



Institutional Equity

Title IX

Investigators and Decision-Makers

Training - 2024

Hosted By:

Office of Institutional Equity

Title IX of the Educational Amendments of 1972 protects individuals from discrimination based on sex in any educational program or activity operated by recipients of federal financial assistance.

As required by Title IX, the University of Arizona does not discriminate based on sex in its educational programs or activities, including in admission and employment, and must respond **promptly and effectively** to knowledge of conduct that reasonably may constitute sex discrimination.

TITLE IX APPLIES TO . . .

Conduct that occurs under the University's education program or activity including:

- Facilities owned/controlled by University or an officially recognized student organization
- Conduct that is subject to the University's disciplinary authority
- Conduct that occurred outside the University's education program or activity or outside the U.S. but that creates a sex-based hostile environment at the University

Scope of Prohibited Conduct

Sex discrimination under Title IX includes discrimination based on **sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity** and further includes **sexual harassment and other harassment on the basis of sex** that constitutes any of the following:

- **Title IX Quid Pro Quo Harassment**
- **Title IX Hostile Environment Harassment**
- **Title IX Sex-Based Harassment (specific VAWA offenses)**

Title IX

Quid Pro Quo Harassment

When an employee, agent, or other person authorized by the University to provide an aid, benefit, or service under the University's educational program or activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on participation in unwelcome sexual conduct.

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Hostile Environment Harassment

When unwelcome sex-based conduct 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 (i.e., creates a hostile environment).

Hostile Environment?

Whether a hostile environment has been created is a **fact-specific**

inquiry that includes consideration of:

- The degree to which the conduct affected a person's ability to access the University's education program or activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the University's education program or activity.

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SexBased Harassment (specific offenses)

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault

Any attempted or actual *sexual act* directed against a person, without their consent, including where a person is incapable of giving consent. *Sexual acts* include forcible and non-forcible sexual offenses (under the Uniform Crime Reporting system of the Federal Bureau of Investigation).

Dating Violence

Violence committed by a person who is or has been in a **social relationship of a romantic or intimate nature with a victim**. The existence of such a relationship shall be determined based on the information available and consideration of the following factors:

- 1) the **length of the relationship**,
- 2) the **type of relationship**, and
- 3) the **frequency of the interaction** between the persons involved in the relationship.

Domestic Violence

Conduct that would meet the definition of a felony or misdemeanor crime of violence committed:

- a. by a current or former spouse or intimate partner of the victim, by a person who is cohabitating with, or who has cohabitated with the victim, as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of an applicable jurisdiction;
- b. by a person with whom the victim has a child in common, or either party is pregnant by the other party;
- c. by a person residing or having resided in the same household;
- d. where a victim is related to the person or the person's spouse by blood or court order as a parent, grandparent, child, grandchild, brother, or sister or by marriage as a parent-in-law, grandparent-in-law, stepparent, step-grandparent, stepchild, step-grandchild, brother-in-law, or sister-in-law; or
- e. where a victim is a child who resides or has resided in the same household as the person and is related by blood to a former spouse of the person or to a person who resides or who has resided in the same household as the person.

Stalking

Engaging in a **course of conduct** directed at a **specific person** that would cause a **reasonable person to fear** for that **person's safety** or the **safety of others** or to **suffer substantial emotional distress**.

Information and Notification Requirements

Pregnancy and Related Conditions

All employees must provide a student who informs them of the **student's pregnancy or related conditions**:

- the **contact information for the Title IX Coordinator** and **advise that the Title IX Coordinator can coordinate actions to prevent sex discrimination and ensure the student's equal access** to the University's educational programs and activities.
- Requirement met with provision of **Title IX Pregnancy Resource**.

Suspected Sex Discrimination

All non-confidential employees must notify Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination or provide the contact information for the Title IX Coordinator and information about how to make a complaint. **UA Policy: No option. All nonconfidential employees must notify the Title IX Coordinator.**

- Done through report to OIE
- Confidential employees exempt but have information provision responsibility.

Confidential Employees

The following **Title IX confidential employees** are not required to report:

- A University employee whose communications are privileged or confidential under Federal or State law (CAPS counselors; Campus Health providers);
- A University employee designated as confidential for the purpose of providing services to persons related to sex discrimination (Survivor Advocates; Ombuds);
- A University employee conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination.

**The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies*

Confidential **Employees**

Title IX confidential employees informed of conduct that reasonably may constitute sex discrimination under Title IX **must inform the impacted person** of the following:

- the employee's confidential status;
- how to contact the Title IX Coordinator and how to make a complaint of discrimination; and
- that the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an investigation under grievance procedures.

Provision of [Rights and Options brochure](#) satisfies requirements 2 and 3, above.

Report or Complaint?

Complaints are now . . .

verbal or written requests that can **objectively be understood as a request to investigate and make a determination** about alleged discrimination.

The University's 2024 Procedures provide for submission of complaints via online report, mail or electronic mail and require complaints to:

- state an allegation of Sex Discrimination;
- identify the Complainant's status as an employee, student, or other individual participating in, or attempting to participate, in a University educational program or activity; and
- state the action being requested.

Complainants

Complainants are now . . .

- Students
- Employees
- Persons participating or attempting to participate in the education program or activity **at the time of the alleged sex discrimination.***

** Formerly affiliated individuals may submit a complaint, and Title IX Coordinator can initiate or continue with some or all of a complaint.*

Applicable Procedures?

First, assess Complaint to determine applicable Procedures:

- For incidents occurring between August 14, 2020 – July 31, 2024: *2020 Interim Procedures for Formal Complaints of Title IX Sexual Harassment*
- For incidents occurring on or after August 1, 2024: *2024 Procedures for Formal Complaints of Title IX Sex Discrimination*

2024 Title IX Procedures

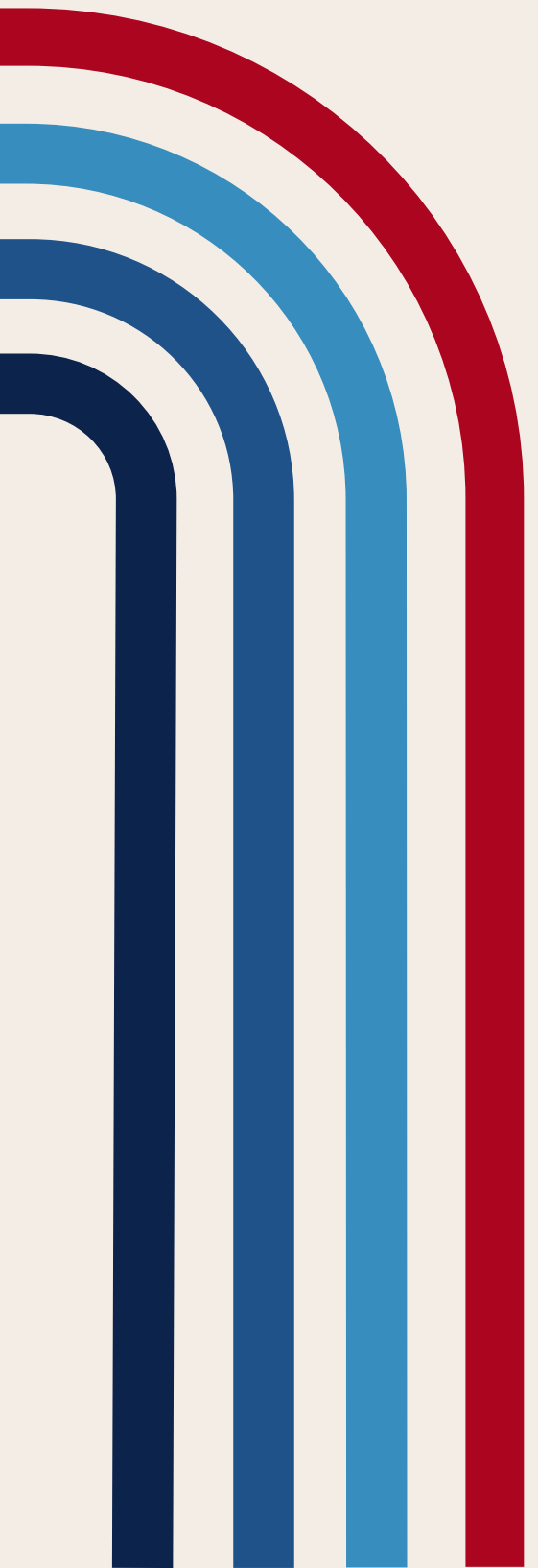
Supportive Measures

Emergency Removal

Principles of Investigation and Adjudication

Complaint Process

- Notice of Allegations
- Discretionary Dismissals
- Investigative Process
- Hearing
- Determination
- Appeal



Supportive Measures

Supportive Measures:

- Are non-disciplinary, non-punitive, individualized services available to Complainants and Respondents;
- May include counseling, extension of deadlines or other course-related adjustments, modification of work or class schedules, campus escort services, no contact orders, changes in campus work or housing locations, leaves of absence, increased security and monitoring of campus areas, visa and immigration assistance, transportation accommodations, safety planning, community referrals, and other similar measures;
- Are available regardless of whether a Complainant initiates a Complaint; and
- Are confidential to the extent possible.

A Complainant or Respondent can now seek modification or reversal of the decision to provide, deny, modify, or terminate Supportive Measures when initially imposed or later if circumstances materially change.

- Such requests should be submitted to OIE in writing.
- A written determination to the parties and the Title IX Coordinator will issue within five (5) days of receiving a complete written request.

Emergency Removal

Emergency removal may be utilized to remove a Respondent from education program or activity after conducting an **individualized safety and risk analysis** to determine if the student presents **immediate threat to physical health or safety** of the complainant or any other individual **arising from the allegations of Sex Discrimination**.

- **Investigator should assess** each reported incident **initially and throughout** to determine if process is applicable and should be recommended.
- **Administrative leave process** may be utilized to remove employee respondent from University setting pending Title IX grievance process.

Principles of Investigation and Adjudication

- Equitable treatment of complainant and respondent
- Free of bias and conflict of interest
- Presumption that not responsible
- Inform parties of neutrality, that preponderance of evidence standard is used, and of the range of disciplinary sanctions if respondent is determined to be responsible for violation
- Reasonably prompt timeframes with extensions for good cause
- Reasonable steps to protect privacy
- Objective evaluation of all relevant evidence
- Exclude impermissible evidence
- Articulate consistent principles for applying grievance procedure

Impartiality

Maintain neutrality throughout process.

Avoid:

- Prejudgment of facts at issue
- Conflicts of interest
- Bias

Relevancy

Relevancy means ‘related to the allegations of sex discrimination under investigation.

Relevant information is information that:

- Aids decision-maker in determining whether the alleged discrimination occurred; and/or
- Aids in determining credibility of party or witness, even if not directly related to allegation(s) of discrimination.

Impermissible Evidence

Regardless of relevancy, the following evidence may **not** be considered or used:

- Evidence protected by privilege recognized by federal or state law
- Evidence provided to confidential employee, unless the person to whom the confidentiality is owed has waived confidentiality
- Party's or witness' records that are made or maintained by physician, psychologist or other recognized provider in connection with treatment of party or witness, unless the party or witness provides voluntary, written consent for use in grievance process
- Evidence related to complainant's sexual interests or prior sexual conduct, unless evidence about prior sexual conduct is offered to prove:
 - that someone other than respondent committed alleged conduct; or
 - the prior sexual conduct evidence relates to conduct with respondent that is offered to prove consent.

Credibility Assessments

Credibility assessments are the process and articulation of evaluating the extent to which evidence is believable and reliable (accurately reflects what occurred).

Credibility factors include:

- Corroborating evidence verified by independent and objective individual
- Inherent Plausibility – information believable on its face/by context
- Consistency of evidence/information from various sources
- Motive to falsify
- Past record and demeanor (although not particularly probative)

Hearing

University's **live hearing process** enables the decision-maker to question parties and witnesses to assess credibility to the extent credibility is in dispute and relevant to evaluating allegations of sex discrimination.

- Questions from Decision-maker and parties must be relevant and permissible;
- Decision-maker must explain decision to exclude a question and provide party with chance to clarify or revise
- Decision-maker can adopt reasonable, equally-applied rules on decorum of proceedings
- Decision-maker can choose to place less/no weight on statements by a party/witness who refuses to respond to relevant, permissible questions
- Decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on party's/witness' refusal to respond to questions

Determination

Decision-maker must simultaneously provide parties with a written Determination that includes:

- Description of alleged sex discrimination
- Policies and procedures used to evaluate allegations
- Decision-maker's evaluation of relevant and permissible evidence and determination of whether sex discrimination occurred
- The disciplinary sanctions imposed on Respondent (if conduct occurred)
- Additional remedies to be provided to Complainant (if conduct occurred)
- Other students identified to be experiencing effects of sex-based harassment, e.g., hostile environment (if conduct occurred and to the extent appropriate)
- Procedures for parties to appeal

Appeal

Either party may appeal a Determination or Dismissal of all or part of a Complaint.

Grounds for appeal:

- 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 or Dismissal was made
- The decision was not reasonably justified by the evidence or is contrary to law
- Excessive severity of the disciplinary sanction
- Title IX Coordinator, Investigator, Hearing Officer, or other decision-maker had a conflict of interest or bias against Complainants or Respondents generally or a specific party that would change the outcome

Important Reminders

1. **Proofread everything you write before you send it, upload it, or provide it for review.** Those who are disappointed with the information you provide or with the outcome of a matter will look for any error, omission, or misstatement to undermine your work or the office. Do not offer that opportunity by rushing through work and making errors.
2. **Read No. 1 again.**
3. **Understand the information needed and pursue it.** You must know what is alleged, what information you have, and what information you need to conduct an effective investigation. Remember that parties do not have the burden to provide relevant information; you have the burden to pursue it.
4. **Prepare in advance.** Read the file, prepare and refine your Investigative Plan, request and review documents before interviews and identify those you have questions for the party/witness about, and prepare your outline/questions in advance. When you're not prepared, you're not the only one who knows it.
5. **Careful attention to preparation of clear, concise, well-organized, relevant interview summaries will pay off during report preparation and hearings.**
6. **Self-edit. Twice.** If you cannot explain why the information is included or what value it provides, you should reconsider or remove it.
7. **The drafts provided to me or Susan for review should be in a form and quality that you would have no concern being evaluated on by someone external to our office.** I have the expectation and trust that everyone will do their work in a timely and exceptional manner.
8. **Our workload will increase, and we will have strict timelines to meet.** Susan will be communicating with you about those timelines, which we will need to see reflected on your case-trackers and any other method she determines to be most effective.
9. **Update Advocate on a daily basis, including notes of phone calls.**



THANK YOU

