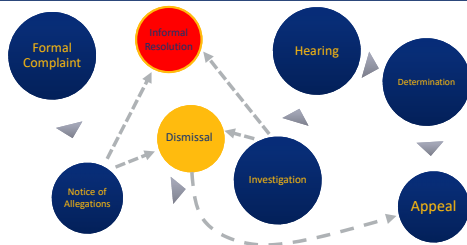
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HPU Informal Resolution or Informal Resolution Process ("IRP")

- Voluntary process that must be agreed upon by all parties and HPU, initially and throughout, through written consent
- Formal complaint is required
- Can be requested at any time prior to the decision-maker has made a final determination, including prior to, during, and after the completion of an investigation
- Party must submit a form requesting IRP
- Can take many forms, including facilitated discussions, shuttle diplomacy, mediation, restorative practices, or acceptance of responsibility, among others
- Can be in-person, virtually, or even electronically, as determined by the Title IX Coordinator
- Can be concluded by any party or HPU
- If IRP is unsuccessful, IRP submissions should not be shared with investigator (but that does not mean the underlying factual information cannot be provided during the investigation)—the point being to keep the process separate
- Completed through a resolution agreement or a return to the formal process
- BUT not available when respondent is an employee and complainant is a student

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IRP Considerations

- Are there allegations for which it is not appropriate in your community
- What factors impact the Title IX Office's decision to permit or not permit it
- Given what the institution know of the parties and circumstances, how likely is it that IRP will be successful
- Will it resolve all matters involving the parties
- What information will be shared during this process
- Are we taking steps in the outcome to stop the harassment, prevent its occurrence, and address its effects?
- Should these outcomes be consistent from Formal Complaint to Formal Complaint
- Impact on the investigation process
- Can the outcome be used in future process
- Recordkeeping

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Common Outcomes

- No-contact order
- Nondisparagement
- Changes in classes, residence halls, extracurricular activities
- Removal from leadership positions
- Counseling, training, and education requirements
- Probation
- Reimbursement for expenses
- Pay for property damage
- Agreement not to sue
- Suspension
- No admission of responsibility
- Apology



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Advisable?



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Maya and Dr. Harmon

Maya is an undergraduate student in her last semester. Her faculty advisor is Dr. Harmon. Maya noticed that three or four times this semester, Dr. Harmon has asked her to come meet with him in his office and once at a coffee shop about "important" matters. Each time, she has felt like Dr. Harmon just wanted to chat and that nothing they discussed was important to her academically or something that could not have been communicated by email. Maya is not sure what to do so she confides in her friend Shelia, who is a fellow grad student and TA for the university. Shelia tells Maya it is probably nothing and Maya is a notoriously good conversationalist.



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Maya and Dr. Harmon

Maya continues to engage with Dr. Harmon. He occasionally text Maya over the weekend about great local restaurants and asks for her recommendations about the best local happy hours. Maya responds to the texts, frequently using emojis or symbols instead of words.

Maya is also waiting for Dr. Harmon's letter of recommendation for her Maya's graduate school applications, which is now weeks overdue. When she asks Dr. Harmon about it, he said he wants to "get to know her a little better" to make sure the letter fully captures her capabilities.

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A chance encounter?

As Maya was leaving Dr. Harmon's office on Friday, she received a phone call from her brother, who is an alum, asking her for the name of the restaurant where they were having dinner that night. Maya reminds him of the location and time.

That evening, while Maya and her brother are at the table, Maya notices Dr. Harmon come in the restaurant and take a seat at the bar. She starts to tell her brother about it before they are interrupted by the waiter. She then gets up to go to the restroom.

As she heads to the restroom, Dr. Harmon approaches her from behind and puts his hand on her shoulder. He tells her how fortuitous it is to see her there and repeatedly asks her to introduce him to her "boyfriend." Maya tells Dr. Harmon that she is not comfortable with that.

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The Evening Escalation

Later that same night, after Maya has returned to her dorm, Dr. Harmon calls her, but she does not answer. He then texts her, asking her to meet him at a bar — noting that he found the bar closest to her dorm room. He tells her that she can also bring her boyfriend. Maya does not respond.

About an hour later, Maya hears a knock at her dorm room door but is too afraid to answer it.

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Maya asks for help.

- Maya calls her Resident Advisor (RA), who contacts Campus Safety.
- Campus Safety responds and asks Maya to recount all the details again.
- Separately, Maya's brother — referencing his status as an alum of the university — emails his former department chair to ask what to do, giving the chair all the details about these recent events.
- The department chair then calls the Provost's office about it.
- The Provost's office informs HR, and HR reaches out to Maya on Monday to find out what happened.
- Local police call Maya on Saturday to come in for an interview.



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What questions do we have?

- What should Maya make of Dr. Harmon's pattern of contact, and what policies might already be implicated at the earlier stage when Dr. Harmon was scheduling unnecessary meetings?
- Does the fact that the encounter between Maya and Dr. Harmon at the restaurant occurred off campus change the University's obligations to respond?
- How does Dr. Harmon's apparent knowledge of Maya's dorm location and his escalating attempts to contact her that night affect the analysis of this situation?
- Did the reporting chain handle this disclosure appropriately, and who should be coordinating the institutional response going forward?
- Does the off-campus restaurant encounter fall within the university's "education program or activity" for Title IX purposes, or does it need to be addressed under a separate non-Title IX conduct or HR policy?
- Does the power differential between a faculty advisor and a graduate advisee change how the Coordinator should classify this conduct (e.g., quid pro quo harassment versus hostile environment harassment)?
- Once the RA and Campus Safety are involved, whose responsibility is it to loop in the Title IX office, and how quickly should that referral happen?
- Should Maya have been asked to repeat her account multiple times (to the RA, then Campus Safety, then potentially HR), or should the Coordinator have intervened earlier to centralize intake and minimize repeated disclosures?



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What questions do we have?

- What interim or supportive measures should the Coordinator consider offering Maya immediately — such as a no-contact directive, or a change in academic advisor — even before a formal complaint is filed?
- Because the respondent is a faculty member, does this trigger a parallel HR or faculty conduct process, and how should the Title IX Coordinator coordinate with HR and the Provost's office to avoid duplicative or conflicting investigations?
- Should Dr. Harmon be subject to any interim measures (e.g., restrictions on contact with Maya, reassignment of advisees) while the matter is reviewed, and who has authority to impose those measures?
- How should the Coordinator treat the earlier pattern of pretextual meetings and the overdue recommendation letter — as background context, as part of a pattern of grooming behavior, or as independently actionable conduct?
- Are there other students Dr. Harmon advises who should be discreetly checked on, given the possibility of a pattern of behavior?
- Given that Maya's brother — an alumnus — initiated part of the reporting chain by contacting his former department chair, how should the Coordinator address the resulting spread of information outside formal reporting channels, and what confidentiality concerns does that raise?
- What steps should the Coordinator take to protect Maya from retaliation, particularly given Dr. Harmon's continued role as her academic advisor?



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The Investigation Process



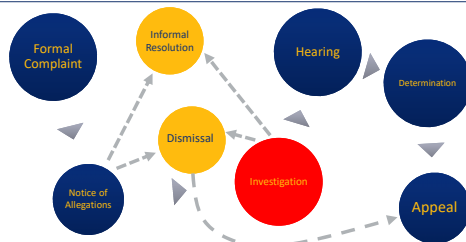
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Formal Grievance Process



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Whose Responsibility Is It?

The ***burden of proof*** and the ***burden of gathering evidence*** sufficient to reach a determination regarding responsibility rests on the recipient and not on the parties.



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Understanding Roles — Investigator's Work

- Undertake a "thorough search for relevant facts and evidence" pertaining to a particular case, while operating **under the constraints** of conducting and concluding the investigation under designated, reasonably prompt timeframes and without powers of subpoena."
- Such conditions limit the extensiveness or comprehensiveness of the efforts to gather evidence while reasonably expecting you to gather evidence that is available
- Culminating with the Final Investigative Report and investigation file
 - Summary of "directly related" evidence (must be available at the hearing)
 - Final report containing relevant evidence
 - With copies of both to the parties and advisors for review and response
- For VAWA: *only access to information used by decision-makers*



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Understanding Roles — Coordination between Investigator and Title IX Coordinator

- Have clear understanding about who will:
 - Determine applicable policy and procedures
 - Determine who will (or will not) be interviewed
 - Arrange the interviews
 - Issue timely notice of meetings to the parties
 - Address advisor issues, including any advisor agreements and communications
 - Communicate with the parties about the status of the case
 - Decide whether to delay the investigation for good cause
 - Communicate notices of delay and recommencement of the investigation
 - Send any amended notice of investigation
 - Decide on close of evidence
 - Decide to re-open an investigation to gather more evidence
 - Decide what evidence is going to be included and excluded
 - Ensure compliance with timeframes in policy and required by Title IX



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Review and Summarize Evidence

Title IX (*only*):

- Both parties must be given equal opportunity to inspect and review any evidence obtained during the investigation that is ***directly related*** to the allegations in the formal complaint, including:
 - evidence upon which recipient does not intend to rely in reaching a responsibility determination
 - inculpatory and exculpatory evidence obtained from a party or other source
 - and all must be available at the hearing as well
- Evidence must be ***sent to each party***, and their advisors (if any), in an electronic format or hard copy
- Party must be given ten (10) days to submit a response in writing to the "directly related evidence"
- Investigator must consider any response before finalizing investigative report



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"Directly Related" Evidence

- May take many forms and includes most of the evidence gathered
 - A file containing all of the pertinent evidence
 - **Draft** investigative report and documentary evidence
- Interviews: interview summaries or rough transcripts for recorded interviews
- Documentary evidence:
 - Employment or student records
 - Text messages, group chats, apps, emails, photos, videos, social media posts
 - Campus police or other law enforcement records
 - Data: key fob, Wi-Fi, surveillance footage
 - Other documents: medical records, diagrams, bank statements, receipts, and maps
- Sexual disposition/history is included **if** directly related (and even if not "relevant")
- Medical and privileged materials not included without a waiver (may redact)
- Prior to sharing evidence with parties: review final contents with Title IX Coordinator
 - Document the decisions made and reasons for excluding certain evidence



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More on Evidentiary Exclusions

- Remember specific Title IX exclusions (evidence that is "not relevant"):
- Prior **sexual predisposition** or **sexual behavior** of the **Complainant**, unless:
 - The questions (or evidence) are related to prior sexual contact with the respondent and are offered to prove consent, or
 - Respondent alleges someone else committed the conduct
 - **Privileged records**:
 - Medical, psychological, or similar treatment records
 - Attorney-client
 - Clergy
 - Spousal
 - Privilege can be waived through "voluntary, written consent"



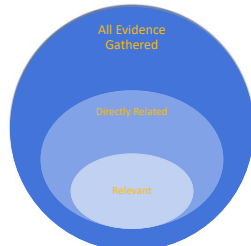
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"Directly Related" and Relevant Evidence



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Checklist for Closing Investigation Process

- Confer with investigator about timing and mechanics of providing "copies" to parties **and their advisors** for review (Title IX)
- Can be provided in electronic form, including, for example, a link to the files
- *If a VAWA case not proceeding under the Title IX policy or procedures, this probably occurs in conjunction with providing parties access to the final investigative report*



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Checklist for Protecting the File

Prior to providing the "directly related" evidence (or the report for VAWA) to the parties, build in protections:

- Remove or redact information that is not "directly related"
- Require parties and their advisors to use the evidence and any report only for the purposes of the institution's process
- Prohibit parties and advisors from sharing the documentation or disclosing the information to others
- Non-disclosure agreement?
- Use digital encryption to protect privacy
- Use party-specific watermarks
- **Use the same practices for the final report**



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Finalize Investigative Report

After the review and response period:

- Title IX
 - Create an investigative report that fairly summarizes **relevant evidence**, and
 - at least 10 days prior to a hearing, send the report to each party **and** their advisor (if any) for their review and written response (in an electronic format or a hard copy)
 - Investigator cannot be the decision-maker
 - Share report and responses with decision-maker and make available at hearing
- VAWA:
 - Provide the **party** with **access** (can be supervised access to review)
 - to the information to be used in the decision-making process
 - Investigator can be the decision-maker



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Finalize Investigative Report

Relevant evidence:

- "The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."
- "Focus investigations and adjudications on **evidence** pertinent to **proving whether facts material** to the **allegations** under investigation **are more or less likely to be true** (i.e., on what is relevant)."



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Hearings and Determinations



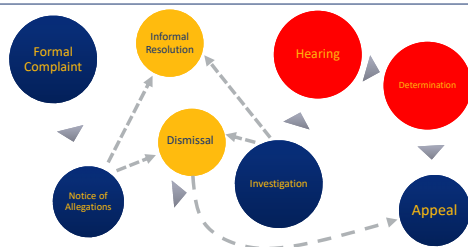
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Understanding Roles — Coordination Between Decision-Maker and Title IX Coordinator

- Who will:
 - Decide when the case events, such as the hearing, will occur
 - Decide who participates in the hearing (Title IX Coordinator? GC?)
 - Single decision-maker or multiple? Hearing chair? Who decides relevancy?
 - Communicate with the parties, including issuing timely notice of meetings to the parties for pre-hearing, hearing, or related events
 - Communicate/arrange for witness participation
 - Arrange and conduct any Pre-hearing meeting
 - Decisions about delay for good cause and send notices of delay
 - Responsibility for technology during the hearing
 - Prepare opening scripts or remarks for the hearing
 - Ensure compliance with timeframes in policy and required by Title IX



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Pre-Hearing Conference

- Not required
- Presents opportunity to discuss hearing process and steps with party (and advisor) in advance
- Party and advisor confirmation about participation in hearing
- Discuss hearing format and procedural steps
- Discuss rules of decorum, advisor role, use of evidence, and excluded evidence
- Review the cross-examination process
- Identify witnesses for hearing
- Identify evidence upon which the party will stipulate
- Convened by Title IX Office, Hearing Chair, Decision-maker, or Title IX Coordinator



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Title IX Legal Requirements — Hearings

- Live hearing, in-person or virtual (with security measures)
- At the request of either party, hearing to take place with *parties* in separate rooms with technology enabling the decision-makers to simultaneously see and hear the person answering questions
- Parties entitled to an advisor of their choice
 - advisor role can be limited (to asking questions)
 - if party does not have advisor or advisor does not attend the hearing, institution must provide without charge (if party refuses, loses the right)
 - no requirement that institution-provided advisor be an attorney or have experience or training ("read" party's questions)
 - not required to be free from bias or conflicts
- Party can also be accompanied by others if "required by law" (e.g., language assistance or disability)



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Title IX Legal Requirements — Hearings

- Providing for cross-examination:
 - of parties and witnesses by allowing each party's advisor of choice to ask "all relevant questions and follow-up questions," including those challenging credibility
 - conducted directly, orally, and in real time by the party's advisor and never by the party personally
- Institution cannot require party or witness to participate, although the reason for not participating may be important (threat? safety? retaliation?)
- **Decision-maker cannot draw inference "solely" based on lack of participation or testimony**



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Title IX Legal Requirements — Hearings

- Before a question can be answered, the hearing officer must determine whether it is relevant and explain any decision to exclude a question that is not relevant:
 - Mechanics: question posed, pause, hearing officer makes relevancy determination, and, if permitted, question answered
 - Can decide that duplicative questions are not relevant
 - Can exclude questions intended to harass or embarrass (relying on rules of decorum)
 - Questions that assume facts not in evidence, are prejudicial, or appear misleading are to be permitted, if relevant
- Can permit discussion about the relevancy determination
 - otherwise the parties can address it through an appeal
- Must create an audio recording, audiovisual recording, or transcript of the live hearing and make it available to the parties for review and inspection



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Plan in Advance

Hearings are difficult and unpredictable. Common challenges include:

- Parties and witnesses who do not attend or seek to cancel at the last minute
- Parties who do not answer some or all questions
- Long, nonresponsive answers to questions
- Long, layered cross-examination questions
- Advisors who do not abide by the rules of decorum
- Attempts to introduce new evidence for the first time at the hearing
- Technology issues



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Determinations Framework

- Decision about whether the policy was violated
 - For sexual harassment: determine what conduct occurred and whether it was welcomed or unwelcomed
 - For sexual contact: what conduct occurred and was it with consent or without consent
- Using the applicable **standard of evidence**
- With rationale for finding on each allegation
- Sanctions (institution-specific)
- Remedies (institution-specific)



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Determinations

Standard of evidence:

Preponderance: more likely than not that respondent violated the policy (50% and a feather) or insufficient evidence to conclude it is more likely than not

Clear and convincing: "highly probable" that respondent violated the policy or insufficient evidence to conclude it is "highly probable"

- Under Title IX, must apply the same **standard of evidence** to all Formal Complaints of sexual harassment



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Determinations

For Title IX, **cannot** categorically exclude evidence, including:

- Lie detector results
- Expert reports
- Medical records, including rape kits (but must have written consent)
- Character evidence
- Prior bad acts
- Witness statements submitted by party or their advisor
- *Unduly prejudicial/evidence "whose probative value is substantially outweighed by the danger of unfair prejudice"*

BUT: can assign the proper weight to such evidence



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Determinations— Sanctions and Remedies

- Separate the finding on responsibility from the sanctions and remedies
 - If credibility is part of the sanctions determination, whomever makes credibility determinations should decide sanctions
- Know your process
 - Based solely on the investigation and hearing files?
 - Parties to submit impact statements?
- Sanctions and remedies should align with the determination
 - "close evidentiary calls" do not warrant lesser sanctions
 - evidentiary standard should not be raised because of the severity of the sanctions
- Designed to stop the discriminatory conduct, prevent its recurrence, and address its effects



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Determinations— Sanctions and Remedies

- Range of possible sanctions are listed in your policy
 - Requires the sanctions to be specific, including the type and length of suspension and reinstatement requirements
 - Sanctions must be included in notice of determination
 - Any information relied upon by decision-makers must be available to parties
- Sanctions must be included in the singular Notice of Determination (Title IX)



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Determinations— Sanctions and Remedies

Potential Considerations for Sanctions:

- The specific misconduct at issue
- The circumstances accompanying any lack of consent (e.g., force, additional violence, threat, coercion, intentional incapacitation, etc.);
- Respondent's state of mind (bias-motivated, reckless, negligent, etc.);
- Respondent's prior disciplinary history;
- The safety of the University community; or
- Impact or mitigation statement by one or both parties



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Determinations— Sanctions and Remedies

Common sanctions options:

- Reprimand/warning;
- Disciplinary letter;
- Changing the Respondent's academic or employment schedule;
- Disciplinary probation;
- Revocation of honors or awards;
- Loss of privileges;
- Imposition of conditions of employment;
- Restricting access to facilities or activities, including student activities and campus organizations;
- Mandatory training;
- Service hours.



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Determinations— Sanctions and Remedies

Sanctions Options (cont.):

- Alcohol and/or drug assessment or counseling;
- Issuing a "no contact" order to the Respondent or requiring that an existing order remain in place;
- Moving the Respondent's residence on campus;
- Loss of leadership positions;
- Dismissal, termination, or restriction from employment;
- Ineligibility for hire or rehire;
- Removal from student housing;
- Demotion or other removal from a management, supervisory, or leadership role(s);
- A full or partial ban from campus (either limited time or indefinite);
- Transcript notations.



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Determinations— Sanctions and Remedies

Sanctions Options (cont.):

- Deferred suspension;
- Restriction from sponsored or affiliated events;
- Pay reduction;
- Loss of raise;
- Loss of supervision or oversight duties;
- Referral for further sanctioning pursuant to applicable policies and/or procedures;
- Employment record notations;
- Suspension;
- Expulsion; and
- Revocation of degree.



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Remedies

Remedies:

- Coordinator responsible for effective implementation
- Often resemble supportive measures and extend them when the Respondent is not suspended/expelled but are disciplinary
- Restore Complainant's access to education programs and activities
- Benefit the community
- Common Remedies:
 - No contact order (directed to Respondent)
 - Academic/employment support, services, flexibility, and adjustments necessary (backward and forward looking)
 - Counseling and medical services
 - Loss of privileges or participation for Respondent
 - Limited access to campus or facilities for Respondent
 - Campus escorts
 - For the community: trainings, surveys (e.g., Greek life), and education



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Written Notice of Determination

Title IX requires that it include:

- **Identification of allegations potentially constituting sexual harassment**
 - Summarize the allegations contained in the Formal Complaint
 - All allegations, for both parties, in a factual and concise manner
- **Description of the procedural steps from formal complaint through determination, including all:**
 - notifications to parties,
 - interviews with parties and witnesses,
 - site visits,
 - methods used to gather other evidence,
 - any hearing held
 - Include information about who was present and their roles



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Written Notice of Determination

Policy Provision Section:

- Identify the policies at issue
- Include applicable definitions
 - Regarding conduct (e.g., sexual assault, consent, incapacitation) and the elements
 - Standard of proof
 - Burden of proof
 - Presumption of not responsible
 - Retaliation, if applicable



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Written Notice of Determination

- Findings of fact supporting the determination
- Conclusions regarding application of policy to the facts
- Statement of, and rationale for, the result as to each allegation, including determination regarding responsibility, sanctions, and whether remedies designed to restore or preserve equal access to education program/activity to complainant

In practice:

- Discuss of all the material facts;
- Apply the policy definition and standard of proof to the facts;
- To reach conclusions that are;
- Explained through the evidence available: how it was *weighed*, and how it supports, or does not support, the outcome (including credibility)



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Written Notice of Determination

Findings and Rationale (cont.)

- **Sanctions and rationale**
 - And procedure for failing to abide by them
- **Remedies provided**
 - Notify Complainant of the remedies
 - Notify Respondent of whether remedies (generally) have been provided (Title IX provides this FERPA exception) but not the details
 - For VAWA, there is no FERPA exception to permit disclosure of information about remedies that do not involve the Respondent (like no contact orders)



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Written Notice of Determination

- **Procedures and basis for appeal**
 - Explain the process, general requirements, roles, and the timeframes
 - Permissible grounds for appeal
 - How to file it
 - On what timeline
 - To be decided by whom (by name, title, or otherwise)
- Plus any other grounds listed in the policy



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Written Notice of Determination

Delivery of the Notice of Determination (Title IX):

- Know in advance who is responsible for delivering the notice to the parties
- Must be a written notice
- Must be provided to the parties simultaneously

VAWA crimes:

- Simultaneous notice, when the decision becomes final
- AND for any change to the results prior to it becoming final

Effective Date (Title IX Regs):

- Final at conclusion of appeal or, if no appeal is filed, on the date on which the appeal would no longer be considered timely



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Requirements for Appeals



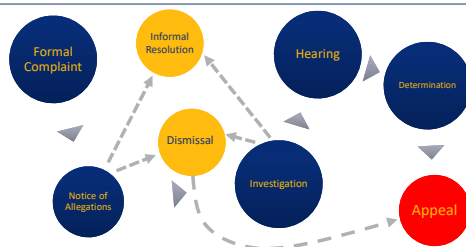
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Formal Grievance Process



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Decision-Making — Appeals

- Must be offered to both parties for the final determination of responsibility and the dismissal of formal complaints
- Appeal bases must include:
 - Procedural irregularity that affected the outcome
 - New evidence that was not reasonably available at the time the determination regarding responsibility (or dismissal) was made, that could affect the outcome
 - Title IX Coordinator, Investigator, or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome
- Plus any other grounds listed in the policy



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HPU Appeal Grounds

Same as Title IX minimum requirements:

- **Procedural irregularity** that affected the outcome (this therefore requires a material irregularity)
- Was a material procedure not followed and did it impact the outcome?
- Did the decision-maker not consider material evidence, including inculpatory and exculpatory evidence
- Was relevant evidence excluded?
- Did the decision-maker fail to provide rationale for any of the determinations made?



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HPU Appeal Grounds

Same as Title IX minimum requirements:

- **New Evidence:** new evidence presented for the first time on appeal
- Was the evidence not available at the time of the determination and what is the explanation for what it was not?
- Would that evidence impact the outcome?



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HPU Appeal Grounds

Same as Title IX minimum requirements:

- Title IX Coordinator, Investigator, or decision-maker(s) had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome
- Has the appealing party specifically referenced evidence or factual support for the alleged conflict or bias?
- Is the evidence material?
- Is the conclusion reasonable?
- Has the appealing party explained how it impacted the outcome?



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Decision-Making — Appeals

- Generally, the purpose of an appeal is **not** for the decision-maker to review all evidence and make a decision about responsibility
- An appeal is not a re-deciding of the determination and the Decision-Maker should not substitute their own judgment for that of those who made the determination
- Determine whether an error occurred, by the applicable standard of evidence



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Decision-Making — Appeals

Additional Requirements (Title IX):

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
- Decision-maker for appeal cannot be:
 - Decision-maker on the determination of responsibility or dismissal
 - Investigator who investigated
 - Title IX Coordinator
- Comply with prohibitions on bias and conflict of interest
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale
- Provide the written decision simultaneously to the parties



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Decision-Making — Appeals

VAWA:

- No appeal requirement but, if provided, it must be offered equally to the parties with the same procedural protections as provided throughout the process



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Appeals at HPU

- Complete online form
- Within 3 business days of the receipt of a notice of dismissal or 5 calendar days of the receipt of a notice of determination.
- **Initial assessment by Title IX Coordinator (or designee) and can be denied**
- If the appeal states a valid ground for appeal, the other party will be provided with a copy, will have 3 business days (for dismissals) or 5 business days (for notices of determination) to respond.
- As applicable, both parties may appeal
- In reviewing any appeal, the Executive Council can affirm the decision, overturn the decision, or remand the matter, with instructions, for further investigation and adjudication by the same or different investigators, decisionmakers, or Hearing Board or Adjudication Panel members, as applicable.
- The written decision describing the result of the appeal and the rationale for the result will be simultaneously issued to the parties.



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Post-Grievance Process Actions

- Ensure parties understand process has ended
- Monitoring sanctions
- Checking-in on effectiveness of remedies and supportive measures
- Community-wide prevention efforts
- Recordkeeping



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Recordkeeping — Title IX

Must maintain certain records for seven years, including:

- For each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by the Regulations, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the education program or activity
- Any appeal and the result
- Informal resolution
- Supportive measures
- Training materials for Title IX Coordinators, Investigators, decision-makers, and those who facilitate informal resolution (and post on website)
- Actions taken in response to a report or formal complaint sufficient to document why the response was not deliberately indifferent



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