

# SEXUAL AND GENDER-BASED MISCONDUCT POLICY UPDATE

Presented by Katsura Kurita, Melissa Lees and David Tiscione



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## OVERVIEW OF TRAININGS

- Hearing Panel Member, Advisor, and Title IX Intake Officer Training (Friday, September 18- 11 AM – 12:30 PM)
- Title IX Intake Officer Training (Friday, September 25- 10 AM –12 PM)
- Advisor Training (Thursday, October 1- 2 - 4 PM)
- Hearing Panel Member Training (Friday, October 9- 2 – 4 PM)
- Combined case study (Friday, October 16- 2 – 4 PM)
- SUNY SCI online trainings due October 16.



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## OVERVIEW OF TODAY

- Welcome and Case Trends
- Action Plan
- OCR Requirements
- New Policy and Procedures
- Definitions
- Q+A



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# WELCOME

## Introductions:

- Name
- Department
- Role in Title IX process



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Sexual Misconduct Cases – 5 Year trend

Sexual Misconduct Reports	Student as Respondent	Faculty/Staff/Admin as Respondent	Non-Loyola Respondent	Non-Title IX After investigation	Total Reports
AY 2015-2016	11 (2 of 11)	5	14	12	42
AY 2016-2017	30 (10 of 30)	2	16	1	49
AY 2017-2018	18 (4 of 18)	6	14	0	38
AY 2018-2019	18 (6 of 18)	4	31	0	53
AY 2019-2020	14 (2 of 14)	2	18	0	34



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# UNIVERSITY ACTION PLAN



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## REVIEW OF UNIVERSITY ACTION PLAN

- ESTABLISH TITLE IX INTAKE OFFICERS
- DEVELOP A PROCESS TO SURVEY ALL STUDENTS WHO INTERACT WITH TITLE IX DEPUTIES AND INTAKE OFFICERS
- ESTABLISH AN ADVISORY BOARD OF STUDENTS
- RECONVENE THE COORDINATED COMMUNITY RESPONSE TEAM (CCRT)
- REWRITE THE WOMEN'S CENTER MISSION STATEMENT



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- ENHANCE TRAINING OFFERINGS FOR "MANDATED REPORTERS"
- UPDATE TRAINING FOR HEARING PANELS THROUGH A PARTNERSHIP WITH THE SUNY STUDENT CONDUCT INSTITUTE (SUNY SCI)
- REVIEW AND REVISE THE BYSTANDER INTERVENTION TRAINING, "STEP UP!"
- INFORM THE COMMUNITY OF THE CHANGES OF THE NEW TITLE IX REGULATIONS
- HIRE AN ADDITIONAL FULL-TIME TITLE IX PROFESSIONAL
- CONDUCT A COMPREHENSIVE REVIEW OF LOYOLA'S POLICIES
- CONDUCT ADDITIONAL AND SPECIALIZED TRAINING



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## OCR REGULATIONS



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**NEW TITLE IX REGS AND  
PROCESS CHANGES**

- New regulations were released by OCR on May 6 with an implementation deadline by August 14
  - Title IX team has been meeting and attending trainings regularly since proposed regulations were released and specifically since May 6


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**NEW TITLE IX REGS OVERVIEW**

- Different from Obama era Dear Colleague Letters
  - Interim guidance issued September 2017
    - Rescinded Obama era guidance
- Completed through Negotiated Rule Making
  - Proposed rule released November 2018
  - Notice and comment period through January 30, 2019
    - Over 124,000 comments
  - Final regulations were 2,033 pages
    - Comments and Discussion- 2,008 pages
    - Official rule- 25 pages


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**NEW TITLE IX REGS OVERVIEW:  
MAJOR COMPONENTS**

- Actual knowledge
  - No more responsible employees
  - Report must be made to Title IX Coordinator or Official with Authority
  - No more constructive notice
- Goodbye Responsible Employees, hello Mandated Reporters
  - Responsible employees previously put the institution on notice.
  - New language is Mandated Reporter, which is an institutional definition
    - Notice to a mandatory reporter does not require institutional action
  - Mandated Reporter must tell Title IX Coordinator


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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

- Jurisdiction
  - Education program or activity
    - "education program or activity" includes locations, events, or circumstances over which the **recipient exercised substantial control** over both the respondent and the **context** in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
  - In the United States
  - Not off campus unless
    - Happens within University's operations
    - Exercised substantial control
    - Happens at a building controlled by a student organization


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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

- New Definitions
  - *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:
    - An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
    - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity


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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

- New Definitions
  - Must use VAWA definitions
    - Sexual Assault
      - Rape
      - Incest
      - Fondling
      - Statutory Rape
    - Domestic Violence
    - Dating Violence
    - Stalking
  - Universities can define consent


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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

- Complainant must file formal complaint for University to move forward with investigation
  - Universities can sign on behalf of complainant, but it's rare
- Complaints must be dismissed if they do not fall within Title IX Jurisdiction
  - Can be addressed under general code of conduct

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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

Parties must receive notice:

- Details of the incident
- Statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- Advisor of choice (2 for Maryland)
- Section of code that is violated
- Statement that false information is a violation of the code

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## NEW TITLE IX REGS OVERVIEW- MAJOR COMPONENTS

- Bias restrictions
  - Title IX Coordinator cannot be
    - Hearing or appeal decision maker
  - Investigator cannot be
    - Hearing or appeal decision maker
  - Hearing panel member cannot be
    - Appeal decision maker

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**NEW TITLE IX REGS OVERVIEW:  
MAJOR COMPONENTS**

- Investigations
  - Must include summary of relevant and related evidence
    - Inculpatory and Exculpatory
  - The following is irrelevant:
    - **Sexual predisposition or prior sexual behavior are not relevant**, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
    - Privileged information
    - Medical Records
    - Duplicative or abusive questions
- Both parties may review all evidence related, unrelated, relevant, and irrelevant except privileged information and medical records (except with permission)

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**NEW TITLE IX REGS OVERVIEW-  
MAJOR COMPONENTS**

Additional timeline requirements:

- 10 days after investigation report is drafted to review all related evidence and provide comment
- 10 days upon receipt of final report before hearing can be scheduled
- Delays for good cause must be written to both parties

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**NEW TITLE IX REGS OVERVIEW-  
MAJOR COMPONENTS**

Live hearing is required:

- Have to be able to **see and hear** parties
- Cross examination
  - Each party's advisor can ask questions of the other party or witness
  - Chair rules on relevance, then party can answer
  - If party does not answer or does not submit to cross examination, their statements must be thrown out
- Standard of evidence must be the same for all sexual misconduct cases

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## NEW SEXUAL MISCONDUCT PROCESS

- Created a diverse pool of Title IX intake officers or OWAs
- Process has more aspects of transparency
- Previous policy stays largely the same for non Title IX cases
  - No cross examination
  - Only need to be heard not seen in process (i.e. no need for parties to see each other on video)
- Quid pro quo student policy
- Keeping preponderance of the evidence for all sexual and gender-based misconduct processes

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## SEXUAL AND GENDER-BASED MISCONDUCT POLICY

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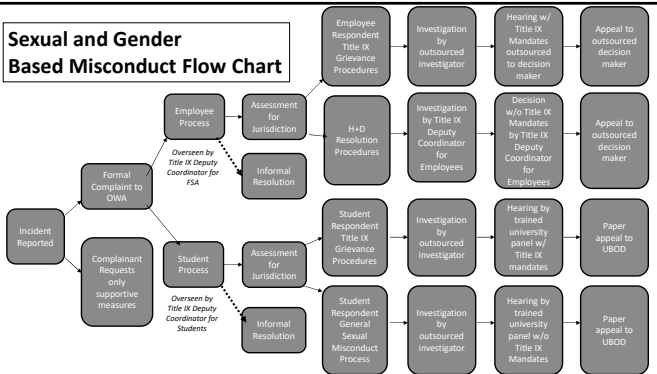
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### Sexual and Gender Based Misconduct Flow Chart



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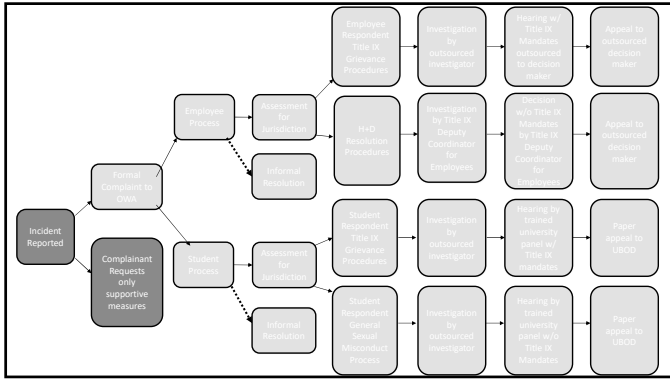
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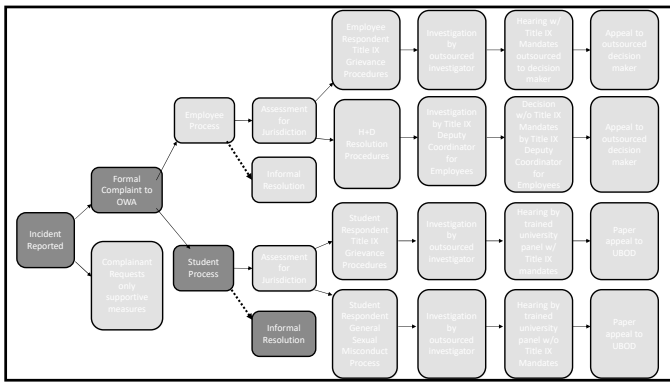
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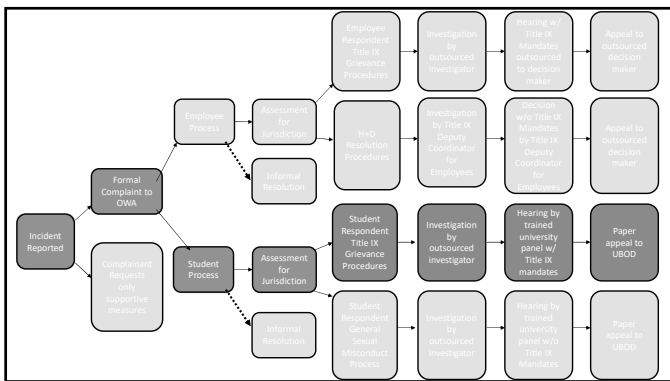
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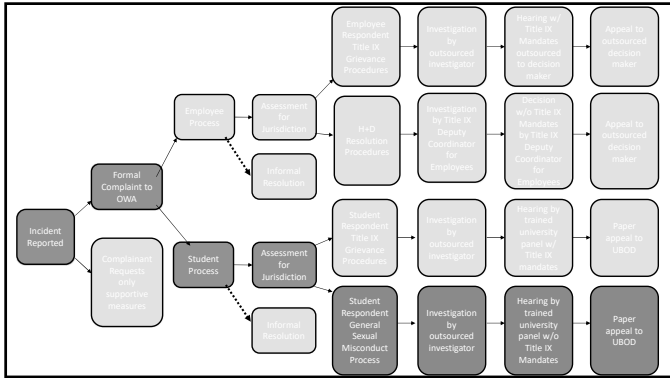
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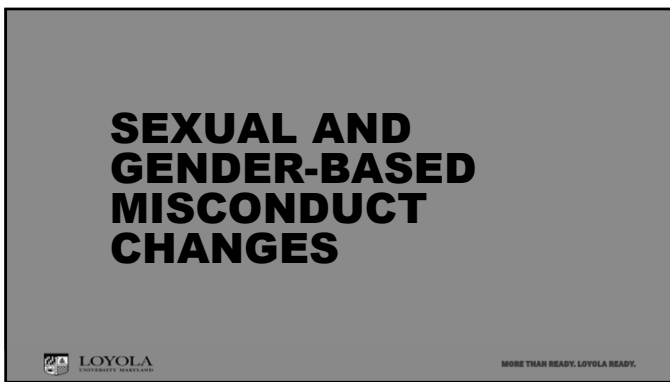
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**REPORTING OPTIONS**

- Online/Anonymous reporting options
- Mandated reporters
- Title IX Coordinators
- Title IX intake officers

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# ONLINE/ANONYMOUS REPORTING OPTIONS

•Anonymous Reporting Form  
<https://www.loyola.edu/departments/public-safety/anonymous-information-form>



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# ONLINE/ANONYMOUS REPORTING OPTIONS

•Sexual Violence, Relationship Violence or Stalking Report  
[https://cm.maxient.com/reportingform.php?LoyolaUnivMD&layout\\_id=4](https://cm.maxient.com/reportingform.php?LoyolaUnivMD&layout_id=4)



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# ONLINE/ANONYMOUS REPORTING OPTIONS

•Bias Related Behaviors Report  
[www.loyola.edu/reportbias](http://www.loyola.edu/reportbias)



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## ONLINE/ANONYMOUS REPORTING OPTIONS

- EthicsPoint  
<https://secure.ethicspoint.com/domain/media/en/gui/18799/index.html>



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## MANDATED REPORTERS

- Any University administrator
- Staff with supervisory responsibilities
- Faculty members
- Campus police
- Athletic coaches
- Athletic trainers
- Graduate Resident Coordinators
- Resident assistants

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## TITLE IX TEAM

<p>Kathleen Parnell          Title IX Coordinator  <a href="mailto:kmparnell@loyola.edu">kmparnell@loyola.edu</a>          410-617-1350</p>	<p>Katsura Kurita          Deputy Title IX Coordinator for Students  <a href="mailto:kkurita@loyola.edu">kkurita@loyola.edu</a>          410-617-5646</p>
<p>Karen Feely          Deputy Title IX Coordinator for Employees  <a href="mailto:kafeeley@loyola.edu">kafeeley@loyola.edu</a>          410-617-1345</p>	

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## TITLE IX INTAKE OFFICERS

- Neil Andrito, Director of Student Life
- Stepf Diaz, Assistant Director of Student Life
- Daniel Fitzpatrick, Assistant Director of Student-Athlete Support Services
- Ashley Schantz, Assistant Director of Student Engagement

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## TITLE IX INTAKE OFFICER ROLE

- Are considered Officials With Authority, which puts the institution on notice
- Meet with parties to go over rights, options, and resources
- Can offer supportive measures and safety planning for parties
- Reports information to Title IX Coordinator
- May assist complainant in filing formal complaint

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## SUPPORTIVE MEASURES

- May include:
  - Counseling
  - No contact orders,
  - Relocating residence hall assignments
  - Restricting access to certain campus buildings
  - Changes to class schedules
  - Assistance with rescheduling an academic assignment (paper, exam, etc.)
  - Tutoring support
- Changes to work schedules/situations
- Changes to work locations
- Leaves of absences
- Transportation assistance and escorts to and from campus locations
- Increased security and monitoring of certain areas
- Other measures for safety as necessary

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## STUDENT TIMELINE

- Initial assessment- 1-5 business days
- Informal resolution- up to 30 business days
- Investigation- up to 60 business days
- Review of investigation draft- 10 business days
- Time between final investigation draft and hearing- 10 business days
- Time between hearing and outcome- up to 10 business days
- Time between outcome and appeal submission- 5 business days
- Time between appeal submission and other party response- 5 business days
- Time between appeal and outcome- 5 business days
- Timeline can be extended for good cause and must be communicated to the parties

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## ADVISORS

- Advisor of choice
- Up to two advisors at any meeting related to the process
- Will receive copies of materials
- Cannot address investigators, hearing panel, or decision-makers except for cross examination in Title IX process
- Student parties can apply to MHEC to receive a lawyer for Sexual and Gender-Based Misconduct Cases, but may not be approved for harassment only cases

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## FILING A FORMAL COMPLAINT

- Document filed and/or signed by the complainant alleging a violation of Sexual and Gender-Based Misconduct
  - Can be a document or electronic submission
  - Contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint
  - Must include sufficient known at the time such the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date, time and location of the alleged incident, if known
- University can combine formal complaints when the complaints arise out of the same facts
- Title IX Coordinator can sign on student behalf when there is a compelling risk to health and/or safety

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## NOTICE OF ALLEGATIONS

- Details of the incident
- Statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- Advisor of choice (2 for Maryland)
- Section of code that is violated
- Statement that false information is a violation of the code
- Includes a brief description of the incident per the complainant

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## DISMISSAL OF A FORMAL COMPLAINT

Mandatory dismissal

- 1) The conduct alleged in the formal complaint **would not constitute sexual harassment** as defined in the Prohibited Conduct under the Title IX Grievance Process section of this policy; and/or
- 2) The conduct **did not occur in an educational program or activity controlled by the University** (including buildings or property controlled by recognized student organizations), and/or the **University does not have control of the respondent**; and/or
- 3) **The conduct did not occur against a person in the United States**; and/or
- 4) At the time of filing a formal complaint, a **complainant is not participating in or attempting to participate in the education program or activity of the University**.

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## DISMISSAL OF A FORMAL COMPLAINT

Discretionary dismissal

- 1) a complainant notifies the appropriate Title IX Coordinator in writing that they would like to **withdraw the formal complaint**; or
- 2) when the **respondent is no longer enrolled by the University** (if a respondent involved in an investigation for an alleged violation of the Student Code of Conduct or with pending conduct charges requests a leave or withdrawal, the investigation and/or conduct process may be completed prior to the change in student status being approved); or
- 3) Specific **circumstances prevent the University from gathering evidence sufficient** to reach a determination as to the formal complaint or allegations therein.

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# INVESTIGATION

- Outsourced to investigator
- Title IX Deputy for students coordinates interviews
- Investigator summarizes collects all evidence, which parties can review
- Final report summarizes relevant evidence

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**1**

All evidence that is both relevant and directly related to the complaint

Parties may make case to Investigator/Decision-makers that this evidence should be shifted to Bucket 2 or 3

Once finalized, this evidence should be provided to the Parties/Advisors/Decision-makers within the investigation report via secure technology

**2**

Only evidence that is directly related to the complaint (but is determined by the investigator not to be relevant)

Parties may make case to Investigator/Decision-makers that this evidence should be shifted to Bucket 1 or 3

Once finalized, this evidence should be provided to the Parties/Advisors/Chair in a separate file via secure technology

**3**

All evidence that is neither relevant nor directly related to the complaint

Evidence should be maintained by the Investigator(s), but disregarded for purposes of the process. Parties/Advisors/Decision-makers don't get to see or know about it

**ATIXA Investigation buckets**

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# HEARING PROCESS

- Pre-hearing conference to go over process and review questions
- New evidence may not be allowed at hearing
- Witnesses will be requested to attend if they've been interviewed
- Cross examination in Title IX cases
- Outcome

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## CROSS EXAMINATION

- Only in Title IX cases
- Advisors will ask questions on behalf of parties
  - Parties cannot ask questions directly
- Chair will rule on relevance
  - Whether the question seeks information that will aid the decision maker in making a decision
  - Not based on tone or style of questions, who is asking, or what the motives of the questions are
  - Irrelevant question
    - Prior sexual behavior except to prove someone else was responsible or consent
    - Privileged information
    - Medical records
    - Duplicative questions
- Party answers question if relevant
- If party does not answer one cross examination question or does not attend, no statements can be relied upon



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## DEFINITIONS

Consent is defined as an **affirmative indication by words and/or actions of a voluntary agreement to engage in the particular sexual act or conduct** in question. **Consent for one sexual act or conduct does not constitute consent to all sexual acts or conduct. Consent can be withdrawn at any time, and once withdrawal of consent has been expressed, sexual activity must cease. Consent cannot be obtained through the use of force, threat, intimidation, or coercion.** **Consent cannot be given by someone who is incapacitated** due to consuming drugs or alcohol or for any other reason (including but not limited to being unconscious, asleep, or otherwise unaware that sexual activity is occurring). Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). While incapacitation may result from the use of alcohol and/or drugs, incapacitation is a state beyond drunkenness or intoxication. Incapacitation may also exist because of a physical, mental, or developmental disability. The question of incapacitation will be examined objectively from the perspective of the respondent i.e. whether a reasonable, sober person in place of the respondent should have known the condition of the complainant based on the apparent indications of incapacitation, which may include, but are not limited to, acting confused or incoherent, difficulty walking or speaking, and vomiting.



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## DEFINITIONS

**Sexual Harassment** defined as **conduct on the basis of sex** which may include such behavior as unwelcome sexual advances, requests, and other verbal, written, or electronic communications or physical conduct of a sexual nature when (1) an **employee** of the University **conditions the provision of an aid, benefit, or service of the University on an individual's participation in the unwelcome sexual conduct**, or (2) **employee** 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**.



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**DEFINITIONS**

*Sexual assault* is defined as **any sexual act directed against another person, without consent** of the complainant, including instances where the complainant is incapable of giving consent. Sexual assault includes **penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,** without the consent of the complainant. This definition includes any gender of the complainant or respondent.

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**DEFINITIONS**

*Fondling* is another form of sexual assault which is defined as the **touching of the private body parts,** including but not limited to breasts, buttocks, or groin of another person, for the purpose of sexual gratification, **without the consent** of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

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**DEFINITIONS**

*Incest* is also a form of sexual assault when non-forcible **sexual intercourse** occurs **between persons who are related to each other within the degrees wherein marriage is prohibited by law.**

- Vaginal intercourse with an individual's grandparent, parent, child, sibling, grandchild, grandparent's spouse, spouse's grandparent, parent's sibling, stepparent, spouse's parent, spouse's child, child's spouse, grandchild's spouse, spouse's grandchild, or sibling's child

*Statutory Rape* is non-forcible **sexual intercourse** with a **person who is under the statutory age of consent which is 16 years of age in the state of Maryland** (which means the victim must be under 16); however, 14- and 15-year-olds may consent if the offender is less than four years older than the victim.

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## DEFINITIONS

*Dating Violence* encompasses a wide range of behaviors including sexual assault, physical abuse and other forms of **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 the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

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## DEFINITIONS

*Domestic Violence* encompasses a wide range of behaviors including sexual assault, physical abuse and other forms of **violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child in common; by a person who is cohabitating with or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.**

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## DEFINITIONS

*Stalking* is defined as **engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.** A course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. A reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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## DEFINITIONS

Harassment under this section means unwelcome verbal, written or physical conduct based on sex, sexual orientation and/or gender identity, that has the purpose or effect of unreasonably interfering with an individual's work or education (including living conditions) or that creates an intimidating, hostile or offensive environment. Sexual exploitation means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited. Examples include but are not limited to non-consensual photography, video-, or audio- recording of sexual images or activity, distributing images of sexual activity without consent, allowing others to observe a consensual sexual act without the prior knowledge or consent of all involved parties, and voyeurism.

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## DEFINITIONS

Sexual exploitation means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited. Examples include but are not limited to non-consensual photography, video-, or audio- recording of sexual images or activity, distributing images of sexual activity without consent, allowing others to observe a consensual sexual act without the prior knowledge or consent of all involved parties, and voyeurism.

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## DEFINITIONS

Student Quid Pro Quo Sexual harassment is a form of harassment that consists of unwelcome sexual advances, requests for sexual favors, or other verbal, written, or physical conduct of a sexual nature when a student of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in the unwelcome sexual conduct.

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## STUDENT APPEALS

Appeals can be based on:

1. The dismissal determination of a formal complaint or any included allegations and/or
  - a) Outlined under dismissal determination section
  - b) Appeal is referred to Dean of Students or designee. Independent decision maker appointed to decide appeal
2. A determination regarding responsibility and/or the sanction under either the Title IX Grievance Procedures or the General Sexual Misconduct Process
  - a) Outlined under appeals

**New: Paper appeal Process**

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## STUDENT APPEALS

- When one party appeals, the other has an opportunity to respond within 5 business days
- Decision is final

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## STUDENT APPEALS

Grounds for appeal:

1. The party alleges that there were procedural irregularities that affected the outcome of the matter;
  - a) May change or affirm sanction or remand
2. The party alleges new evidence that was not reasonably available when the determination of responsibility or dismissal of the complaint was made that could affect the outcome of the matter;
  - a) May only remand
3. The party alleges the Title IX Coordinator or Deputies, investigators, or hearing panel had a conflict of interest or bias for or against the complainant(s) or respondent(s) generally, or the individual complainant or respondent that affected the outcome of the matter.
  - a) May change or affirm sanction or remand
4. The party alleges that the sanctions imposed are grossly disproportionate to the findings of responsibility.
  - a) Panel may only affirm, reduce, or increase the sanctions

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## EMPLOYEE APPEALS

- Appeal submitted within 14 days on one or more of the following grounds:
  1. The determination is not supported by the evidence.
  2. Relevant new evidence that was not available for consideration prior to the determination has been discovered.
  3. The sanction is disproportionate to the offense.
  4. Procedural error(s) occurred that materially affected the outcome of the investigation.
- Written response by other party
- Written appeal process
- Decision is outsourced and made within 5 days
- Decision is final

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## Q+A

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