

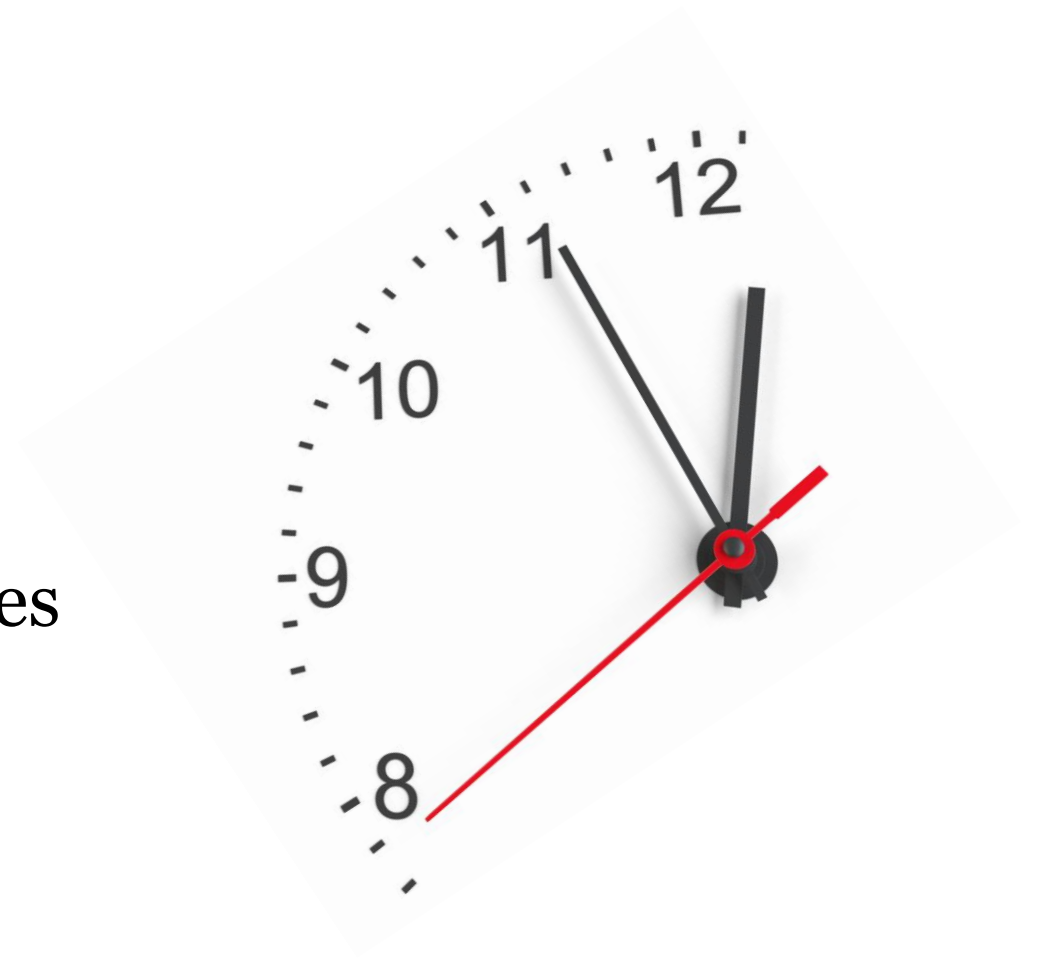
Title IX Team Member Training

September 28, 2021

Kathryne Grove, JD

Agenda

- ❑ Introductions
- ❑ Housekeeping
- ❑ Why are we here?
- ❑ Title IX Overview
- ❑ Title IX Requirements
- ❑ Sexual Harassment
- ❑ Investigative and Grievance Processes
 - Impartiality
 - Relevancy
 - Hearing Technology



A mosaic background composed of small, square tiles in various shades of blue, yellow, and tan. The tiles are arranged in a grid pattern, with some tiles missing or damaged, particularly in the center and right side. The overall appearance is that of an ancient or historical mosaic.

Introductions



Disclaimer

These materials and training sessions are informational only, and not intended to be legal advice. Seek the advice of counsel for further guidance on any current or prospective policies and procedures and specific situations.

JCU

Housekeeping

Attendance

Meeting
Agreements

Scheduled
Break

WHY ARE WE HERE?

Title IX

[Notice of Nondiscrimination](#)

[Title IX Officers](#)

[Sexual Harassment & Interpersonal Violence Policy](#)

[Resolution Process](#)

[More ...](#)

[John Carroll University](#) / [About Us](#) / [Administrative Offices](#) / [All Offices](#) / [Title IX](#)

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

Training Requirements for All Title IX Team Members

- Training topics that reflect regulation requirements:
 - Definition of sexual harassment;
 - Scope of the University's education programs and activities;
 - Conducting an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;
 - Applying definitions under the Sexual Harassment and Interpersonal Violence Policy consistently and impartially as to consent;
 - How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 - Review technology to be used at a live hearing or in any other stage of the Resolution Processes; and
 - Cover issues of relevance of questions and evidence.





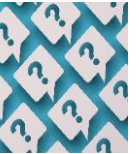
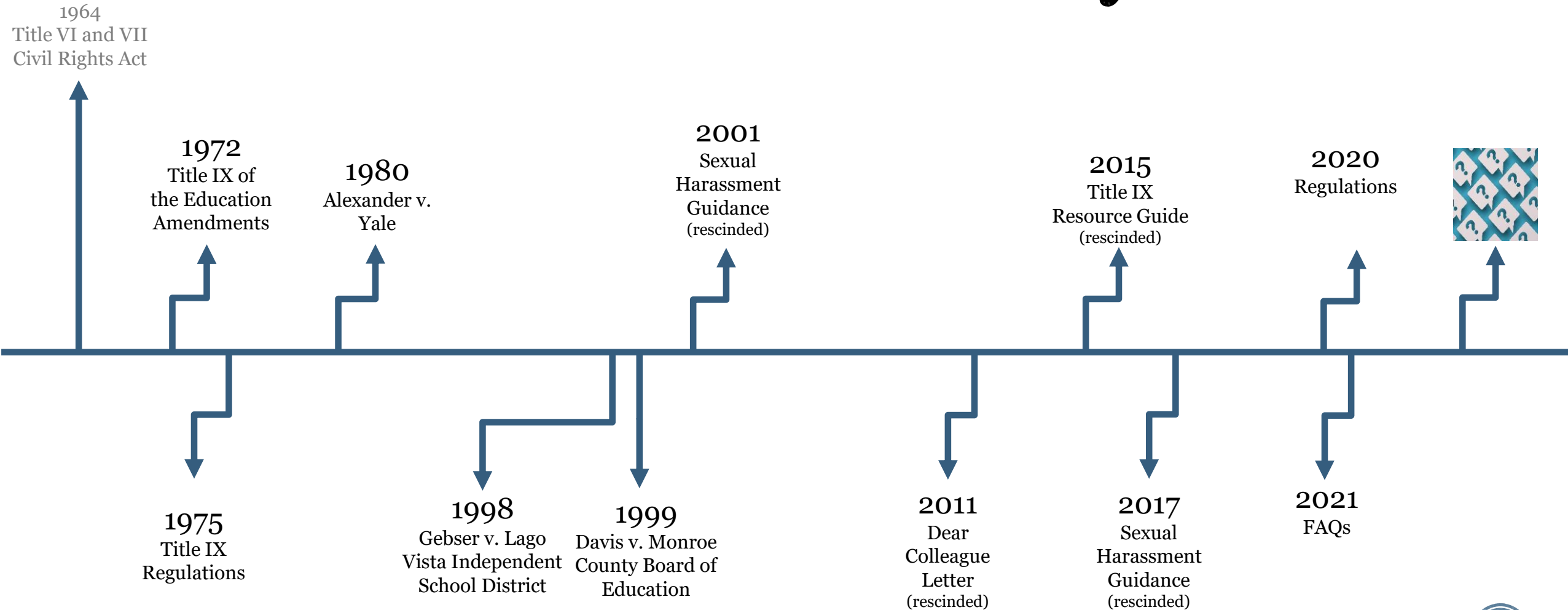
TITLE IX OVERVIEW

Department of Education Office for Civil Rights

“Ensuring equal access to education for all students—from pre-K through elementary and secondary schools and postsecondary institutions—is at the heart of the mission of the U.S. Department of Education’s Office for Civil Rights. This includes protecting rights of students and others to an educational environment free from discrimination based on sex, including discrimination in the form of sexual harassment and discrimination based on sexual orientation or gender identity, as guaranteed by Title IX of the Education Amendments of 1972.”

<https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf>

TITLE IX History*



*These are some highlights of Title IX's evolution, and this timeline not intended to be comprehensive.



Title IX Requirements



Expectation:




Complainant/Impacted Party: Right to be taken seriously

- Inform of Title IX Policy, resolution options/processes, and rights
- Prohibition against retaliation
- Advise of confidentiality and privacy
- Autonomy as to pursuit of a formal complaint
- Supportive measures that are “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge.” 34 C.F.R. § 106.30(a)
- Right to an advisor
- Decision-makers cannot be employees of the Title IX coordinator.
- Required training regarding conducting investigation impartially.
- The materials used to train investigators and decision-makers must be available on the school’s website.
- Consistent appeal rights

Respondent: Presumption of not responsible until proven otherwise

- Inform of Title IX Policy, resolution options/processes, and rights
- Prohibition against retaliation
- Advise of confidentiality and privacy
- Written notice of the allegations
- Supportive measures that are “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge.” 34 C.F.R. § 106.30(a)
- Right to an advisor
- Decision-makers cannot be employees of the Title IX coordinator.
- Required training regarding conducting investigation impartially.
- The materials used to train investigators and decision-makers must be available on the school’s website.
- Consistent appeal rights



**EXAMPLES OF
SUPPORTIVE
MEASURES**
**34 C.F.R.
§ 106.30(A)**

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work/class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus and other similar measures

Confidentiality

Confidential Resources

- doctors
- nurses acting under the direction of a doctor
- licensed counselors
- ordained members of the clergy acting in that capacity

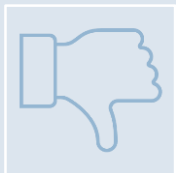
Mandatory Reporters

- all employees are Responsible Employees who have a mandatory duty to report incidents related to Sexual Harassment and Interpersonal Violence
- any University employee who becomes aware of possible sexual discrimination, including Sexual Harassment or Interpersonal Violence, must promptly inform the Title IX Coordinator or one of the Deputy Title IX Coordinators
- Responsible Employees cannot promise confidentiality

RETALIATION



Prohibition of behavior against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.



Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.

RETALIATION



Where conduct by the agent of a student or employee — such as an Advisor who is not an employee of the University — constitutes retaliation pursuant to University policy, the student or employee will be accountable for the retaliatory conduct of the agent.



Charging an individual with a code of conduct violation for making a materially false statement in bad faith does not constitute retaliation.



Complaints alleging retaliation may be filed consistent with university policy.

Title IX Coordinator

The University employee having primary responsibility for coordinating all Title IX compliance measures, which includes tracking and overseeing the resolution of Formal Complaints of Sexual Harassment and Interpersonal Violence falling under this Policy.

Title IX Coordinator

- Designation of at least one employee to assist with the coordination of Title IX compliance – Title IX Coordinator
- Designation of deputies prompts compliance with separation of functions (i.e. decision-maker)
- Disseminate a non-discrimination notice, including the identity of the Title IX Coordinator:
 - ✓ Name and Title
 - ✓ Office address
 - ✓ Electronic mail address
 - ✓ Telephone number

Shared prominently and with:

- ✓ Students
- ✓ Employees
- ✓ Unions



Non-Discrimination Notice

Statement that the institution does not discriminate on the basis of sex in its educational programming or activities pursuant to Title IX

Identify compliance coordinator

Identity and contact information for the Title IX Coordinator

The policy extends to admission and employment

Inquiries may be directed to the Title IX Coordinator, Office for Civil Rights, or both

Information on how to file a complaint

- treat complainants and respondents equitably
 - notification of rights
 - describe the range of supportive measures
 - include presumption that respondent is not responsible
 - prohibit conflict of interest or bias for or against complainants or respondents
 - objective evaluation of all relevant evidence
 - preclude use of any information protected by privilege
 - include reasonably prompt time frames
 - describe the range of possible disciplinary sanctions and remedies
 - identify the standard of evidence
 - describe appeal process
 - notification and procedural requirements per VAWA
-

Grievance Procedures

Grievance Procedures

University Policies & Procedures



Students, faculty and staff may review the following policies and procedures to help determine if a Title IX concern is in issue: [Sexual Harassment & Interpersonal Violence Policy](#), the [Complaint Resolution Process](#), and/or the [Mandatory Reporting Policy](#).

Title IX Coordinator

Dan Fotoples serves as the **Title IX Coordinator for John Carroll University**. The Title IX Coordinator is the University employee having primary responsibility for coordinating all Title IX compliance measures, which includes tracking and overseeing the resolution of Formal Complaints of Sexual Harassment and Interpersonal Violence falling under the University's [Sexual Harassment & Interpersonal Violence Policy](#). Any concerns about possible violations should be reported to the Title IX Coordinator.

Contact the Title IX Coordinator:

TitleIX@jcu.edu

216.397.1559

Administration Building 128

1 John Carroll Blvd.

University Heights, OH 44118





Standard of Proof

preponderance of the evidence or clear and convincing

The institution must apply the same standard in all sexual harassment cases regardless of the status of the Respondent (i.e. faculty, staff, or student)

Should be reviewed against and run consistent with collective bargaining agreements, tenure rules, and academic freedom codes



Recordkeeping

7 Years

- ✓ For each response to a report or formal complaint of sexual harassment:
 - ✓ Records of any action, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - ✓ In each instance, document the basis for a conclusion that the response was not deliberately indifferent (clearly unreasonable), and document that the measures taken were designed to restore or preserve equal access to the recipient's education program or activity.
 - ✓ If supportive measures are not provided to a complainant, then document the reasons for that decision in light of the known circumstances.



Recordkeeping

7 Years

- ✓ Each sexual harassment investigation including any determination regarding responsibility.
- ✓ Any required audio or audiovisual recording or transcript.
- ✓ Any disciplinary sanctions imposed on the respondent.
- ✓ Any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity.
- ✓ Any appeal and the result.
- ✓ Any informal resolution and the result therefrom.
- ✓ All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

- **Complainant and Respondent (i.e., parties a formal complaint)**
- **Witnesses/Interviewees**
- **Official with authority to take corrective action‡**
- **Title IX Coordinator*‡**
- **Deputy Title IX Coordinators***
- **Informal Resolution Facilitator† ‡**
- **Investigators* † ‡**
- **Advisors**
- **Hearing Officers † ‡**
- **Appeal Officers † ‡**

* Cannot serve as a decision maker in hearing.

† Cannot serve in multiple roles in the same review process.

‡ Must serve impartially and without bias

TITLE IX CAST

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States must respond promptly in a manner that is not deliberately indifferent.





Education Programs and Activities



Actual Knowledge

Institution has the responsibility for redressing sexual harassment when it has “actual knowledge” of such misconduct.

Actual knowledge means notice of sexual harassment or allegations of sexual harassment (or, under JCU policy, interpersonal violence) to the Title IX Coordinator or any official of the institution who has authority to institute corrective measures (Official with Authority) on behalf of the school.

The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. Institutions determine who is an Official With Authority.

Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

EDUCATION PROGRAM OR ACTIVITY

- Education program or activity includes locations, events, or circumstances over which the institution exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.
- A complainant must be participating in, or attempting to participate in, the institution's education program or activity at the time of filing a formal complaint.
- The new regulations apply to reports of sexual harassment in education programs and activities in the United States only.
- A school may still offer "supportive measures to a complainant who reports sexual harassment that occurred outside its education program or activity.
- There is no distinction between sexual harassment occurring in person versus online for purposes of education program or activity.





Sexual Harassment



DEFINITION OF SEXUAL HARASSMENT

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. Quid pro quo – an employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Hostile environment – unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. Clery/VAWA – sexual assault, dating violence, domestic violence, or stalking.

Title IX Sexual Harassment

- Applies to:
 - ✓ all employees (including all faculty and staff members);
 - ✓ student-employees;
 - ✓ volunteers, and any other person over whom the University exercises substantial control in the context of their employment or volunteer role;
 - ✓ all current and prospective students participating in or attempting to participate in any education program or activity of the University.
- It applies to acts in
 - ✓ locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment that occurs in any building owned or controlled by a student organization that is officially recognized by the University.

[Interim Sexual Harassment & Interpersonal Violence Policy](#), V(D)1

Title IX Sexual Harassment

- Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

(1) An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity of the University; or

(3) Sexual assault, defined as:

(a) Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. . . . (i.e. Forcible Rape, Forcible Sodomy, Sexual Assault with an Object, or Forcible Fondling)

(b) Sex Offenses, Nonforcible— Nonforcible sexual intercourse . . . (i.e. Incest or Statutory Rape)

[Interim Sexual Harassment & Interpersonal Violence Policy](#), V(D)1c



Title IX Sexual Harassment

(4) Dating Violence

(a) Dating Violence is defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.

(b) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(c) For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

[Interim Sexual Harassment & Interpersonal Violence Policy](#), V(D)1c

Title IX Sexual Harassment

(5) Domestic Violence

(a) Domestic Violence is defined as: a felony or misdemeanor crime of violence committed—

- (i) By a current or former spouse or intimate partner of the Complainant;
- (ii) By a person with whom the Complainant shares a child in common;
- (iii) By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- (iv) By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws for the State of Ohio; or
- (v) 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 the State of Ohio.

(b) To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

[Interim Sexual Harassment & Interpersonal Violence Policy, V\(D\)1c](#)



Title IX Sexual Harassment

(6) Stalking

(a) Stalking is defined as: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (i) Fear for the person's safety or the safety of others; or
- (ii) Suffer substantial emotional distress.

(b) For the purposes of this definition—

- (i) Course of conduct means 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

[Interim Sexual Harassment & Interpersonal Violence Policy](#), V(D)1c

Title IX Sexual Harassment

Consistent with the Scope of this Policy described in Section III, the University also prohibits acts of Sexual Harassment and Interpersonal Violence that may occur outside the scope of employment or an education program or activity, or that may include behaviors other than those described in Section V(D)1 as Title IX Sexual Harassment. [Interim Sexual Harassment & Interpersonal Violence Policy](#), V(D)2



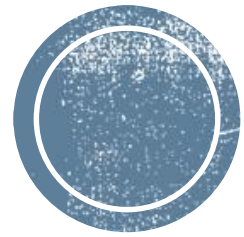
Consent

- The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

VI. Consent to Engage in Sexual Activity

A. Standards for Consent to Engage in a Sexual Activity

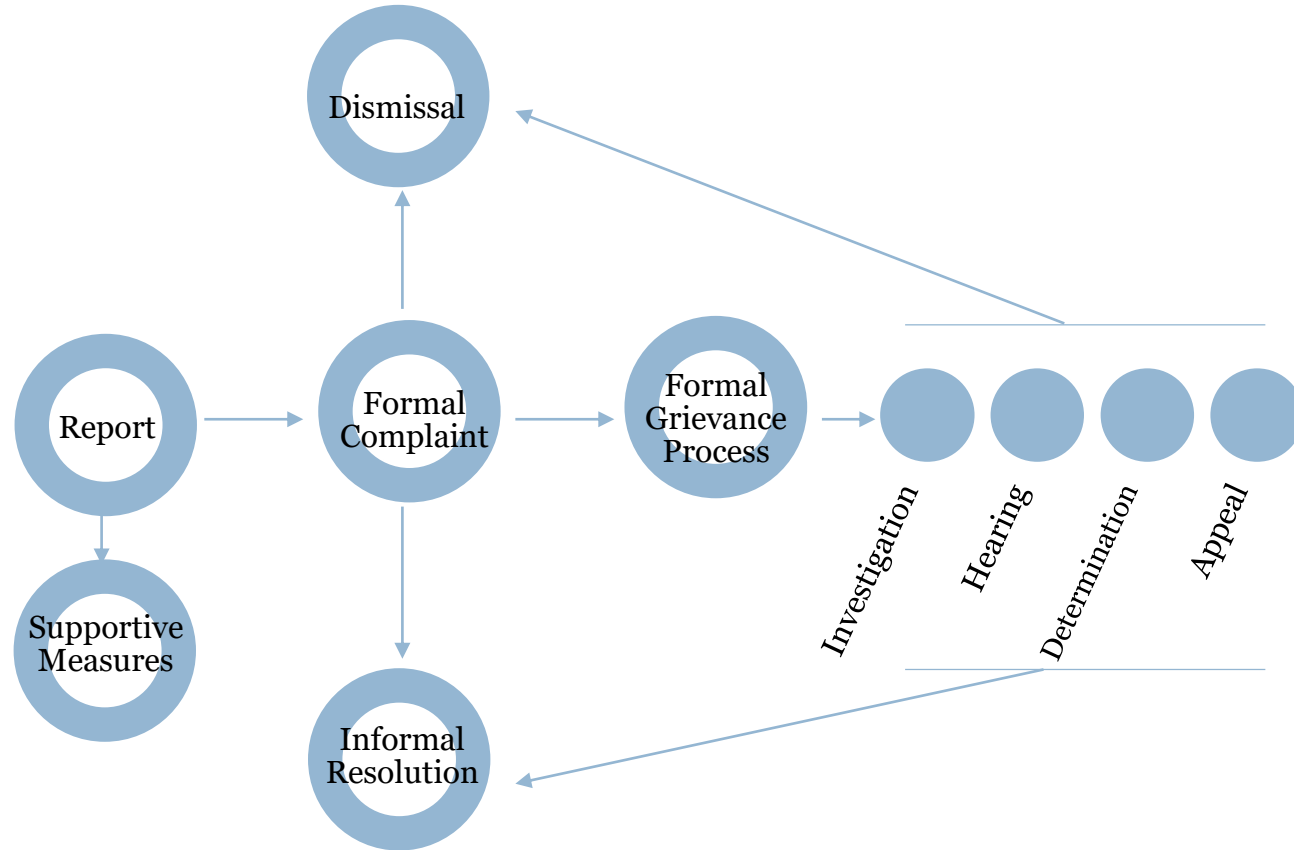
1. Consent is granted when a person freely, actively and knowingly agrees at the time to participate in a particular sexual act with a particular person.
2. Consent requires mutually understandable words and/or actions that demonstrate a willingness to participate in mutually agreed-upon activity at every stage of that sexual activity.
3. Consent is mutually understandable when an objective, reasonable person would consider the words and/or actions of the parties to have reached agreement to engage in the particular sexual activity.
4. In the absence of mutually understandable affirmative words or actions, it becomes the responsibility of the initiator (the person who wants to engage in a specific sexual activity) to obtain effective consent from the other partner.
5. Consent has time boundaries. Consent at one time does not imply consent at any other time.
6. The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish consent for future sexual activity.



Investigation and Grievance Process



Process

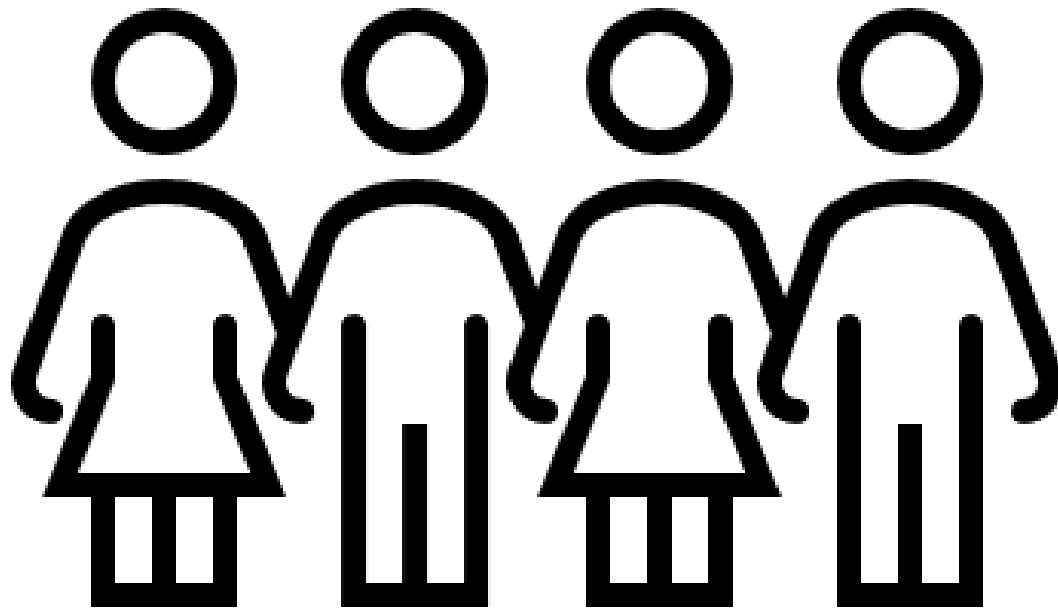


Key Terms

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment and Interpersonal Violence.
- **Formal Complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment. Such a Formal Complaint does not need to contain a detailed statement of facts.
- **Report:** A disclosure by any person to the Title IX Coordinator (or Deputy Title IX Coordinator or a University official who has authority to institute corrective measures) that is sufficient to provide Actual Knowledge of Sexual Harassment or Interpersonal Violence; such a disclosure does not need to contain the information required of a Formal Complaint in order to constitute a Report.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment and Interpersonal Violence.
- **Third-Party Reporter:** any person who was not the recipient of the behavior and reports an incident of Sexual Harassment or Interpersonal Violence. This term can apply to witnesses or other employees who report allegations of Sexual Harassment and Interpersonal Violence.

Reports

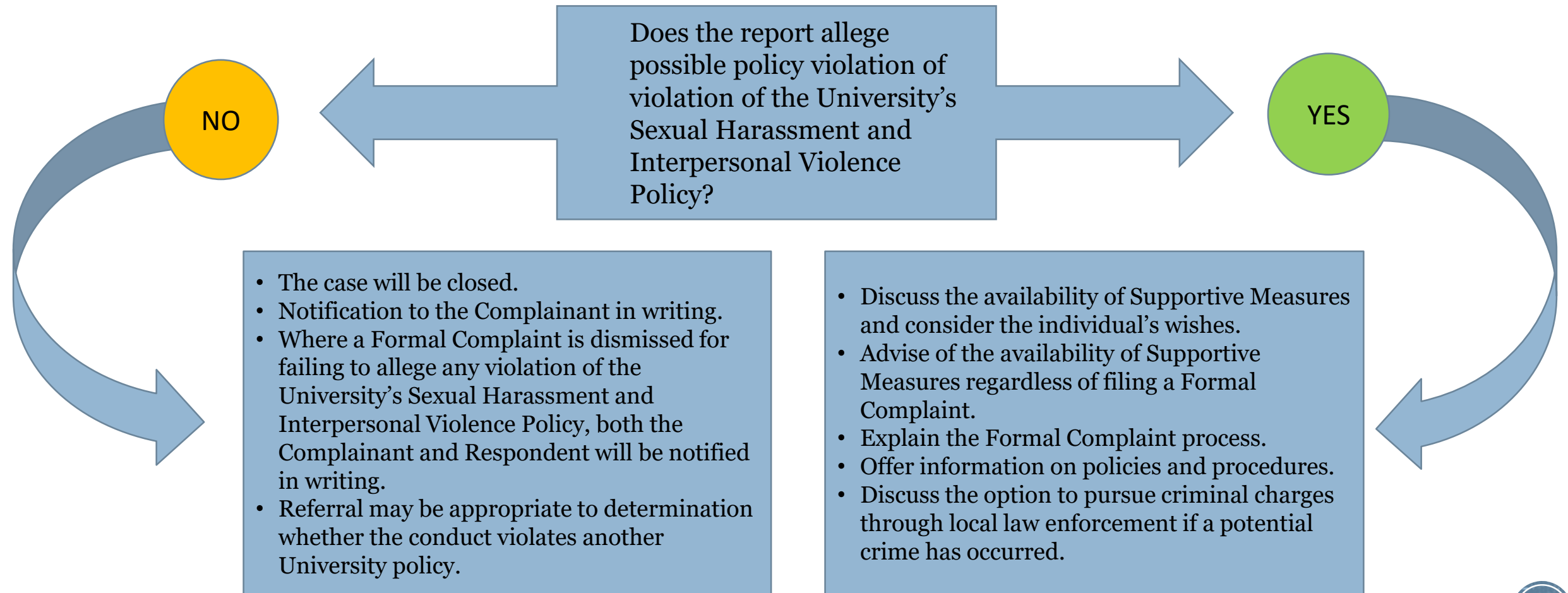
- All reports will be reviewed and acted upon promptly.
- Title IX Coordinator (or designee) will promptly conduct a review to determine if the Report on its face alleges a policy violation, and, if so, which policy violations are alleged in the report.
- Reports can be made by anyone alleged to be the victim of conduct that could be sexual harassment.
- A report is not the same thing as a Formal Complaint.



Supportive Measures

- Offered to Complainant and Respondent with wishes taken into account:
 - Prompt
 - Free
 - Non-punitive
 - Confidential
 - Individualized
 - Assessed for effectiveness
 - Documented

Intake:



Dismissals

- Mandatory Dismissal if the alleged conduct:
 - ❑ Would not constitute Title IX sexual harassment even if proved,
 - ❑ Did not occur in the institution's education program or activity, or
 - ❑ Did not occur in the United States.
- Discretionary Dismissal if:
 - ❑ Complainant notifies the Title IX Coordinator in writing of the wish to withdraw the complaint or any allegations in it,
 - ❑ Respondent is no longer enrolled in or employed by the institution, or
 - ❑ Specific circumstances prevent sufficient evidence to reach a determination.
- Upon Dismissal:
 - ❑ Provide written notice of and the reasons for dismissal to both parties.
 - ❑ Parties may appeal dismissal.
 - ❑ Dismissal does not preclude investigation and adjudication under another provision or policy.

Formal complaint

B. Formal Complaints

Upon receipt of a Formal Complaint, the Title IX Coordinator (or designee) will provide a written Notice of Investigation to the parties (Complainant(s) and Respondent(s) who are known). The written Notice of Investigation will contain, at minimum:

- Notice of the University's Resolution Processes, including the Grievance Procedures for Title IX Sexual Harassment (where applicable), and any options for informal resolution of the Formal Complaint.
- Notice of the allegations of Prohibited Behavior, as defined by Section V(D) of the University's Sexual Harassment & Interpersonal Violence Policy. Sufficient details of the alleged behavior known at the time will include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting Prohibited Behavior, as defined by Section V(D), and
 - the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Resolution Processes.
- A statement informing the parties that they may have an Advisor of their choice—who may be, but is not required to be, an attorney (see [Section XI\(A\)\(4\)](#) below regarding Advisors).
- A statement informing the parties that they may inspect and review evidence in accordance with the procedures described in the Resolution Processes.
- A statement informing the parties of any provision of any applicable University policy that prohibits knowingly making false statements or knowingly submitting false information during the Resolution Processes.

EMERGENCY REMOVALS

- Any person may be removed from an educational program or activity on an emergency basis where University officials determine in an individualized safety and risk analysis that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal.
- Where a person is removed on an emergency basis, the removed person will have timely notice and an opportunity to challenge the removal. The Sexual Harassment and Interpersonal Violence Resolution Process will describe the process for making such a determination regarding emergency removal, including the removed person's opportunity to challenge that removal.

X. Resolutions by Agreement

The University encourages resolutions by the agreement of both parties (sometimes referred to as an “informal resolution”) when the parties desire to resolve the situation cooperatively and expeditiously. Either party may propose a resolution by agreement for certain alleged violations of the University’s Sexual Harassment and Interpersonal Violence Policy. The parties also may agree to consider a resolution by agreement at any point during the Formal Investigation and Hearing Process ([Section XI](#)) or Grievance Process for Title IX Sexual Harassment ([Section XII](#)), which will be subject to the approval of the University.

Prior to facilitating any resolution by agreement, the University will provide written notice to both the Complainant and Respondent disclosing:

- the allegations;
- the requirements of the resolution by agreement process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and
- any consequences resulting from participating in the resolution by agreement process, including the records that will be maintained or could be shared.

After providing the written notice, the University will obtain the parties’ voluntary, written consent to the process of seeking resolution by agreement.

In all instances, the Title IX Coordinator will determine if an informal resolution is appropriate based on an individualized assessment. **For allegations of Title IX Sexual Harassment involving a Complainant who is a student and a Respondent who is an employee, resolutions by agreement will not be available.** Some other Formal Complaints of sexual harassment or interpersonal violence—particularly those involving allegations of violent behavior—may not be appropriate for resolutions by agreement and may require use of the Formal Investigation and Hearing Process described below.

Investigative Overview

Role of the investigator

- ✓ Anti-discrimination policies
- ✓ Neutral/objective fact finders
- ✓ Confidentiality vs. Privacy
- ✓ Anti-retaliation policy
- ✓ Resources

Collection of relevant information that is reasonably available

- ✓ Parties and interviewees do have the right to have advisor
- ✓ Interview Complainant and Respondent and document the interview
- ✓ Written statements
- ✓ Interview others who may have information and document the interview
- ✓ Collect of other information (email, texts, video, etc.)
- ✓ DO: ask the parties who they think should be interviewed and questions that they would ask
- ✓ DO: follow up interviews when needed

Investigative Overview

Identify and draft allegations consistent with applicable policies and procedures

- ✓ DO: notify of the parties in writing of what is being investigated

General timeline regarding process

- ✓ DO: provide adequate notice of interview date, time and location
- ✓ DO: document interviews, other meetings, and communication with parties
- ✓ DO: provide reasonable accommodations if necessary
- ✓ DO: give updates of the pending investigation to both parties

Review of all relevant information

- ✓ Standard of review: preponderance of evidence standard
- ✓ DO: prepare a written report that fairly summarizes relevant information gathered that is inculpatory and exculpatory
- ✓ DO: share all information gathered with the parties
- ✓ DON'T: rely on assumptions or gut feelings
- ✓ DON'T: rely on prior sexual behavior contrary to policy and procedures
- ✓ DO: consult with the Title IX Coordinator regarding disputes over relevant information



- The Complainant, Respondent, and any interviewed witnesses have a right to be accompanied by one Advisor of their choosing during any meeting or interview.
- The Advisor may be a friend, mentor, advocate, family member, attorney or any other person a party chooses; however, the Advisor cannot be someone who may be called as a witness. The same individual may also not serve as Advisor to multiple participants (whether Complainants, Respondents, or witnesses) in the same Investigation and Hearing process.
- The role of the Advisor is to offer guidance and advice to the advisee throughout the process.
- The Advisor may be present at interviews and any other proceedings, but may not speak on behalf of the advisee.
- Advisors are expected to refrain from interfering with the investigation and hearing process.
- Any party also may request the assistance of a University-appointed Advisor.

Investigative report

Preliminary

- Statement of allegations and issues.
- Description of the applicable standard.
- Any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including any inculpatory or exculpatory evidence, whether obtained from a party or other source, and regardless of whether the University intends to rely on that evidence in reaching a determination regarding responsibility.
- Parties - and their Advisors – have an opportunity review the preliminary report electronically/remotely; share more information; propose additional questions; and submit written response.

Assess for
additional
review

Final

- Where no additional investigation is warranted, the investigator(s) will finalize the report
- The investigator(s) will incorporate into the report any responses or relevant evidence provided by the parties or additional witnesses, unless such information must be excluded pursuant to applicable procedures or law
- Parties - and their Advisors – will have the opportunity to review an electronic copy of the final investigation report for at least 10 days before hearing phase and may use that time to submit suggested questions for the hearing

Relevancy

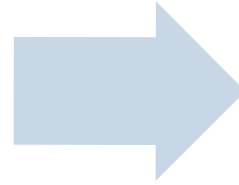
- With disputes regarding relevancy determinations at the investigative stage, the parties can make an argument in favor of the information in question in the written response to the investigative report and to the decision-maker at the hearing held.
- The decisionmaker must objectively evaluate all relevant evidence and the parties have the opportunity to argue the relevancy of information gathered throughout the process.
- It is permissible to redact information from the investigative report if determined not to be relevant.



Hearing

Finalized Report

- Forward to the Chair of Employee Hearings; or
- Chair of Student Hearings.



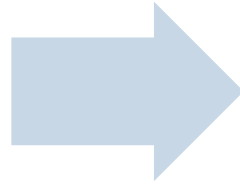
Convene three-person complaint review panel (CRP)

- CRP will serve as the hearing body and decision-maker(s) on questions of responsibility, and as applicable, sanctions and other responsive actions.
- CRP will only make final determinations after holding a live hearing.

Hearing

Pre-hearing Informational Meeting

- Review the hearing agenda, procedures, and general expectations of the parties;
- Review the standard of evidence;
- Review the features of any technology to be used by the participants during the hearing (e.g. Zoom or other video conferencing programs);
- Discuss which witnesses are expected to appear and speak at the hearing;
- Discuss the role of the Advisor in the hearing, and/or to discuss the appointment of an Advisor if a party does not have an Advisor of choice;
- Discuss any disability-related accommodations or other adjustments that the party or Advisor may require in order to effectively participate in the hearing; and
- Answer any questions that the parties and/or Advisors may have about the hearing process.



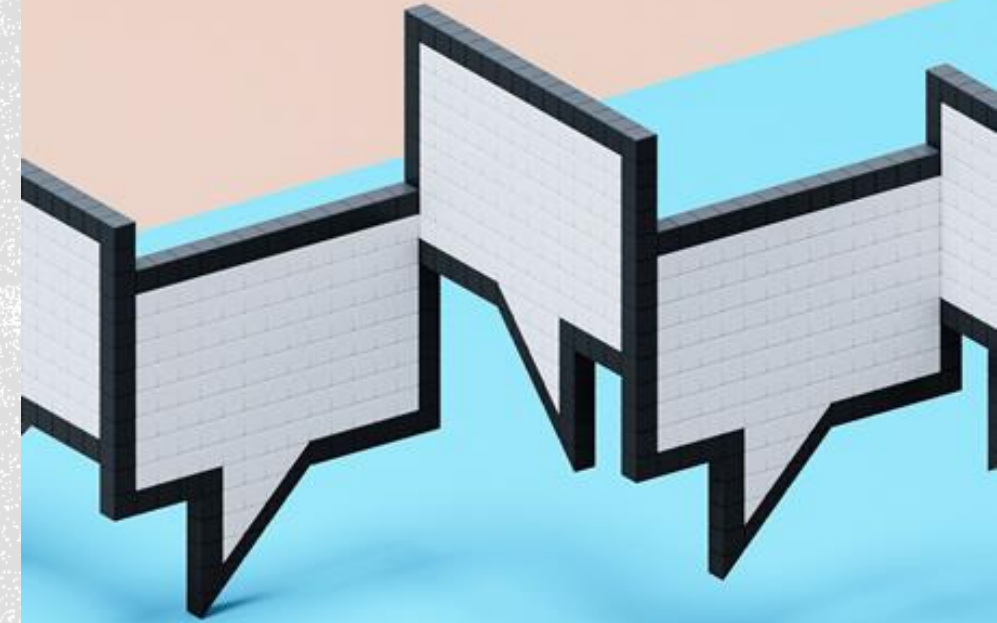
Live Hearing

- May be held in person or by using real-time video conferencing.
- Where the hearing is held in person, arrangements will be made for the parties to give their statements and answer questions from separate rooms using real-time video conferencing which enables the CRP and parties to simultaneously see and hear the party or the witness answering questions.
- The parties will have access to a copy of the final investigation report and all other available evidence during the course of the live hearing conducted by the CRP.
- Every live hearing will be documented by audio recording.

Hearing Technology

The live hearing:

- Must be recorded, and
- May be conducted with all parties physically present in the same geographic location or
- May occur virtually.
 - ✓ No set technology requirement for virtual proceeding
 - ✓ Hearing officer must be proficient with the technology
 - ✓ Must be real time
 - ✓ Allowing participants to simultaneously see and hear each other
 - ✓ Parties must be given access to documentation
 - ✓ When appropriate reasonable accommodations must be provided



Hearing Outcome / Written Determination

- Written determination will include:
 - ✓ Identification of allegations potentially constituting sexual harassment.
 - ✓ Description of the procedural steps from the filing of the formal complaint through the determination.
 - ✓ Findings of fact supporting the determination.
 - ✓ Conclusions regarding the application of the policy to the facts. • Statement of and rationale for the result as to each allegation.
 - ✓ Sanctions and whether remedies will be provided.
 - ✓ Appeal instructions.
- The determination becomes final on the date the institution provides the parties with the written determination of the appeal, if any, or the date on which an appeal would no longer be timely, if there is no appeal.
- [Grievance Process for Title IX, XII](#)



Appeals

- Four grounds for appeal:
 - Procedural irregularities that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
 - The Title IX Coordinator, Investigator(s), 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 of the matter; and/or
 - The disciplinary sanction(s) imposed are substantially outside the parameters or guidelines set by the University for this type of violation or the cumulative conduct record of the Respondent.
- Upon receiving an appeal request, a three-member Appeal Review Panel (ARP) will be convened.
- An appeal is a review and not a re-hearing.
- ARP will render a written decision.

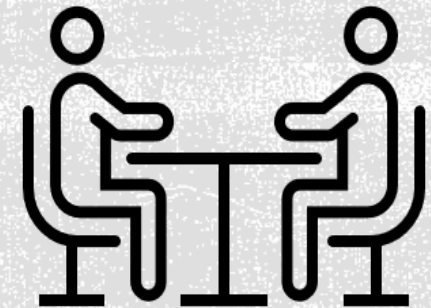


Relevance of Questions and Evidence



- The Hearing Officer has the authority to ensure that all participants, including parties and advisors, participate respectfully and non-abusively during a hearing.
- Intimidation and yelling is not permissible.
- Advisors who fail to meet the rules of decorum may be dismissed by the Hearing Officer. If so, the party whose advisor has been dismissed may use a different advisor conduct cross-examination.
- An institution may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.

Hearing Decorum



Questions and Cross-Examination

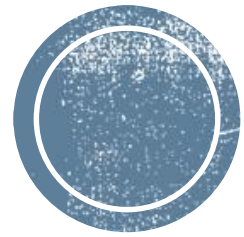
- Witnesses and parties will appear for the purpose of answering relevant questions and relevant follow-up questions—including those challenging credibility—posed by the members of the CRP, and by each party’s Advisor (i.e. “cross-examination”).
- Such questions at the live hearing must be conducted directly, orally, and in real time by the party’s Advisor of choice, and never by a party personally. If a party does not have an Advisor present at the live hearing, the University must provide without fee or charge to that party.
- Participation in the hearing by all witnesses and parties is voluntary.
- In light of recent guidance, please connect with the Title IX Coordinator regarding the relevancy of the statements of any individual who is not available to appear at the hearing to answer relevant questions by the CRP and parties’ Advisors—or declines to answer relevant questions during their appearance.
- The CRP also cannot draw an inference from a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.
- [Grievance Process for Title IX](#), XII

Relevancy Determinations

- Only relevant questions may be asked of a party or witness.
- Before a Complainant, Respondent, or witness answers a question, the CRP must first determine whether the question is relevant.
- Where the relevance of any question is disputed, the Chair of the CRP will determine whether the disputed question is relevant before an individual is expected to answer the question.
- The Chair of the CRP will also explain any decision to exclude a question as not relevant.
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.
- [Grievance Process for Title IX, XII](#)

Relevancy Determinations

- Privileged conversations (e.g., legal counsel, clergy, etc.) are not relevant.
- Information about a complainant's prior sexual history is not relevant.
- Unless given with voluntarily written consent, a party's medical, psychological, or records of the like, as well as educational records, are not relevant.
- It is impermissible to exclude relevant information that may be unduly prejudicial, concern prior bad acts, or constitute character evidence.
- In light of recent guidance, please connect with the Title IX Coordinator regarding the relevancy of a party or witness's investigative statement when the individual was not subject to cross examination at a live hearing.
- Duplicative information may be deemed irrelevant.



Impartial and bias free engagement



Awareness



True or False:

Fact-finding equals objectivity and neutrality?

✓ Mindfulness and awareness of potential biases prompts neutrality.

- Avoid stereotypes, assumptions, or speculation
- Avoid confirmation bias
- Avoid affinity bias
- Avoid partiality for one group over another, e.g. complaints v. respondents.
- Avoid conclusions based on body language
- Treat each case as unique and different.
- Be transparent and consistent
- Answer questions about the process
- Actively listen
- Keep an open mind.



QUESTIONS?

JCU