

Equal Opportunity, Harassment & Nondiscrimination

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August 2024 – May 2025



Bucknell
UNIVERSITY

AGENDA

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- Scenarios

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Equal Opportunity, Harassment and Nondiscrimination

- **Equal Opportunity, Nondiscrimination and Harassment Policy**
 - Covers Title IX (sex-based discrimination); Title VII; and Title VI (other identity-based discrimination)
 - All forms of discrimination and harassment hostile environment
- 1 Reporting Form
- www.bucknell.edu/titleix
- Questions? Email **titleix@bucknell.edu**.

Introduction - Title IX

What is Title IX?

A federal law which states:

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

20 U.S.C.A. section 1681(a).

•This includes, but is not limited to gender disparity in academic programs; equal access to athletics, class, programming; sexual harassment and discrimination; and pregnant and parenting students.



Recent Procedural History of Title IX

- 2020 Title IX regulations effective August 2020
- 2024 Title IX regulations effective August 2024
- Injunction August 2024
- Federal District Court in Kentucky struck down 2024 regulations January 2025
- State of Kansas, et al. v. U.S. Dept. of Education, et al. (USDC, D. KS, 07/02/24); Applicable to KS, AK, UT, WY, as well as schools attended by the members of Young America's Foundation or Female Athletes United, and schools attended by the children of members of Moms for Liberty, which issued an injunction that prohibits the Department of Education from enforcing the 2024 Title IX regulations.
- The Court found that the 2024 Title IX Regulations violated both the First Amendment and the Spending Clause of the United States Constitution and that the Final Rule was vague, arbitrary, and capricious. The ruling declared the 2024 regulations to be unenforceable nationwide.

WHERE ARE WE NOW?

- The University continues to implement policy and procedures consistent with the 2020 Title IX Regulations.
- DOE recognized in a [footnote](#) that “The Department’s Title IX regulations were amended in 2020 (2020 Notice of Final Rule; 2020 Title IX regulations) and again in 2024 (2024 Notice of Final Rule; 2024 Title IX regulations). On January 9, 2025, a federal district court issued a decision vacating the 2024 Final Rule. Consistent with the court’s order, the 2024 Title IX regulations are not effective in any jurisdiction.”

WHERE ARE WE NOW?

- NEW

- On January 9, 2025, the U.S. District Court for the Eastern District of Kentucky in *Tennessee v. Cardona* (Civil Action No. 2:24-072-DCR (January 9, 2025)) vacated the Biden administration's 2024 Title IX regulations. The vacatur applies nationwide, meaning the 2020 Title IX final rule and Title IX regulations are effective.

Introduction – Title VI

Title VI of the Civil Rights Act of 1964, 34 C.F.R. 100 et seq., is a federal law that protects persons from discrimination based on race, color, or national origin in programs and activities that receive federal financial assistance. Accordingly, a recipient of financial assistance from the Department of Education must provide access to their programs and services on a nondiscriminatory basis.

Bucknell complies with all applicable federal and state laws regarding nondiscrimination and equal opportunity.

Roles

- **Complainant.** Means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.
- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.

Roles

- **Investigator.** The person(s) authorized by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Decision-maker.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.

Roles

Confidential Employee.

An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or

An employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, retaliation, or Other Prohibited Conduct; or

An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, retaliation, or Other Prohibited Conduct. The employee's confidential status only applies with respect to information received while conducting the study.

Roles

Mandated Reporter. A University employee who is obligated by Policy to share Notice, and/or reports of discrimination, harassment, retaliation, and/or Other Prohibited Conduct with the Title IX Coordinator.

Definitions

- **Discriminatory Harassment.** Defined as unwelcome conduct on the basis of actual or perceived protected characteristic(s), that based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person's ability to participate in or benefit from the University's education program or activity.
- **Sexual Harassment:**
 - Conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct ("Quid Pro Quo");
 - 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 institution's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking, each as further defined below.

Definitions

Sexual Assault

Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent. This includes:

Non-Consensual Sexual Intercourse: Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal.

For ease of understanding, this Policy uses the term “non-consensual sexual intercourse” to encompass all conduct defined by 20 U.S.C. 1092(f)(6)(A)(v).

Fondling: The touching of the private body parts (i.e. buttocks, genitalia, breasts) of another person for the purpose of sexual gratification without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

This includes having another person touch you sexually, forcibly, and/or without their consent for purposes of sexual gratification.

Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Definitions

- **Dating Violence:** Meaning violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship
- For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Definitions

- **Domestic Violence:** Meaning felony or misdemeanor crimes committed by a person who:
 - Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Pennsylvania, or a person similarly situated to a spouse of the Complainant;
 - Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
 - Shares a child in common with the Complainant; or
 - Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Definitions

- **Stalking:** Meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - Fear for the person's safety or the safety of others; or
 - Suffer substantial emotional distress.

For the purposes of this definition, “course of conduct” means two or more acts, including, but not limited to acts in which the Respondent 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.

“Reasonable person” means a reasonable person under similar circumstances and with similar identities to the Complainant.

“Substantial emotional distress” means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Definitions

Sexual Misconduct Offenses

These offenses capture a broader range of conduct that is beyond the scope of Title IX.

Hostile Environment Sexual Harassment

unwelcome conduct on the basis of sex that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

Sexual Exploitation: Taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Sexual Harassment under this Policy.

Sexual Exploitation Examples:

- Sexual Exploitation includes (but is not limited to):
- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed);
- Indecent exposure or inducing others to expose themselves when consent is not present;
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent);
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing);
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Defining Hostile Environment

- “A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.”
- The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”
- When discriminatory harassment rises to the level of creating a hostile environment, the University may impose sanctions on the Respondent through application of a Resolution Process in the Equal Opportunity, Harassment and Nondiscrimination Policy.
- The University also reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under the Equal Opportunity, Harassment and Nondiscrimination Policy, but may be addressed through other University policies, respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.



Defining Hostile Environment



- Bucknell recognizes that excellent educational experiences include and must allow for divergent viewpoints and perspectives, some of which may challenge individual beliefs, values or cultural norms. As a campus community, we value and protect academic freedom and the open exchange of ideas.
- The policy is not intended to undermine or weaken these precepts; rather it is meant to address those incidents that fall beyond professional and academic discourse. All members of the University community are responsible for the maintenance of an environment in which people are free to learn and work without fear of discrimination or abuse.
- For example: *Remedial response is required if the totality of circumstances create a hostile environment even if freedom of speech is involved - Office of Civil Rights on Title VI response (Muhlenberg resolution)*
- *Must consider the impact of incidents involving alleged harassment that takes place off campus and on social media. - Office of Civil Rights on title VI response (Muhlenberg resolution)*
- We therefore must balance individual freedom of expression rights (legal concepts) with OCR's expectation that we review and remedy any potential hostile environment regardless of traditional legal principles (First Amendment) and jurisdiction (i.e. off-campus; private social media posts)
- Addressing but not stopping the behavior in some circumstances is necessary.



Consent:

Consent: Knowing, voluntary and mutual decision among all participants to engage in sexual activity.

- Consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate Consent. To give Consent, a person must be of legal age.
- Assent does not constitute Consent if obtained through Coercion or from an individual whom the person initiating the sexual contact knows or reasonably should know is incapacitated. Coercion is the use of express or implied threats, intimidation or physical force which places an individual in fear of immediate harm or physical injury or causes a person to engage in unwelcome sexual activity.

Consent:

- Coercion constitutes unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive (i.e. badgering, blackmailing, guilting, lying, etc.). Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.
- Coercion also includes administering a drug, intoxicant or similar substance with the intent to impair that person's ability to Consent prior to engaging in sexual activity.
- Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.
- An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain Consent.
- A current or previous consensual dating or sexual relationship between the Parties does not itself imply Consent or preclude a finding of responsibility for misconduct.

Incapacitation

- Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.
- This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.
- Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, and/or being drunk.
- If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Force

- Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.
- Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Standard of Proof

- Bucknell uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

Confidentiality

Confidentiality/Privacy

Bucknell makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint of discrimination, harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.

HEARING RESOLUTION PROCESS

- The Hearing Resolution Process is used for all Complaints of Title IX and Sexual Misconduct offenses as defined in the Policy.
- The University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination at the conclusion of the Hearing Resolution Process.
- The Parties will be given an equal opportunity during the investigation and hearing process to review, comment and inspect all directly related and/or relevant evidence collected and used during these procedures to reach a determination.

BRIEF OVERVIEW OF PROCEEDINGS

- Introductions / instructions read by Chair
- Presentation of investigation
- Presentation of information and questioning of the parties and witnesses
- Closing statements
- Deliberation and Determination (closed to all except decision-makers)

DECISION-MAKER ROLE PRE-HEARING

- Review evidence and investigation materials
- Review applicable policy definitions and procedures
- Determine areas follow-up is needed
- Develop questions for parties and witnesses
- Engage in a pre-hearing meeting (chair) to make relevance determinations
- Anticipate challenges during the hearing
- Prepare/review the script with Title IX Coordinator

LIVE HEARING REQUIREMENTS

- Hearing Venue Options and Recordings. The live hearing may occur in person or via video technology. The Decision-maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Each Party may communicate their preference to the Title IX Coordinator but the Title IX Coordinator retains discretion to determine whether the live hearing will occur in person or via video technology.
- Questions. The Decision-maker will ask questions of the Parties and witnesses during the hearing. Parties in collaboration with their Advisors may also ask or pose questions during the hearing. For matters determined to be under the jurisdiction of Title IX, the Parties, through their Advisors, may engage in “cross-examination” by asking questions directly to the other Party and witnesses. For matters not falling under Title IX, the Parties may submit written questions to the Decision-maker at the hearing for the Decision-maker to ask of the other Party or witnesses. The method of submitting questions to the Decision-maker will be specified by the Decision-maker during the pre-hearing meetings.

LIVE HEARING REQUIREMENTS

- Impact Statements. Each Party may submit an impact and/or mitigation statement to the Title IX Coordinator that the Decision-maker will review during any sanction determination.
- Conflicts of Interest or Bias. The Decision-maker(s) must not have a bias for or against complainants or respondents generally or the individual Complainant or Respondent in particular. A Decision-maker should recuse themselves or consult with the Title IX Coordinator if they believe there is a possible conflict of interest or bias that would affect their ability to be impartial. The Parties must raise challenges with the Title IX Coordinator within two (2) business days of receiving the Hearing Notice if they believe a Decision-maker has a conflict of interest or bias.

LIVE HEARING REQUIREMENTS

- Evidence Provided to Decision-maker(s) and Parties. The Decision-maker will be provided electronic copies of the Final Investigation Report and all relevant, directly related, but not impermissible evidence, including the names of all Parties, Witnesses, and Advisors, at least ten (10) business days in advance of the hearing. The Parties will be provided with electronic copies of all materials, including the Final Investigation Report with the Hearing Notice, unless already provided.
- Presumption. Respondent will be treated without presumption of responsibility for the alleged conduct during the investigation and hearing processes, and any determination of responsibility will be made only at the end of the investigation and hearing process.

PRE-HEARING MEETINGS

- The Decision-maker will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.
- However, this advance review opportunity does not preclude the Parties from asking or submitting a question at the hearing for the first time or asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each Party.

PRE-HEARING MEETINGS

- The Decision-maker or Title IX Coordinator will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Decision-maker, only with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.
- The Title IX Coordinator may be present or conduct Pre-hearing meetings to discuss matters of procedure or logistical questions and will communicate any evidentiary or substantive questions to the Decision-maker for response.

HEARING PROCEDURES

- **Introductions and Hearing Procedure Explanation.** The Decision-maker will explain the hearing procedures and introduce the participants. The Decision-maker or Title IX Coordinator will answer any procedural questions prior to and as they arise throughout the hearing.
- **Investigator Attendance.** The Investigator may be present at the request of either the Decision-maker or one of the Parties if there are questions specific to the Final Investigation Report. The investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

HEARING PROCEDURES

- Testimony and Questioning. The Parties and witnesses may provide relevant information in turn, beginning with questioning in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through the questioning format previously explained during the pre-hearing meeting.
- In matters designated under Title IX, the Parties will be permitted to ask questions of the other Party and witnesses directly (“cross-examination”), through their Advisors. All questions will be subject to a relevance determination by the Decision-maker first. If a Party does not have an Advisor, the University will appoint an Advisor for purposes of conducting cross-examination on behalf of that Party at the hearing.

HEARING PROCEDURES

- For matters not designated under Title IX, the Decision-maker may direct the Parties to submit their questions in writing to the Decision-maker for the Decision-maker to pose the question to the other Party or witnesses.
- Witnesses will appear at a portion of the hearing to respond to specific questions from the Decision-maker and the Parties, and the witnesses will then be excused.
- The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
- The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive. The Decision-maker has final say on all questions and determinations of relevance and appropriateness. The Decision-maker may consult with legal counsel on any questions of admissibility.

HEARING PROCEDURES

- Refusal to Submit to Questioning and Inferences. Any Party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on the available relevant evidence in making the ultimate determination of responsibility. The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer any or all questions.
- Closing Statements. After all information is presented, each Party will have the opportunity to make a brief closing statement. The Hearing Panel Chair has the authority to limit lengthy or irrelevant statements. Closing statements are not subject to questioning by the Parties, and are not considered evidence.

DELIBERATIONS AND DETERMINATION

- After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of proof. If a panel is used, a majority vote is required to determine the finding. Deliberations are not recorded.
- The Decision-maker will then prepare and provide the Title IX Coordinator with a written outcome letter ("Notice of Outcome") detailing the determinations, the rationale(s) explaining the decision(s), the relevant evidence used in support of the determination(s), the evidence not relied upon in the determination(s), and any credibility assessments. The Title IX Coordinator may assist in preparing the written outcome letter to assure procedural accuracy only.

SANCTIONING

- When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) will immediately engage in a determination of sanctions. The Decision-maker(s) may consider any previously submitted Party impact statements in determining appropriate sanction(s). The Title IX Coordinator will ensure that any submitted impact statements are exchanged between the Parties if they are viewed by the Decision-maker. Impact statements do not influence the finding, they only potentially influence the sanctions.
- The Decision-maker(s) will review the impact statements and any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s). The Decision-maker(s) may consult with the Title IX Coordinator to gather general historical knowledge regarding a range of sanctions issued for the particular policy violation, in order to assure consistency.

SANCTIONS

- Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:
- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

STUDENT SANCTIONS

- Disciplinary Warning
- Disciplinary Probation
- Suspension
- Expulsion
- Disciplinary Withholding of Degree
- Degree Revocation

EMPLOYEE SANCTIONS

- Verbal or Written Warning
- Performance Improvement Plan Process
- Enhanced Supervision, Observation, or Review
- Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Shift or schedule adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

NOTICE OF OUTCOME

- Within ten (10) business days of the conclusion of the Resolution Process, the Title IX Coordinator provides the Parties simultaneously with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that the University is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the University is permitted to share under federal or state law.
- The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

APPEAL OF THE DETERMINATION

- Appeal Grounds Appeals are limited to the following grounds:
- A procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 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 specific Complainant or Respondent that would change the outcome.
- The sanctions imposed were substantially disproportionate to the findings.
- Request for Appeal. Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

APPEAL OF THE DETERMINATION

- In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal. Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof.
- An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s). The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed.

APPEAL OUTCOME

- An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decisionmaker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new appointed administrator(s) serving in the Investigator and Decision-maker roles.
- If the Appeal Decision-maker determines the sanction to be substantially disproportionate to the findings, the Appeal Decision-maker may revise the sanction or order a new hearing before a new Decision-maker solely for the purpose of sanctioning.
- A written outcome letter will be sent to all Parties simultaneously and will specify the finding on each appeal ground, any specific instructions for remand, reconsideration, or revision and the rationale supporting the essential findings to the extent the University is permitted to share under federal or state law. Once an appeal is decided, the outcome is final and constitutes the Final Determination.

OTHER CONSIDERATIONS

- Questions should be “relevant” meaning it (FRE 401):
 - Has any tendency to make a fact more or less probable than it would be without the evidence; and
 - The fact is of consequence in determining the action
- Irrelevant or Impermissible questions:
 - Information protected by legal privilege (unless waived)
 - Medical treatment and care
 - Unduly repetitious or duplicative
 - Complainant’s prior sexual history, with limited exceptions

OTHER CONSIDERATIONS

- Questions should be:
- Thoughtful and “relevant”
- Explorative to a degree – stick to the policy definitions and evidence you need to make a determination
- Gathering additional evidence or gap areas
- Be efficient – no need to walk through the full testimonies with each party/witness; the investigation report is incorporated into evidence and questions should be limited to areas you need additional information on

OTHER CONSIDERATIONS

- Questions should be aimed at determining/reviewing:
 - Credibility
 - Timeliness
 - Reliability
 - Corroboration
 - Plausibility
- Facts related to the elements of the specific policy violation
- Relevance on evidence and how it relates to testimony
- Details about the allegations
- Inconsistent behaviors/statements
- Alcohol/drug consumption
- Probing into reports related to lack of memory