



**UNIVERSITY SYSTEM OF GEORGIA**

# **Title IX Advisor Training**

## **Fall 2020**

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# What is Required under the Final Rule?

A recipient with **actual knowledge** of **sexual harassment**, in an **education program or activity of the recipient** against a person **in the United States**, must respond promptly in a manner that is not deliberately indifferent.



# Title IX Sexual Harassment §106.30

- Conduct on the basis of sex that satisfies one or more of the following:
  - (i) An **employee** conditioning education benefits on participation in unwelcome sexual conduct (i.e quid pro quo); or
  - (ii) **Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's education program or activity; or**
  - (iii) Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in VAWA

# Title IX Jurisdiction

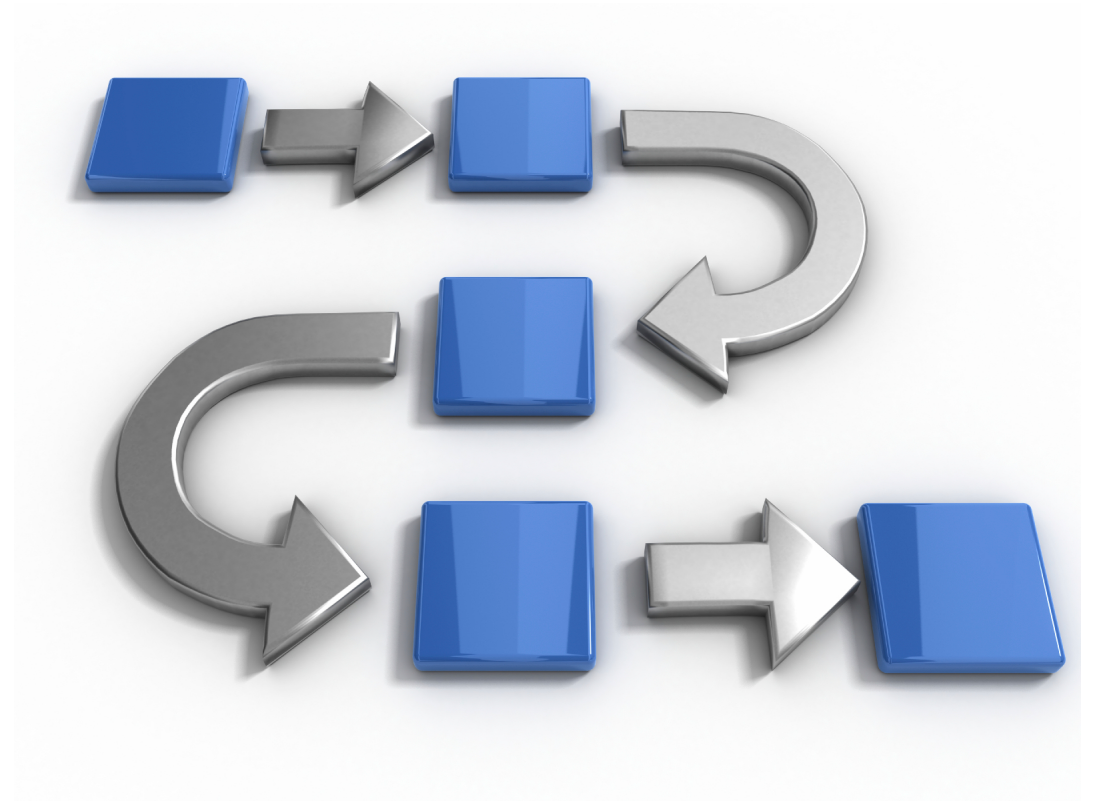
- Institution's program or activity in the United States
  - Institution property
  - Institution sponsored or affiliated events [**substantial control** is key]
  - Buildings owned or controlled by officially recognized student organizations



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# USG Complaint Process

- A report of misconduct has been made
- The Complainant or the Title IX Coordinator has initiated the formal investigation process
- Notice of the investigation has been sent to the parties
- The assigned investigator(s) have made preliminary determinations
- The parties and the institution have been unable to reach an informal resolution



# The Live Hearing Requirement § 106.45(b)(6)

- The Final Rule mandates a bifurcated process
- Final determinations of responsibility and sanctions are made by decision-makers
  - CANNOT be the Title IX Coordinator or assigned investigator
  - Informal resolution not permissible for student allegations against an employee
- New due process considerations
  - Cross examination by a party's advisor
  - Relevancy determinations
  - Impact of party or witness refusal to submit to cross-examination
- Institutions must provide an advisor if a party does not have one

# Adjudication Processes

## Students

- All matters not informally resolved will be heard by a Hearing Panel
- Hearing Panels comprised of trained faculty and staff

## Employees

- Title IX matters not informally resolved will be heard by a single decision-maker or panel
- Sexual Misconduct matters not informally resolved will be resolved according to established institutional procedures
  - Institutions may choose to offer a hearing or utilize single decision-maker

# Advisors at Title IX Hearings § 106.45(b)(6)

- Provide advice, counsel, and support to a party
  - Students or employees
- Perform cross examination of the other party and any witnesses
- Institutional advisors assigned at the hearing stage



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# What is Cross Examination?

- Questions raised to an opposing party or witness called by the opposing party
- Used to advance claims or defenses of a party
- Used to assess the credibility of an individual
- **USG Expectation:** Respect, dignity, decorum

# Typical Order of a Hearing

- Opening by Decision Maker
- Opening statements by both parties
- Questioning of the Complainant
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of the Respondent
  - By the decision maker or panel
  - By other party (through their advisor)
- Questioning of any Witnesses
  - By the decision maker or panel
  - By the parties (through their advisor)
- Closing statements by both parties
- Closing by Decision Maker

# Preparing for the Hearing

- Review the Sexual Misconduct Policy and appropriate procedures
- Review the investigation report and provided materials
- Communicate with your assigned party
  - Drafting questions
  - Addressing procedural inquiries



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# Hearing Logistics

- Hearings may be conducted in-person or via videoconferencing
  - Ensure you know how to use the technology as well
- At the request of either party, the parties must be permitted to be in separate rooms
- All directly related information will be available
- All hearings must be recorded

# Evidentiary Considerations

- The burden of proof AND burden of gathering evidence is on the institution
- Parties are permitted to present evidence and call witnesses to advance their claims and defenses
  - In Title IX Hearings that may include fact or expert witnesses
  - Permitted to establish the weight given to certain types of evidence

# Relevancy Determinations During Title IX Hearings

- Prior to any question being answered, relevancy will be determined
- The Hearing Officer will provide the reason for excluding the question or evidence
- Rebuttals may not be permitted



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# Assessing Relevancy

## Relevant

- Relevant information relates to the incident at issue
- Relevant information provides sufficient value in making the overall determination

## Irrelevant

- Questions and information regarding the Complainant's sexual history or sexual predisposition unless to prove
  - Someone else other than the Respondent committed the alleged misconduct
  - Consent between the parties

# Other Evidentiary Exclusions

- Legally privileged information is protected
- A party's treatment records cannot be used without their voluntary, written consent
- Duplicative evidence may be deemed irrelevant
- If an individual does not submit to cross examination, at a Title IX hearing, their statements cannot be relied upon

# Standard of Evidence

Decisions regarding student and employee alleged misconduct are based on a preponderance of the evidence



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# The Written Decision §106.45(b)(7)

- Provided to both parties simultaneously must include:
  - The allegations
  - The procedural steps from the complaint through determination
  - Findings of fact supporting the determination
  - Determinations regarding responsibility, sanctions (and remedies) along with the supporting evidence and rationale
  - Information on the appeals process

# Expectations of USG Advisors

- Be willing to advise any party, Respondent or Complainant
- Actively engage and be attentive during the hearing
- Adhere to Board and institutional policies and procedures



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# Additional Concerns & Questions

