


Interim Policy 1.8

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In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the FERPA

- Consent may be initially given but ~~withd~~ at any time.
- Consent cannot be given ~~when~~ a person is incapacitated, and a reasonable person ~~knows~~ or should have ~~known~~ that such person is incapacitated. Incapacitation occurs ~~when~~ an individual lacks the ability to ~~knowingly~~ choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise ~~cannot~~ consent. Depending on the degree of intoxication, someone ~~who~~ is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given ~~when~~ it is the result of any coercion, intimidation, force, or threat of harm.

- Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that ~~would~~ cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial 

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they desire to file a complaint, as appropriate. Supportive measures are non-disciplinary and non-punitive.

As appropriate, supportive measures may include, but not be limited to:

- *counseling*
- *extensions of deadlines or other course-related adjustments*
- *modifications of class schedules*
- *campus escort services*
- *restrictions on contact ~~et.ween~~ between the parties (no contact orders)*
- *changes in housing locations*
- *leaves of absence*
- *increases*

3. Administrative leave
 - a. The University retains the authority t

Information about this process, ~~which is not available for~~
Employees, is available at Addendum A
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7. Discretionary dismissal

- a. The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:
- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
 - The respondent is no longer enrolled or employed by the University; or,
 - If any other circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.
- . Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

8. Notice of dismissal

- a. Upon a complaint, and upon that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain accurate

- a. Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides written notice of the request to the Title IX Coordinator, Director of Student Conduct, or designee at least five (5) business days before the scheduled hearing.

the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A 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.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under;
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under;
- As per Community Rights & Responsibilities and any applicable employee handbook/policies, a statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

6. Ongoing notice

- a. If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.
 - . The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Fr Advisor of choice and participation of advisor of choice

1. The University's

- . The University has a long-standing practice of requiring Students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an advisor of choice to any meeting or hearing to which they are required or are eligible to attend. The advisor of choice is not an advocate. Except where explicitly stated by this policy, as consistent with the Final Rule, advisors of choice shall not participate directly in the process as per standard policy and practice of the University.
3. The University will not intentionally schedule meetings or hearings on dates where the advisors of choice for all parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.
4. The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an advisor of choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an advisor of choice, and may offer the party the opportunity to obtain a different advisor of choice or utilize one provided by the University.

G. Investigation

1. General rules of investigations
 - a. The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.
 - . The University and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.
 - c. The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

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h. The parties and their adv

- c. All proceedings ~~will be~~ recorded through audio recording or audiovisual recording. That recording ~~will be~~ made available to the parties for inspection and review ~~according to the process~~ described in Community Rights & Responsibilities, Section 4(3)() (vi).
- d. Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX grievance process. Once signed, this agreement may not ~~be~~ ~~withdrawn.~~

. Continuances or granting extensions

- a. The University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University ~~will~~ notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

3. ~~Newly~~ discovered evidence

- a. As a general rule, no ~~new~~ evidence or ~~witnesses~~ may be submitted during the live hearing.
 - . If a party identifies ~~new~~ evidence or ~~witnesses~~ that ~~were not~~ reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or ~~witnesses~~ be considered at the live hearing.
- c. The Hearing Body ~~will~~ consider this request and make a determination regarding (1) ~~whether~~ such evidence or ~~witness~~ testimony ~~was~~ actually unavailable by reasonable effort prior to the hearing, and (2) ~~whether~~ such evidence or ~~witness~~ testimony could affect the outcome of the matter. The party offering the ~~newly~~ discovered evidence or ~~witness~~ has the burden of establishing these questions by the preponderance of the evidence.
- d. If the Hearing Body answers ~~in the~~ affirmative to both questions, then the parties ~~will be~~ granted a reasonable pause in the hearing to review ~~the~~ evidence or prepare for questioning of the ~~witness.~~

4. Participants in the live hearing

- a. Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows ~~is.~~

Complainant and Respondent (the parties)

- i. The parties cannot ~~have~~ the right to a live hearing.
- ii. The institution may still proceed ~~with~~ the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.
- iii. For example, a verbal or ~~written~~ statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other ~~words~~, a prior statement ~~would~~ not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of ~~sexual~~ harassment under the formal complaint.
- iv. The University ~~will~~ not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation.
- v. If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “~~statement~~” by ~~that~~ party. ~~Unsubstantiated~~ ~~allegations~~ ~~that~~ ~~are~~ ~~not~~ ~~substantiated~~ ~~by~~ ~~the~~ ~~preponderance~~ ~~of~~ ~~evidence~~.
- vi. ~~The~~ ~~decision~~ ~~maker~~ ~~cannot~~ ~~draw~~ ~~adverse~~ ~~inferences~~ ~~from~~ ~~a~~ ~~party’s~~ ~~failure~~ ~~to~~ ~~submit~~ ~~to~~ ~~cross~~ ~~examination~~.

- i. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- ii. If a ~~witness~~ does not submit to cross-examination, as described ~~below~~, the decision-maker cannot th

- . Before any cross-examination question is answered, the Hearing Board

inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

- f. Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be afforded, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.
- g. The Final Rule requires that the University allow parties to call "expert witnesses" for direct and cross examination. The University does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.
- h. The Final Rule requires that the University allow parties to call character witnesses to testify. The University does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be cross examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to character witness testimony relative to fact witness testimony, regardless of whether the character witness testimony is the subject of cross examination and regardless of whether all parties present character witnesses as witnesses.

a. The written determination regarding responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

- i. Identification of the allegations potentially constituting covered sexual harassment;
- ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding which section of this policy and/or Community Rights & Responsibilities, if any, the Respondent has or has not violated.
- v. For each violation, the sanctions to be imposed and the rationale for the sanctions.
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consistent with the procedures and timeline outlined in "Appeals" or, if an appeal is not filed, the date on which the opportunity to appeal expires.

. Appeals

1. Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within seven (7) calendar days of being notified of the decision, indicating the grounds for the appeal.

. The limited grounds for appeal available are as follows.

a. Procedural irregularity that affected the outcome of the matter (i.e. ~~University policy, the institution's student conduct rules or any other rule or regulation that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;~~

c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter;

d. Severity of the sanction.

3.f. ~~Miss~~ If mission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

4. If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties.

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not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other institutional programs and activities.

M. Effective Date

1. This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of incidents of sexual harassment that occurred on or after August 14, 2020.

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