



Sanctioning Panel Training

October 5, 2023

Joshua W. B. Richards
Amy L. Piccola

Jurisdiction and Scope

INTERIM POLICY ON TITLE IX SEXUAL HARASSMENT

Title IX Policy: Jurisdiction

- Policy applies to Title IX Sexual Harassment:
 - Occurring in the University's

Title IX Policy: Jurisdiction

Education program or activity includes:

Locations, events or circumstances . . .

whether on campus or off campus . . .

over which the institution exercises **substantial control** over
both the respondent and

Title IX Policy: Prohibited Conduct



TIX Sexual
Harassment

Title IX Sexual Harassment

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

Title IX Sexual Assault

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object or instrument, or oral penetration by a sex organ of another person, **without the consent** of the victim or where the victim is incapable of giving consent, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia

Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Fondling: The 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 their age or because of their temporary or permanent mental incapacity.

Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Title IX Dating and Domestic Violence

Dating Violence. Violence committed by a person (A) who is/has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such relationship shall be determined based on its

Title IX Stalking

Engaging in **a course of conduct** directed at a specific person [on the basis of sex] that would cause a reasonable person to—

(A) fear for their safety or the safety of others; or

(B) suffer substantial emotional distress.

What happens before a matter reaches the sanctioning panel?

PROCESS

Reports, Complaints, Notice

- Reports can be made by anyone
 - All University employees (including student employees) and graduate students with teaching or supervisory authority, are obligated to promptly report Title IX Sexual Harassment, discrimination, harassment, or sexual misconduct of which they become aware in the scope of their work for the University to OCR *[does not apply to confidential resources]*
 - OCR contacts the person reported to have experienced the conduct, offers **supportive measures**, explains procedural options *[required when TIXC has notice]*
- Title IX Formal Complaints must be filed by the

OCR Intake Process (Title IX)

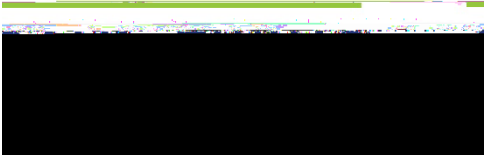
- Initial Inquiry

- Assessment by OCR as to whether the allegations, if substantiated, would rise to the level of a violation of University policy;
- Determination of the specific policy(ies) implicated; and
- Assessment of the appropriate University response.

- Possible next steps:

- Dismiss





Title IX Hearings

- Live with Cross Examination
 - Advisors conduct ~~cross~~ examination, asking relevant questions
- Decisionmaker resolves outstanding issues of contested facts, assesses credibility

Referrals to Sanctioning Panel

- Code of Conduct/PHDSM: OCS convenes a three-member panel of students, faculty, and staff (students are not involved in OCR matters).
- Title IX: In the event a policy violation is found, the hearing decisionmaker will consult with the UHAS Sanctioning Panel comprised of three faculty or staff members to determine any sanctions to be imposed.

Written Decisions

Title IX Appeals

- Either party may appeal on the following grounds:
 - Procedural irregularity 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; or
 - The sanction is disproportionate with the violation

Serving on a Sanctioning Panel

AVOIDING CONFLICTS OF INTEREST & BIAS

Serving Impartially: Avoid Prejudgment of the Facts

- Cannot **pass judgment** on the allegations presented by either party or witnesses.
- Cannot **jump to any conclusions** without fully investigating the allegations and gathering all of the relevant facts and evidence from all parties involved. Be objective!
- Treat parties **equally** provide an equal opportunity to present evidence, witnesses, and their versions of the story.

Impermissible Bias

Making a decision based on the characteristics of the parties, rather than based on the facts

Bias: What does it mean?

“Treating a party differently on the basis of the party’s sex or stereotypes about how men or women behave with respect to sexual violence constitutes impermissible bias.”

A “recipient that ignores, blames, or punishes a student due to stereotypes about the student violates the final regulations[.]”

All protected classes

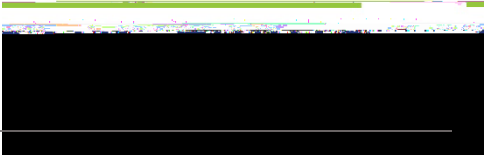
“The Department’s conception of bias is broad and includes bias against an individual’s sex, race, ethnicity, sexual orientation, gender identity, disability or immigration status, financial ability, socioeconomic status, or other characteristic

What is not defined as bias?

Professional/Personal Experiences or affiliations

Not *per se* bias; exercise caution not to apply “generalizations that might unreasonably conclude that bias exists”, examine on a case-by-case basis:

- All “self-professed feminists” or “self-described survivors” as biased against men
 - A male is incapable of being sensitive to women
 - History of working in a field of sexual violence
-



Conflict of Interest: Who can serve which function?

Hearing decision maker...

- Investigator
- Title IX Coordinator
- Appeal decision maker

Appeal decision maker ...

- Investigator
-
- Hm .904ea04 Tmmak004 Tg d

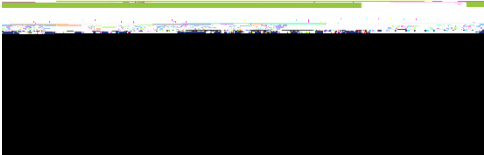
The investigative report & file

THE RECORD



Title IX Investigative Report

- Must fairly summarize relevant evidence
- Relevant Evidence “*evidence pertinent to proving whether facts material to the allegations under*



Title IX: Rape Shield Provision



Title IX: Rape Shield Provision

There are two exceptions where questions or evidence of past sexual behavior are allowed:

- **Exception 1** Evidence of prior sexual behavior is permitted if offered to prove someone other than the respondent committed the alleged offense.
- **Exception 2** Evidence of prior sexual behavior is permitted if it is specifically about the complainant and the respondent **and** is offered to prove consent.
 - Does not permit evidence of a complainant's sexual behavior with anyone other than the respondent.

SANCTIONING



Title IX: Sanctioning Objectives

- Promoting safety and protecting the University community;
- Sanctioning individuals for violating this Policy and deterring them from similar future behavior;
- Ending harmful conduct;
- Taking steps reasonably calculated to prevent the future reoccurrence of the conduct;
- Restoring the Complainant to their pre-deprivation status, to the extent practical and possible.

Title IX: Remedies

- Title IX Coordinator determines whether and to what extent ongoing Supportive Measures or other remedies will be provided to Complainant
- Remedies are measures provided to a Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent.
- Provided as reasonably necessary to restore or preserve access to the University's Education Programs or Activities.

Title IX: Remedies

- Counseling
- Extensions of deadlines or other course related adjustments
- Modifications of work or class schedules
- Campus escort service
- 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
- Other changes to academic, living, dining, transportation, and working situations
- Honoring an order of protection or no contact order entered by a state civil or criminal court