

What is Title IX?

- Enacted as Title IX of the Education Amendments of 1972
- Protects people from discrimination based on sex in education programs or activities that receive federal financial assistance
 - Includes students and employees
- *“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.”*
- K-12 Schools vs. Post-Secondary Institutions
 - Sometimes, different rules apply



Definition of Sexual Harassment

Conduct on the basis of sex that falls into one or more of the following three categories:

- Unwelcome “quid pro quo” sexual harassment by a school employee.
- Unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it denies a person equal access to their education.
- An incident that meets the definition of “sexual assault,” “dating violence,” “domestic violence,” or “stalking” under the Clery Act and the Violence Against Women Act.

Title IX - Sexual Assault

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the alleged person.
- The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the alleged person.
- Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Title IX – Dating Violence

Violence, including sexual or physical abuse or the threat of such abuse, committed by a person

- (a) who is or has been in a social relationship of a romantic or intimate nature with the alleged person; and
- (b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) the length of the relationship,
 - (ii) the type of relationship, and
 - (iii) the frequency of interaction between the persons involved in the relationship.

Title IX – Domestic Violence

Violence committed by a:

- current or former spouse or intimate partner,
- person with whom the alleged person shares a child in common,
- person who is cohabitating with or has cohabitated with the alleged person as a spouse or intimate partner,
- similarly situated to a spouse of the alleged person under the domestic or family violence laws of Connecticut, or
- any other person against an adult or youth alleged person who is protected from that person's acts under the domestic or family violence laws of Connecticut.

Title IX- Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition,

- (a) course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;
- (b) reasonable person means a reasonable person under similar circumstances and with similar identities to the person; and
- (c) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

What falls within the school's jurisdiction?

- On campus
- Off-campus locations over which the school “exercises substantial control” so long as in the United States
- Any building owned or controlled by a student organization officially recognized by the University.

Non-Retaliation Policy

- Retaliation against an individual for participating in any way in a report, investigation, Hearing, or other proceeding under this Policy is strictly prohibited.
- No one may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or Hearing under this Policy

Accessible Reporting: Title IX Coordinator

- The Title IX Coordinator is the employee designated to coordinate the school's efforts to comply with Title IX responsibilities
- The following parties must have the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator:
 - Students
 - Employees
 - Applicants for admission
 - Applicants for employment
 - Parents or legal guardians of elementary and secondary school students
 - All unions
- Contact information for the Title IX Coordinator is and must remain prominently displayed on the University's website



Mandated Reporters

- The University determines which employees have “authority to institute corrective measures” related to Title IX violations (an “Authorized Employee”)
- If a disclosure or report is made to an Authorized Employee, then that disclosure or report triggers the University’s Title IX policy (requiring a response) and it must be reported to the Title IX Coordinator.

Authorized Employees at the University of Hartford

- Title IX Coordinator and Deputy
- President
- Provost (including assistant and associate provosts)
- Deans of colleges
- Athletic Director
- Dean of Students
- CFO
- COO
- Any cabinet level administrator

Accessible Reporting: Making a Report

- Any person may report sex discrimination, including sexual harassment
 - Any third party as well as the complainant may report sexual harassment
 - A report can be made whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment
 - While parents and guardians do not become complainants (or respondents), they have legal rights to act on behalf of parties (including by filing formal complaints) in Title IX matters
- Reports can be made:
 - In person
 - By mail
 - By telephone
 - By e-mail, using the contact information listed for the Title IX Coordinator, or
 - online at hartford.edu/about/policies/title-ix or hartford.ethicspoint.com.Reports can be made at any time



Anonymous Reporting

- Reports may be made anonymously by telephone, email, or online at hartford.edu/about/policies/title-ix or hartford.ethicspoint.com
- Authorized and Responsible Employees cannot make anonymous reports
- The University's ability to take action in response to anonymous reports may be limited.

Responding to Reports of Sexual Harassment

- **Mandatory Response Obligations**
 - Response must be prompt
 - Must contact the complainant confidentially to discuss:
 - Supportive measures
 - “Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent”
 - Complainant’s wishes regarding supportive measures
 - Availability of supportive measures with or without filing formal complaint
 - Process for filing formal complaint

Supportive Measures

Supportive Measures may include, but are not limited to:

- Access to counseling services;
- Extensions of deadlines or other course-related adjustments;
- Modification of work or class schedules;
- Mutual restrictions on contact between the Parties (i.e., “no contact” orders);
- Changes in work or housing locations;
- Leaves of absence;
- No Contact Orders;
- Employee Assistance Program (“EAP”);
- Escorts;
- Increased security and monitoring of certain areas; or
- Any other measures deemed appropriate by the Title IX Coordinator or designee to preserve equal access to the University of Hartford’s programs and activities.

Informal Resolution Process

- Both parties must give voluntary, informed, written consent
- The Title IX Coordinator or Deputy will provide the Parties with written notice disclosing the allegations, the requirements of the process, the right to withdraw from Informal Resolution to pursue formal resolution, and any consequences of participation
- Title IX Coordinator or Deputy appoints an Informal Resolution Facilitator
- Can start any time prior to the conclusion of an appeal.
- Mediation or Restorative Justice
 - Complainant and Respondent will never be required to be in the same room.
- The outcome of the Informal Process is an agreement signed by both parties

Informal Resolution Process

- Any party has the right to withdraw from the informal resolution process at any time and resume the grievance process with respect to the formal complaint
- Informal process cannot be used if the complaint contains allegations that an employee sexually harassed a student

What Constitutes a “Formal Complaint”?

- Document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
 - The Formal Complaint can also be submitted electronically (e.g., by e-mail or through an online portal), so long as it contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- Who Can File a Formal Complaint?
 - Only those who are “participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed”

Notice Requirements for Formal Complaints

- Upon receipt of a formal complaint, the Title IX Coordinator must send written notice to both parties (complainants and respondents) including:
 - Notice of the Allegations
 - The University's Title IX Policy
 - Notice of the parties' entitlement to an advisor, as well as the ability to inspect and review evidence.
 - The name of the Investigator
 - Notice that the University prohibits knowingly making false statements or knowingly submitting false information.
 - Notice that the Respondent bears no responsibility unless same is determined at the end of the Formal Resolution Process.

Advisors

Who can be an advisor?

- The complainant and respondent must be informed that they can have an advisor, who can, but need not be, an attorney.
- Parties must have the same opportunity to select an advisor of the party's choice
- Parties are required to have an advisor for cross-examination
 - If a party does not have one, the University will appoint one for this purpose

What can an advisor do?

- Each advisor advocates for their party and has access to the same information as their party (e.g., investigative report, testimony, evidence, etc.).
- Conducts cross-examination

Tips for Advisors

- Advisors accompany the students to all investigative interviews, hearings, meetings, etc.
- The advisor's role is to provide support and advice to the Complainant or Respondent.
- Other than during cross-examination, the advisor's role is not to speak aloud at the proceedings, but to quietly advise their individual.
- The University maintains a list of employees who have agreed to serve as advisors

What Triggers an Investigation?



- Schools must investigate sexual harassment allegations in any formal complaint.
- The complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances

Timing of Investigation

- “Reasonably prompt time frames” for concluding the grievance process, including filing and resolving any appeal and any informal resolution process
- Temporary delays or extensions of time frames are permitted for good cause.

Investigation

- Upon receiving the written notice issued by the Title IX Coordinator, each party has three calendar days to object to the chosen Investigator on the grounds of conflict of interest or bias
- Once the investigation begins, all parties have the same opportunity to identify witnesses and present evidence
- Parties will also have an investigative interview

Top Things to Remember for Investigators

- Remain unbiased and impartial.
- The Investigator's role is not to adjudicate.
- Parties must receive notice of interviews.
- Parties are entitled to have an advisor present at all meetings.
- Parties are free to gather, discuss, and present evidence.
- The purpose of the Investigator's report is to summarize the evidence.
- Investigators may be questioned at the hearing.

During the Investigative Interview

- Develop a rapport first by being conversational.
- Be aware of stereotypes and/or implicit bias.
- Ask the general questions first before going to the more narrow questions.
- Ask follow up questions and focus on details.
- Acknowledge the uncomfortable questions, but ask them once you have established a rapport.
- Understand that the party may need to take breaks.

Ending the Investigative Interview

- Ask the interviewee if they have any questions
 - “Is there anything we haven’t talked about that you would like me to know?”
- Discuss additional resources for the interviewee.

Hypothetical

Report submitted online from a student named Alex:

I auditioned for the Fall play and didn't get a part, even though I've been part of most shows during my time here in school. When I asked what I could do better next time, I was told that I wasn't offered a spot in the show because the director learned that I was pregnant.

Investigation Report

- Before completing the investigation report, the Investigator must send both parties and their advisors (if any), all evidence obtained as part of the investigation.
- The parties are prohibited from disclosing or disseminating the evidence to third parties.
- The parties have 10 calendar days to provide a written response to the evidence via email, including identifying additional evidence. Such responses will be shared with the other party.
- Parties will receive a copy of the Investigator's report at least 10 calendar days before the Hearing and will have 5 calendar days to submit a written response.
 - The written response is shared with the other party.

Hearing Process

Hearing Notice

- Date, time, and location of hearing
- Provided no later than 5 calendar days before the hearing
- Must specify charges of Prohibited Conduct subject to disposition
- Identifies Hearing Officer
- At the request of either party, the Hearing can take place in separate rooms with technology allowing the parties to simultaneously see and hear each other
 - Request must be made at least 3 days before hearing

Hearing

- Complainant and Advisor, Respondent and Advisor, and witnesses are the only individuals who may attend.
- The witnesses can only be present when providing testimony.
- The Investigator, Title IX Coordinator, or Deputy may also be present.
- Hearings are recorded
- Parties have the opportunity to give opening and closing statements

Hearing Process:

- Opening Statements
- Complainant generally goes first when presenting to the Hearing Officer.
- Each party has the opportunity to question witnesses and present evidence.
- Advisors conduct the cross-examination and can only ask relevant questions.
- Closing Statements

Role of the Hearing Officer

- Prepare for the hearing by reviewing all of the relevant evidence and the Investigator's report.
- Ask questions of the parties and witnesses during the hearing.
- Ensure that the hearing is fair and impartial, such that both parties have the same opportunities to present evidence.
- Make relevancy and credibility determinations.
- Weigh the relevant evidence and issue a decision.

Evidence and Documentation



- Objective evaluation of all relevant evidence, inculpatory and exculpatory
 - Avoid credibility determinations based on a person's status as a complainant, respondent, or witness.
- The burden of gathering evidence and burden of proof must remain on school, not on the parties.
- The University must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- The University cannot access or use a party's medical, psychological, and similar treatment records unless it obtains the party's voluntary, written consent to do so.

Relevant Evidence

- Relevance = likely to make a claim more or less true
- Rape Shield Protections: Questions about a complainant's sexual predisposition or prior sexual behavior may only be relevant if:
 - Offered to prove that someone other than the respondent committed the conduct, or
 - Concern specific incidents of prior sexual behavior with respondent and offered to prove consent.

Rules of Decorum

- Questions must be conveyed in a neutral tone.
- Parties and Advisors will refer to others using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
- No Party may act abusively or disrespectfully during the Hearing.
- Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
- Parties and Advisors may take no action at the Hearing that a reasonable person in the shoes of the affected Party would see as intended to intimidate that person (whether Party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Rules of Decorum Specific to Advisors

- While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
- The Advisor may not yell, badger, or physically “lean in” to a Party or witness’s personal space. Advisors may not approach the other Party or witnesses without obtaining permission from the Hearing Officer.
- The Advisor may not use profanity or make irrelevant ad hominem attacks upon a Party or witness.
- The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Officer, the Advisor in cross-examination, or the Party or Advisor in direct testimony.
- When the Hearing Officer determines a question has been “asked and answered” or is otherwise not relevant, the Advisor must move on.

Hearing Outcome Letter

- Issued “within a reasonable time” via email to both parties simultaneously
- Includes:
 - A description of the allegations and procedural steps taken
 - A statement of factual findings and conclusions
 - A statement explaining the rationale for the result and a determination of responsibility
 - An explanation of disciplinary sanctions, if any.
 - A statement of whether any specific remedies will be provided to the Complainant
 - The procedures and permissible bases for appeal

Standard of Proof

- University of Hartford applies a preponderance of the evidence standard
- Must consistently apply the same standard for formal complaints against students and employees

Sanctions

- Sanctions range from written reprimand to expulsion or termination, depending on severity of incident and any previous violations.
- Faculty terminated under the Title IX Policy and who are tenured or in the middle of a contract term are entitled to additional procedural rights under Section 10, Dismissal, of the Faculty Policy Manual.
- The Hearing Officer may also sanction students found responsible for violations of the Student Code of Conduct in accordance with sanctions used in the general Student Conduct Process.

Remedies

- Provided to a complainant when a respondent is found responsible
- Designed to maintain the complainant's equal access to education
- May include the same individualized services described as supportive measures
- Need not be non-disciplinary or non-punitive and need not avoid burdening the respondent

Dismissals

Mandatory Dismissal if the Alleged Misconduct:

- Does not fall under Title IX's definition of Sexual Harassment
- Did not occur in the University's education program or activity
- Did not occur in the United States

Discretionary Dismissal if:

- Complainant seeks to withdraw the Formal Complaint
- Respondent is no longer a student or employee of the University
- The University cannot sufficiently gather evidence to reach a decision

Appeals

- Must email Title IX Coordinator or Deputy written appeal within 5 calendar days of Hearing Officer's Letter
- Grounds for appeal:
 - 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, Deputy, Investigator, or Hearing Officer had a conflict of interest or bias that affected the outcome of the matter.

Appeals Procedure

- Other party has 3 calendar days to provide a written response to appeal
- Title IX Coordinator or designee decides whether there are grounds for appeal. If not, the appeal is denied and the Hearing Officer's decision is final.
- If the appeal is found to be valid, the appeal can be set for a new hearing or the Appeal Officer can recommend adjustments in the sanctions.
- Unless the appeal is dismissed, the Appeal Officer will typically issue a written decision on the appeal, including the result and a brief rationale, within a reasonable time.