

# Title IX Advisor Training

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February 2025

# Title IX

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No **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.

Title IX of the Education Amendments of 1972

Implementing Regulations at:

20 U.S.C. §1681 & 34 C.F.R Part 106



# What is Required under the 2020 Final Rule?

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A recipient with **actual knowledge** of **sexual harassment**, in an **education program or activity** of **the recipient** against a person **in the United States**, must respond promptly in a manner that is not deliberately indifferent.

# Title IX Sexual Harassment

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- Conduct on the basis of sex that satisfies one or more of the following:
  - (i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
  - (ii) **Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity; or**
  - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA



# Title IX Jurisdiction

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- Institution's program or activity in the United States
  - Institution property
  - Institution sponsored or affiliated events [substantial control is key]
  - Buildings owned or controlled by officially recognized student organizations



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# USG Complaint Process

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- A report of misconduct has been made
- The Complainant or the Title IX Coordinator has initiated the formal investigation process
- Notice of the investigation has been sent to the parties
- The assigned investigator(s) have made preliminary determinations
- The parties and the institution have been unable to reach an informal resolution



# The Live Hearing Requirement

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- The Final Rule mandates a bifurcated process
- Final determinations of responsibility and sanctions are made by decision-makers
  - CANNOT be the Title IX Coordinator or assigned investigator
  - Informal resolution not permissible for student allegations against an employee
- Due process considerations
  - Cross examination by a party's advisor
  - Relevancy determinations
- Institutions must provide an advisor if a party does not have one

# Adjudication Processes

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## Students

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

## Employees

- Refer to your institutional policy



# Advisors at Title IX Hearings

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- Provide advice, counsel, and support to a party
  - Students or employees
- If not selected by party, one will be provided by the University prior to the hearing
- Copied on investigation report
- Perform cross examination of the other party and any witnesses

# What is Cross Examination?

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- Questions raised to an opposing party or witness called by the opposing party
- Used to advance claims or defenses of a party
- Used to assess the credibility of an individual
- **USG & GS Expectation:** Respect, dignity, decorum



# Hearing Logistics

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- Parties must receive notice of hearing at least 10 days prior to the hearing
  - Final investigation report and evidence
  - Notice of hearing date, time, and modality
  - Notice of decision-maker(s)
- At the request of either party, the parties must be permitted to be in separate rooms
- Hearings may be conducted in person or via videoconferencing
  - Ensure you know how to use the technology

# Hearing Logistics

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- Have available all directly related information
- University may establish rules of decorum
- Questions may be requested—but not required—  
ahead of time
- Hearing Officer determines relevancy of each  
question
- All hearings must be audio recorded



# Typical Order of a Hearing

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- Opening by Decision Maker
- Opening statements by both parties
- Questioning of the Complainant
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of the Respondent
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of any Witnesses
  - By the decision maker or panel
  - By the parties (through their advisor)
- Closing statements by both parties
- Closing by Decision Maker

# Preparing for the Hearing

- Review the Sexual Misconduct Policy and appropriate procedures – know their rights
- Review the investigation report and provided materials
- Communicate with your assigned party
  - Drafting questions
  - Addressing procedural inquiries



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# Evidentiary Considerations

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- The burden of proof AND burden of gathering evidence is on the institution
- Parties are permitted to present evidence and call witnesses to advance their claims and defenses
  - May include fact or expert witnesses

# Relevancy Determinations During Title IX Hearings

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- Prior to any question being answered, relevancy will be determined
- The Hearing Officer will provide the reason for excluding the question or evidence
- Rebuttals may not be permitted



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# Assessing Relevancy

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## Relevant

- Relevant information relates to the incident at issue
- Relevant information provides sufficient value in making the overall determination

## Irrelevant

- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove
  - Someone else other than the Respondent committed the alleged misconduct
  - Consent between the parties

# Other Evidentiary Exclusions

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- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant



# Standard of Evidence

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- Decisions regarding student and employee alleged misconduct are based on a **preponderance of the evidence**.



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# The Written Decision

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- Provided to both parties simultaneously & must include:
  - The allegations
  - The procedural steps from the complaint through determination
  - Findings of fact supporting the determination
  - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
  - Information on the appeals process



# Best Practices

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- Reach out to the party immediately
- Schedule time to meet with the party
- Pass along any questions they may have about the process
- Help them identify any witnesses they may want to invite to the hearing
- Help them draft their questions for parties and witnesses
- Be mindful of their well-being

# Expectations of USG Advisors

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- Be willing to advise any party, Respondent or Complainant
- Actively engage and be attentive during the hearing
- Adhere to Board and University policies and procedures



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# Additional Questions & Concerns

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