



Title IX Hearing Officers

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OVERVIEW

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Major Changes to Title IX Process

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Jurisdiction:

The jurisdiction of what triggers the Title IX obligation to investigate an incident has been narrowed.

- **Actual Knowledge:** The Title IX Coordinator or another official with the University with authority to Institute Corrective Measures.
- **Definition of Sexual Harassment:** The federal definition has changed and is specific.
- **Educational Program:** The incident must occur on during an educational program.
- **In the US:** the incident must have occurred in the United States.



Schools Response

- **Liability:** Deliberate Indifference- A university must respond promptly, must provide supportive measures, must give notice to respondent, must follow grievance process, and must not restrict 1st amendment rights.
- **Formal Complaint Filed** – a formal complaint must be filed and signed by complainant or the Title IX coordinator for a formal investigation to take place.
- **Investigation** – The investigation process is not initiated until the formal complaint is filed. Additionally, if at any point during the investigation, it is learned that the incident does not meet jurisdictional requirements, then the investigation may be closed.



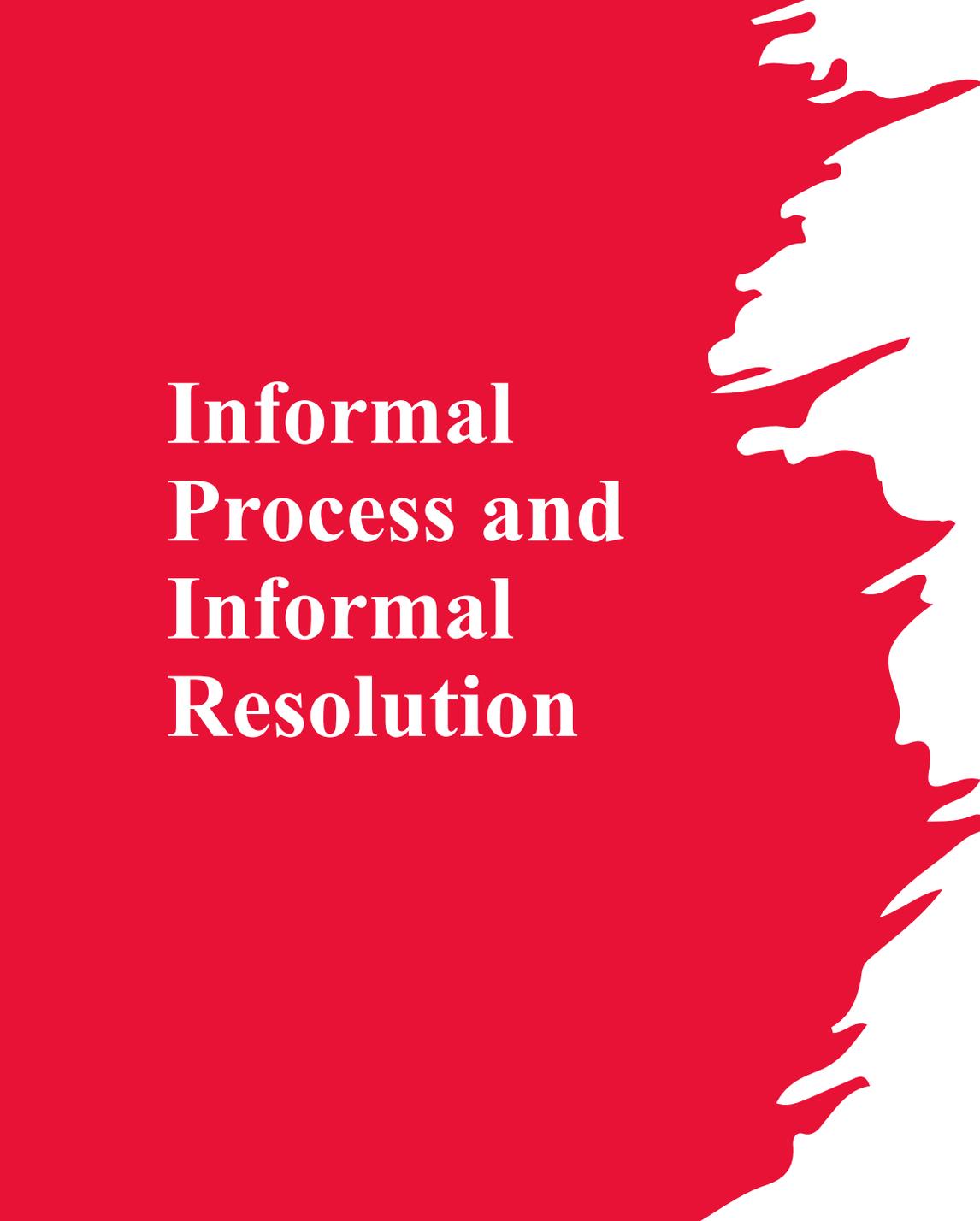
Live-Hearing Process

- **Advisor Requirement** – Students are given the option of choosing an advisor to help them through the Title IX formal investigation process (this may be an attorney). If a student cannot find an advisor or afford an advisor, then the University must provide them one.
- **Cross Examination** – Parties will be subject to cross examination that shall take place during the live hearing process.
- **Relevant Questions** – Questions asked in cross-examination must be relevant to the incident alleged. The Hearing officer shall determine if a question is relevant.
- **Hearing Officer** – A hearing officer (not the Title IX coordinator or investigator) shall be the decision-maker in a Title IX proceeding.
- **Timelines and Turnover of Evidence and Investigator's Report** – The new regulations set out certain timelines for providing an investigator report and turning over evidence before the live hearing. Additionally, new regulations require turnover of all evidence to both parties and their advisors for review.
- **Rape Shield Protections** – The new regulations provide for protections regarding sexual history.

Appeals



- The new regulations require **3 appeals** options.
 - Procedural Irregularity
 - New Evidence that was not reasonably available at the time the determination that could affect the outcome of the matter
 - The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.



Informal Process and Informal Resolution

- Both Parties must opt-out of the formal process and agree to the informal process.
- Should either party choose to not proceed with the informal process then the process automatically reverts to the formal process which includes the live hearings, etc.
- Complaints made where an employee is involved cannot opt-out of the formal process.
- Prior to filing a formal complaint a complainant may choose to proceed with an informal resolution.



Additional Updates:

- 7-year retention policy requirement.
- Reporting Online
- Additional Training for hearing officers, Title IX coordinators, Deputy Coordinators, and Advisors.

Roles & Responsibilities

Title IX Coordinator

Title IX Investigator

The Deputy Coordinator

The Advisor

The Hearing Officer

- Manages the entire Title IX process and hearings.
- Answers parties' questions about the Title IX processes.
- Assists in Investigations (when necessary).
- Provide support in all aspects of the Title IX Processes.
- Schedule and coordinate the Title IX Processes.
- Ensure Live hearing Technology is utilized and working.

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The Title IX Coordinator

- Meets with parties to go over Rights and Responsibilities, Non-Retaliation, Decision Options, Title IX Processes.
- Conducts Title IX Investigations
- Interviews Witnesses
- Collects Evidence
- Provides pre-liminary and final investigation report.

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The Title IX Investigator

- Investigates Title IX Complaints when a conflict of interest with the Title IX Investigator has been raised.
- Assists in Investigations
- Helps the Title IX Coordinator manage a hearing

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The Deputy Coordinator

- This person may be chosen by the party or if not chosen by a party, then the Title IX office will assign.
- Understands the entire Sexual Misconduct Policy and the Sexual Misconduct Adjudication Processes (SMAP)
- Assists complainants and respondents through the entire Title IX process
- Advises parties of the process and helping them with reviewing evidence, responding to the investigator's report, and questioning and cross-examining witnesses.

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The Advisor



The Hearing Officer/Decision- Maker Role

- Oversees a hearing
- Evaluates the evidence
- Determines relevancy
- Determine what evidence is admitted and what evidence or testimony shall be excluded.
- Issues a Notice of decision regarding responsibility.

The Processes

The Formal Complaint Process

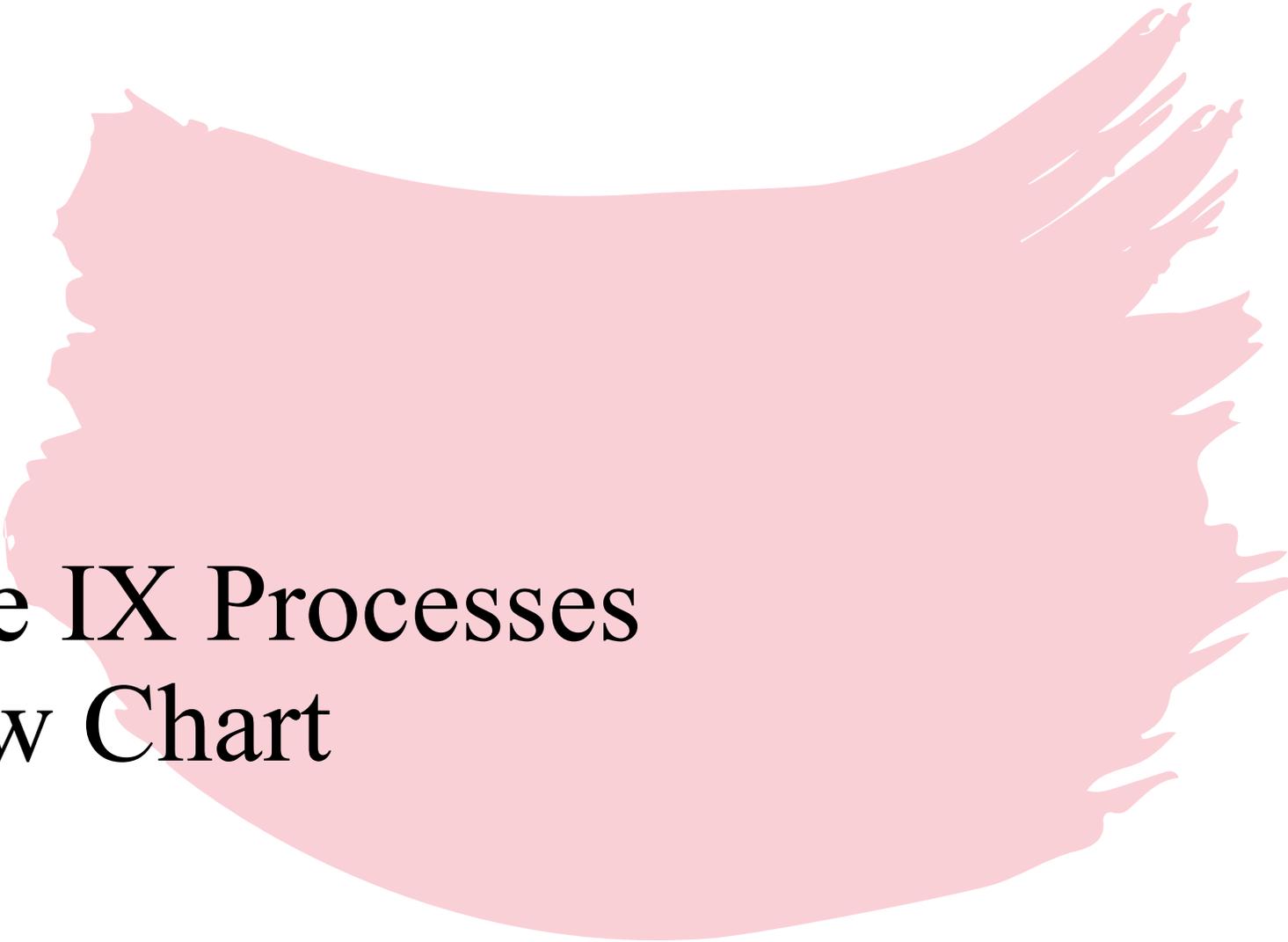
The Investigation Process

The Hearing Process

The Decision Process

The Appeals Process

The Sanction Process

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Title IX Processes Flow Chart

The Hearing Officer

- The hearing officer will render a decision based on all evidence, statement's, investigator's reports, etc. that are submitted during the hearing.
- This decision shall be made using the preponderance of evidence standard.
- The Hearing Officer shall also make ruling on the relevance of evidence and shall utilize the test for relevance in making these determinations.



Determining What is Relevant

- 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 must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This explanation must be given before proceeding and must be recorded or transcribed for the records.



The Test for Relevancy

- Evidence is relevance if:
- 1) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- 2) the fact is of consequence in determining the action.



Sexual History Rule

- In a case of Sexual Misconduct, the past sexual history of the Complainant and/or the Respondent or either party's sexual history with others will NOT be used in determining whether the Sexual Misconduct occurred. Prior consensual activity between the two parties will not be determinative of the issue of consent in the pending disciplinary complaint. Consent to one sexual act does not constitute consent for another sexual act.
- 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 shall review all questions during cross-examination to determine if they are relevant before a party being questioned may be asked about sexual history.

Pausing a Hearing

A hearing may be paused in certain instances by the Hearing Officer. These may include decorum issues with a party or an advisor. In addition to the decorum policy. A hearing may be paused by the Hearing Officer for any of the following reasons:

Intentionally False Testimony

- If it is found through the evidence that a party or witness intentionally provided false testimony, then the Hearing Officer may pause the hearing. The Hearing Officer will then determine if they need to bring that party or witness back in for additional questioning regarding the false testimony.

Tampering with a Witness

- If it is found that either party is attempting to tamper with a witness or has tampered with a witness in any way, then the Hearing Officer may pause the proceedings.

Tampering with Evidence

- If it is found that either party or witness or other person affiliated with the parties or witnesses has tampered with any evidence, then the Hearing Officer shall have discretion to pause the hearing proceedings.

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