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# Interim Title IX Training

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# Introduction

- How we got here
- Politics & the Constitution
- IX & Clery
- Follow the letter of “new IX” & the spirit
- Why this is called “interim”



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## Definition of Sexual Harassment

*Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

- (1) 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;
- (2) 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; or
- (3) “Sexual assault” as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), “dating violence” as defined in [34 U.S.C. 12291\(a\)\(10\)](#), “domestic violence” as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or “stalking” as defined in [34 U.S.C. 12291\(a\)\(30\)](#).



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## Many reasons to know s/h definition the best

- S/h contains “traditional” sexual harassment – with changed definition; quid pro quo, and “Clery crimes.”
- S/h is the only alleged offense that gets a formal hearing.
- S/h is a focus, around which the rest of the process flows.
- So, what happens to other alleged offenses?
  - Offenses or allegations that don’t go to a formal process and hearing, or to informal resolution
  - Informal resolution that avoids or leaves formal process



A photograph of two graduates in black caps and gowns, smiling and embracing each other. The image is overlaid with a semi-transparent orange filter. The text is positioned on the left side of the image.

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*How we educate & train.....*

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- The University notifies applicants for admission and employment, students, and employees of this policy through the *Ashford University Academic Catalog*, which is provided to the University community online through the University website, the Student Portal, and other appropriate channels of communication.
  - Annually, Ashford University new and current students and employees will be provided with **primary** prevention training and educational materials to promote familiarity with the University's policy on sex/gender discrimination, misconduct and harassment and specifically address issues of risk reduction and bystander intervention. This material will be provided via an online training program that prepares the community to recognize, respond to, and prevent, especially but not exclusively, domestic violence, dating violence, stalking and sexual assault.



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## Remember, there is primary & ongoing

- Additionally, student educational efforts and employee training provide **ongoing** awareness and prevention campaigns that identify safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or to intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such bystander. Information is also provided on risk reduction so that students, faculty, and staff may recognize warning signs.
- Educational efforts designed to promote equality and enhance awareness about sexual assault prevention are in the P & P, but always happy to hear new ideas!



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## **The following are pieces we will emphasize – but don't forget these!**

- Clery written rights and responsibilities
- Confidentiality – under IX and Clery
- Emergency removals & administrative leave
- Burden of proof is?
- Dismissal, consolidation or delay of complaints
- Written determinations of responsibility
- Difference between protective/supportive and remedy/sanction
- Recordkeeping



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# Notice

Upon receipt of a formal complaint, the University will simultaneously provide the following written notice to the parties who are known.

- Notice of the recipient's grievance process, including any informal resolution process
- Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview
- Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known



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# What else is in the notice?

- The written notice will include 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.
- The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- The written notice will inform the parties of the provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- If, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the first notice provided, the University will provide simultaneous and written notice of the additional allegations to the parties whose identities are known.



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# How to conduct an investigation; or, what are the parameters under the new IX?

- Without looking at the new IX P & P, who can explain it?
- How do you think it is different?
- Now, let's go through it
- Questions, discussion and ideas!



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## Here is how it begins...

Upon receipt of a formal complaint, the Title IX Coordinator will provide the written formal complaint to the investigators within the Student Dispute Resolution Center (SDRC), and, if applicable, Human Resources staff, to mutually investigate the complaint.

- Only trained investigators will analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence – including both inculpatory and exculpatory evidence – and take into account the unique and complex circumstances of each case.
- The investigation results in a written report summarizing the relevant exculpatory and inculpatory evidence. The investigator(s) will present the written investigative report to the involved parties, advisors and hearing officers(s) within forty-five (45) business days of the receipt of the complaint.
- There may be extensions of this or any timeframe within this procedure for good cause with simultaneous, written notice to the parties of the delay and the reason(s) for the delay.



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## Remember this is about due process, so...

When investigating a formal complaint and throughout this grievance process, the University:

- Will ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.



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## And privacy and equal treatment...

- Cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for this grievance process
- Will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.



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## In that spirit, the University...

- Will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding
- However, the University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.



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## And...

- Will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate
- Will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does **not** intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation
- Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- Will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination



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## Finally...

- Questions and evidence about the complainant's 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.
- The hearing officer(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.



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# Hearings – the heart of the change

- The University provides for a live hearing for formal complaints that are not dismissed pursuant to this policy and procedure.
- At the live hearing, the hearing officer(s) will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which advisors may participate in the proceedings.
- The University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the hearing officer(s) and parties to simultaneously see and hear the party or the witness answering questions.



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## More on hearings

- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- Again: If a party does not have an advisor present at the live hearing, the University will provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- Again: Questions and evidence about the complainant's 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.



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# Appeals

The University will offer both parties an appeal from a determination regarding responsibility, and from any dismissal of a formal complaint or any allegations therein, on the following alleged bases. Any appeal will be conducted by the Vice President of Student Affairs & University Registrar or designee.

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- The Title IX Coordinator, investigator(s), or decision-maker(s) 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



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## More on appeals

As to all appeals, the University will:

- Notify the other party, simultaneously and in writing, when an appeal is filed and implement appeal procedures equally for both parties
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
- Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy and procedure
- Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result
- Provide the written decision simultaneously to both parties.



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## And...

- If the complainant and/or respondent do not indicate his/her acceptance or Appeal of the findings within five (5) business days of communication, non-communication will be considered acceptance.
- If the appeal is denied, the Title IX Coordinator will proceed accordingly with any sanctions determined by the hearing chair.
- If the appeal is granted, the Title IX Coordinator will begin the hearing process anew and all involved will proceed without prejudice.



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# Technology

- Old hands at zoom
- But, don't be afraid to ask questions
- All hearing leaders will be expected to be trained
- So, let's not assume 😊



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## Let's end with the Important Presumption

- Respondent is NOT responsible for the alleged conduct
  - Until a determination regarding responsibility is made
  - At the conclusion of the grievance process!
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- Again, how to handle Clery: assumption of victim
  - Treat Complainant as victim for Clery crimes (what are those, again?)
    - Protective measures become supportive
  - Treat respondent as innocent until proven guilty!
    - Then, response becomes remedy/sanction and not protective/supportive



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*Questions...*

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