



# TITLE IX SEXUAL HARASSMENT

WASHINGTON STATE  UNIVERSITY

- 
- Title IX Sexual Harassment definitions
  - Title IX Jurisdiction
  - Reports and Formal Complaints
  - Informal Resolution Process
  - Investigation Process
  - Hearing Process
  - Appeals Process
  - Serving Impartially and Neutrally
  - Assessing Evidence



COURSE  
OBJECTIVES



- EP 15 = WSU Policy Prohibiting Discrimination and Harassment
- CCR = Compliance & Civil Rights
- CCS = Center for Community Standards
- HRS = Human Resource Services





# TITLE IX SEXUAL HARASSMENT (1)



## SEXUAL HARASSMENT (1)

WSU Policy Prohibiting Discrimination and Harassment, Executive Policy (EP 15) prohibits Title IX Sexual Harassment.



## TITLE IX SEXUAL HARASSMENT (2)

- Title IX Sexual Harassment
- Quid Pro Quo Harassment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



## SEXUAL HARASSMENT (2)

- 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 university's education, program or activity



## QUID PRO QUO HARASSMENT

- An employee or other person over whom WSU has disciplinary authority
- Explicitly or impliedly conditioning the provision of an aid, benefit, or service
- Upon a person's participation in unwelcome sexual conduct



# SEXUAL ASSAULT

Sexual Assault includes forcible or nonforcible sex offenses under the uniform crime reporting system of the Federal Bureau of Investigation, including:

- Sex offense
- Rape
- Sodomy
- Sexual assault with an object
- Fondling
- Incest
- Statutory Rape



## CONSENT (1)

Consent:

- Must be clear, knowing, and voluntary
- Requires all parties to:
  - Actively express words or conduct
  - That a reasonable person would conclude demonstrates clear permission



## CONSENT (2)

Sexual activity is also nonconsensual where:

- Force or coercion is used
  - Physical violence, force, threat, or intimidation
  - Unreasonable pressure for sexual activity
- Person is: asleep, unconscious, or physically unable to communicate their unwillingness to engage in sexual activity
- Person lacks the mental capacity to consent, through illness, defect, the influence of alcohol or some other substance, or some other cause



## SEX OFFENSE

- Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.



# RAPE

- 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, or by a sex-related object, without the consent of the victim
- Includes instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.



## SODOMY

- Oral or anal sexual intercourse with another person, without the consent of the victim.
- Includes instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.



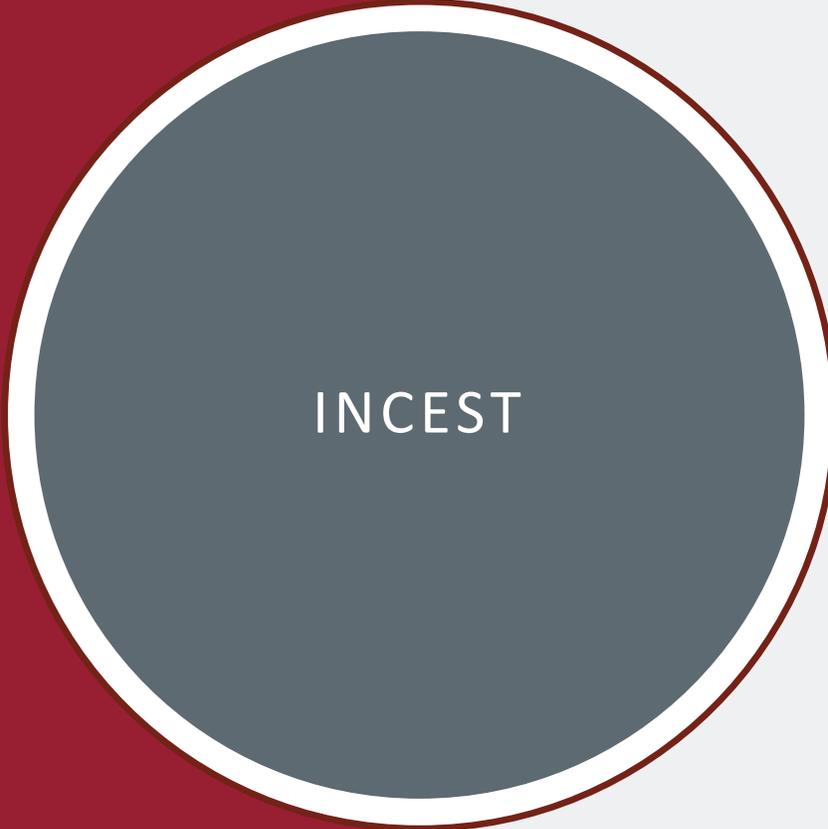
## SEXUAL ASSAULT WITH AN OBJECT

- To use an object or instrument to unlawfully penetrate, however, slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.



## FONDLING

- The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim
- Includes instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity



# INCEST

- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
- RCW 26.04.20: Marriage prohibitions
  - Nearer of kin to each other than second cousins
  - Sibling
  - Child
  - Grandchild
  - Aunt
  - Uncle
  - Niece
  - Nephew



## STATUTORY RAPE

- Sexual intercourse with a person who is under the statutory age of consent.
- Washington state age of consent:
  - RCW 9A.44: 16 years old



## DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Relationship:

- Determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.



## DOMESTIC VIOLENCE

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim
- By a person with whom the victim shares a child in common
- By a person who is cohabitating with, or 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 Washington, or
- By any other person against an adult or youth victim who is protected from that person's act under the domestic or family violence laws of Washington.

Washington state domestic violence: [RCW 10.99.20](#)



## STALKING (1)

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
- Suffer substantial emotional distress



## STALKING (2)

- 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 any action, method, device, or means, follows, monitors, observes, or interferes with a person's property.
- Reasonable person means:
  - A reasonable person under similar circumstances and with similar identities to the victim
- Substantial emotional distress means:
  - Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling



# TITLE IX JURISDICTION



## JURISDICTION

- Refers to the specific circumstances or locations that WSU can exercise control over. Under Title IX, it must meet both:
  - Title IX Jurisdiction definition and
  - Title IX Sexual Harassment definitions.
- If not, it is not Title IX conduct.
  - May still address under other university policies.



## TITLE IX JURISDICTION (1)

Applies to students, faculty, staff, and others having an association with WSU where the alleged incident(s):

1. Could constitute Title IX Sexual Harassment
2. Occurred within WSU's educational program or activity
3. Occurred against a person in the US
4. Occurred against a person who is participating in or attempting to participate in WSU's educational program or activity



## TITLE IX JURISDICTION (2)

Educational program or activity includes:

1. Locations, events, or circumstances over which WSU exercises substantial control over both the respondent and the context in which the sexual harassment occurred
2. Any building owned or controlled by a student organization that is officially recognized



## PROGRAMS OR ACTIVITIES

- Educational program or activity could include:
  - On campus programs or activities
  - Off campus programs or activities (located in the US) where WSU also exercises substantial control over the respondent
  - Residence Halls
  - Houses owned by fraternities or sororities who are officially recognized



## EXAMPLE #1

Student A sexually assaults another student at an off-campus apartment. WSU does not exercise any control of the off-campus apartment.

This conduct is not Title IX Sexual Harassment because although the conduct would constitute Title IX Sexual Harassment, the conduct did not occur within WSU's educational program or activity. Even though it is not Title IX Sexual Harassment, it could still be addressed under other provisions of EP 15.



## EXAMPLE #2

During an advising session, a WSU employee informs a student that they will only ensure the student receives a scholarship if the student agrees to have sex with them.

This conduct is Title IX Sexual Harassment because the conduct would constitute Title IX Sexual Harassment, it occurred within WSU's educational program or activity, WSU exercises substantial control over the employee, it occurred against a person in the US, and it occurred against a person who was participating in WSU's educational programs or activities.



## EXAMPLE #3

On campus, prior to class, Student A tells Student B that they'd like to "Netflix and chill" with them, a reference to sex. This makes Student B uncomfortable.

This conduct is not Title IX Sexual Harassment because although it occurred within WSU's educational program or activity, occurred against a person in the US, and occurred against a person who was participating in WSU's educational programs or activities, the conduct does not rise to the level of Title IX Sexual Harassment, because it is not so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.



# REPORTS AND FORMAL COMPLAINTS



## REPORTS AND FORMAL COMPLAINTS (2)

Individuals can share information with the Title IX Coordinator or CCR for two different purposes:

- Reporting
- Formal Complaint



## REPORTS

- Can be made 24/7 via online reporting form, via email, or telephone
- Can be made by any person (e.g. the person who experienced the misconduct (the Complainant) or a person who knows about misconduct)
- Triggers a response from WSU to the Complainant and/or Reporter



## WSU'S RESPONSE TO A REPORT

CCR will reach out to the Complainant and/or Reporter with information on:

- Supportive measures (including that these are available with or without filing a formal complaint)
- Grievance processes
- How to file a complaint
- Statement that the Complainant's wishes with respect to supportive measures will be considered



# REPORT

Reports can be made for the purpose of:

- Documenting concerns
- Facilitating supportive measures or resources
- Requesting a consultation
- To learn about filing a Formal Complaint



## SUPPORTIVE MEASURES

Non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available, without fee or charge to complainant or respondent. Can include:

- Academic support
- Medical or counseling resources or referrals
- Referrals to external resources (e.g. victim advocacy agency)
- Safety planning/ workplace management plans
- Adjustments to academic or work schedules
- No contact directives

Additional options are listed in EP 15.



## FORMAL COMPLAINTS

A formal complaint can be filed for the purpose of seeking an:

1. Informal Resolution or
2. Investigation.

*Supportive Measures are also available for individuals filing a Formal Complaint*



## FILING A FORMAL COMPLAINT

### Formal Complaints:

- Can be made 24/7 to CCR
- Formal Complaint form must be filled out and signed by:
  - The Complainant
  - Title IX Coordinator or designee

The Complainant should indicate their preferred resolution:

- Informal Resolution
- Formal Investigation



## FORMAL COMPLAINT ASSESSMENT

CCR will determine if the Formal Complaint may be Title IX Sexual Harassment and within the Title IX jurisdiction.

- If so, CCR may initiate an investigation or informal resolution.
- If not, CCR is required to dismiss the complaint under Title IX provisions but may proceed under other provisions of EP 15.
- May include an investigation or informal resolution under other EP 15 provisions.



## FORMAL COMPLAINT ASSESSMENT (2)

CCR may also dismiss the formal complaint if:

1. CCR is unable to identify the respondent after taking reasonable steps to do so;
2. The respondent is not currently participating in WSU's education program or activity and is not employed by WSU, or was not at the time of the alleged incident(s);
3. The complainant voluntarily withdraws any or all of the allegations in their complaint, and any remaining conduct does not constitute an EP 15 violation;
4. The parties voluntarily resolved their matter through an Informal Resolution; or
5. Specific circumstances prevent an investigator from gathering evidence sufficient to make a determination.



## EXAMPLE #4

Employee A contacts CCR and states that Employee B said Employee C was sexually harassing her. Employee A files a formal complaint and requests an investigation. What happens?

The formal complaint must be filled out by the actual complainant, Employee B, or by the Title IX Coordinator. Employee A's statement to CCR will be treated as a "report." CCR will reach out to Employee B with information about supportive measures and how to file a formal complaint. Depending on the information received, the Title IX Coordinator may also file a complaint to initiate an investigation or informal resolution.



## EXAMPLE #5

Student A reports to CCR that Student B sexually assaulted them. Student A does not want an investigation but wants help with academic resources. What happens?

In most circumstances, CCR will respect Student A's request not to investigate and help Student A with academic resources. Under certain circumstances, the Title IX Coordinator may file a formal complaint and initiate an investigation, particularly if there are ongoing safety concerns for the WSU community.



# INFORMAL RESOLUTION PROCESS



## INFORMAL RESOLUTION

Informal Resolutions are different than supportive measures because they:

- May have provisions that apply to both parties
- Require formal notice to both parties
- Require voluntary, signed consent from both parties to engage in the process

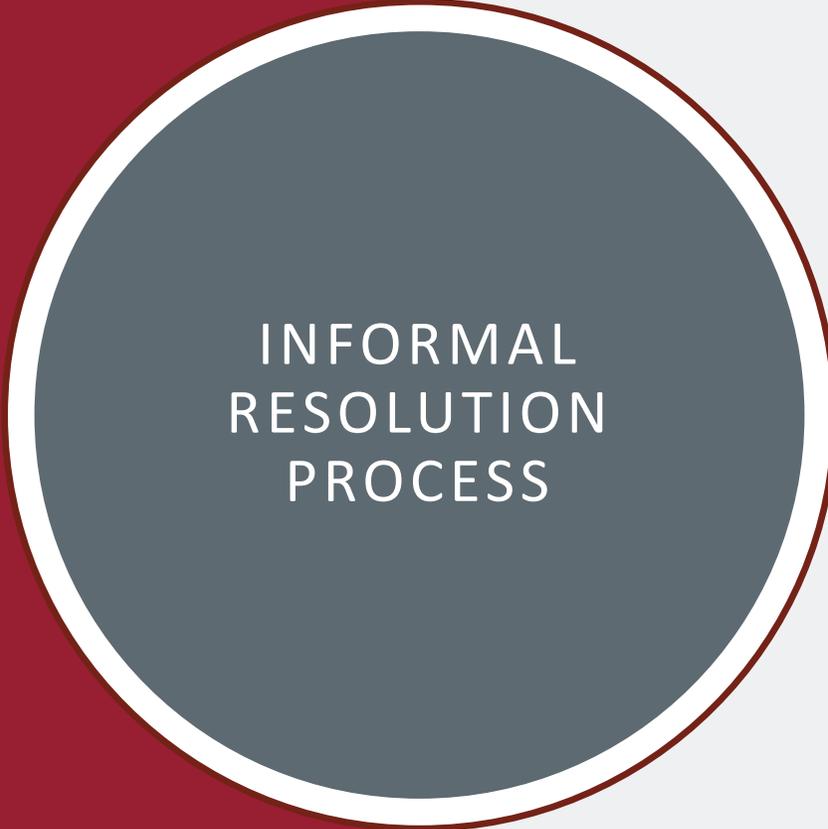
*Informal resolutions are not available to resolve allegations that an employee sexually harassed a student, as defined by the Title IX Violation/Jurisdiction in EP 15.*



## INFORMAL RESOLUTION (2)

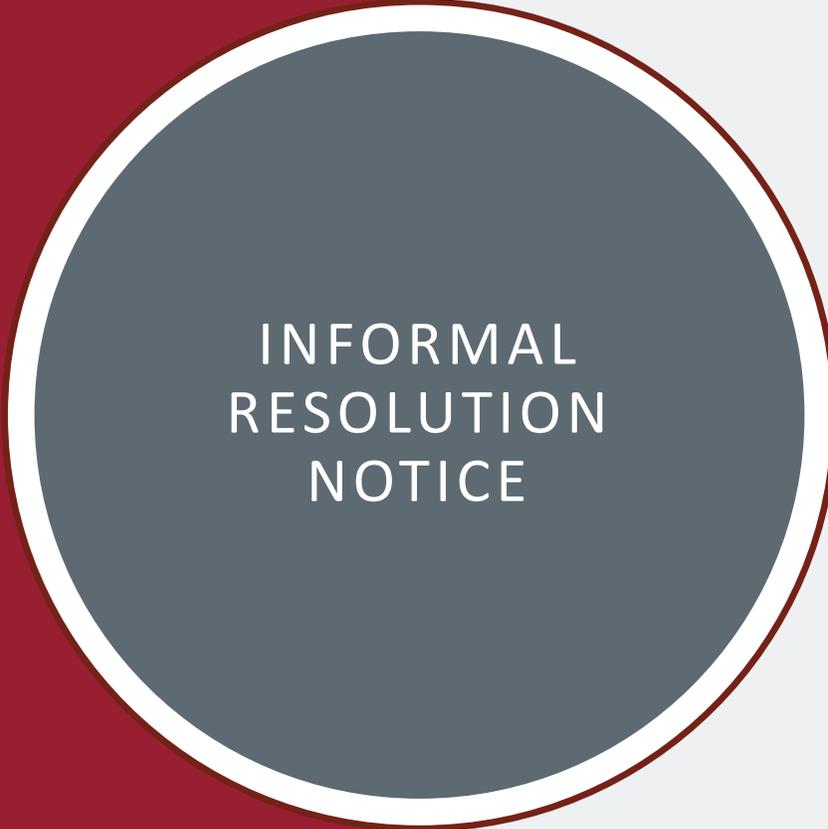
- Conduct management plans or resolution agreements;
- Verbal or written counseling;
- Departmental resolutions;
- Alternative dispute resolutions;
- Mediation, if available; and/or
- Additional required training.

*Informal Resolutions may include measures deemed punitive towards the Respondent.*



## INFORMAL RESOLUTION PROCESS

- Complainant files a formal complaint requesting an informal resolution.
- CCR reviews the formal complaint and confirms the conduct implicates EP 15 and is appropriate for an informal resolution.
- CCR sends Notice of Informal Resolution to the Complainant and the Respondent.



## INFORMAL RESOLUTION NOTICE

- Summary of allegations
- Information on EP 15 and CCR Procedures
- Parties will have sufficient time to prepare
- Parties may have advisor of their choice
- Prohibition on retaliation and interference
- Prohibition on making a false statement or submitting false information
- Information on Supportive Measures
- Limitations on confidentiality



## INFORMAL RESOLUTION NOTICE (2)

- Participation is voluntary
- May involve provisions designed to punish the Respondent
- Respondent is presumed not responsible
- Requirements of process
- Either party may withdraw from the Informal Resolution process and resume the grievance process, at any point prior to an agreed upon resolution (once agreed upon, the resolution is binding)
- Request for both parties to provide voluntary, written consent



## INFORMAL RESOLUTION FACILITATION

- Facilitator will work with both parties to arrive to an agreed upon resolution.
- When the parties are satisfied with the provisions of the resolution, the Facilitator will request their signature on a binding agreement.
- If parties cannot agree to a resolution, the parties will be informed of their right to resume the grievance process with regards to a Formal Complaint.



## EXAMPLE #6

Student A files a formal complaint with CCR alleging that Employee B sexually harassed Student A. Student A requests an informal resolution. What happens?

CCR will review the allegations. If the allegations constitute Title IX Sexual Harassment, CCR cannot proceed with an informal resolution, because per EP 15, Informal Resolutions are not available for matters involving employees sexually harassing students under Title IX. However, if the allegations do not rise to the level of a Title IX Sexual Harassment complaint, CCR could proceed with an informal resolution under other EP 15 provisions.



## EXAMPLE #7

Student A files a formal complaint with CCR alleging that Student B, her ex-girlfriend, isn't respecting her boundaries and is engaging in stalking behavior. Student A tells CCR she does not want Student B to get into trouble but wants her to learn about why her behavior is inappropriate and to not be allowed to come to her residence hall, which happens to be where Student B's friends also live. What happens?

CCR will send notice of informal resolution to Student B. If Student B agrees to participate, a Facilitator will work with Student A and Student B to find a resolution, which could include the punitive measures of Student B voluntarily agreeing to not visit the Residence Hall.



## EXAMPLE #8

Employee A and Employee B are voluntarily engaged in an informal resolution process. Employee A wants Employee B to agree to read a book about sexual harassment and to write a formal apology letter. Employee B does not want to, and Employee A is frustrated. What happens?

Either party may withdraw from the process prior to agreeing to a formal resolution. In this case, Employee A could withdraw and resume the grievance process, with respects to an investigation.



# INVESTIGATION PROCESS



# INVESTIGATIONS

## CCR Investigations:

- Neutral and unbiased
- Conducted by investigators who do not have a conflict of interest or bias towards either party specifically or generally
- Conducted pursuant to the CCR Procedural Guidelines
- May be conducted upon the receipt of a formal complaint, if appropriate



## INVESTIGATION PROCESS

- Complainant files a formal complaint requesting an investigation.
- CCR reviews the formal complaint and confirms the conduct implicates EP 15 and is appropriate for an investigation.
- CCR sends Notice of Investigation to the Complainant and the Respondent.



INVESTIGATION  
NOTICE

- Summary of allegations
- Information on EP 15 and CCR Procedures
- Parties will have sufficient time to prepare
- Parties may have advisor of their choice
- Prohibition on retaliation and interference
- Prohibition on making a false statement or submitting false information
- Information on Supportive Measures
- Limitations on confidentiality



## INVESTIGATION NOTICE

- A description of CCR's role as a neutral investigator and its investigative process.
- Statement that the Respondent is presumed not responsible for the alleged conduct, and that a determination regarding responsibility is made at the conclusion of the grievance process
- Brief description of the disciplinary process, including information on the relevant student or employee code or manual.
- Notice that parties will have an opportunity to review or inspect evidence and provide an additional written statement, prior to publication of an investigative report.



## INVESTIGATION

- No restrictions on either parties' ability to discuss the allegations under investigation or to gather and present evidence
- Parties have the right to an advisor of their choice



## INVESTIGATION (2)

- CCR will gather all available, relevant evidence:
  - Request documentary evidence – text messages, emails, police reports, treatment records (with the signed permission of the party) etc.
  - Interview available witnesses
- CCR will provide parties with an opportunity to review evidence and provide an additional written statement prior to the publication



## INVESTIGATION REPORT

- Fair summary of all relevant evidence
  - List of documents reviewed
  - List of witnesses interviewed and/or contacted
  - Summary of the investigation
- For Title IX Sexual Harassment cases:
  - Recommended findings
- Determinations are made using a preponderance of the evidence standard.



## EXAMPLE #9

Student A files a formal complaint, involving allegations that Student B, on one occasion prior to class, asked Student A on a date, and when she declined, Student B said, “Well, you’re stupid anyway.” Student A requests an investigation. What happens?

The conduct described likely does not rise to the level of a violation of EP 15, and thus would not be appropriate for an investigation. CCR must dismiss the complaint but could offer Student A supportive measures.



## EXAMPLE #10

Student A alleges that Employee B subjected him to multiple sexual propositions and fondled him on multiple occasions. Student A does not want an investigation, noting that he is too busy with school right now and just wants to transfer to another department.

CCR can help Student A with supportive measures, including transferring to another department. However, based on the described conduct, the Title IX Coordinator would likely file a formal complaint, as the alleged conduct poses a serious risk to students who may engage with Employee B.



# HEARING PROCESS



## HEARINGS

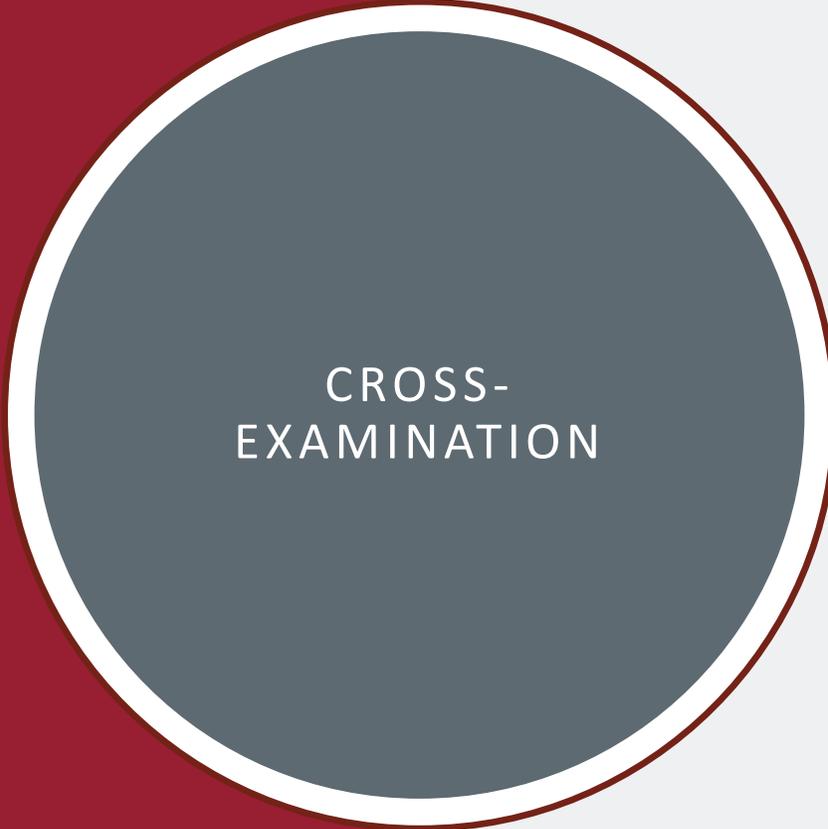
After an investigation, cases involving Title IX Sexual Harassment allegations are afforded specific disciplinary processes, starting with a live hearing. The live hearing:

- Separate decision-maker (not the investigator or Title IX Coordinator)
  - Decision maker must have received training
- All parties present (either in-person or virtually through technology)
- Audio or audiovisual recording
- Allow for questionings of parties and witnesses by an advisor



## QUESTIONING OF WITNESSES

- Can be directed towards either party or any witness
- Advisor of choice (including an attorney) will ask questions, including those challenging credibility
- If no advisor, WSU will provide one
- Relevant cross-examination allowed



## CROSS- EXAMINATION

- After advisor asks cross-examination question, the decision-maker must determine whether the question is relevant and explain any decision to exclude a question as not relevant
- If relevant, the witness or party will be provided an opportunity to answer the question



## CROSS- EXAMINATION (2)

- Where a party or witness declines to participate in the live hearing process, and thus is not subject to cross-examination, the decision-maker is not prohibited from considering their out of hearing statements.
- If a party declines to be cross-examined, the decision maker cannot draw an inference about the determination regarding responsibility solely from their refusal.



HEARING  
DECISION

- Decision is based:
  - On relevant evidence only
  - Using a preponderance of the evidence standard –more likely than not.
- Written determination

*Determinations about relevance will be discussed in a later section of this presentation.*



## WRITTEN DECISION

Provided simultaneously to both parties and includes:

- List of allegations
- Description of procedural steps taken from receipt of formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the employee or student code or policy manual
- A statement of, and rationale for, the result for each allegation
- Any disciplinary sanctions imposed on the respondent
- Any remedies designed to restore or preserve equal access to the recipient's education program or activity
- Appeal rights



## EXAMPLE #11

A live hearing is held to assess evidence regarding Student A's allegations that Student B subjected her to sexual assault. Although Student A engaged in the investigative process and was interviewed, Student A declines to participate in the hearing. What happens?

The decision-maker may consider Student A's statements to the investigator, if the decision-maker deems the statements relevant to the hearing.



## EXAMPLE #12

A live hearing is held to assess evidence regarding Employee A's allegations that Employee B subjected Employee A to sexual harassment. Employee A does not have an advisor.

WSU will provide Employee A with an advisor to ask questions of the opposing party and other witnesses.



## EXAMPLE #13

A live hearing is held to assess evidence regarding Student A's allegations that Employee B stalked Student A. Employee B wants to provide evidence that is not relevant.

The decision-maker must exclude the non-relevant evidence from consideration.



## EXAMPLE #14

A live hearing is held to assess evidence regarding Student A's allegations against Student B. Student B informs the hearing facilitator that he is scared to be in the same room as Student A.

The live hearing can be held virtually, so that Student B does not have to be in the same location as Student A. The parties need to be able to see and hear each other in live-time.



# APPEALS PROCESS



## APPEALS

After a live hearing, cases involving Title IX Sexual Harassment allegations are afforded specific appeals processes. The appeal:

- Made to a separate decision-maker (not the investigator, Title IX Coordinator, or live hearing decision-maker)
  - Decision maker must have received training
- For students – University Appeals Board (see Standards of Conduct for Students)
- For employees – see Appeals process in relevant employee manual



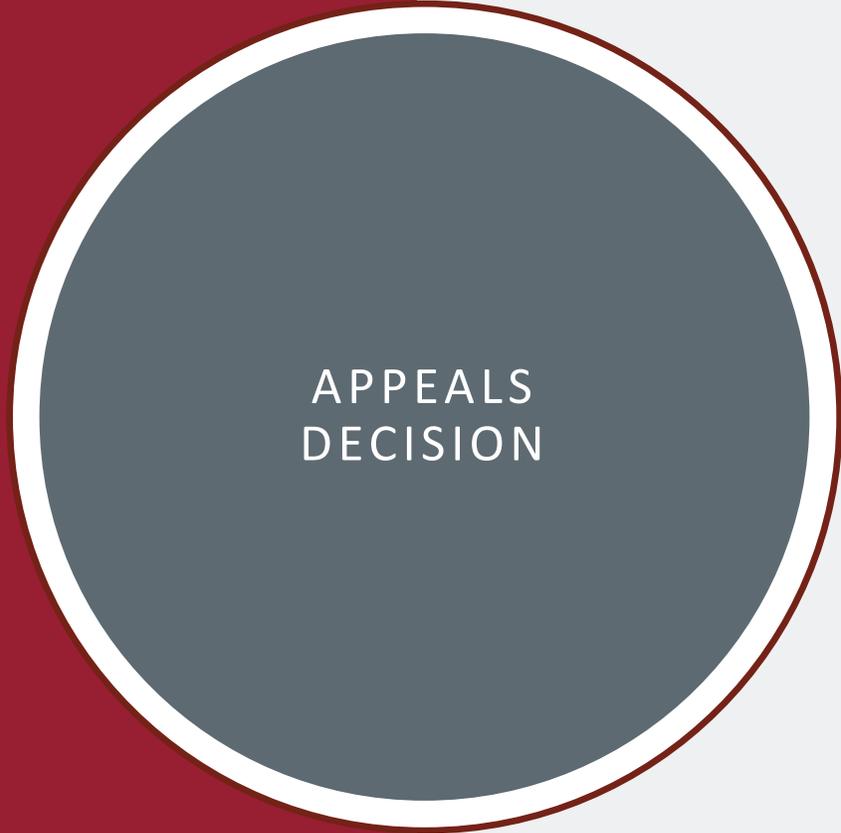
## GROUNDS FOR APPEAL

- Appeals can be made on the following grounds:
  - A procedural irregularity that affected the outcome of the matter
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
  - 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 individual complaint or respondent that affected the outcome of the matter



## REQUIREMENTS FOR APPEAL

- Notify the other party in writing when an appeal is filed
- Ensure that the decision-maker is not the same person as for the live hearing process, investigation, or Title IX Coordinator
- Give both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome

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APPEALS  
DECISION

- After reviewing the appeal and any written statements from the parties, the appeals decision maker will:
  - Issue a written decision describing the result of the appeal and the rationale for the result
  - Provide the written decision simultaneously to both parties

## EXAMPLE #15

A live hearing results in a finding that Student B subjected Student A to dating violence. Student B appeals the finding because (1) his notice of Investigation did not include one of the allegations that he was found responsible for, and (2) he disagreed with the definition of dating violence. What happens?

The appeals decision-maker will accept the first basis of appeal – this is a procedural irregularity that may have affected the outcome of the matter. For example, if Student B knew this allegation existed, he may have provided additional evidence. However, the appeals decision-maker cannot accept the second appeal – this is not one of the allowed grounds for appeals of a Title IX case.



# SERVING IMPARTIALLY AND NEUTRALLY



## OVERVIEW

- The Title IX Coordinator, the Investigators, Informal Resolution facilitators, live hearing decision-maker, and appeals decision-maker are required to review information impartially
- Decisions should be made based on evidence available, not on personal preferences or biases
- Decisions should be just and fair



## AVOIDING PREJUDGMENT

- Even though Title IX Sexual Harassment cases can involve very egregious allegations, it is important not to exercise prejudgment
- Decisions should be fully supported by the evidence available, not by a decision-maker's initial reaction to the allegations



## CONFLICTS OF INTEREST OR BIAS

- Investigators, Title IX Coordinator, Decision-makers, Informal Resolution Facilitators must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.



## CONFLICTS OF INTEREST

- Conflict of interest is when a Title IX Coordinator, Investigator, Decision-maker, or Informal Resolution Facilitator has an interest in one party or the other, or for complainants or respondents generally, that could result in an unfair outcome.
- In other words, their personal interests outweigh or impact their professional obligations to be impartial, neutral, and fair.
- For example, an Investigator operates a graphic design business on the side, of which the Respondent is a primary customer. The Investigator has a personal financial interest that might impact the Investigator's professional responsibility to investigate in an impartial, neutral, and fair manner.



## BIAS

- Prejudice, favor, or inclination towards one party or the other, or towards complainants or respondents generally
- For example, a Decision-Maker states on social media that they don't believe complainants of sexual assault



## EXAMPLE #16

Student A, a minor, alleges that an employee sexually harassed Student A. The CCR investigator does not find evidence to support the allegation, but just believes Student A. The CCR investigator writes an investigative report recommending that the employee be found responsible for sexual harassment. This is not appropriate. The CCR investigator must serve impartially and make recommendations based on the available evidence, not a feeling.



## EXAMPLE #17

Employee A alleges that Employee B subjected Employee A to sexual harassment. The decision-maker is a close personal friend of Employee A.

The decision-maker should recuse themselves from the proceedings, as there is a potential conflict of interest and the decision-maker may not be able to serve impartially due to their relationship with Employee A.



## EXAMPLE #18

A CCR Investigator begins an investigation into allegations of sexual assault. Student A raises that the investigator is biased because they used to work as a victim advocate.

This prior role in itself is not sufficient to demonstrate bias. Furthermore, all investigators, Title IX Coordinators, decision-makers, and Informal Resolution Facilitators have received training on serving impartially and without prejudice.



## EXAMPLE #19

An Informal Resolution is being worked on. The Facilitator writes in an email to the Complainant, “The Respondent is clearly guilty. I’ll make sure the Respondent understands that if they doesn’t agree to this resolution, they will get expelled.”

This is inappropriate. In the Informal Resolution process, the Respondent is presumed not responsible. Because the Facilitator is not gathering evidence, the Facilitator is not in a position to determine responsibility. The Facilitator should be replaced with a Facilitator who is impartial.



# ASSESSING EVIDENCE



# RELEVANCE

Evidence must be “relevant” to be considered

To determine relevance:

- Use logic and common sense
- Consider whether the evidence presented is appropriate for what is being considered or alleged



## NOT RELEVANT

Evidence is not relevant and not permitted when:

- Information protected by a legally recognized privilege (where a party has not consented to its inclusion)
- Any party's medical, psychological, and similar records (where a party has not consented to its inclusion)
- Evidence about a complainant's prior sexual history or sexual predisposition, unless:
  - Offered to prove that someone other than the respondent committed the conduct alleged, or
  - Offered to provide specific incidents in the complainant and respondent's past sexual history and are offered to prove consent



## EXAMPLE #20

During a hearing regarding sexual harassment, the investigator's evidence is presented to the decision maker. Included is a statement from a witness describing that the Respondent used racist language during a meeting several years ago.

In most instances, the decision-maker should exclude this statement from consideration. The statement is not relevant to the allegations of sexual harassment.



## EXAMPLE #21

During an investigation into dating violence, the Complainant submits the Respondent's medical records, which he obtained while they were living together, to the investigator as evidence.

The medical records are not relevant, unless the investigator receives the Respondent's signed permission to use them. The investigator should exclude the records from their assessment of the case.

## EXAMPLE #22

During a hearing regarding sexual assault, the Respondent states that the Complainant's allegations are false, that the Complainant was too intoxicated to remember the night, and that the Complainant actually had sex with her ex-boyfriend, not the Respondent, on the night in question. The Respondent provides evidence that the Complainant had an ongoing date with her ex-boyfriend, on a weekly basis for the past year, including on the date of the incident.

This evidence is relevant, because even though it is information about the Complainant's sexual predisposition and history, it is provided to offer evidence that the incident occurred with someone other than the Respondent.



## EXAMPLE #23

During an investigation into sexual harassment, the Respondent states that the Complainant's allegations are false, because the Complainant has a history of engaging in sexual activity with coworkers.

This statement is not relevant and should be excluded, because information about the Complainant's sexual predisposition and history is not relevant unless it is offered to demonstrate that the incident occurred with some other person or offered to demonstrate the Complainant's and Respondent's history as it relates to consent.

## EXAMPLE #24

In an appeal from a decision-maker's determination that the Respondent was not responsible for sexual assault, the Complainant stated that the Respondent was responsible because a witness informed the Complainant that the Respondent bullied someone in high school.

This information is not relevant. First, the allegation is outside of WSU's Title IX jurisdiction and cannot be investigated by WSU. Second, the allegation is not relevant to the current allegations being investigated.



## EXAMPLE #25

In an investigation into sexual assault allegations, the Investigator finds multiple court orders finding the Respondent guilty of rape. The circumstances of those rapes are almost identical to what the Complainant alleged occurred. The Investigator includes these court orders in their summary of investigation. The decision-maker may rely on these court orders, as they are relevant in that they may show a pattern or practice.



# FINAL REVIEW



## FINAL REVIEW (2)

Cases defined as Title IX Sexual Harassment and within WSU's Title IX Jurisdiction have specific procedural requirements

These requirements are outlined in:

- EP 15
- CCR Procedural Guidelines
- Standards of Conduct for Students, WAC 504-26
- Employee Manuals (WSU Faculty Manual, Administrative Professional Handbook, WAC 357-40 (civil service employees), or Applicable collective bargaining agreements)



## FINAL REVIEW (3)

Decision-makers, Investigators, Title IX Coordinators, and Informal Resolution Facilitators should receive this training and carefully review the provisions of the university policies and procedures impacting their role in assessing complaints of Title IX Sexual Harassment.

Participants in these processes should not hesitate to reach out to relevant offices for guidance and support under these policies, including:

- CCR
- CCS
- HRS
- WSU Division of the Office of the Attorney General



# ADDITIONAL INFORMATION

TITLE IX COORDINATOR – COMPLIANCE AND CIVIL RIGHTS

CENTER FOR COMMUNITY STANDARDS

HUMAN RESOURCE SERVICES