



TITLE IX HEARING OFFICER TRAINING

Policies, Processes, and
Responsibilities



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TITLE IX

Introductory Information



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TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

- “[N]o person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”



RESPONSIBLE OFFICE

- Title IX Office
 - Addresses all reports of sexual misconduct for Vanderbilt
 - Part of Equal Access
 - Title IX
 - Equal Opportunity and Access
 - Student Access
- Title IX Coordinator

TITLE IX COORDINATOR

- Stephanie Roth
 - Interim Associate Vice Chancellor, Equal Access
- Stephanie.a.roth@vanderbilt.edu
- 615.343.7953



FORMAL GRIEVANCE PROTOCOL

Key Issues and Definitions



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SEXUAL HARASSMENT

- Quid Pro Quo harassment
 - Limited to employee involvement as actor
- Hostile Environment harassment
 - Reasonable person standard: severe, pervasive, AND objectively offensive
 - Fact-specific inquiry
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

JURISDICTIONAL/SCOPE ISSUES

- In the United States
- Education Programs and Activities
 - On campus
 - Off campus but in the context of an educational program or activity
 - Off campus in a house owned or controlled by an officially-recognized student organization
- Formal Complaint may be filed by Employee, Student, or Applicant for admission/employment
 - *Or by Title IX Coordinator

APPLIES TO ALL COMMUNITY MEMBERS

- Faculty, Staff, Students, Postdocs, Trainees
- Formal Grievance Protocol (FGP) the same for all
 - Except with Emergency Removal/Administrative Leave
 - Emergency Removal: applicable to students and subject to immediate challenge and review
 - Administrative Leave: applicable to employees and not subject to challenge and review
 - Likely reflects, in part, the intersection of Title VII and Title IX responsibilities and rights



SEXUAL MISCONDUCT POLICY

Key Issues and Definitions



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SEXUAL MISCONDUCT

- The university's Sexual Misconduct Policy (SMP) applies more broadly than the Formal Grievance Protocol, which addresses Sexual Harassment as defined by the DOE

SEXUAL MISCONDUCT

- No jurisdictional limit
- Explicit inclusion of sexual exploitation and facilitation
- Broadened definitions of other offenses
- No express limitation on who can file a complaint
- Also applies to all members of VU community

SMP DEFINITIONS

- Sexual Misconduct Definition
- Non-consensual Sexual Contact
- Non-consensual Sexual Penetration
- Sexual Exploitation



EFFECTIVE CONSENT

- Informed and freely & actively given
- Requires mutually understandable words or actions indicating a willingness to engage in mutually agreed-upon sexual activity

COERCION

- Means to exert power or control over another person by use of force, pressure, manipulation, threats, or intimidation in an effort to compel participation in sexual activity. Determinations regarding whether actions or statements amount to coercion will be made on a case-by-case basis. For example, repeated advances or requests to engage in sexual activity may or may not amount to coercion depending on all of the relevant facts and circumstances.

INCAPACITATION

- The lack of ability to make rational, reasonable judgments as a result of alcohol consumption, other drug use, sleep, the taking of any so-called “date-rape” drug, unconsciousness, or blackout. An incapacitated person cannot make rational, reasonable decisions because that person lacks the ability to fully understand the who, what, where, or how of their sexual interaction. Determining whether an individual is incapacitated requires an individualized assessment. Incapacitation is a state beyond drunkenness or intoxication, in which alcohol, drugs, or other factors render one unable to make fully informed judgments or have an awareness of consequences. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known of the other individual's incapacitated state. While incapacitation may be caused by drugs or alcohol, it also includes the state of being asleep, during which time a person is unable to provide effective consent.



INVESTIGATION PROCESS

Two Paths



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REPORT AND NOTICE

- Title IX Office Receives Report
- Outreach and Informational Meeting
 - Supportive Measures, Process, Formal Complaint, Wishes



INITIATION OF INVESTIGATION

- Formal Complaint
 - Required under Formal Grievance Protocol
 - May be withdrawn by the Complainant
 - May be consolidated with other FC's by TIX Office
- Assessment by Title IX Office
- Notice of Investigation (written)

INVESTIGATION

- Investigation
 - Collect relevant inculpatory and exculpatory evidence
 - Parties must have sufficient notice to participate
 - Right to have adviser present for all meetings
 - SMP provides 90 business days from date of NOI to completion of investigation
 - May be extended for good cause



ROLE OF SEXUAL HISTORY

- Formal Grievance Protocol
- “Rape shield” protections: Past sexual conduct of complainant is irrelevant unless used to establish:
 - Someone other than respondent engaged in alleged conduct; OR
 - Consent
 - Must be specific incidents of the complainant’s conduct with the respondent

LIMITED IMMUNITY

- Alcohol and Other Drug (AOD) violations
 - Generally available for students
 - Title IX Office or Student Accountability available to discuss with the party (regardless of status)

PRELIMINARY REPORT AND REVIEW OF EVIDENCE

- FGP
 - At least 10 days prior to issuance of the investigation report, the parties will receive access to all inculpatory and exculpatory evidence directly related to the allegations
 - Parties may provide written responses in accordance with requirements of the policy
 - The university may determine additional investigation is required

PRELIMINARY REPORT AND REVIEW OF EVIDENCE

- SMP
 - Parties may receive for review and/or response a preliminary report containing the procedural history, interview summaries, and the information gathered
 - PR requirements vary in accordance with requirements of the policies
 - Following review of any responses to the PR, the university may determine additional investigation is required

INVESTIGATION REPORT

- FGP and SMP Cases with Student Respondents
 - Will fairly summarize the evidence collected
 - Issued at least 10 days before any hearing
 - Does not include determinations
 - Sent to party and adviser

INVESTIGATION REPORT

- SMP Cases with Non-student Respondents
 - Single-investigator Model
 - Will fairly summarize the evidence collected
 - Includes determination as to whether Respondent(s) violated the policy
 - Sent to parties and, as appropriate, supervisor(s)



RESOLUTION

- Standard of Evidence: Preponderance of the Evidence
- Hearing under Formal Grievance Protocol and for all Sexual Misconduct investigations to which a student is a respondent
 - Single Hearing Officer

HEARINGS

- Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued

HEARINGS

- Pre-Hearing Conference to Evaluate Relevant Evidence
- Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true. i.e., “inculpatory” and “exculpatory”
- Credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness
- Sexual Misconduct Adjudicator has discretion to grant lesser weight to evidence introduced at the hearing that was not previously presented for investigation by the Investigator

HEARINGS

- Live hearing
- Parties located in separate rooms upon request of a party
 - Technology must enable the Sexual Misconduct Adjudicator and parties to simultaneously see and hear the party or witness answering questions
- Live hearings may be conducted with all parties physically present in the same location OR any or all parties, witnesses, and other participants may appear at the live hearing virtually



HEARINGS

- Parties identify Advisers and expected witnesses (including themselves), including witnesses' expected sequence, to the Title IX Coordinator 5 days in advance
 - TIX-C will supply the disclosure to the other party
 - The parties will not be strictly bound to their disclosures, but they should be submitted in good faith
- When necessary Sexual Misconduct Adjudicator may ask the TIX-C to request additional witnesses after receipt of the parties' witness lists
 - Vanderbilt generally cannot compel a witness to attend and any requested witness will be disclosed to the parties

HEARINGS

- Only relevant cross-examination and other questions may be asked of a party or witness
- Sexual Misconduct Adjudicator must determine whether a question is relevant and explain any decision to exclude a question as not relevant before a party or witness answers a question

HEARINGS

- If a party or witness does not submit to cross-examination at the live hearing, the adjudicator must not rely on any statement of that party or witness in reaching a determination regarding responsibility
- The adjudicator cannot, however, draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions

RESOLUTION

- Written Determination – 15 Days (typically)
 - Allegations
 - Description of the procedural steps from receipt Complaint through the determination
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather evidence
 - Hearings held

RESOLUTION

- Written Determination
 - Findings of fact supporting the determination
 - Conclusions regarding application of the Policy to the facts
 - Statement of, and rationale for, the result as to each allegation, including:
 - Determination regarding responsibility
 - Any disciplinary sanctions the adjudicator imposes on the respondent; and
 - Whether remedies designed to restore or preserve equal access to Vanderbilt's education program or activity will be provided to the Complainant

RESOLUTION

- Written Determination
 - Procedures and permissible bases for the parties to appeal the determination
- May Consult with Relevant University Officials
 - e.g., determining sanctions and remedies



RELATED MATTERS

General Principles
and Roles of other Persons



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GENERAL PRINCIPLES

- Equitable Treatment of All Parties
- No stereotypes based on a Party's Status as a Complainant or a Respondent
- Presumption Respondent did not Violate Policy Unless and Until a Determination is Made
 - Presumption is true for all processes
 - After hearing (and any appeal) for FGP

GENERAL PRINCIPLES

- Conflict and bias-free institutional participants
 - COI: Material connection to a dispute or involved party such that a reasonable person would question the individual's ability to be impartial
 - **Cannot have a COI or bias for or against complainants or respondents, generally, or against a specific Complainant or Respondent**
- **Report to Title IX Coordinator**
 - Self-report and Report Allegations



NO GAG ORDER/RULE

- Parties are not restricted from discussing the allegations or gathering and presenting relevant evidence
- BUT parties should not engage in witness intimidation, witness manipulation, false statements, retaliation, harassment, etc.

ROLE OF ADVISERS

- Assist parties in navigating the process
- Clarify for the parties their rights and responsibilities within the process

ROLE OF ADVISERS

- May accompany party to any investigative interview or meeting
- Passive role during investigation phase
 - Not to interrupt or respond on behalf of student during meetings and interviews
 - Can be excluded if failure to comply with request(s) to abide by expectations for participation
 - All expectations applied equally to advisers for each party

ROLE OF ADVISERS

- Active role during hearing phase
 - Must conduct cross examination of parties/witnesses
 - May assist with any pre-hearing conference



ROLE OF ADVISERS

- Advisers may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses during the hearing, except for conducting cross examination
- Cross examination must be conducted directly, orally, and in real time by the party's adviser of choice, and never by a party personally

ROLE OF ADVISERS

- At the hearing, the adjudicator will typically ask questions first, before either adviser
- Subsequently, each party's adviser is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility



PRIVATE INSTITUTION

- The University is Not a State Actor
- “Due Process” Does Not Apply
 - Fair process
 - Comply with our policies

RETALIATION

- Prohibited under both the Formal Grievance Protocol and the Sexual Misconduct Policy
 - For participation in a protected activity
 - Title IX prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution's policy.



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