



Welcome
to...



TITLE IX

POLICY AND PRACTICE

ADJUDICATOR TRAINING

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Rules of the Road

- Questions are *always* welcome.
- This is not legal advice.
- If you haven't taken an intro, you should.
- Materials will be provided as required.

Finding our “True North”: The Starting Point for All Title IX Processes



Every participant, every witness, is a member of your campus community, inherently valuable as a human being, and worthy of being respected and believed.

Sexual violence causes extreme damage to individuals and to the campus culture you are trying to develop and maintain.

Model College is committed to providing a community in which the learning and working environment reflect our Mission. This environment is free from all forms of gender-based discrimination or harassment because such behavior violates an individual's fundamental rights and personal dignity. Model College considers gender-based discrimination to be a serious offense and has zero tolerance.



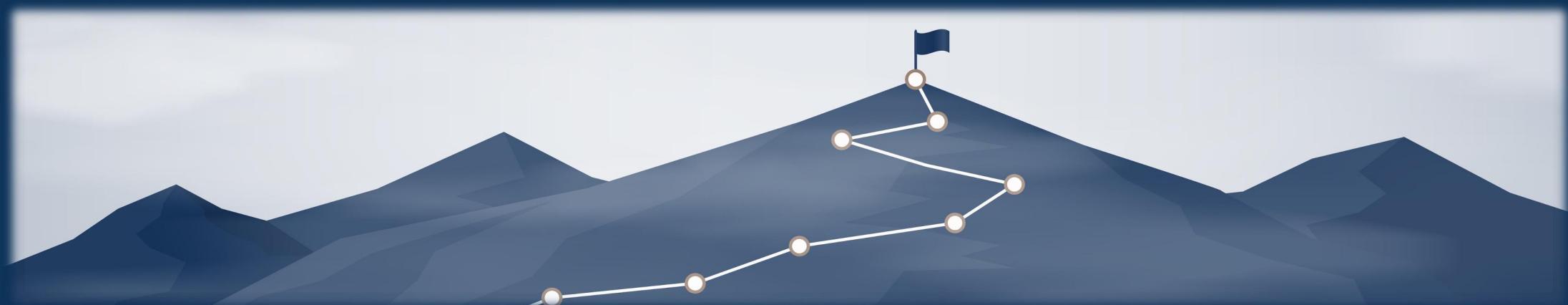
Sample Policy Language

Sample University believes in the intrinsic value of all human beings. Moreover, it is committed to the full, peaceable participation of all of its members in the educational endeavor it fosters. Sample University is committed to maintaining a learning and living environment which is fair and respectful and will not tolerate any threats or acts of sexual harassment, sexual assault or sexual violence.

Sample Policy Language



Our plan for this session



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TITLE IX BASICS

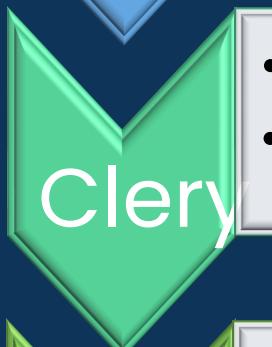
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This is Title IX

A bit of context...



- Passed 1972, Regulations Updated May 2020 (and 2024)
- Prohibits sex discrimination in schools receiving federal funds



- Requires timely reporting of crimes
- Includes requirement of policies and procedures regarding sexual assault



- Expands Clery Act
- Includes dating violence, domestic violence, stalking

Title IX prohibits sex discrimination but... *what exactly does that include?*

- Sexual harassment
 - Education benefit premised upon participation in unwelcome conduct (quid pro quo); or
 - Unwelcome conduct that a reasonable person would determine is so **severe, pervasive, and objectively offensive** that it effectively denied a person equal access to the education program or activity.



Title IX prohibits sex discrimination but... what exactly does that include?



- Sexual harassment
- Sexual assault
- Dating violence
- Domestic violence
- Stalking
- *Sexual exploitation*
- Pregnancy and childbirth discrimination
- Retaliation

Retaliation



An institution's **response** to a complainant or respondent in response to a Title IX complaint may, itself, constitute discrimination on the basis of sex in violation of Title IX.

Title IX Principles and Limitations



- The school must have **actual knowledge** of the discrimination.
- The school must have **substantial control** over the Respondent, the context, and the building.
- Off campus buildings included only if owned or controlled by **official student organization**.
- Incident must have occurred **within the USA**.

Initiation of Formal Complaint Process

- . Complaint Process
 - Notice of allegations
 - Supportive measures
 - Appointment of investigator
 - Opportunity to object
 - Investigation is completed
 - Parties review evidence
 - Final investigative report is issued
 - Hearing officer appointed
 - Opportunity to object
 - Evidence provided to adjudicator



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THE HEARING PROCESS

Understand your role



- Act as the Adjudicator ("Disciplinary Authority", "Hearing Officer", "Decision Maker").
- Thoroughly review all relevant evidence.
- Make a prompt and fair determination of responsibility/non-responsibility for policy violation.
- *Note terminology – we do not look for guilt or innocence.*
- Determine sanctions or remedies, if appropriate.
- Treat parties with respect and equity.
- Provide a report, in writing, as to the determination, the relevant evidence upon which the determination was based, and the process and grounds for appeal.

Selection of Adjudicator

- o Internal or external to institution
- o Appropriately trained
- o Single adjudicator or panel
- o Not coordinator or investigator
- o Able to maintain privacy
- o Trust and temperament
- o Capable of control over hearing
- o Free from bias





How do panels differ
from single adjudicator
proceedings?

Adjudicator Conflicts of Interest & Bias

Adjudicators **must be neutral, objective, and impartial** and must not have a conflict of interest or bias for or against the Complainant, Respondent, or the subject matter of the complaint.

- Recuse yourself if you know the parties, including if they have been one of your students, been advisee, etc.
- Avoid even the appearance of bias.

Be Mindful of Implicit Bias

- Impermissible mental shortcuts, attitudes and stereotypes that affect understanding, actions, and decisions in an unconscious manner. For example:
 - Assuming Respondent is always a man.
 - Stereotyping particular racial or ethnic groups or those for whom English is not first language.
 - Applying social stigma to alcohol or drug use.
 - Associating behavioral stereotypes with Greek life, athletics, or other activities or groups.



What considerations
should be given to
neurodivergent
individuals or those
from other cultures?

Preparing for the Hearing

- Review policy, including elements and definitions.
- Review final investigation report, appendices, evidence deemed relevant.
- Make a note of any unanswered questions identified.
- Prepare an outline for questioning during hearing, including questions that should be asked to confirm each required element.
- Identify advisors.
- Identify witnesses.
- Customize script.



Know and Understand the Standard of Proof

Preponderance of the Evidence

OR

Clear and Convincing
Evidence

Burden is on the institution, not the parties.





Is the adjudicator required to conduct a prehearing conference with parties and their advisors?



Who selects the parties' advisors?

Are those advisors trained?

What if one advisor is an attorney?

Technology Considerations at Hearing



- All parties should be admitted to Zoom simultaneously.
- Notify parties that the hearing will be recorded.
- Ensure privacy to degree possible.
- Mention view options on Zoom screen.
- Ensure coordinator sets up breakout rooms.
- Coordinator should provide contact information.

Beginning the Hearing

- Introduction of self
- Recording disclosure
- Purpose of hearing
- Technology disclosures
- Introduction of parties and advisors
- Not legal proceeding
- Truthfulness is expected
- Trauma-informed tone setting
 - Recognition of difficulty
 - Need for breaks, pauses
 - Reassurance of decorum
 - Discussion of amnesty
 - Zoom view options
 - What to expect
 - No preconceived notions

Title IX Hearing Script Template

Convening the Hearing and Notice of Recording

[Begin recording]

Good morning. It is [state exact time] on [date]. The recording of the hearing has begun.

I am convening this hearing to determine the outcome of the matter involving [complainant name] as Complainant and [respondent name] as Respondent under the [university name] Sexual Misconduct Policy. My name is [hearing officer name], and I am [state adjudicator's position or affiliation]. I am serving as the adjudicator for today's hearing. It will be my responsibility to decide whether Respondent is responsible for a violation of the [institution's] Sexual Misconduct Policy and, if so, to determine what sanctions, if any, are appropriate. Regardless of the outcome of the hearing, either party will be given the opportunity to appeal, and you'll be given the details of that process when you are notified of the outcome of this matter.

This hearing is being recorded by the University. This recording will be maintained in this case file and will be available for the parties' review. However, this recording is the only recording of the hearing that is permitted. No party or participant is permitted to record this hearing. Could each of you please affirm for me that you understand and agree to not make any separate recording of these proceedings, please?

Introduction of Parties and Advisors

At this time, I will ask those present in this hearing to please introduce themselves. Please also give me your preferred pronouns as you introduce yourselves.

We will start with the Complainant and their advisor. [Allow Complainant and advisor to introduce themselves.]

Preliminary Statements of Hearing Officer

Before we begin, I want to share just a few preliminary items with the parties and their advisors.

First, this hearing is not a court of law, and the Title IX process is not akin to the legal process. The purpose of this hearing is not to determine whether any law was broken and is not to determine guilt or innocence; rather, it is to determine whether University policy has been violated. Thus, this hearing will not be conducted in the same manner as a legal proceeding in a courtroom. I ask that all participating in this hearing keep this in mind.

Second, I understand how strange and intimidating this process can be and you have my word that I will make this process as smooth as possible for everyone involved. While I have read the investigative report and the supporting documentation, I come into this hearing with no preconceived notions about what has happened or whether there has been a policy violation. It is my responsibility to review all relevant evidence in the matter, listen to what everyone has to say during this hearing, and only then to make my determination. I take that obligation very seriously.

I also understand how very difficult it can be to answer questions related to the most intimate portions of your life, especially when posed to you by a complete stranger over a video screen. That's difficult and awkward and unpleasant. Please know that you may be completely candid with me, and you will not shock or offend me. Your stories matter to me, so you can (and should) be entirely honest in your testimony here today.

Along those same lines, there may be times during this hearing when questions will be asked, either by me or by one of the parties, that relate to the use of drugs or alcohol. It is important that you answer those questions freely and honestly; you will not be subject to disciplinary proceedings based upon your answers to those questions, even if the answers reveal potential violations of university policy.

Prior to the hearing, the parties and their advisors were provided with the Rules of Decorum by which each participant in this hearing is expected to abide. As a reminder, failure to comply with the Rules of Decorum will result in a finding of **willful** violation of university policy.

The Flow of the Hearing

- Opening statements
 - Limits?
 - Directed to Adjudicator
- Questions to Complainant
 - Adjudicator
 - Respondent Advisor (xexam)
- Questions to Respondent
 - Adjudicator
 - Complainant Advisor (xexam)
- Questions to Witnesses
 - Adjudicator
 - Parties' Advisors
- Closing statements
 - Limits?
 - Directed to Adjudicator
- Conclusion
 - When to expect determination
 - Right to appeal

Testimony and Cross-Examination

- Cannot compel participation of parties or witnesses:
- *You are not required to answer my questions. If you choose not to answer some or all of my questions, I will still consider statements you have made in making a determination of responsibility.*
- During cross-examination must determine relevance of every question before it may be answered:
 - *I will need to determine the relevance of each and every question asked by the parties through their advisor. [Name of Witness], please do not answer any question until I have determined the question to be relevant. To clarify: the advisor will ask you a question and you will need to pause and wait. I will say that you may (or may not) answer the question. Only if I say you may answer it should you begin your answer. Please do not worry if you accidentally begin to answer before I have said to do so. It's very normal but it will become more comfortable as we go along.*

Evidentiary Considerations -

Relevance

1. Relevant and directly related evidence
2. Directly related, but not relevant evidence
3. Neither relevant nor directly related
4. Privileged Information



1 is included in the Investigative Report. 2 is included in the evidence review. 3 and 4 are not provided to the parties, advisors, or adjudicators.

Evidentiary Considerations – Relevance - Continued

- Relevant Evidence – Evidence is generally considered relevant if it tends to prove or disprove a material fact/allegation. It includes both inculpatory and exculpatory evidence.
- Directly Related Evidence – Evidence that is “directly related to the allegations” may encompass a broader universe of evidence than evidence that is “relevant.”

Types of Evidence to Review

Testimonial

Interviews of:

- Parties
- Witnesses
- Expert witnesses

Can include hearsay and character evidence

Non-Testimonial

Electronic:

- Text messages
- Photos/Videos
- Call history/Voicemail
- Screen shots/Clips
- Social media posts,
- Security Video
- Key card logs
- Information on school servers/email

Documentary:

- Police reports
- Medical records
- SANE reports
- Receipts
- Credit card statements

Evidentiary Considerations

Prior Sexual History

Evidence regarding a Complaint's sexual behavior is not relevant unless:

- Offered to prove that someone other than Respondent committed the conduct the Complainant alleges; or
- Offered to prove consent, if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with the respondent

Evidentiary Considerations

Privileged Information

Parties may not be required to provide information protected by a legally recognized privilege, unless the person **voluntarily waives** the privilege.

Tone and Decorum

- Insist on a respectful tone at all times.
- Determinations of relevance belong exclusively to the Adjudicator.
- Advisor should not be allowed to argue relevance.
- Build rapport with parties and Advisors, be understanding and non-judgmental
- Use active listening skills, follow up where appropriate.
- Ask open ended and non-leading questions as far as possible.
- Clarify non-precise language (“making out”, “talking”, “messing around” etc.
- Always treat parties with equal dignity and respect.

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DRAFTING THE DETERMINATION REPORT

What to Include in Every Determination Report

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from including all witnesses interviewed;
3. Precise policy language defining elements of alleged violations;
4. Findings of fact supporting the determination;
5. Conclusions regarding the application of the recipient's code of conduct to the facts;
6. Determination for each allegation and the rationale for the finding;
7. Any disciplinary sanctions imposed including aggravating and mitigating circumstances warranting the sanctions imposed;
8. Procedures and permissible grounds for either party to appeal.

Drafting the Report

- Use neutral tone.
- Provide as much detail as possible but rely on factual evidence.
- Indicate why certain evidence was or was not determined to be credible.
- Reconcile inconsistent evidence and indicate how determination was made.



Distribution of Report

- Once the report is completed, it must be shared with the Parties and their advisors simultaneously.
- Clearly reflect bases and process for appeal; both in cover letter and in determination.



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THE APPEALS PROCESS

Grounds for Appeal

The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases:

- procedural irregularity that affected the outcome of the matter;
- newly discovered evidence that could affect the outcome of the matter; and/or
- Title IX personnel had a conflict of interest or bias, that affected the outcome of the matter.

Notification of Right to Appeal

Provide following information, in bold print, in both cover email and at conclusion of determination report:

- Name of appeals officer or appeal panel chair
- Requirement that appeal must be completed in writing
- Email address to which appeal should be sent
- The timeframe in which appeal must be filed (eg – by 5:00 p.m. on Friday, December 13)
- Permissible grounds for appeal

Elements of Appeal

- Appeals officer should not be same as decision maker, investigator, or coordinator.
- Standard of review is at discretion of institution.
- Both parties may provide statement to appeals officer(s) in support of position.
- Appeals officer is not required to review all relevant evidence but may determine appeal from Determination Report and statements.

If Appeal is Upheld... Then What?

- Must describe the result and rationale for the result.
- May send back to investigator to explore newly discovered evidence.
- May order new hearing with corrections to defect(s).
- May overturn (limited circumstances).

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THE INFORMAL RESOLUTION ALTERNATIVE

Informal Resolution



- Available as alternative
- Both parties must agree
- Cannot use when employee is party
- Can return to formal at any time until resolution is complete
- Enormous creativity available in possible resolutions

Informal Resolution: Partial list of possible agreed upon outcomes

- Consent education
- Shared statements
- Mediated conversations
- Restitution/damages
- Counseling
- Agreements to get STI/STD testing
- Community service
- Staggered schedules
- Changes in study abroad sites
- Site transfers
- Probation, suspension, or withdrawal
- Agreement to opt out of shared activities
- Agreement to change residence hall
- Agreement to not register for same classes



Questions? Please
feel free to reach
out!

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