

FORUM ON TITLE IX SEXUAL HARASSMENT POLICY CHANGES

UNIVERSITY OF THE VIRGIN ISLANDS



HIGHLIGHTS OF THE U.S. DEPARTMENT OF EDUCATION'S CHANGES TO TITLE IX REGULATIONS

- WHAT CONSTITUTES “SEXUAL HARASSMENT” UNDER TITLE IX?
- UNIVERSITY’S TITLE IX RESPONSIBILITIES UNDER TITLE IX?
- REPORTING MISCONDUCT AND FILING COMPLAINTS
- REMEDIES AND PREVENTION
- LIVE HEARINGS AND CROSS-EXAMINATION
- DUE PROCESS REQUIREMENTS

NEW DEFINITION OF SEXUAL HARASSMENT

Quid Pro Quo

- Conditioning of any educational or employment opportunity or benefit on the participation in unwelcome sexual conduct or the granting of sexual favors

Severe, Pervasive, Objectively offensive

- Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies equal access to an educational program or activity

Sexual Assaults

- Any form of sexual assault, dating violence, domestic violence or stalking as defined in the Clery Act (this includes, rape, fondling, incest, statutory rape)

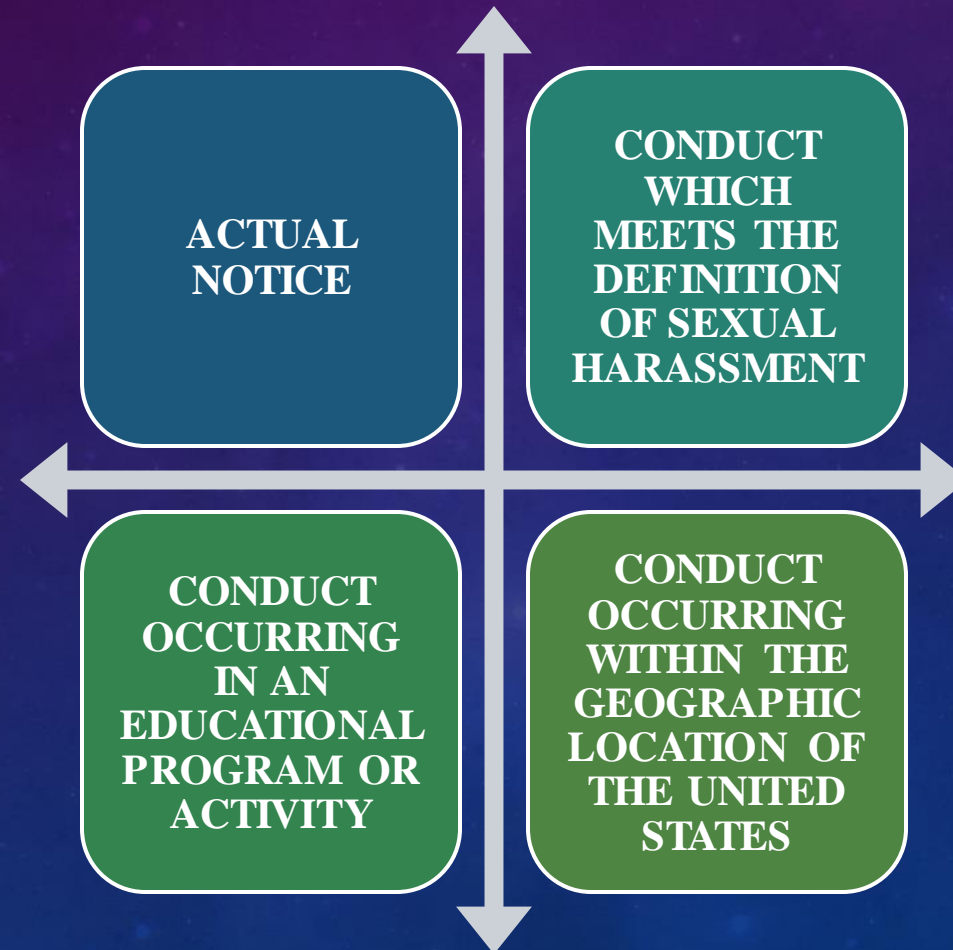
WHAT TRIGGERS THE UNIVERSITY'S DUTY TO RESPOND?

UNDER THE NEW TITLE IX REGULATIONS, NOTICE TO CERTAIN UNIVERSITY OFFICIALS CHARGES THE INSTITUTION WITH ACTUAL KNOWLEDGE AND TRIGGERS THE UNIVERSITY'S RESPONSE OBLIGATIONS. AT UVI, THOSE OFFICIALS WITH SUCH AUTHORITY TO TRIGGER THE UNIVERSITY'S DUTY TO RESPOND TO A COMPLAINT OF SEXUAL HARASSMENT ARE THE TITLE IX COORDINATOR, MEMBERS OF THE UNIVERSITY PRESIDENT'S CABINET AND THE ACADEMIC DEANS.

CONFIDENTIAL RESOURCES AVAILABLE TO UNIVERSITY EMPLOYEES AND STUDENTS

THE NEW TITLE IX REGULATIONS ALLOWS THE UNIVERSITY TO DESIGNATE CONFIDENTIAL RESOURCES FOR ITS EMPLOYEES AND STUDENTS TO DISCUSS SEXUAL HARASSMENT WITHOUT AUTOMATICALLY TRIGGERING A REPORT TO THE TITLE IX OFFICE. A REPORT TO A CONFIDENTIAL RESOURCE IS NOT DEEMED ACTUAL KNOWLEDGE TO THE UNIVERSITY AND THEREFORE DOES NOT TRIGGER THE UNIVERSITY'S RESPONSE OBLIGATIONS.

FACTORS WHICH IMPACT THE UNIVERSITY'S DUTY TO RESPOND UNDER TITLE IX?



HOW MUST THE UNIVERSITY RESPOND?

SEXUAL
HARASSMENT
WITHIN THE
SCOPE OF TITLE IX

The University must respond to the complaint of sexual harassment in a manner that is not deliberately indifferent to such knowledge

CONDUCT IS NOT
WITHIN THE SCOPE
OF TITLE IX

Such conduct may still be addressed within the University's other disciplinary policies (ie. Student Code of Conduct, HR Policy Manual)

THE UNIVERSITY ACTS WITHOUT DELIBERATE INDIFFERENCE IF IT IS:

ACTS CLEARLY REASONABLE IN LIGHT OF KNOWN CIRCUMSTANCES

PROMPT IN RESPONDING TO A COMPLAINT OF SEXUAL HARASSMENT

WHAT DELIBERATE INDIFFERENCE IS NOT

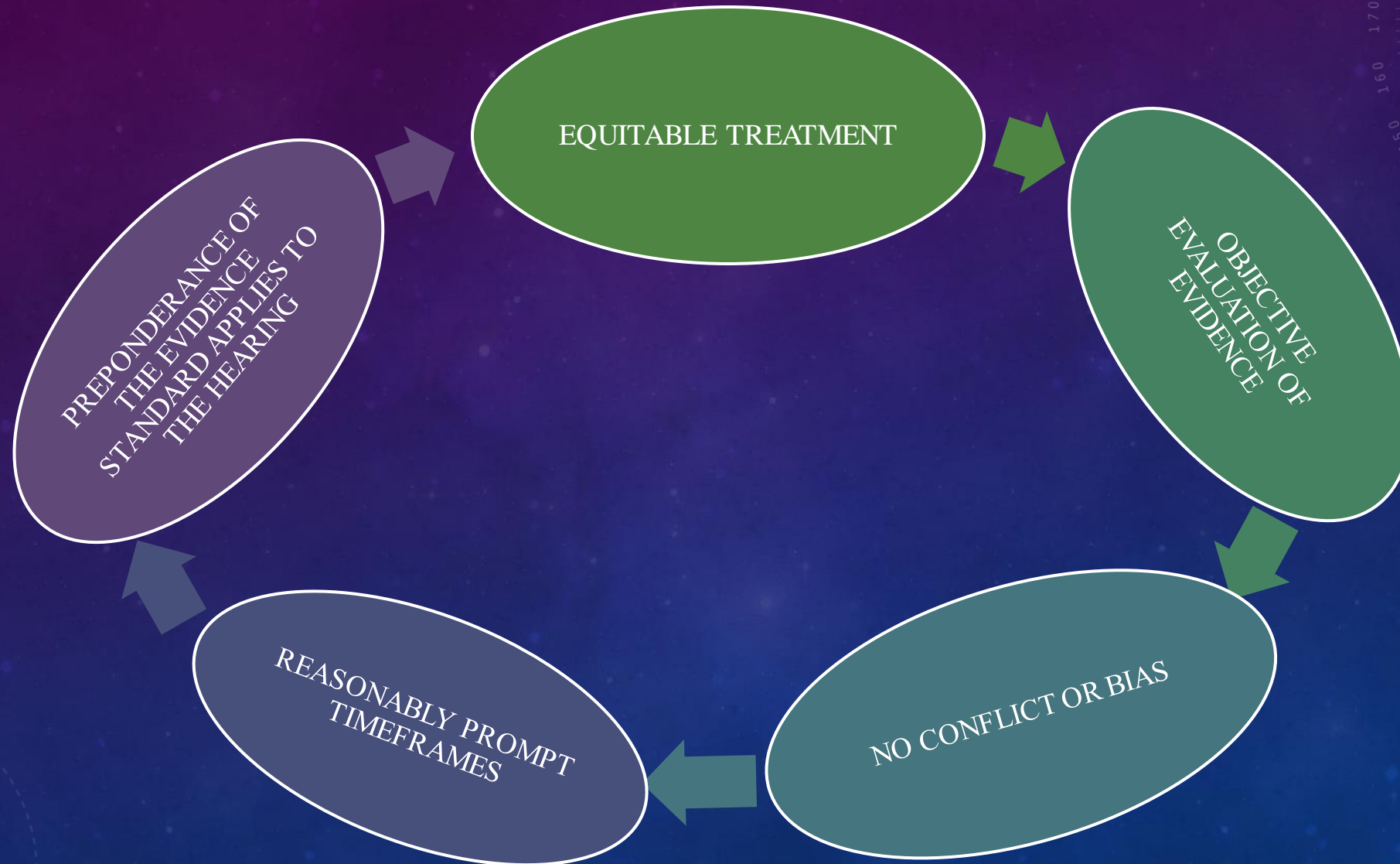
OFFERS SUPPORTIVE MEASURES TO COMPLAINANT AND DUE PROCESS TO RESPONDENT

INFORMS BOTH PARTIES OF THE TITLE IX COMPLAINT PROCESS AND FOLLOWS THAT PROCESS IN ADDRESSING THE COMPLAINT

SAFE HARBOR RULES

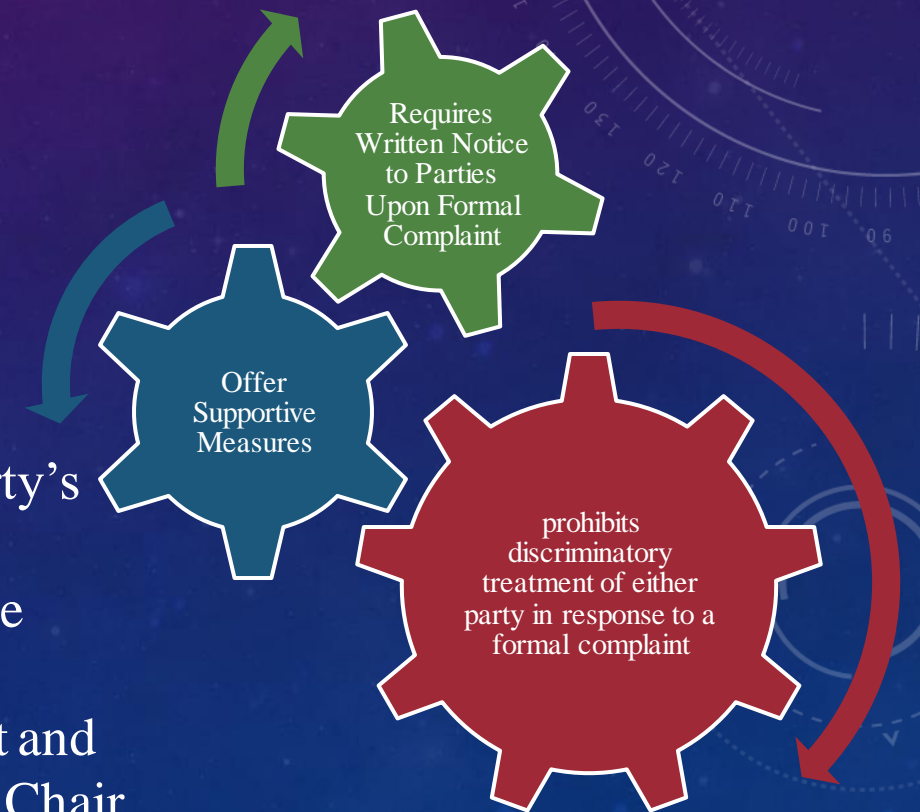
- NO FORMAL COMPLAINT FILED / COMPLAINANT REQUEST NOT TO FILE COMPLAINT – UNIVERSITY STILL MUST ACT REASONABLY GIVEN THE KNOWN CIRCUMSTANCES
- SAFE HARBOR IF:
 - (a) The University documents the complainant's knowing request that no formal complaint be initiated, and
 - (b) it offers the complainant supportive measures; and works to preserve the respondent's access to the University's educational programs and activities pending outcome of an investigation.

TITLE IX INVESTIGATORY AND DECISION-MAKING PROCESSES



NEW TITLE IX GRIEVANCE PROCESS

- The New Regulations require a consistent, transparent grievance process, which must:
 - Treat complainants equitably by providing remedies anytime a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process
 - Complainant must continue to have access to the University's educational programs and activities
 - There must be objective evaluation of all relevant evidence
 - All Title IX Personnel must be free from conflicts of interest and unbiased against complainants or respondents
 - Afford parties an equal opportunity to select an advisor of the party's choice, who may, but need not be an attorney
 - Allow for cross-examination by both sides, to be conducted by the Advisor of each party
 - At least ten (10) days prior to a Title IX hearing, the Complainant and Respondent shall submit their cross-examination questions to the Chair of the Title IX Decision-making Body for review and approval.



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QUESTIONS AND ANSWERS REGARDING THE DEPARTMENT'S FINAL TITLE IX RULE

*U.S. DEPT OF EDUCATION, OFFICE OF CIVIL RIGHTS
SEPTEMBER 4, 2020*

QUESTIONS AND ANSWERS

- **QUESTION:** Can you please clarify whether the new Title IX rules that went into effect on August 14, 2020 will be applied retroactively?
 - ANSWER: The Title IX Rule will not be applied retroactively

QUESTIONS AND ANSWERS

- **QUESTION:** The Title IX Rule states: “At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.” If a complainant either withdraws from school because of sexual harassment and then files a complaint, or files a complaint but then withdraws as a result of the sexual harassment or stress of the grievance process, how would the regulations affect the complainant’s ability to pursue a formal complaint?
 - ANSWER: Under the Title IX Rule, recipients must promptly respond to a report that an individual has been allegedly victimized by sexual harassment, whether the alleged victim is presently a student or not, in a manner that is not “deliberately indifferent,” or clearly unreasonable in light of known circumstances. Students and others who are participating or attempting to participate in the school’s program or activity also have the right to file a formal complaint.

QUESTIONS AND ANSWERS

- **QUESTION:** Does the Title IX Rule allow schools to continue to address misconduct that does not meet the definition of sexual harassment? Can Title IX personnel still review these complaints, and follow procedures similar to those allegations that do meet the definition of sexual harassment?
 - ANSWER: Yes. The Title IX Rule does not preclude a recipient from using the same Title IX personnel (including the Title IX Coordinator, who must be an employee of the recipient, and Title IX investigators and decision-makers, who may be a recipient's employees or the employees of a third-party, such as a consortium of schools) to review and investigate allegations of misconduct that fall outside the scope of Title IX. Similarly, the Rule does not preclude a recipient from using a grievance process that complies with § 106.45 with respect to allegations that fall outside the scope of Title IX.

QUESTIONS AND ANSWERS

- **QUESTION:** When a post-secondary institution holds a live hearing to address a Title IX Complaint, is the questioning limited to certain subjects?
 - **ANSWER:** The Regulations require that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask all relevant questions (including follow-up questions), and only relevant questions.

QUESTIONS AND ANSWERS

- **QUESTION:** Are all witnesses expected to appear at a hearing, or do decision-makers have the flexibility to request witnesses as they deem necessary?
 - **ANSWER:** The Title IX Rule does not require that all witnesses appear at a hearing, although it does provide the parties an equal right to present witnesses.

Furthermore, § 106.71(a) of the Regulations protects parties and witnesses against retaliation for deciding to participate or not to participate in a Title IX grievance process. Thus, a witness cannot be compelled to appear at a hearing, and cannot be intimidated, threatened, coerced, or discriminated against if the witness chooses not to appear. However, the parties must have an equal opportunity to “present” witnesses, so the decision-maker cannot request the presence only of witnesses the decision-maker has deemed necessary. The decision-maker has discretion to permit witnesses to testify at the hearing remotely, using technology. See § 106.45(b)(6)(i).

REFLECTIONS; COMMENTS; QUESTIONS



THE UNIVERSITY'S SEXUAL HARASSMENT POLICY,
REVISED AUGUST 13, 2020, MAY BE FOUND AT:

HR

WEBSITE: [HTTPS://WWW.UVI.EDU/ADMINISTRATION/
ADMINISTRATION-AND-FINANCE/HUMAN-
RESOURCES/DEFAULT.ASPX](https://www.uvi.edu/administration/administration-and-finance/human-resources/default.aspx)

STUDENT WEBSITE:

[HTTPS://WWW.UVI.EDU/STUDENT-LIFE/STUDENT-
AFFAIRS/SEXUAL-HARASSMENT.ASPX](https://www.uvi.edu/student-life/student-affairs/sexual-harassment.aspx)