

Title IX & Sexual Harassment Response

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Who does Title IX apply to?

- Entities that receive federal financial assistance, including colleges and universities that participate in Title IV funding
 - Not individual persons
 - But institutions are required to adopt policies and procedures to implement Title IX that apply to individual persons



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What sexual harassment does Title IX apply to?

- Title IX applies to sexual harassment in the “education program or activity” of a federal funding recipient
 - Title IX defines “education program or activity” to include the “operations” of educational institutions
- Title IX does not apply to private conduct occurring in private location that is not part of education program/activity



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What are examples of education programs and activities?	Admissions	Hiring	Workplace
	Academic instruction	Residence life	Amenities on campus
	Sports teams	Work-study	Games, concerts, and speeches on-campus
	Off-campus trips or experiences organized by the institution	Sponsored organization activities	Anything else that happens on-campus

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Does Title IX apply to off-campus sexual harassment?

Yes, if the conduct at issue

Example (excluded from EP&A)

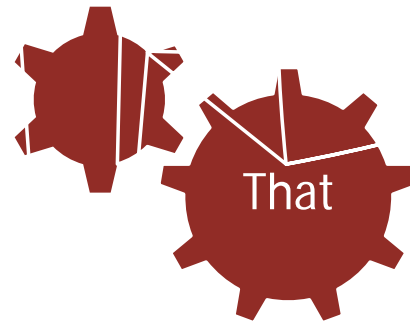
During spring break, two students travel to another state and stay at an all-inclusive resort owned by a prominent hotel chain. The students booked the trip on their own for leisure purposes. While staying at the resort, one student sexually assaults the other student.

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What is quid pro quo?

- An employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual conduct
Often arises in the employment context or where an employee holds a position of authority over a student



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How do we determine if a hostile environment exists?

- Consider all the facts and circumstances, such as:
 - The type of misconduct
 - The frequency of the misconduct
 - Where the misconduct occurs
 - Whether a power differential exists, etc.
- From the perspective of a reasonable person

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Example of hostile environment

Student A repeatedly gropes Student B's buttocks when the two are in the elevator of their shared dormitory. Student B has no romantic interest in Student A and has told Student A to stop. But Student A persists, causing Student B to use the stairs instead of the elevator and to avoid Student A in other areas of the dormitory.

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Does the First Amendment matter?

- While sexual harassment can be verbal or written in nature, sexual harassment under Title IX does not include conduct that is protected by the First Amendment
- The subjective offensiveness of speech, alone, is not sufficient to create a hostile environment



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Example (not-hostile environment)

Student A actively supports a prominent political candidate who has been accused of sexually harassing campaign staffers. Student B files a complaint that Student A's political support of the candidate has caused a sexually hostile environment on campus.

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What is sexual assault?

Title IX regulations define “sexual assault” as incorporating the following classes of conduct:

Rape

Sodomy

Sexual assault
with an object

Fondling

Incest

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What is rape?

Having carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted rape is included.

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What is consent?

- Institutional definitions may vary
- Words or actions that a reasonable person in the respondent's perspective would understand as agreement to engage in the sexual conduct at issue
- A person who is incapacitated is not capable of giving consent
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Example (incapacitated)

Student A has had ten cocktails over

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What is fondling?

Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical

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What is incest?

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.



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What is statutory rape?

Sexual intercourse with a person who is under the statutory age of consent as defined by law.



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What is domestic violence?

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Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the

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Example of stalking

Student A is infatuated with Student B, who has rebuffed Student A's romantic advances. Thereafter, Student A dresses in black and sneaks up to the window of Student B's Greek house at night in an attempt to see Student B. Student A does this twice before being caught in the act during Student A's third attempt.

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Does Title IX also prohibit retaliation?

Yes – Title IX prohib 24.48 Tf 1 0 0 1 148.55 315.96 Tm [(re)-1.5

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Example of retaliation

Employee A testifies at hearing in support of Employee B's complaint of sexual harassment against manager. After institution finds that manager sexually harassed Employee B, manager demotes Employee A to punish Employee A for testifying against manager.

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What about state laws governing sexual harassment on campus?

- Institutions must still comply with state laws unless
- They conflict with some element of the new Title IX regulation in which case
- State law is preempted

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**Group
Scenario**

Student A reports that Student B sexually harassed Student A on two occasions. The first incident consisted of Student B groping Student A's genitals without permission while the two were dancing during a formal hosted by a Greek organization at a local party venue the Greek organization rented. The second incident consisted of Student B attempting to have sexual intercourse with Student A a week later, when Student A was heavily intoxicated at a tailgate party held in the parking lot of a rival institution's football stadium.



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Title IX & Other Policies

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Examples of Policies with Related Concepts

- Discrimination**
 - Sexual Harassment
 - Other non-discrimination statement & policies
- Relationships**
 - Workplace
 - Employee - student
- Conduct**
 - Student
 - Faculty/Employee
- Discipline**
 - Student
 - Faculty
 - Employee

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How do Title IX and Title VII standards compare?

“Neither Federal non-sex discrimination civil rights law represents a ‘zero-tolerance’ policy banning all sexual harassment.” – Preamble to 2020 Title IX Regulations

Title VII Sexual Harassment

Quid pro quo

Sufficiently severe or pervasive

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How should we treat alleged conduct that may violate Title IX and Title VII policies?

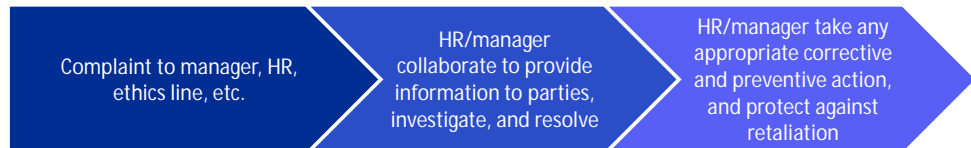
“The Department recognizes that employers must fulfill their obligations under Title VII and also under Title IX. There is no inherent conflict between Title VII and Title IX, and the Department will construe Title IX and its implementing regulations in a manner to avoid an actual conflict between an employer’s obligations under Title VII and Title IX.”

— Preamble to 2020 Title IX Regulations (also 34 C.F.R. § 106.6(f))



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Example of typical “Title VII” process



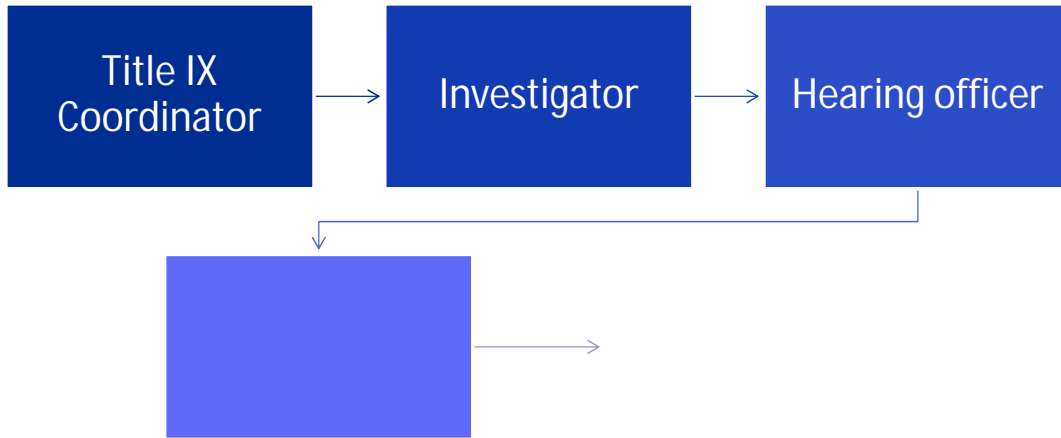
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What triggers an employer's liability for sexual harassment under Title VII?

An employer, its agent, or its supervisor
Knew or should have known
About severe or pervasive sexual harassment

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Who are the key institutional actors in the grievance process?



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What is “actual knowledge”?

- “Actual knowledge” occurs when
 - An institutional official, with authority to take corrective action
 - Observes or receives a report
 - Of sexual harassment occurring in the institution’s education programs and activities

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When do we reach out to the alleged victim?

- After institution has actual knowledge of alleged sexual harassment, Title IX Coordinator must contact alleged victim
- Provide information about supportive measures, explain the grievance process and how to file a formal complaint, and discuss the alleged victim's wishes

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What if we can't identify the alleged victim from a report?

- Title IX Coordinator should oversee preliminary investigation to determine identity i6g9iabou sup

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Example of no immediate threat to physical health or safety

Student A reports that Student B committed sexual harassment by repeatedly posting pornographic images on Student B's door in a Greek house. Student A does not allege that Student B has engaged in any physical conduct. When notified of formal complaint, Student B agrees to voluntarily remove images and cooperate with investigation.

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Can we place employees on administrative leave?

- Yes – employee respondents may be placed on administrative leave without requisite showing of threat to physical health or safety
- Whether an opportunity to challenge administrative leave must be given depends on employee status and other policies (i.e., Faculty Handbook)

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What is a formal complaint?

What

- Document
- Alleging sexual harassment

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Example of T9 Coordinator formal complaint

Student A and Student B each separately report they were sexually assaulted by Student C. Student A and Student B each suspect they were drugged by Student C. Neither Student A nor Student B wishes to file a formal complaint, but each has indicated they will cooperate with an investigation if the Title IX Coordinator files a formal complaint.

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When must we dismiss a formal complaint?

- If filed by the alleged victim, and the alleged victim is not a current or attempted participant in education programs and activities
- Complaint does not allege sexual harassment in the institution's education programs or activities
- Complaint alleges sexual harassment abroad
- Conduct alleged would not amount to sexual harassment even if it occurred as reported

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Example of dismissal

Student A reports that Student B sexually assaulted Student A in their hometown during summer break. The alleged assault occurred in Student B's house after the two attended a co-ed softball game hosted by a local recreation league. Student A and Student B have had no contact since the alleged sexual assault.

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Example of dismissal

Student A makes a sexual harassment complaint against a faculty member because the faculty member requires students in English class to read a "Confederacy of Dunces" which contains sexual content that Student A finds immoral and obscene. Student A has no other basis for the complaint but the required reading of the book.

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When may we dismiss a formal complaint?

- Alleged victim indicates in writing a desire to withdraw the complaint (or particular allegations)
- Respondent is no longer enrolled in or employed by the institution
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

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Example of permissive dismissal

Prior to investigation being completed, respondent graduates institution and complainant indicates she will not testify at a hearing because any discipline would be meaningless in light of respondent's graduation. There are no witnesses to the alleged sexual harassment and no non-testimonial evidence, such as video footage.

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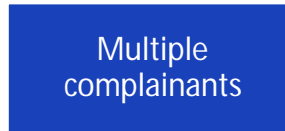
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Can we consolidate the complaints?

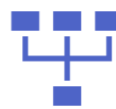
Yes – complaints can be consolidated if they arise out of the same facts and circumstances.



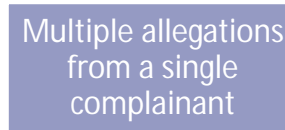
Multiple respondents



Multiple complainants



Multiple allegations against a single respondent



Multiple allegations from a single complainant

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Example of permissible consolidation

Students A and Student B, who are roommates, allege that Student C barged into their dormitory room drunk and propositioned them for sex. Student A and Student B each file their own formal complaint of sexual harassment from the same incident.

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Example of impermissible consolidation

Student A files a formal complaint that Student B sexually assaulted Student A two years ago after Student A was incapacitated by drinking. Student C, Student B's present romantic partner, files a formal complaint that Student B committed dating violence by slapping Student C during an argument a month ago.

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What is the grievance process?

Investigation to collect relevant inculpatory and exculpatory evidence

Live hearing before a decision-maker who finds facts under an evidentiary standard and determines the existence (or not) of a policy violation and any resulting sanctions/remediation

Appeal

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What general principles govern the grievance process?

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What is a conflict of interest?

- When an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial
- May be based on prior or existing relationships, professional interest, financial interest, prior involvement, and/or nature of position

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Example of conflict of interest

Student A files a formal complaint of sexual harassment against Student B. One of the hearing panel members

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What do we do if we find sexual harassment occurred?

- If grievance process results in a finding of sexual harassment:
Discipline for the respondent as determined by



What is inculpatory evidence?

- Evidence tending to support the proposition a respondent committed sexual harassment as alleged
- Example: A text message sent the day after an incident from the respondent stating: "I never should have forced you to have sex with me after you said 'no.' I'm so sorry for what I did."



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What is exculpatory evidence?

- Evidence tending to support that the respondent did not commit sexual harassment as alleged
- Example: A text message sent the day after an incident from the complainant stating: "I know that I said 'yes' at the time. And I knew what I was doing. But now I feel like you just used me as a one-night-stand."



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What else does the notice need to say?

- Written notice must also include:
 - Statement of presumption respondent is not responsible unless and until a determination is made at the end of the process
 - That parties have the right to an advisor of their choice
 - That parties have the right to inspect and review evidence
 - Any prohibition on providing knowingly false statements or information



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How do we collect evidence in an investigation?

Interviews of parties and witnesses

Collection of non-testimonial evidence

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What are some general principles about interviewing?

Timing

Conduct interviews as soon as reasonably possible to maximize the most accurate memories

Choose a private and quiet setting

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Another example question

- From a party: "I want to tell you something 'off-the-record.' Is that okay?"
- Answer: "The nature of the interview is that everything is 'on-the-record.' So no, I can't have an 'off-the-record' conversation with you. But you can have a confidential conversation with one of the University counselors."

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How do you structure an interview?

Rapport building/information providing phase



Substantive testimony collection

Closure/information providing phase

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How do you build rapport?

- Take the time to learn basic information about the interview subject before conducting the interview
- Learn something about the subject and share something about yourself; find commonality
- Explain the nature of the investigation, your role, and the rules of the interview

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Things helpful to say in every interview . . .

- “If I ask a question you don’t understand, please tell me.”
- “If I ask a question and you don’t know the answer, it’s okay to say you don’t know.”
- “If you think I’ve misunderstood anything you say today, please tell me.”
- “I want to get as much information as possible, so please be detailed in what you share. And if I don’t ask about something you think is important, please tell me.”
- “To do my job, I need accurate information. So I always remind every witness that it’s important to tell the truth.”



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How do I ask questions in the substantive phase?

- Open-ended and non-suggestive invitations
- Use facilitator words to keep the narrative flowing
- Use cued-invitations to expand particular topics
- Delay use of recognition prompts as long as possible
- Avoid suggestive or leading questions
- Save externally derived information for last



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Examples of open invitations

“Tell me what happened that night.”

“Will you walk me through what you remember?”



“Tell me more about that.”



“What happened next?”

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Examples of facilitators



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Examples of cued invitations

“You mentioned that Can you tell me more?”

“You said that What did you mean?”


“You used the word ‘pressured’ to describe Can you be specific about what they did?”


“If I understood you right, you said that after Did anything happen in between?”

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Examples of recognition prompts

 “What did she say?” (directive)

 “What day did that happen?” (directive)

“Did it hurt?” (option choosing)

“Was he slurring words?” (option choosing)

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"I'm sure it's difficult when you see him on campus. Do you agree?"

"You probably thought that was an invitation to have sex, right?"

"If I were h.b

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Do parties/witnesses have a right to record the interview themselves?

- No – parties do not have the right to insist on recording an interview
- If the interview is recorded, the institution should make the recording and give the parties access as required at the appropriate time

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The parties

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May an investigation collect evidence on sexual history?

- Generally, no – Evidence of a complainant's prior sexual behavior is relevant only if offered to prove that someone other than the respondent committed the conduct, or if evidence of specific incidents of the complainant's prior sexual behavior with the respondent are offered to prove consent

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May an investigation collect and rely on privileged records?

- Only if a party waives the privilege
- An institution may not access information under a legally recognized privilege unless the holder of the privilege waives it
- Institution cannot unilaterally access its own counseling and health files for investigation purposes

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Example of permissible use

Student who makes report of sexual assault executes a HIPAA-compliant release requesting and authorizing the hospital to provide a copy of her SANE/SART examination to the investigator.

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Example of impermissible use

Respondent tells investigator he met with an attorney the day after the alleged sexual assault. The investigator demands that the respondent reveal what he told his attorney. When the respondent declines, the investigator states he will note that in the report and advise the hearing panel to draw an adverse inference against the respondent for “failing to cooperate.”

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Do the parties have access to the evidence?

- At a minimum, parties must be given access to all inculpatory and exculpatory evidence directly related to the allegations (regardless of whether the institution intends to rely on it) at least 10 days before the investigation report is finalized
- Evidence must be provided to a party and their advisor in physical copy or electronically
- Any earlier access to the evidence must be provided equally

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Do the parties get to respond to the evidence?

- Yes – after they review the evidence provided at least 10 days prior to issuance of the investigation report, parties can provide written responses
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How is the investigation concluded?

- Issuance of a written investigation report
- Must fairly summarize the evidence collected, including both inculpatory and exculpatory evidence
- Must be provided to each party and their advisor at least 10 days prior to any hearing



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Example of advisor breaking the rules

A student brings an aggressive attorney as their advisor to an interview. The institution's policy states that advisors are to remain passive and not argue on behalf of the parties they are advising. During the interview, the attorney repeatedly interrupts the investigator, objects to questions, argues that the investigator should ask different questions, and attempts to present legal arguments citing caselaw.

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Example of advisor breaking the rules

A student names the student's mother as advisor. The institution's policy states that advisors may not obstruct communications between the institution and a party. The student's mother tells the investigator the investigator is to communicate solely through the mother and not send any emails directly to the student. When the investigator emails the student directly to schedule an interview, the mother calls and verbally attacks the investigator.

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Are parties subject to a “gag” order during the investigation?

- No – the institution may not restrict the ability of parties to discuss the allegations or to gather and present relevant evidence, which includes talking to witnesses
- But institution can still enforce prohibitions on witness intimidation, witness manipulation, false statements, retaliation, harassment, etc.

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Example of permissible conduct

Respondent accused of sexual assault sends text messages to various students who may have observed the complainant's level of intoxication on the night in question. Respondent's text says: "Please contact me ASAP if you believe the complainant was sober."

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Example of impermissible conduct

Respondent tells roommate that respondent has been accused of sexual assault and "it's important that we get our stories lined up." Roommate states his belief that respondent arrived home at 2:00 a.m. Respondent says: "No. You're going to say you saw me here in bed at 11:00 p.m. That's what you need to say or

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Hearings



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What is the purpose of the hearing?

- To hear testimony and receive non-testimonial evidence so that
- The decision-maker can determine facts under a standard of evidence
- Apply those facts to the policy, and
- Issue a written determination resolving the formal complaint and imposing discipline/remedial measures as necessary

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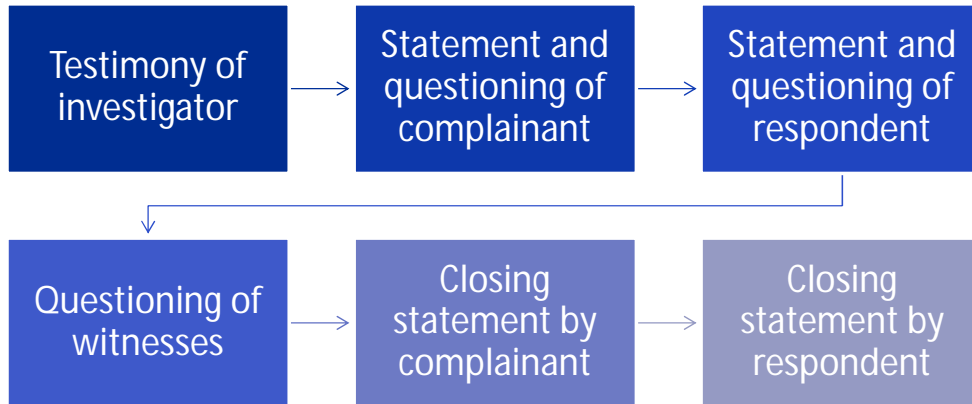
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Do we provide a party's advisor?

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What is a potential sequence?



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Example (relevant)

Coach is accused of sexually propositioning Student B in exchange for more playing time. Advisor for complainant asks the Coach: "Didn't you tell one of the trainers that Student B is a 'very attractive young woman?'"

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Example (not relevant)

Complainant alleges boyfriend/respondent engaged in dating violence by kicking complainant during an argument. Advisor for boyfriend/respondent asks complainant: "Isn't it true that you are only dating boyfriend/respondent because of his family's money?"

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Example (not relevant)

Student A has accused Student B of sexual assault. Advisor for Student A asks Student B: "Were you convicted for driving under the influence when you were a sophomore in high school?"

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Is sexual history considered?

- Generally, no – Evidence of a complainant's prior sexual behavior is relevant only if:
 - Offered to prove that someone other than the respondent committed the conduct, or
 - If evidence of specific incidents of the complainant's prior sexual behavior with the respondent are offered to prove consent

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Example (impermissible)

Student A has accused a faculty member of sexual harassment. Advisor for the faculty member asks Student A: "How many men did you sleep with in the month before you claimed the faculty member sexually harassed you?"

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Example (permissible)

Student A has accused Student B of sexual assault. Student A testified that Student B had intercourse with Student A without using a condom, 32hom1 265.()w0n1.7() (g /F1

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Does any testimony get excluded?

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Example (excluded)

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Witness gives statement to

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Example (impermissible)

Institution's policy prohibits a party or advisor from "doing anything that would make another party uncomfortable or suffer anxiety, including asking questions that may cause a party to relive an experience in a traumatizing way."

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How long does a hearing last?

- Decision-maker(s) have the ability to set reasonable time limits on the hearing and its constituent parts
- Parties must have a reasonable opportunity to conduct questioning/cross-examination, but do not have the right to question/cross-examine witnesses as long as they want
- Decision-maker(s) should set an overall length to the hearing in advance and keep parties on schedule

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How do(es) the decision-maker(s) decide a case?



After hearing, decision-maker(s) must deliberate and consider all the admissible testimony and admissible non-testimonial evidence



Evaluate evidence for weight and credibility



Resolve disputed issues of fact under the standard of evidence adopted by the institution



Using the facts as found, apply the policy's definitions to those facts to determine whether sexual harassment occurred



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What does it mean to weigh evidence?

- Not all evidence has equal value
- Some evidence may be more reliable and probative than other evidence
- Weight may vary depending on a range of factors, such as credibility; corroboration; consistency; level of detail; expertise of the witness; whether a witness is disinterested, etc.



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Example of considerable weight

Witness testified he saw complainant and respondent leave the bar at 11:05 pm as witness was arriving. Witness states he clearly saw their faces and remarked to a friend about a particular t-shirt the complainant was wearing and how respondent had a nose ring. Witness testified he knows the time was exactly 11:05 pm because witness remembers receiving a phone call right as witness entered the bar, and witness's call log indicates the call was received at 11:05 pm.

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Example of less weight

Witness says he saw a couple leaving the bar "sometime after ten but before midnight" but witness is not "sure exactly" when. Witness testified they

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How do(es) the decision-maker(s) issue a decision?

- In a written document, provided contemporaneously to the parties that:
 - Identifies the allegations of sexual harassment
 - Describes the various procedural steps taken from the time the formal complaint was made
 - States findings of facts supporting the determination
 - Reaches conclusions regarding application of relevant policy definitions to the facts
 - Includes a rationale for each finding for each allegation
 - States the disciplinary sanctions and remedies, if implicated by the determination made, and
 - Explains the procedures and grounds for appeal

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Who determines discipline and remediation?

- This is a question of institutional choice
- Some institutions will have the decision-maker(s) also impose discipline
- Others may refer a disciplinary authority with jurisdiction over the respondent (i.e., Dean of Students, Provost, Director of Human Resources, etc.)
- If referred to someone else, that must occur before the written determination is issued

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What is the purpose of the appeal?

- Appeal permits challenge of a dismissal or determination on certain limited grounds
- Appeals are not an opportunity to re-argue an outcome or seek “de novo” review

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Who can appeal?

- Title IX regulation requires that either party be allowed to appeal
- Third-party persons cannot file appeals on behalf of a party

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Can an institution set a time limit to appeal?

- Yes – an institution can and should require an appeal to be filed within a reasonable number of days after a dismissal or determination
- Institution may set a secondary deadline for the non-appealing party to elect to file a cross-appeal the first party has appealed

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What are the grounds for appeal?

Title IX regulation requires the following permitted grounds:



Procedural irregularity that affected the outcome of the matter



New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or



Title IX Coordinator, investigator, or decision-maker (hearing official) had a conflict of interest or bias against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

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Example (procedural irregularity)

During a hearing, the hearing officer denies the respondent's advisor the right to question witnesses. The respondent appeals, citing this procedural irregularity, and argues that key witness testimony relied on by the hearing officer must be excluded because the witness was not subjected to questioning by the advisor, as required by the policy 44.8(5)(d)-1.7()6.5(a)-3(8)(i)1.4(t)4.86(e)-2.o4(i)3(h)-2. (e)-2

Example (harmless error)

Policy required hearing to be held within 60 days of submission of Formal Complaint. Hearing was held 61 days after submission of Formal Complaint due to a counting error. The evidence would have been the same if the hearing were held a day earlier.

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Example (new evidence)

After determination is made that respondent did not commit sexual harassment, complainant secures a previously unknown

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Example (conflict of interest/bias)

After determination is made that respondent committed sexual harassment, respondent sees social media post by hearing officer stating: "All victims of sexual harassment must be believed. False reports of harassment are exceedingly rare. A person accused of sexual harassment is a guilty person in my book." Respondent argues bias resulted in a sham hearing with the outcome predetermined.

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What is the appeal process?

Provided to
Parties

Written decision must

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Can we require an appealing party to explain their appeal?

Yes – an institution can require that the appealing party state the grounds for appeal and also explain, with some level of specificity, why the appeal should be granted.



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How does the appeal officer make their decision?

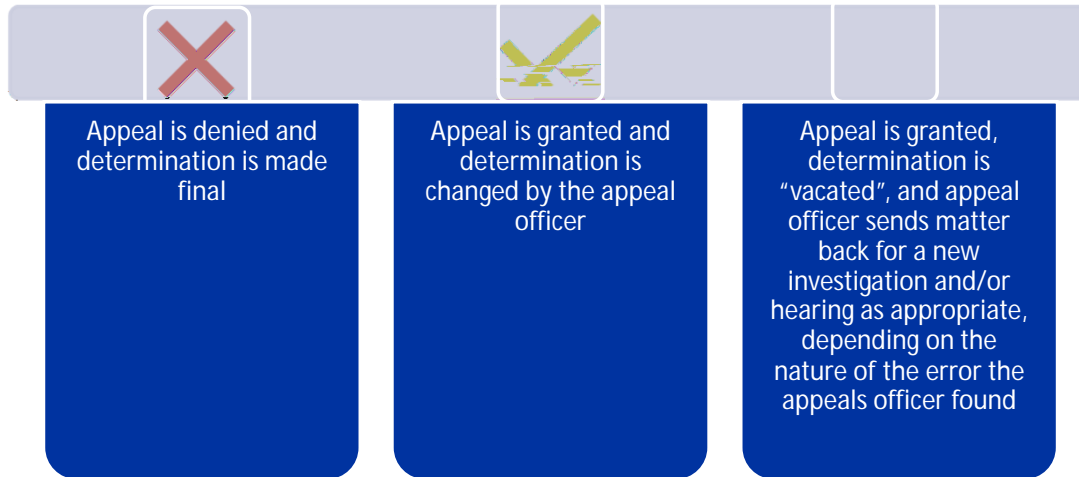
- Appeal officer's review is limited in scope to the grounds stated for appeal
- Appeal officer does not hold a new hearing
- Appeal officer must review the appeal, response, and hearing record (to the extent necessary, depending on the grounds for appeal)
- Appeal officer must then draft a written decision that states the outcome of the appeal and rationale



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What are the potential outcomes of an appeal?



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Example

Appeals officer finds there was a prejudicial procedural error because the hearing officer failed to send notices requesting several of the respondent's key witnesses appear. Appeals officer vacates the adverse finding against the respondent and directs that a new hearing take place after appropriate notices to appear have been issued.

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Is there further review after appeal?

Unless policy expressly provides for second level appeals (not recommended), President and Board should not entertain pleas for additional review.



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Group Scenario

After a hearing, a faculty member—who is also a principal investigator in externally funded research—is determined to have sexually harassed a student lab assistant by repeatedly making sexualized comments about the student's physique and manner of dress when the student was performing research duties in the lab. Faculty member appeals on ground that the Title IX Coordinator was biased insofar as faculty member had previously challenged and argued with Title IX Coordinator during faculty trainings about whether the Title IX process was a "kangaroo court." Faculty member did not raise a concern about bias until the appeal. Hearing officer was a retired judge who heard testimony during the hearing from eight students and lab employees who all corroborated the complainant's account.



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How would the prior example be resolved?

- Investigation and hearing process would resume
- If student withdraws complaint, or refuses to participate, institution might elect to dismiss complaint
- But Title IX Coordinator might also elect to file formal complaint and cause the issue to be adjudicated fully

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Example (impermissible)

Enrollment agreement for students contains a clause stating: "Student hereby waives their right to a formal investigation and hearing as contemplated by Title IX and instead agrees that all reports of sexual harassment will be summarily resolved by a decision issued by the Dean of Students after an investigation."

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Does every case with disputed facts have to proceed to hearing?

- No – As long as the procedural requirements to enter informal resolution are met, Title IX regulations permit a wide range of alternative models, including a decision by a single individual (i.e., “arbitration”)
- It is especially important to advise the parties of the nature of this type of resolution and how it differs from the default investigation and hearing



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Is an informal resolution final?

- Generally, yes – Most informal resolutions will result in an agreement that resolves the allegations in a definitive and final way
-

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How is an informal resolution documented?

- Agreements should be well-documented by the informal resolution facilitator
- Ideally, parties will sign the agreement or provide

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Example (institution may restrict)

Complainant contacts witness who complainant knows will testify to witness' belief, based on observation, that complainant was not incapacitated and

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**Group
Scenario**

Student A is being investigated for sexually assaulting Student B. Student A contacts various individuals who were present at a party immediately before the sexual assault and asks the individuals to sign a declaration attesting that Student B was sober and fondling Student A in front of others. One such individual is a friend of Student B's and complains to the Title IX Coordinator. Later, when Student A is given access to the investigation evidence before the conclusion of the investigation, Student A posts the entire evidentiary record online.



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