

# The University of Scranton

## Title IX Training for Coordinators, Investigators, Advisors and Adjudicators

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# Agenda

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## **Title IX Regulatory Framework**

### **The University of Scranton Sexual Harassment and Sexual Misconduct Policy**

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# 2020 Title IX Regulatory Framework



## **Application to students and employees**

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# **The University of Scranton's Sexual Harassment and Sexual Misconduct Policy**

## Definitions – Title IX Sexual Harassment

**Title IX Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on a complainant's participation in unwelcome sexual conduct. Unwelcome sexual conduct includes, but is not limited to: any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise.

**Title IX Sexual Harassment:** Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

**Title IX Sexual Assault:** Any attempted or actual sexual act directed against another person, without the consent of the Complainant, including instances where the victim is incapable of giving consent. Sexual assault is the penetration, no matter how slight, of the vagina or anus, with a body part (e.g., finger, hand or penis), or object, or oral penetration by a sex organ of another person, without consent.

- Title IX sexual assault also includes sexual intercourse between persons who are related to each other.



## Definitions – Title IX Sexual Harassment

**Title IX Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.

**Title IX Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child; by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Title IX Stalking:** Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to fear for that person's safety or the safety of others, or suffer substantial emotional distress.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through third parties, by an action, method, device, or means, follows, monitors,



# Definitions – University Sexual Misconduct

## University Sexual Harassment

## University Gender-Based Harassment

**University Sexual Exploitation:** Conduct that exploits another person in a sexual and non-consensual way, including:

- a. non-consensual touching, fondling, or kissing,
- b. causing the incapacitation of another person for the purpose of compromising that person's ability to give consent to sexual activity,
- c. non-consensual voyeurism,
- d. allowing others to view sexual activities without the consent of all of the participants,
- e. non-consensual recording or photographing of private sexual activity and/or a person's intimate parts (audio or visual),
- f. non-consensual dissemination or posting of images or recordings of private sexual activity and/or a person's intimate parts,
- g. exposure of one's body in an indecent or lewd manner,
- h. sexual activity in public or semi-public places,
- i. prostituting another person, or
- j. knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge

## University Intimate Partner Violence

## University Stalking

# Consent at The University of Scranton


In order for individuals to engage in sexual activity of any type with each other, there must be **clear, knowing, and voluntary consent** prior to and during sexual activity. Consent is an **active and positive exchange of words or actions** that indicate a willingness to participate freely and voluntarily in mutually agreed upon sexual activity.

Effective consent cannot be given when:

- A person is physically or mentally incapacitated, including when the incapacitation stems from alcohol or other drugs.
- A person is unconscious.
- A person is asleep.
- A person is under the age of consent.

## More on Consent at The University of Scranton

- Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in sexual activity.
- Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity.
- The existence of a dating relationship between persons (including past sexual relations), by itself, is not sufficient to constitute consent.
- Any party may withdraw consent at any time, demonstrated by words or actions that clearly indicate a desire to end sexual activity.



**Consent is not effective if it results from the use (or threat) physical force, intimidation, coercion, incapacitation or any other factor that would impact an individual's ability to exercise their own**

# Reporting Potential Prohibited Conduct

## Anonymous Reporting

### Reports to Authorized and Responsible Employees

A disclosure or report of prohibited conduct made to an official with authority to institute corrective measures (regardless of whether the disclosure is made by the Complainant or a third party):

- Constitutes a report to the University (*i.e.*, actual knowledge), triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.

A disclosure or report of prohibited conduct made to a Responsible Employee (regardless of whether the disclosure is made by the Complainant or a third party):

- Does not constitute a report to the University (*i.e.*, is not “actual knowledge”) triggering a response under this Policy.
- Must be promptly reported to the Title IX Coordinator.





# Emergency Removals

At any point following the receipt of a report of prohibited conduct, the University may remove the Respondent from any or all of its programs or activities where it is determined there is an immediate threat to the **physical health or safety** of the Complainant or any other person(s), which may include the Respondent.

- Before imposing an emergency removal, the University will undertake an individualized safety and risk analysis.
- Emergency removal will be imposed only if the threat to physical health or safety arises from the allegations of prohibited conduct and warrants removal.
- Respondent may appeal the removal.
- Non-punitive actions taken as Supportive Measures do not constitute an emergency removal.

# Formal Complaint and Resolution Process

# Formal Complaint

## What is a Formal Complaint?

A document submitted by a Complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, requesting that the University investigate allegations that may constitute Sexual Harassment or Sexual Misconduct.

- The Title IX Coordinator also may sign a Formal Complaint, but does not become the Complainant by doing so.

**Upon the submission of a Formal Complaint, the Title IX Coordinator will provide written notice to the Parties, including the following:**

- The Policy.
- Notice of the allegations of conduct that may constitute prohibited conduct, with sufficient detail for the Respondent to prepare a response before any initial interview.
- The presumption that the Respondent is responsible for the conduct.



## Available only when:

- Formal Complaint has been filed;
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- Facilitator should focus on resolving the matter through a negotiated agreement that will provide the parties and University Community with a safe educational environment.
- Facilitator should work with both parties to ascertain specific remedies and/or sanctions that will preserve their access to educational opportunities, and will address the underlying matter.
- The Resolution Agreement must contain the names of the Complainant,



**The University seeks to resolve Formal Complaints within 75-90 calendar days of the Formal Complaint, excluding the appeal period and period of informal resolution.**

**Investigator will not have a conflict of interest or bias against complainants or respondents generally, or the particular complainant or respondent involved.**

**The Investigator will conduct an investigation of the allegations in the Formal Complaint, and is responsible for interviewing the Parties and witnesses, and gathering relevant inculpatory and exculpatory evidence.**

- Parties will be provided with written notice of the date, time, location, participants and purpose of all investigative interviews in which they are expected to participate.
- Parties may be accompanied by an Advisor of their choice at any investigative interview.
- The Investigator may not access, consider or use records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional in connection with the provision of treatment to a party without that party's voluntary written consent.

## **Advisor of Choice v. Provided Advisor**

- Party's Advisor may accompany them to all interviews,

# Role of the Investigator

## **An investigator must:**

Be objective and unbiased.

Be free of conflict of interest.

Avoid any prejudging of the parties or responsibility.

Take the lead in seeking evidence related to the allegations (



## **Before the interview:**

Provide sufficient notice.

Communicate the availability of supportive measures / resources.

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# Conducting the Interview: The Fundamentals

**Develop rapport with an open and conversational style.**

**Demonstrate respect.**

**Be alert to your non-verbal communications.**

**Avoid stereotypes and bias.**

**Explore areas of inquiry that can be corroborated.**

**Focus on sensory details.**

**Ask what the other might say.**

**Don't shy away from the uncomfortable questions.**

**Be OK with breaks and stretches of silence.**

# Conducting the Interview: The Funnel

Start as general as possible – “tell me what happened.”

Refrain from interrupting the initial narrative with clarifying or follow up questions.

Continue to return to the narrative to get all details.

Use reflective listening.

Ask varied questions (question/act to effecting)

# Conducting the Interview: The Closing

**Give the interviewee a final (for that meeting) opportunity to provide information.**

“Is there anything I haven’t asked that you think I should know?”

“If you were me who would you interview? What would you want to see?”

“It’s not uncommon to think of something after you leave. If you think of something, will you please contact me?”

**Ask if they have questions.**

**Discuss supportive measures/resources.**

**Thank the interviewee for their time.**



To: [elizabeth.garcia2@Scranton.edu](mailto:elizabeth.garcia2@Scranton.edu)

From: Student

Date: October 1, 2020

John came over to my suite after a party back in early September. He knew I was drunk. I told him I didn't want to have sex. He slept over and when I woke up the next morning, I realized he raped me. The university needs to do something so he doesn't do this to anyone else.

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I was at a party downtown with a group of friends in early September when I saw R[ @ }. I don't really know him, but we had a class together last year. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, R[ @ } and I started kissing.

I was feeling pretty buzzed and decided to leave around midnight. My roommate, Û~ :i^, didn't want to leave the party yet so R[ @ } offered to walk me back to my suite. We just talked about our classes while we walked. When we got there, he followed me into my bedroom and sat down on my bed. I really just wanted to go to sleep, but I didn't want to be rude. We talked for a bit. I started to feel a little sick and told him I wanted to go to sleep. He laid down next to me on my bed.

I think I fell asleep for a bit, but woke up when R[ @ } started kissing me. We made out for awhile but then I rolled away from him. He rolled me back over. We made out a bit longer and he unbuttoned my shirt. I let him take my shirt off. At that point, I was really uncomfortable but was scared of what he'd do if I told him to leave. I told him that I didn't want to have sex.

The rest is fuzzy for me. He left sometime early in the morning. When I woke up around 7 a.m., I saw a condom wrapper on the floor and remembered us having sex. h. t o h 4



**Who should be interviewed?**

**What other (non-witness) evidence may be available?**

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## John's Initial Interview Narrative

I got to the party around 11 p.m. and saw Student dancing with friends. She waved me over. We had an Econ class together in the spring. I knew she was interested in me at the time, but I had a girlfriend. We hung out for maybe an hour at the party and kissed a couple times. I think we were both buzzed, but not bad. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell and talked with him for a couple minutes. When we got to Student's suite, we walked straight back to her bedroom and sat on her bed. She asked for my cell number and put it into her phone.

After a few minutes, we laid down and started kissing. At first she said she didn't want to hook up, but then she took her shirt off and helped me take off my jeans. We had sex and fell asleep. I woke up and left around 5 a.m.

Student sent me a text later that day wanting to talk. I didn't respond right away because I'm trying to get back together with my ex-girlfriend and felt bad about hooking up with Student. Student and I texted a couple times over the next couple days, but then I stopped responding.



I was in the s

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# The Investigation Report



**Prior to completing the investigation report, the Investigator will send to the parties and their advisors all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, regardless of whether it is anticipated that the evidence will be used at the hearing.**

- Parties will have 10 calendar days to provide a written response, including identifying additional evidence for the Investigator's consideration prior to completing the investigation report.

**At least 10 calendar days before the hearing, the Investigator will provide the parties and their advisors a copy of the investigation report.**

- Parties will again have the opportunity to respond.



**How do members of the Panel get ready?**

Self-

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# Hearing – The Decision-Making Panel

## What is the Panel's role at the hearing?

- Ask relevant questions of parties and witnesses and review relevant evidence to aid in reaching an unbiased conclusion, based on available inculpatory and exculpatory evidence.
- Ensure the parties have equal opportunities to present and challenge evidence.
- Manage the hearing and enforce the rules of decorum.
- Make relevancy determinations.
- Evaluate credibility.
- Weigh the evidence.
- Make a decision on responsibility using a clear and convincing standard and, if appropriate, issue sanctions.

# Hearing – Advisors

## What is the Advisor's role?

- Provide support and advice to the party.
- Understand the purpose and scope of cross-examination.
- Ask questions on cross-examination that elicit relevant information.
- Wait for relevancy determinations.
- Adhere to rules of decorum.



## **Hear from the Complainant, Respondent and witnesses.**

Each Party will have the opportunity to provide relevant evidence to the Decision-Making Panel.

The Decision-Making Panel may ask relevant questions of each Party and witness, either before, during, or in follow-up to their testimony .

The Decision-Making Panel will facilitate each Party's advisor asking relevant cross-examination questions.


- The Panel will determine whether questions are relevant prior to the Party or witness answering the question.
  - If the question is deemed not relevant, provide
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**Ask: Is it probative of any material fact?**

**Certain evidence is specifically deemed not relevant:**

Questions and evidence about complainant's sexual predisposition or prior sexual behavior, **unless to prove that someone other than respondent committed the conduct alleged or, if concerning specific incidents of complainant's conduct with respondent, offered to prove consent.**


Records



I saw John at a party downtown in early September. I was there with a group of friends. He came over and was hanging out with me and my friends. We were all talking, drinking and dancing in a big group. At some point, he started kissing me.

The party was boring.

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I got to the party around 11 p.m. and saw student dancing with friends. Student waved me over. She was really flirty and started kissing me. I was buzzed. She seemed fine. Around midnight, she said she was going home. Her friend didn't want to leave yet, so I offered to walk her.

When we got to Student's building, we ran into my friend Steve in the stairwell. The three of us talked about our summer internships for quite awhile. Student said she wanted us to get going, so w

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# Is it Credible?

Even where it appears to be a “draw,” it seldom is – one person is usually more credible than the other.

Everyone’s credibility is at issue – there are no “perfect” Complainants, Respondents or witnesses

Consider the following to determine credibility:

- Is the testimony believable?
- Does it make sense?
- Is it convincing?
- Is there a level of detail and specificity?
- Does the testimony feel rehearsed/memorized?

Look to

- Demeanor
- Corroboration

**Inconsistencies may or may not be important**

- Is there a reasonable explanation?
- Is the point significant or trivial?
- Is the variation something that might result from memory lapse?

# Standard of Evidence – Clear and Convincing Evidence

Question isn't who has more witnesses.

It's the quality of the evidence, not the quantity.

## The different standards of evidence

- Beyond a reasonable doubt
- **Clear and convincing evidence**
- Preponderance of the evidence
- Some evidence

# Advisors Code of Decorum

- Advise advisees without disrupting proceedings.
- Do not address University Title IX and Deputy Title IX Coordinators or investigators in a meeting or during investigation interviews unless invited to do so (e.g., asking procedural questions).
- Cross-examine the other party and all witnesses at the hearing and address questions to the Decision-Making Panel.
- Do not make a presentation, argue for, speak on behalf of or represent the advisee during any meeting or proceeding.
- During the investigation phase of the process, may consult with the advisee (privately as needed, by conferring or passing notes) during any non-hearing process meeting or interview.
- Any breaks or time to confer must be requested by the party, not the advisor.
- During hearing, do not use cross-examination to intimidate or abuse a party or witness.

# Hearing Outcome Letter

## The Hearing Outcome Letter will include:

- A description of the allegations that led to the Hearing, as potentially constituting Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- A statement of factual findings supporting the determination;
- A statement of the conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- An explanation of the disciplinary sanctions imposed on the Respondent, if any;
- Statement of whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- The procedures and grounds for appeal.



# Appeals

**Either Party may appeal a determination of responsibility (or non-responsibility) based on only one of the following:**

- A procedural irregularity that affected the determination of responsibility;
- The existence of new evidence that was not reasonably available at the time of the Hearing that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator or Decision-Making Panel 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.
- Dismissal of a Formal Complaint alleging Title IX Sexual Harassment.

**Non-appealing party may respond, but no further exchange of positions is permitted.**

**In most cases, appeals are confined to a review of the written documentation or record of the original investigation and determination, and relevant documentation regarding the grounds for Appeal.**

# Questions, Answers and Discussion

