

Title IX Training for Advisors, Adjudicators and Facilitators

OFFICE OF INSTITUTIONAL COMPLIANCE AND TITLE IX

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A large group of skydivers in various colored suits (red, blue, green, yellow, black) are falling in formation against a clear blue sky. The skydivers are spread across the entire frame, creating a sense of dynamic movement.

Preliminary Disclosures Re Content

Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, any applicable state or local laws, and evolving federal guidance.

The content and discussion in this course will necessarily engage with sex-and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses. We may offer examples that emulate the language and vocabulary Title IX practitioners encounter in their roles including slang, profanity, and other graphic or offensive language.

What's New for Fall 2025?

- ❖ **New Name**

- ❖ OED is now OIC - Office of Institutional Compliance and Title IX

- ❖ **Back to the SHSM policy from 2022**

- ❖ In 2024, the OIC (formerly OED) updated the University's Sexual Harassment and Sexual Misconduct policy in compliance with the new 2024 Title IX regulations. Under this policy, two policies were in effect depending on when the conduct occurred.

- ❖ In January of 2025, these regulations were struck down by the courts and we reverted to our previous SHSM policy which was set in 2022.

Agenda

Title IX Regulatory Framework

The University of Scranton Sexual Harassment and Sexual Misconduct Policy

- Definitions
- Reporting
- Supportive Measures
- Emergency Removals

Formal Resolution Process

- Formal Complaints
- Investigations and Investigation Report
- Hearings
- Appeals

Informal Resolution

Advisor and Panel Member Roles

The University of Scranton's Sexual Harassment and Sexual Misconduct Policy



Jurisdiction

Application to all students and employees

Jurisdiction of Title IX

- WHAT: Sexual harassment: unwelcomed sexual conduct that is so severe, pervasive and objectively offensive that it effectively denies equal access to the university's programs or activities; sexual assault; dating violence; domestic violence; and stalking.
- WHERE: Occurs in
 - A university's programs or activities, defined as locations, events or circumstances over which the university exercised substantial control.
 - Any building owned or controlled by an officially recognized student organization.
 - The U.S.

Definitions-Title IX Sexual Harassment

Title IX Quid Pro Quo Sexual Harassment: An employee of the University conditioning the provision of an aid, benefit, or service of the University on a complainant's participation in unwelcome sexual conduct. Unwelcome sexual conduct includes, but is not limited to: any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise.

Title IX Sexual Harassment: Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

Definitions – Title IX Sexual Harassment

Title IX Sexual Assault: Any attempted or actual sexual act directed against another person, without the consent of the Complainant, including instances where the victim is incapable of giving consent. Sexual assault is the penetration, no matter how slight, of the vagina or anus, with a body part (e.g., finger, hand or penis), or object, or oral penetration by a sex organ of another person, without consent.

- • Title IX sexual assault also includes sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, and sexual intercourse with a person who is under the statutory age of consent.

Title IX Sexual Exploitation: The touching of the private body parts (breasts, buttocks, groin, genitals, or other intimate part of a body) of another person for the purpose of sexual gratification, without consent, including instances where the individual is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

Definitions – Title IX Sexual Harassment

Title IX Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. 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. For purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.

Title IX Domestic Violence: Violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child; by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Definitions – Title IX Sexual Harassment

Title IX Stalking: Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for that person's safety or the safety of others, or suffer substantial emotional distress.

- 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 an action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a person under the similar circumstances and with similar identities as the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may not necessarily require medical or other professional treatment or counseling.

Stalking also includes the concept of cyber stalking.

Definitions – Title IX Sexual Harassment

But, must meet Title IX jurisdictional requirements:

In order to constitute Title IX Sexual Harassment, the alleged misconduct must have occurred:

-
- In the United States, and
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- In Scranton's education program or activity, which is defined as locations, events or circumstances over which the University exercised substantial control over both Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the University.

Definitions – University Sexual Misconduct

University Sexual Harassment: Severe or Pervasive (not and)

University Gender-Based Harassment

University Sexual Exploitation:

- Conduct that exploits another person in a sexual and non-consensual way, including:
 - a. non-consensual touching, fondling, or kissing,
 - b. causing the incapacitation of another person for the purpose of compromising that person's ability to give consent to sexual activity,
 - c. non-consensual voyeurism,
 - d. allowing others to view sexual activities without the consent of all of the participants,
 - e. non-consensual recording or photographing of private sexual activity and/or a person's intimate parts (audio or visual),
 - f. non-consensual dissemination or posting of images or recordings of private sexual activity and/or a person's intimate parts,
 - g. exposure of one's body in an indecent or lewd manner,
 - h. sexual activity in public or semi-public places,
 - i. prostituting another person, or
 - j. knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge

University Intimate Partner Violence

University Stalking

Consent at The University of Scranton

For individuals to engage in sexual activity of any type with each other, there must be **clear, knowing, and voluntary consent** prior to and during sexual activity. Consent is an **active and positive exchange of words or actions** that indicate a willingness to participate freely and voluntarily in mutually agreed upon sexual activity.

Effective consent cannot be given when:

- A person is physically or mentally incapacitated, including when the incapacitation stems from alcohol or other drugs.
- A person is unconscious.
- A person is asleep.
- A person is under the age of consent.

More on Consent at The University of Scranton

Consent is demonstrated through **mutually** understandable words and/or actions that clearly indicate a willingness to engage in sexual activity.

Consent to some form of sexual activity **cannot be automatically** taken as consent to any other form of sexual activity.

The existence of a dating relationship between persons (including past sexual relations), by itself, is **not sufficient** to constitute consent.

Any party may **withdraw** consent at any time, demonstrated by words or actions that clearly indicate a desire to end sexual activity.

More on Consent at The University of Scranton

Consent is not effective if it results from **the use (or threat) physical force, intimidation, coercion, incapacitation or any other factor that would impact an individual's ability to exercise their own free will to choose whether or not to have sexual contact.**

Coercion: The use or attempted use of pressure and/or oppressive behavior, including expressed or implied threats, intimidation, or physical force, which places a person in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity.

Incapacitation: The inability, temporarily or permanently, to give consent, communicate consent, or express unwillingness, because an individual is mentally and/or physically helpless, unconscious, asleep, or unaware that the sexual activity is occurring.

- Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness, intoxication or impairment.
- In assessing the impact of incapacitation, the University will consider whether a Respondent knew or should have known that the Complainant was incapacitated based on objectively and reasonably apparent indicators of incapacitation.

Alcohol or Other Drugs

Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgements. Because alcohol or drug use can place the capacity to consent in question, sober sexual activity is less likely to raise such questions. When alcohol or other drugs are used, **a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction because they lack the capacity to reasonably understand the situation.** If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the safest course of action is to forgo or cease any sexual contact or activity. Being intoxicated or impaired by drugs or alcohol does not diminish an individual's responsibility to obtain informed and freely given consent.

Reporting Potential Prohibited Conduct

Anonymous Reporting Reports to Authorized and Responsible Employees

A disclosure or report of prohibited conduct made to an official with authority to institute corrective measures (regardless of whether the disclosure is made by the Complainant or a third party):

- Constitutes a report to the University (*i.e.*, actual knowledge), triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.

A disclosure or report of prohibited conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party):

- Does not constitute a report to the University (*i.e.*, is not “actual knowledge”) triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.

Responsible Reporters

Every employee, including *students working for the University* (except those specifically identified as a “confidential” resource) who receives information of discrimination on the basis of sex, sexual and gender harassment or sexual misconduct involving a student, employee and/or third party as a complainant, respondent or witness, is required to share all relevant details (obtained directly or indirectly) with the Title IX Coordinator or a Deputy Title IX Coordinator, including, but not limited to:

- The complainant’s identity
- The respondent’s identity, if know,
- The factual details of the incident, if know
- Documents, social media, or any other information obtained during the report, if any
- All other relevant information obtained during the report

Privacy and Confidentiality

Privacy – Only those who **need to know** the information will receive it

Confidentiality – Will not share information **unless** the person making the disclosure consents or as **required** by law

Privacy means that only individuals who need to know the information in order to respond appropriately will receive it

You'll want to ensure that the person reporting to understands that, as a responsible reporter, you are required to share this information with me as the Title IX Coordinator

You must report all information reported to you to the Office of Institutional Equity

Confidential employees may receive disclosures of alleged sex- or gender-based harassment, discrimination, or violence

They will not share information with anyone else unless the person making the disclosure consents or as required by law

For confidentiality to apply, the employee must be designated as confidential in institutional policy and they must be acting in this capacity at the time of the disclosure

This designation does not override any obligations to report child or elder abuse under Pennsylvania State Law

Confidential Resources

The University of Scranton Counseling Center (570-941-7620) provides confidential counseling services to University

Student Health Services (570-941-7667) provides confidential medical support and assistance to University

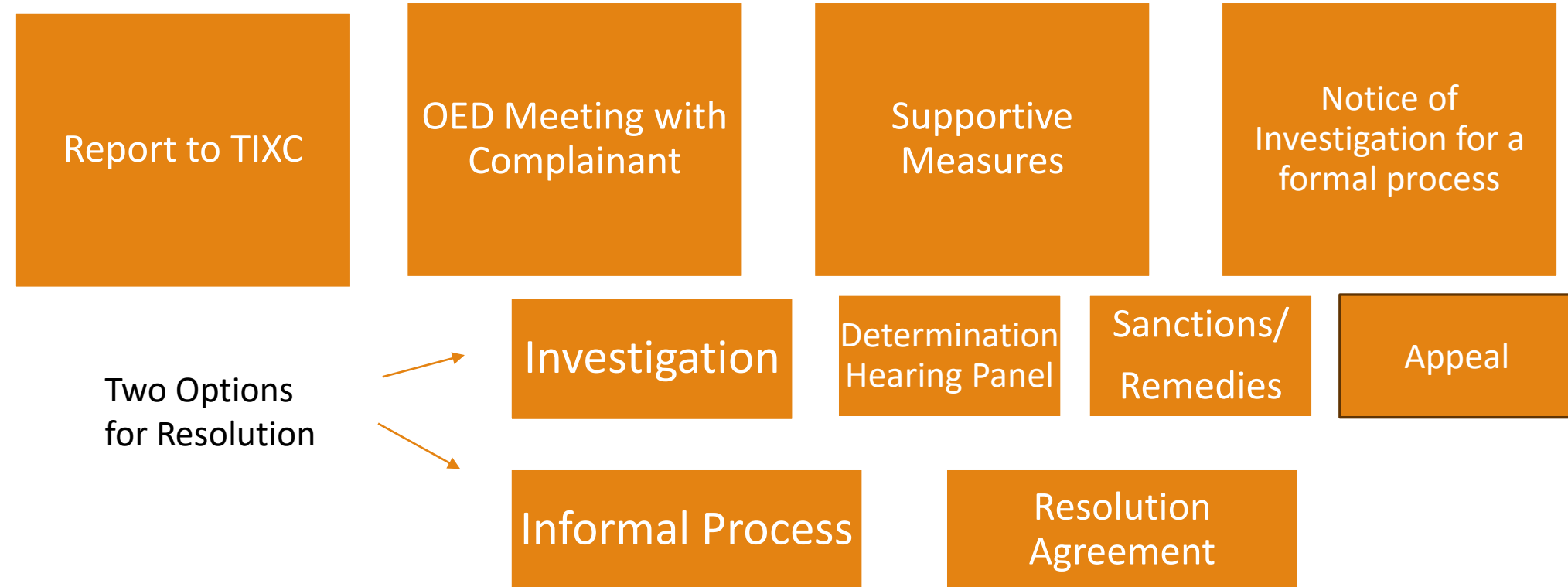
Women's Resource Center of Lackawanna County (570-346-4671) is a confidential, community-based agency serving those who have experienced sexual assault or other sexual misconduct. A counselor/advocate can be reached 24 hours a day.

National Sexual Assault Hotline (800-656-HOPE) is a free, confidential national resource available 24 hours a day by calling, or online at www.rainn.org

The Employee Assistance Program (EAP), (1-800-EAP-CALL (1-800-327-2255)) NextGen offers professional counselor services to employees, including confidential counseling in-person or over the phone for a variety of stressful issues including sexual harassment and misconduct.

Priest in the University Community in their Pastoral Capacity Only.

Life of a Student Case





Supportive Measures

What are supportive measures?

Non-disciplinary, non-punitive individualized services that may be provided to Complainants or Respondents, either upon request (when deemed by the Title IX Coordinator to be appropriate and reasonably available) or at the initiative and in the sole discretion of the Title IX Coordinator.

What is the purpose of supportive measures?

To restore or preserve equal access to Scranton's educational programs and activities, without unreasonably burdening the other party.

When are supportive measures available?

Beginning at any time after the submission of a report of Prohibited Conduct.

Supportive Measures

- Instituting an Administrative Directive for No-Contact between involved parties.
- Limiting an individual's access to certain facilities or activities pending resolution.
- Providing referrals to counseling and health services.
- Referral to community-based service providers.
- Referring to the Employee Assistance Program.
- Providing education and advisories to the community.
- Altering the housing situation of the reporting or responding party.
- Offering adjustments to academic deadlines, course schedules, etc.
- Offering adjustments to extracurricular activities or other activities.

Supportive Measures

- Training and education programs.
- Offering students Financial Aid Counseling.
- Providing academic support services, such as tutoring.
- Altering work arrangements for employees.
- Instituting administrative leaves of absence for employees or students.
- Assisting with visa and immigration issues.
- Providing campus escorts.
- Providing transportation assistance to the hospital.
- Issuing emergency removals pending a formal process and appeal (see VIII (E))
- Increasing security and monitoring of certain areas of the campus.
- Providing any other measure which can be tailored to the involved parties to achieve the goals of the University's policy

Emergency Removals

At any point following the receipt of a report of prohibited conduct, the University may remove the Respondent from any or all of its programs or activities>

Respondent may appeal the removal.





GRIEVANCE PROCESS

Formal Complaint

What is a Formal Complaint?

A document submitted by a Complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that the University investigate allegations that may constitute Sexual Harassment or Sexual Misconduct.

- The Title IX Coordinator also may sign a Formal Complaint, but does not become the Complainant by doing so.

Discretionary Dismissals

At the Title IX Coordinators' discretion, the University may choose to dismiss a complaint, in the following instances:

- The University is **unable to identify the Respondent** after taking reasonable steps to identify the Respondent.
- The Respondent is **not participating in or attempting to participate** in an education program or activity of the University or is no longer employed at the University.
- The **Complainant voluntarily withdraws** any or all allegations relating to their matter and the University determines that, without their withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute a violation of this policy even if proven.
- The Title IX Coordinator determines the conduct alleged in the complaint even if proven does not constitute a violation of this policy, after taking reasonable efforts to clarify the allegations with the Complainant.

Notice of Allegations and Investigation

The Title IX Coordinator will provide written notice to the Parties, including the following, before an **informal or formal process** starts:

- Notice of the University's formal and informal grievance process.
- Notice of the allegations of sex-based harassment or sexual misconduct, including sections of the policy implicated and details known at the time.
- The identities of the parties involved in the incident, if known.
- The conduct allegedly constituting sex-based harassment or sexual misconduct.
- Date and location of the alleged incident, if known.
- Statement that the Respondent is presumed not responsible for the alleged conduct until the conclusion of the appropriate grievance process.
- Notice that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney.
- Notice that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence.
- Non-retaliation notice.
- Notice that knowingly making false statements or knowingly submitting false information during the grievance process may result in disciplinary action.
- Provide sufficient time (up to 5 business days) for the Respondent to prepare for an initial interview.



Formal Complaints – Notice of Allegations and Investigation

Upon the submission of a Formal Complaint, the Title IX Coordinator will provide written notice to the Parties, including the following:

- The Policy.
- Notice of the allegations of conduct that may constitute prohibited conduct, with sufficient detail for the Respondent to prepare a response before any initial interview.
- The presumption that the Respondent is not responsible for the alleged prohibited conduct unless a determination of responsibility is reached at the conclusion of the Formal Resolution Process.
- Notice of the Parties' entitlement to an Advisor of choice.
- The identity of the Investigator.
- Notice that the Parties may inspect and review evidence gathered during the investigation.
- Notice that the University's policies prohibit knowingly making false statements or knowingly submitting false information.

Update notice of allegations throughout investigation, if necessary.

Mandatory and Discretionary Dismissals

Mandatory Dismissal for purposes of Title IX Sexual Harassment:

- Even if proved, the alleged misconduct would not constitute Title IX Sexual Harassment;

The alleged misconduct did not occur in the University's education program or activity; or

The alleged misconduct did not occur in the United States.

◦ **Discretionary Dismissal for purposes of Title IX Sexual Harassment:**

- Complainant notifies the Title IX Coordinator in writing that Complainant wishes to withdraw the Formal Complaint or any allegation in it;
- Respondent is no longer enrolled or employed at the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegation.

Dismissal is subject to appeal.

BUT, the formal complaint may proceed as possible University Sexual Misconduct.



Informal Resolution

Available only when:

Formal Complaint has been filed;

Parties agree (in writing) – and the Title IX Coordinator agrees – to use informal resolution; and

Formal Complaint does not involve students and employees.

Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue formal resolution, the permitted use of any information exchanged in the Informal Resolution, and any consequences of participation (e.g., as it relates to any subsequent formal resolution if Informal Resolution is not achieved).

Informal Resolution can be commenced at any point prior to the conclusion of a Hearing and may be terminated by the Complainant, Respondent, Title IX Coordinator or Facilitator at any time prior to its completion. If Informal Resolution is terminated, the formal process will promptly

commence or resume, as appropriate.

Informal Resolution

Parties agree – and the Title IX Coordinator agrees – to use informal resolution.

Informal Resolution can commence at any point prior to the conclusion of a Hearing and may be terminated by the Complainant, Respondent, Title IX Coordinator or Facilitator at any time prior to its completion.

If Informal Resolution is terminated, the formal process will promptly commence or resume, as appropriate.





Role of an Informal Process Facilitator

- Neutral trained individual without conflict of interest or bias
- Must avoid prejudgment of the facts at issue.
- Facilitator assists and guides the parties toward their own resolution
- Facilitator does not decide the outcome
- Facilitator role requires:
 - Preparation stage
 - Information stage
 - Negotiations/ give and take stage
 - Closing stage
 - Informal Process Agreement, if successful

Informal Resolution

Facilitator focuses on resolving the matter through a negotiated agreement that will provide the parties and University Community with a safe educational environment.

Facilitator works with both parties to ascertain specific remedies and/or sanctions that will preserve their access to educational opportunities, and will address the underlying matter.

The Resolution Agreement must contain the names of the Complainant, Respondent, the policy violations that it is intended to resolve, and the agreed upon terms, with a timeline for those actions.

Respondent can agree to sanctions such as withdrawal, self-suspend (take a leave of absence), and/ or other restrictions, to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent.

A Resolution Agreement must, however, address all potential violations or the Title IX Coordinator will not accept it as a resolution.

- Title IX Coordinator must approve the Resolution Agreement, which is enforceable by the University.
- Any evidence or admissions provided during the Informal Resolution Process is not automatically provided to the Investigator.



VOLUNTEER ROLES



Conducting the Investigation –The University of Scranton's Policy

The University seeks to resolve Formal Complaints **within 90 calendar days after issuing the Notice of Allegations and Investigations**, excluding the appeal period and period of informal resolution.

Investigator will not have a **conflict of interest or bias against complainants or respondents** generally, or the particular complainant or respondent involved. Moreover, they must avoid prejudging any of the facts at issue.

The Investigator will conduct an investigation of the allegations in Notice, and is responsible for interviewing the Parties and witnesses, and gathering relevant inculpatory and exculpatory evidence.

Parties will be provided with written notice of the date, time, location, participants and purpose of all investigative interviews in which they are expected to participate.

Parties may be accompanied by an Advisor of their choice at any investigative interview.

The Investigator may not access, consider or use records that are made or maintained by a **physician, psychiatrist, psychologist or other recognized professional in connection with the provision of treatment to a party without that party's voluntary written consent**.

The University usually hires attorneys or other trained individuals to conduct an investigation.



Speaking of Advisors

Advisor of Choice v. Provided Advisor

Party's Advisor may accompany them to **all interviews, hearings, and other meetings** held in connection with a Formal Complaint.

Parties are responsible for identifying their own Advisor, if they wish to have one, **but** parties must have an Advisor for purposes of conducting cross-examination at a Hearing. If a Party has not identified an Advisor, the University will provide one for that limited purpose.

Advisors may not speak aloud during any meeting, interview or hearing, but may confer with the individual whom they are advising quietly, by means of written notes or during brief recesses at the sole discretion of the University representative conducting the meeting, interview or hearing.

Advisor whose presence is deemed improperly disruptive or inconsistent with established rules of decorum will be required to leave and may be prohibited from participating in future proceedings.

While the University may consider short delays in scheduling to reasonably accommodate an Advisor's availability, doing so is in the sole discretion of the University representative responsible for the event.

Questions to Ask Yourself before Accept.

Do I understand or do I commit to learning the University's policy.

Do you have time and bandwidth to prepare and serve as an advisor?

Do you have personal biases, feelings, and/or opinions that may interfere with your role?

Do you have any conflicts of interest?

What is the anticipated scope of your role?

Is the subject matter comfortable for you?



Advisor Role

Expected to advise ethically, with integrity and good faith

Help advisee to understand institutional policies and procedures.

Help advisee to understand in general terms how a school's resolution process differs from criminal and judicial processes, and especially when law enforcement is investigating, too. However, the Title IX Coordinator or their designee may also cover this with the advisee.

Assist advisee in determining whether to proceed through and informal or formal process.

Prepare for all meetings, interviews, and hearings, which should all occur with advanced written notice.

Accompany advisee to all meetings, interviews, and hearings. Meetings may be with the Title IX Coordinator, the Title IX Investigator or team, and/or the decision-maker or chair.

Advisor Role

Advisors should carefully consider whether their advisee should file a counterclaim. Sometimes, a counterclaim is warranted, and other times it can be an attempt at retaliation. Ensure that any counterclaim is grounded in evidence and made in good faith, and not as retaliation.

Assist advisee in determining how to best present information clearly during any interviews conducted as a part of the investigation.

Help advisee identify the names of witnesses and lines of questioning that are relevant to the issues at hand and present this information to the investigator.

Help advisee review any interviewer notes made of their interview and respond as appropriate.

Advisor Role

Help advisee to identify, gather, review, organize, and present any evidence they may wish to submit. This could include photographs, screen shots, text messages, receipts, snapchats, recordings, etc. Have them properly order any text threads and annotate (without alteration) anything that could cause confusion.

The investigators will want to see originals when possible, not screenshots, so make sure your advisee brings to the interview any device(s) that contains evidence. Make sure your advisee does not alter or omit any evidence, as this will likely be quickly discovered and would be very harmful to their credibility.

Help advisee identify gaps in the investigation and suggest additional relevant questions or areas of focus.

Advisors

Assist your advisee in paying attention to deadlines throughout the process.

Be a listening ear when your advisee needs to talk or vent. It is likely that your advisee will have moments when they use you as a sounding board. This does not require you to become a counselor or psychologist. However, you should be willing to be present, show empathy, and listen.

Keep an eye open for procedural errors and biases as the resolution process unfolds and contact the Title IX Coordinator or other appropriate administrator as warranted to raise your concerns. This communication should occur in a professional, non-accusatory manner.

Advisor Decorum

- Advise advisees without disrupting proceedings.
- Do not address University Title IX and Deputy Title IX Coordinators or investigators in a meeting or during investigation interviews unless invited to do so (e.g., asking procedural questions).
- Do not make a presentation, argue for, speak on behalf of or represent the advisee during any meeting or investigation.
- During the investigation phase of the process, may consult with the advisee (privately as needed, by conferring or passing notes) during any non-hearing process meeting or interview.
- Any breaks or time to confer must be requested by the party, not the advisor.



Role of the Investigator

An investigator must:

Be objective and unbiased.

Be free of conflict of interest.

Avoid any prejudging of the parties or responsibility.

Take the lead in seeking evidence related to the allegations (inculpatory and exculpatory), because it is not the responsibility of the parties to investigate the matter.

The first three also apply to a panel member during the hearing process.

The Initial Interviews (Complainant and Respondent)

Before the interview:

Provide sufficient notice.

Communicate the availability of supportive measures / resources.

Explain the right to an advisor.

Allow sufficient time.

At the start of the interview:

Communicate the availability of supportive measures/resources.

Discuss policy and process.

Reiterate the role of the advisor.

Invite questions.

Conducting the Interview: The Fundamentals

Develop rapport with an open and conversational style.

Demonstrate respect.

Be alert to your non-verbal communications.

Avoid stereotypes and bias.

Explore areas of inquiry that can be corroborated.

Focus on sensory details. Ask what the other might say.

Don't shy away from the uncomfortable questions.

Be OK with breaks and stretches of silence.



Conducting the Interview: The Funnel

Start as general as possible –“tell me what happened.”

Refrain from interrupting the initial narrative with clarifying or follow up questions.

Continue to return to the narrative to get all details.

Use reflective listening.

Ask varied questions on the same topic.

Save tough or uncomfortable questions for later in the interview.

Avoid questions that imply a value judgment.

Question inconsistencies in a non-confrontational manner.

Be persistent and thorough.



Conducting the Interview: The Closing

Give the interviewee a final (for that meeting) opportunity to provide information.

- “Is there anything I haven’t asked that you think I should know?”
- “If you were me who would you interview? What would you want to see?”
- “It’s not uncommon to think of something after you leave. If you think of something, will you please contact me?”

Ask if they have questions.

Discuss supportive measures/resources.

Thank the interviewee for their time.

The Investigation Report

Prior to completing the investigation report, the Investigator will send to the parties and their advisors all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing.

- Parties will have 10 calendar days to provide a written response, including identifying additional evidence for the Investigator's consideration prior to completing the investigation report.

At least 10 calendar days before the hearing, the Investigator will provide the parties and their advisors a copy of the investigation report.

Parties will again have the opportunity to respond.

Advisor Role- after receiving the report

The investigation report is a document that summarizes the information gathered during the investigation, typically with case file documents incorporated or attached as appendices

As an advisor, you should review the report and underlying documents with your advisee. You'll have two different opportunities to do so.

The report may have names and other identifying information redacted, but your advisee should have sufficient information to fully understand the identities of individuals who appear under pseudonyms in the report. Anonymous witnesses are not permitted. If you cannot discern this information from a redacted investigation report, you should ask for clarity in the form of a report key or list of witness names.

The University will provide a draft investigation report containing evidence.

Advisor

Once the final report is completed, it is then re-circulated to the parties and their advisors, as well as the evidence.

The parties will receive notice for the hearing, and a minimum 10-day pre-hearing period begins, again during which review and comment are permitted, but now **those comments are made to the hearing chair**, rather than the investigator(s).

You and advisee may request a prehearing meeting. This is a good opportunity to show that your approach is collaborative and not adversarial. During this pre-meeting, the panel should outline their expectations regarding the role of the advisor, and you should take this time to clarify any questions regarding your role and the process itself.

This prehearing is also a chance to address hearing logistics, to pre-screen any questions you are planning to ask at the hearing, to obtain pre-hearing rulings that may be made, and to make any last arguments about evidence you'd like to see admitted or excluded from the hearing. These can also be addressed at the hearing.

Advisor Role

Once the report and evidence is delivered, a minimum 10-day window of review begins. Your role at this point is to review and comment:

- Sort/organize the evidence, if unsorted
- Note any errors
- Note any questions that should have been asked by the investigator(s)
- Suggest additional witnesses or evidence that should be obtained
- Argue for or against any findings or recommendations made
- Raise any issues of bias or conflict of interest that must be addressed



Pre-Hearing Meeting

Decision Making Panel Role

The chair and/or the entire panel will offer the parties the opportunity to discuss procedural and substantive topics prior to the hearing. Topics can, but are not limited to,:

- Reviewing proposed questions or lines of questioning for relevance determinations
- Whether evidence is relevant or directly related
- Witness testimony order
- Whether additional information will be allowed to be introduced at the hearing if not provided at or prior to the prehearing meeting

Ensure that the Respondent and Complainant have advisors who are willing to conduct cross examination on behalf of the parties

Explain that the Respondent and Complainant cannot cross examine anyone

Review the Advisor Decorum Appendix and explain expectations at the hearing

Hearing Advisors



You'll be given the identities of the decision-maker(s) in advance.



Please work with your advisee to raise any concerns regarding bias or a conflict of interest with the Title IX Coordinator prior to the hearing.



The institution has a process for recusal and appointment of alternates.



Waiting to raise these issues until the last-minute, or at the hearing, will only serve to delay the process.

Hearing-Advisors

Adequate hearing preparation is absolutely critical.

Preparation can involve a fair amount of document review, writing, organizing, and strategizing. You should be prepared to work with your advisee to perform these tasks.

If you or your advisee need a private location to participate remotely in the hearing or need technology assistance to be able to participate effectively, let the Title IX Coordinator know in advance of the hearing.

Similarly, if you or your advisee will need interpreters, assistive devices, and/or disability-related accommodations, let the Title IX Coordinator know well in advance.

Prior to the hearing, your advisee will receive a witness list.

Cross-check that list against the witness list in the investigation report to ensure there are no last-minute surprise witnesses added.

Response after pre- hearing meeting, (if necessary)

After reviewing all procedural and substantive issues with the parties and their advisors, the Chair will issue the parties and their advisors a written decision reached during the pre-hearing meeting.

Pre-Hearing Meeting Outcome Letter Template can be obtained from OED

Hearing – The Decision- Making Panel

How do members of the Panel get ready?

- Self-identify conflict of interest and bias.
- Prepare, prepare, prepare.
- Read the report carefully and repeatedly.
- Understand the conduct at issue and the elements of the alleged violations.
- Identify the areas of agreement and disagreement.
- Did the investigator explore and consider all the relevant evidence – what areas require further inquiry?

Hearing – The Decision- Making Panel

What is the Panel's role at the hearing?

- Ask relevant questions of parties and witnesses and review relevant evidence to aid in reaching an unbiased conclusion, based on available inculpatory and exculpatory evidence.
- Ensure the parties have equal opportunities to present and challenge evidence.
- Manage the hearing and enforce the rules of decorum.
- Make relevancy determinations.
- Evaluate credibility.
- Weigh the evidence.
- Make a decision on responsibility using a clear and convincing standard and, if appropriate, issue sanctions.

Hearing – Advisors

What is the Advisor's role during the hearing?

- Provide support and advice to the party.
- Understand the purpose and scope of cross-examination.
- Ask questions on cross-examination that elicit relevant information.
- Wait for relevancy determinations.
- Adhere to rules of decorum.

Preparing Questions For Cross Examination

As part of the formal hearing process, the parties, through their advisors, will have an opportunity to pose questions to the other party and witnesses.

The investigation report and case file documents your advisee receives should aid you in working with your advisee to draft potentially relevant questions you may want to ask the other party and witnesses during the hearing.

The decision-maker or chair will rule on the relevancy of the questions you pose, so keep them succinct, relevant, and flowing in a logical order.

You may be asked to submit your questions in advance of the hearing for pre-approval. You don't have to, but this can be both efficient and helpful.

Drafting an Impact or Mitigation Statements

An “impact statement” is prepared by the complainant and outlines the impact that the conduct had on them and any additional information they would like the decision-maker to consider in implementing the appropriate sanctions to remediate the impact and prevent recurrence.

A “mitigation statement” is prepared by a respondent that outlines their explanation for engaging in the prohibited conduct, notes any factors that led to the conduct and should mitigate the severity of the sanctions, and includes any additional information they would like the decisionmaker to consider in issuing sanctions.

The impact and mitigation statements are only reviewed once a finding of responsibility has been made, but they must be submitted on or prior to the hearing.

Decision Maker Panel

The decision-maker panel retains discretion to determine the ordering of the steps of the hearing, but generally it will look something like this:

- **Presentation of Formal Allegations and Final Investigation Report by Investigator(s).**
- **When the Investigator(s) has finished presenting the Investigation Report, the Chair leads the portion of the Hearing in which the Investigator(s) serves as witness.**
 - This is the information-gathering portion of the hearing. All questions are to be directed to the Investigator(s). It is the responsibility of the Investigator to answer all questions.
 - The Panel members may ask questions of the investigator
 - The Complaint's advisor may then cross examine the investigator
 - The Respondent's advisor may then cross examine the investigator
- Ask each (Panel, Complainant, Respondent) whether there are any additional or follow-up questions before dismissing the Investigator(s).



The Hearing

Hear from the Complainant, Respondent and witnesses.

The Decision-Making Panel will facilitate each Party's advisor asking relevant cross-examination questions.

- The Panel will determine whether questions are relevant prior to the Party or witness answering the question.
- If the question is deemed not relevant, provide a brief explanation and the question will be precluded.

Is it Relevant?

Ask: Is it probative of any material fact?

Certain evidence is specifically deemed not relevant:

- Questions and evidence about complainant's sexual predisposition or prior sexual behavior, unless to prove that someone other than respondent committed the conduct alleged or, if concerning specific incidents of complainant's conduct with respondent, offered to prove consent.
- Records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to a party, except where the party has consented to their access and use.
- Questions also may be deemed not relevant when they are duplicative of other evidence already in the record.

The Report

To: elizabeth.garcia2@Scranton.edu

From: Student

Date: October 1, 2023

John came over to my suite after a party back in early September. He knew I was drunk. I told him I didn't want to have sex. He slept over and when I woke up the next morning, I realized he raped me. The university needs to do something so he doesn't do this to anyone else.

Student's Initial Interview Narrative

I was at a party downtown with a group of friends in early September when I saw John. I don't really know him, but we had a class together last year. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, John and I started kissing.

I was feeling pretty buzzed and decided to leave around midnight. My roommate, Suzie, didn't want to leave the party yet so John offered to walk me back to my suite. We just talked about our classes while we walked. When we got there, he followed me into my bedroom and sat down on my bed. I really just wanted to go to sleep, but I didn't want to be rude. We talked for a bit. I started to feel a little sick and told him I wanted to go to sleep. He laid down next to me on my bed.

I think I fell asleep for a bit, but woke up when John started kissing me. We made out for awhile but then I rolled away from him. He rolled me back over. We made out a bit longer and he unbuttoned my shirt. I let him take my shirt off. At that point, I was really uncomfortable but was scared of what he'd do if I told him to leave. I told him that I didn't want to have sex.

The rest is fuzzy for me. He left sometime early in the morning. When I woke up around 7 a.m., I saw a condom wrapper on the floor and remembered us having sex.

John's Initial Interview

I got to the party around 11 p.m. and saw Student dancing with friends. She waved me over. We had an Econ class together in the spring. I knew she was interested in me at the time, but I had a girlfriend. We hung out for maybe an hour at the party and kissed a couple times. I think we were both buzzed, but not bad. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell and talked with him for a couple minutes. When we got to Student's suite, we walked straight back to her bedroom and sat on her bed. She asked for my cell number and put it into her phone.

After a few minutes, we laid down and started kissing. At first she said she didn't want to hook up, but then she took her shirt off and helped me take off my jeans. We had sex and fell asleep. I woke up and left around 5 a.m.

Student sent me a text later that day wanting to talk. I didn't respond right away because I'm trying to get back together with my ex-girlfriend and felt bad about hooking up with Student. Student and I texted a couple times over the next couple days, but then I stopped responding.

Steve's Initial Interview

I was in the stairwell of my dorm heading back down to my room at around 1 a.m., when John and Student came running through. We talked for a couple minutes. John and I hung out with a group of guys at the beach back in June, but I hadn't seen him yet this year. So, we just talked about how the rest of our summers went and what our schedules look like this fall. Student was going on and on about her summer job.

The whole run-in with Student was kind of awkward. She and I were both orientation advisors back in August, so I got to know her a bit. We were both at a party downtown one of the nights of orientation. Everyone was pretty drunk. Student's roommate, Suzie, was there and we were dancing. Out of nowhere, Suzie stuck her hand down my shorts, pretty much right there in the middle of the basement. I'm not into her and told her so right there – I was really bothered by it. Student got in my face and said I was making a big deal out of nothing. There was way too much drama.

Student's Hearing Testimony

I saw John at a party downtown in early September. I was there with a group of friends. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, he started kissing me.

The party was boring. Plus, I was really drunk and wanted to leave. I thought I was going to throw up. My roommate, Suzie, didn't want to leave the party yet so John offered to walk me back to my suite. He practically had to carry me back. When we got there, he followed me into my bedroom and sat down on my bed. I really just wanted to go to sleep, but he wouldn't leave. We talked for a bit. I started to feel sick and told him so. He laid down next to me on my bed.

I think I fell asleep for a bit, but woke up when John started kissing me. We made out for awhile but then I rolled away. I was clearly done with what was happening. I just wanted to sleep. He forced me back over. We made out a bit longer and he unbuttoned my shirt. I let him take my shirt off. At that point, I was really scared. I told him that I didn't want to have sex.

I don't remember anything else. He left sometime early in the morning. When I woke up around 7 a.m., I saw a condom wrapper on the floor and remembered us having sex.

John's Hearing Testimony

I got to the party around 11 p.m. and saw student dancing with friends. Student waved me over. She was really flirty and started kissing me. I was buzzed. She seemed fine. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell. The three of us talked about our summer internships for quite awhile. Student said she wanted us to get going, so we wrapped it up. When Student and I got to her suite, she led me back to her bedroom. We sat down on her bed. She asked for my cell number and put it into her phone.

After a few minutes, we laid down and started kissing. At first Student said she didn't want to hook up – she just wanted us to go to sleep. But then she kept kissing me, took her shirt off and helped me take off my jeans. We had sex and fell asleep. I woke up and left around 5 a.m.

Student sent me a text later that day wanting to talk. I didn't respond right away because I wanted to get back together with my ex-girlfriend and felt bad about hooking up with Student. Student and I texted a couple times over the next couple days, but that was it.

Is it Credible?

Even where it appears to be a “draw,” it seldom is – one person is usually more credible than the other.

Everyone’s credibility is at issue – there are no “perfect” Complainants, Respondents or witnesses

Consider the following to determine credibility:

- Is the testimony believable?
- Does it make sense?
- Is it convincing?
- Is there a level of detail and specificity?
- Does the testimony feel rehearsed/memorized?

Look to:

- Demeanor
- Corroboration

Inconsistencies may or may not be important:

- Is there a reasonable explanation?
- Is the point significant or trivial?
- Is the variation something that might result from memory lapse?

Standard of Evidence – Clear and Convincing Evidence

Question isn't who has more witnesses.

It's the quality of the evidence, not the quantity.

The different standards of evidence

- Beyond a reasonable doubt
- **Clear and convincing evidence**
- Preponderance of the evidence
- Some evidence

Hearing Outcome Letter

The Hearing Outcome Letter will include:

- A description of the allegations that led to the Hearing, as potentially constituting Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- A statement of factual findings supporting the determination;
- A statement of the conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- An explanation of the disciplinary sanctions imposed on the Respondent, if any;
- Statement of whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- The procedures and grounds for appeal.

Appeals

Either Party may appeal a determination of responsibility (or non-responsibility) based on only one of the following:

- A procedural irregularity that affected the determination of responsibility;
- The existence of new evidence that was not reasonably available at the time of the Hearing that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator or Decision-Making Panel 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.
- Dismissal of a Formal Complaint alleging Title IX Sexual Harassment.

Non-appealing party may respond, but no further exchange of positions is permitted. I

In most cases, appeals are confined to a review of the written documentation or record of the original investigation and determination, and relevant documentation regarding the grounds for Appeal.

How do I contact the Office of Institutional Compliance and Title IX?

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