

Saint Mary's College

Understanding the Policy for Addressing Formal Complaints of Sexual Harassment under Title IX

Presented by:
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Agenda

TITLE IX COORDINATOR:

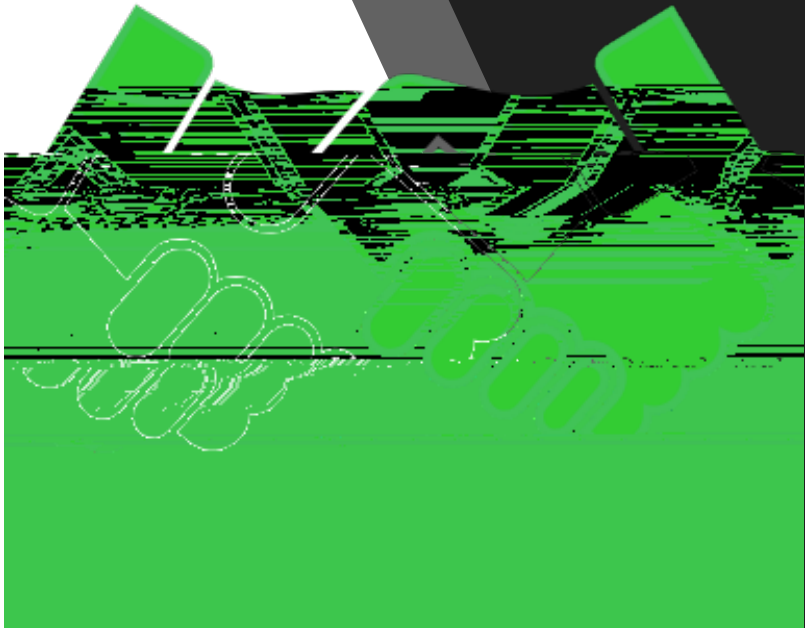
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TITLE IX DEPUTY COORDINATORS:

- **Evette Castillo Clark, EdD** (for Students)
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Introductions

- Name
- Role
- One goal for today





Overview of Saint Mary's Policy

Overview of Policy

Definitions

Relationship of the Title IX Policy to

Other Saint Mary's Policies

Overview

Definitions

Formal Procedures –
Formal Complaint followed
by an investigation phase to
formal hearing with cross
examination by an advisor

Roles of those in the
process



Concepts to Consider

What is the
alleged
conduct?

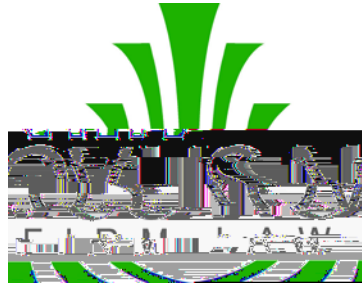
Who are the
parties?

Where did the
alleged conduct
take place?

When did the
alleged conduct
take place?

Which definition
covers the
alleged
conduct?

Relationships to
other policies.



Sexual Harassment - (Unwelcome Conduct)

- **Unwelcome Conduct of a Sexual Nature** that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity



Sexual Assault

Any forcible or nonforcible sexual act directed against another person (contact with genitals, objects, however slight), i.e., rape, sodomy, sexual assault with an object, fondling, incest and statutory rape, without the consent of the victim including instances where the victim is incapable of giving consent



Dating Violence

Any violence committed by a person:

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



Domestic Violence

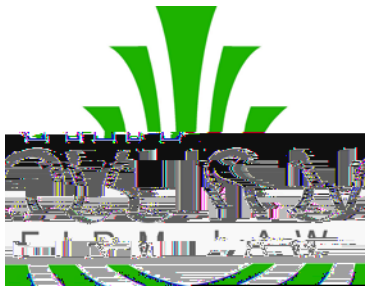
Includes any felony or misdemeanor crimes of violence committed by:

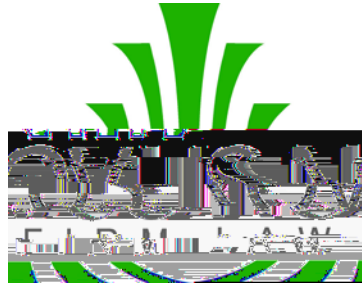
A current or former spouse or intimate partner of the victim,

A person with whom the victim shares a child in common,

A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,

A person similarly situated to a spouse of the victim under California domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of California.





Sexual Exploitation

Occurs when a person takes advantage of another person for the benefit of anyone other than that person, without that person's consent.

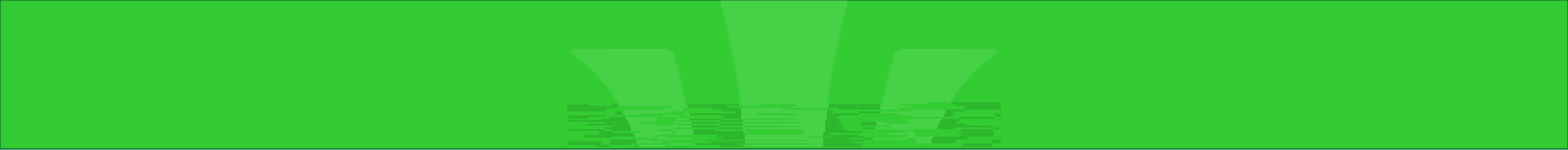
Sexual exploitation may occur regardless of whether sexual activity takes place.

Affirmative Consent

Unambiguous and willing participation or cooperation in act or attitude that is commonly understood to be consistent with the exercise of free will.

Consent means affirmative, conscious, and voluntary agreement to engage in sexual activity.

It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity.



Consent requires participants who are fully conscious, are equally free to act, have clearly communicated their willingness, cooperation, or permission to participate in a specific sexual

Affirmative Consent

continued

If you have sexual activity with someone you know to be- or should know to be – mentally or physically incapacitated (for example, by alcohol or other drug use, unconsciousness or blackout), you are in violation of this policy.

Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, where, why or how of their sexual interaction.



Consent is not freely given if:

It is obtained through the use of force,
through the fear of or the threat of force,

Affirmative Consent

continued

Consent is not freely given if:

A reasonable person in the position of the alleged respondent at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:

The individual is unable to make an informed decision as a result of alcohol or other drugs (including but not limited to predatory drugs or prescribed medications); or
The individual is unconscious, asleep, or suffering from shock; or

Affirmative Consent

continued

Consent is not freely given if:

A reasonable person in the position of the alleged respondent at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:

The individual is under the age of eighteen and therefore legally unable to give consent; or

The individual has a known mental disorder or developmental or physical disability, and therefore legally unable to give consent.

The individual has acted or spoken in a manner which expresses they refuse to give consent.

Jurisdiction of the Policy

- Students
- Employees
- Others (alumni, participants in programs and activities)



Jurisdiction of the Policy

- Complainant must be participating or attempting to participate in the College's programs or activities.



Jurisdiction of the Policy



Jurisdiction of the Policy

- Where did the alleged conduct take place?





Education Program or Activity

Relationship to Other Policies

- Student Code of Conduct
- Employee Handbook





Overview of Procedures

Reporting Concerns

Intake and Assessment

Supportive Measures

Emergency Removals/Interim Actions

Making a Report

Who Must Report

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

Title IX Coordinator

Deputy Title IX Coordinators

Identified Campus Security Authorities are required to report incidents as defined by the VAWA Amendments of the Clery Act.

All members of the College Community who are employees are required by the College to report to a Title IX Officer if they observe,

Confidentiality and Privacy

The following Officials may provide confidentiality and do NOT need to report:

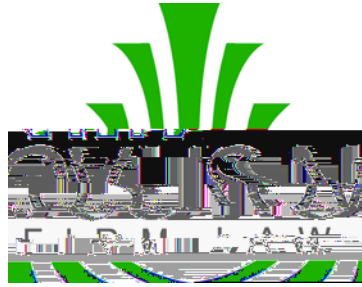
Director of CARE Center

Counseling and Psychological Services
Counselors

Clergy during Confession

What Happens?

The appropriate Title IX coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.



Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Supportive Measures

counseling

extensions of deadlines or other course-related adjustments

modifications of work or class schedules

campus escort services

restrictions on contact between the parties (no contact orders)

changes in work or housing locations

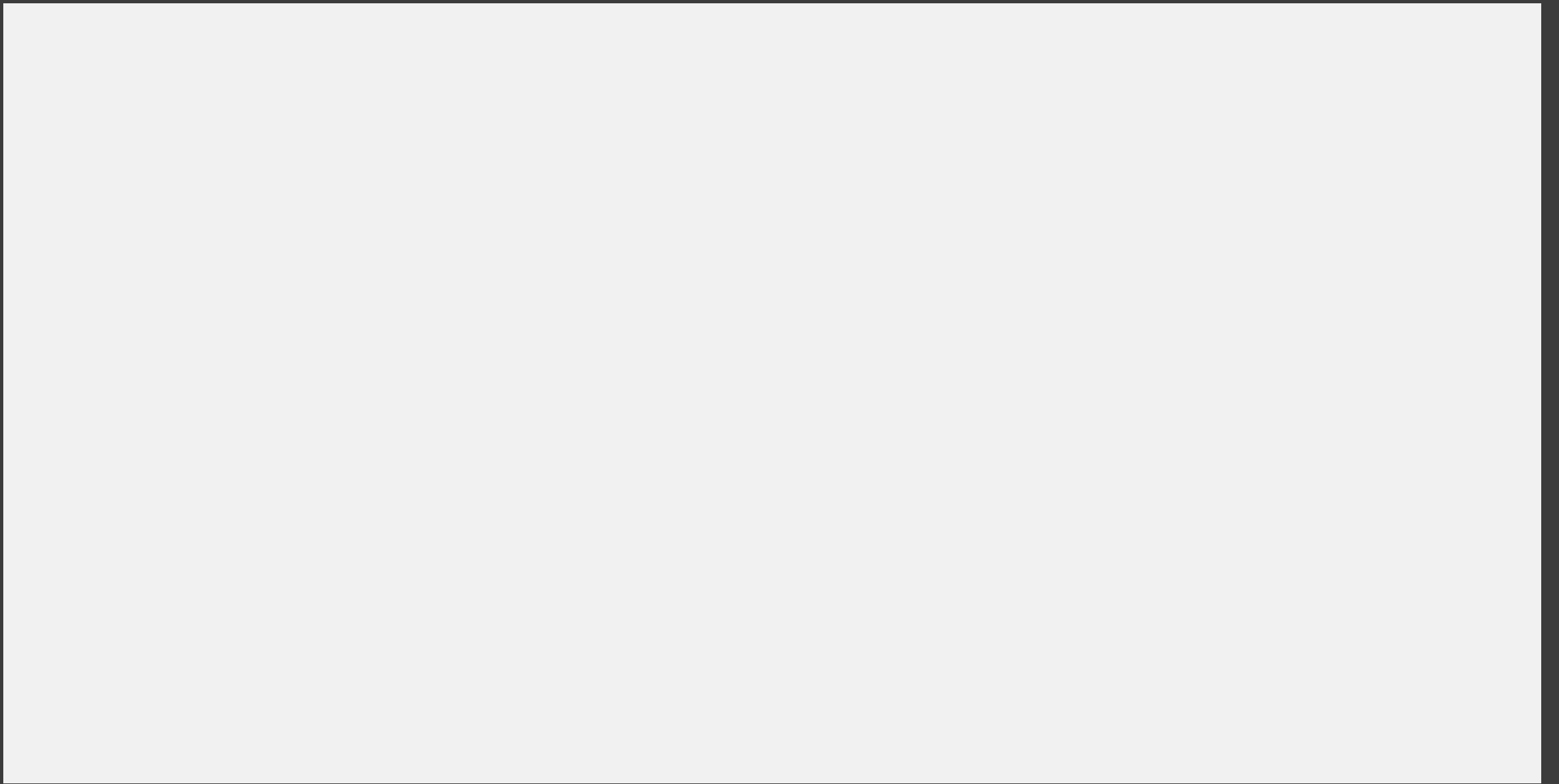
leaves of absence

increased security and monitoring of certain areas of the campus

safety planning

Emergency Suspension (students)

- Saint Mary's retains the authority to remove a respondent from the College's program or activity on an emergency basis, where Saint Mary's (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.
- If Saint Mary's determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal



Emergency Removals

Administrative Leave:

Saint Mary's retains the authority to place a non-student employee respondent on administrative leave with pay during the Title IX Process, consistent with the Faculty/Staff Handbook.



Break Time
10 minutes





Overview of Process

Formal Complaints

Informal Resolution Options

Formal Resolution Phases



Formal Complaint

A “formal complaint” means:

- a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator,
- alleging sexual harassment against a respondent
- about conduct within Saint Mary’s College of California’s education program or activity, and
- requesting initiation of the procedures consistent with the Title IX Policy to investigate the allegation of sexual harassment.

Mandatory Dismissal

Under the Title IX regulations, Saint Mary's must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that any of the below elements are not met:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Saint Mary's College of California education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

Discretionary Dismissal

Saint Mary's may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Saint Mary's College of California; or,
- If specific circumstances prevent Saint Mary's College of California from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint

Impact of Dismissal

Upon dismissal for the purposes of Title IX, Saint Mary's College of California retains discretion to utilize the Code of Conduct, Faculty Handbook, or Employee Handbook to determine if a violation of the Code of Conduct, Faculty Handbook, or Employee Handbook has occurred.

If so, Saint Mary's College of California will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Process and referral to the Office of Community Life or Human Resources for action in accordance with the applicable Handbook.

Notice of Allegations

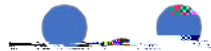
The Title IX Coordinator or designee will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds and will issue a Notice of Formal Complaint Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Formal Complaint Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations

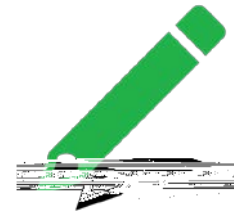
Investigative Phase



Fact-Gathering



Evidence Sharing



Draft Report Review
and Comment



Final Report Shared

The investigation does not consider:

- 1) incidents not directly related to the possible violation, unless they are considered relevant because, for example, they evidence a pattern;
- 2) evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the



Evaluating Evidence (Generally)



Relevancy



Weight

Investigative Report

The investigator designated by the Title IX Coordinator or designee will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report to the parties at least ten (10) calendar days prior to the hearing for each party's review and written response.

Only relevant evidence (including both inculpatory and exculpatory – i.e., tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

Post Investigation



Decision-Making Phase



Notice of Hearing



Hearing



Written Letter of
Determination

General Rules of Hearings

Saint Mary's will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic

Hearing Participants

Complainant and Respondent (The Parties)

The Decision-maker

The hearing body for students will consist of a panel of three (3) decision makers known as the Disciplinary Hearing Board (DHB) and one of these panelists will serve as the Chair.

The hearing body for employees will consist of a single Decision-Maker

No member of the DHB or the decision-maker will also have served as the Title IX Coordinator, investigator, or advisor to any party in the case

No member of the DHB or decision-maker will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case

Advisor of choice: The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.

Hearing Procedures

The DHB Chair or decision-maker will open and establish rules and expectations for the hearing;

The Parties will each be given the opportunity to provide opening statements;

DHB panelists or the decision-maker will ask questions of the Parties and Witnesses;

Parties will be given the opportunity for live cross-examination after the DHB panel or decision-



Appeals

Grounds

Student Respondents:
Dean of Students

Employee Respondents:
Appeal Officer
appointed by HR or
the Provost

Appeal Provisions

- Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility.
- To appeal, a party must submit their written appeal within 5 calendar days of being notified of the decision via the link included in their outcome letter, indicating the grounds for the appeal

Appeal Grounds

1. A process or procedural error was made that that was significantly prejudicial to the outcome of the matter (i.e., a failure to follow the institution's own procedures);
2. 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;



Appeal Grounds



Break Time
10 minutes



Practice Using the Case Study

- Direct questioning
- Cross examination



Direct:

Who
What
Where
When
Why

Cross Exam:

Not argumentative

Narrowing the range of possible
answers

Targeted

Usually to address
inconsistencies/test evidence



Questions?

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