



# Institutional Equity

## University Disciplinary Committee (UDC) Title IX Training

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# Title IX of the Education Amendments of 1972

- “[N]o person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
- **Translation**: No Sex Discrimination in Education Setting.
  - Sex discrimination is umbrella term.
- **Goal**: to Prevent Barriers to Education.

# Responsible Offices

- Office of Institutional Equity
- Office of Student Conduct

# Formal Grievance Policy

- Sex and Gender-Based Discrimination, Harassment, and Retaliation, No. 0.2070 (informally referred to as “Title IX Policy”).

<https://www.wku.edu/policies/docs/index.php?policy=182>

- You can review on WKU’s Title IX Website – [www.wku.edu/titleix/](http://www.wku.edu/titleix/)
- Purpose is to provide an **equitable policy** and **equitable procedures** for addressing, investigating, and responding to reports or complaints of sexual harassment, sexual assault, dating violence, domestic violence, and/or stalking.

# Sexual Harassment

- Qui pro quo harassment – Favor for Favor.
- Unwelcome conduct that is **SPOO** and denies equal access to education program or activity.
  - Severe
  - Pervasive
  - Objectively offensive

# Sex Offenses

- Forcible Rape
- Statutory Rape
- Forcible Sodomy
- Sexual Assault w/an Object
- Forcible Fondling
- Incest

# Additional Title IX Offenses

- Dating Violence
- Domestic Violence
- Stalking
- Retaliation

# Jurisdictional Analysis

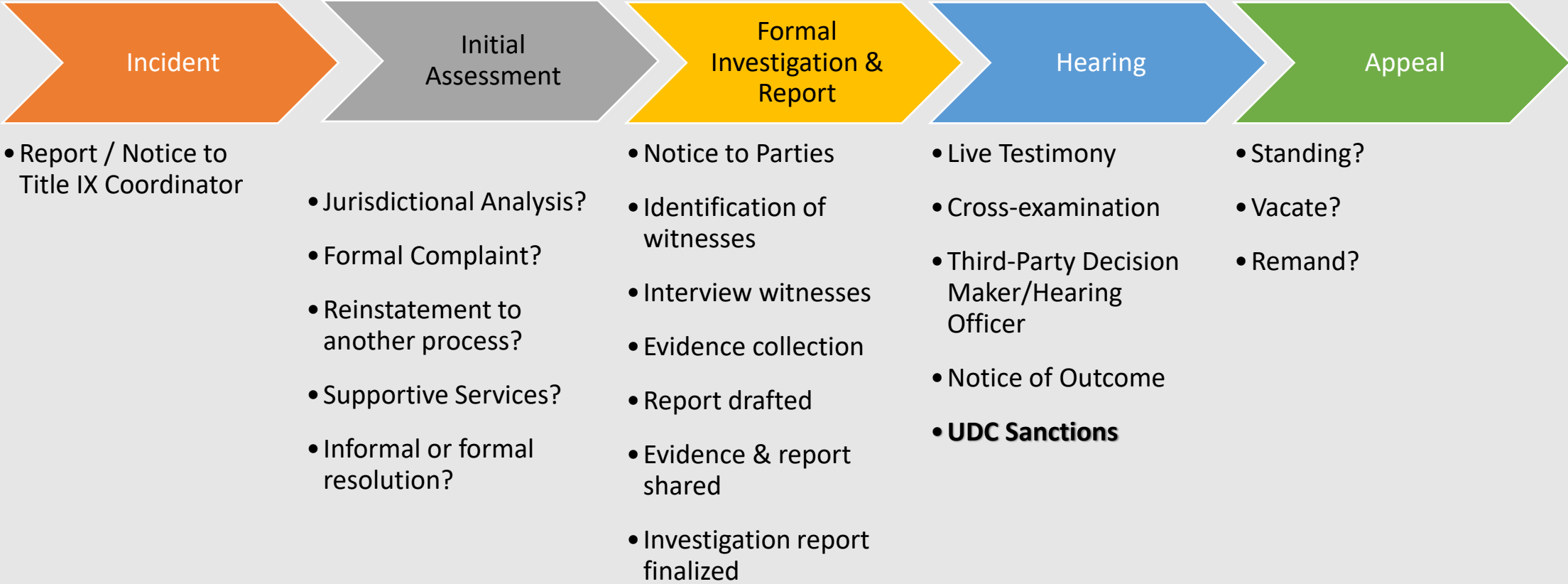
- Subject Matter Jurisdiction
  - **WKU education programs and activities** that take place **on campus**, in **buildings or on property owned/controlled by WKU** (e.g., recognized student organizations), and/or as **WKU-sponsored events**.
- Personal Jurisdiction
  - A Complainant or Respondent must be **attempting to participate, as a WKU student or employee**, in an education program or activity in the **United States**.



# What is Not Covered Under Title IX?

- Sexual exploitation.
- Hazing.
- Other Protected-Class Discrimination (Race, Disability, Religion, Ethnicity, etc.).
- Bullying.
- Conflict/Violence that is not Gender-Based.
- Conduct that Threatens or endangers the Health or Safety of any Person, unrelated to sex discrimination/harassment.
- **NOTE**: Student Conduct Still Applies!

# The Title IX Process



# Administrative Resolution = Title IX Hearing

- Presumption of Non-Responsibility!
- Standard of Evidence: Preponderance of the Evidence
  - More likely than not (50.1% of the evidence).
  - Evidence is equal, but one party is more credible than the other.
- Single Hearing Officer/Decisionmaker
  - List of Approved Hearing Officers.
  - Must be Recorded and Made Available to Parties for Inspection and Review.
- Live Hearing is not a legal proceeding
  - Title IX hearings are not civil or criminal legal proceedings.
  - They are investigative processes and have only administrative repercussions.
  - Court rules, including Rules of Evidence, do not apply.
  - Importance of Equity during hearing.
    - (allowing witnesses to attend via zoom, allowing parties to be in same/separate rooms, etc.)

# What Does a Hearing Officer Do?

- Preside over a live Title IX Hearing.
- Ask questions of the complainant, respondent, and witnesses.
- Maintain order and decorum of the parties and their advisors at the Title IX hearing.
  - Determine the manner of the questioning.
- Determine what evidence is relevant and may be presented at the Title IX hearing.
- In the case of a factual dispute, determine the credibility of the witnesses.
- **Determine whether a respondent is responsible under WKU's Sex and Gender-Based Discrimination, Harassment, and Retaliation Policy – not external laws!**

# What Doesn't a Hearing Officer Do?

- Represent or advocate for any party or any position in the proceeding.
- Determine a finding of responsibility for any other University Policy, other than the Title IX Policy.
- Issue remedies/sanctions in matters in which Respondent is a Student.

# Who is present at the Hearing?

- Parties (Complainant and Respondent)
- Advisor for each Party
- Support Person for each Party
- Hearing Officer
- Title IX Coordinator
- Title IX Investigator(s)
- Hearing Facilitator
- University Disciplinary Committee (UDC) members
- Potential witnesses as called by Hearing Officer

# UDC Role in Title IX Hearing

- UDC Chair will identify no less than three faculty and/or staff Committee members to attend the hearing if/when a student is a Respondent.
- UDC does not participate in any hearings in which an employee is a Respondent.
- **At least three UDC members shall be present during all aspects of the hearing to observe and assess proceedings, should sanctions be necessary.**
- Committee members **cannot participate in the live hearing.**
  - Cannot ask questions.
  - Cannot speak with witnesses.
  - Cannot express opinions.
- If/When the Hearing Officer finds a violation of policy, the **UDC members will render appropriate sanctions** in accordance with University policy.

# After the Title IX Hearing

- Hearing Officer prepares Notice of Outcome.
  - Issues Finding of Responsible v. Not Responsible.
  - Explains Rationale For Finding.
- Each Party has a right to Appeal.
- Once Appeal on substantive decision is exhausted, UDC will determine sanctions, following additional hearing.
  - UDC only determines **suspension or expulsion**.
  - Additional hearing will include aggravating and mitigating evidence.
  - UDC members commence to discuss and issue sanctions.



# General Principles / Guidelines

- Do Not Rely on stereotypes based on someone's gender, race, ethnicity, religion, or any other protected class.
- Do Not Make credibility determinations based on the party's protected class.
- Do Not Make credibility determinations based on a person's status as a reporting or responding party in a matter.
- Do Approach the proceeding with an **open mind and without any preconceived notions.**
- Look at every decision you make as an **objective evaluation of the facts and policies.**

# Bias and Conflict of Interest

- Bias can represent any variable that improperly influences a decision.
- Forms of bias and prejudice that can impact decisions:
  - Pre-determined outcome.
  - Interventions by senior-level administrator or external sources.
  - Not staying in your lane.
  - Improper application of institutional policies or procedures.
  - Confirmation bias.
  - Implicit bias.
  - Animus of any kind, including race, disability, ethnicity, religion, etc.

# Bias and Conflict of Interest

- If you believe you have a bias or cannot hear a case impartially, notify Title IX Coordinator immediately.
  - Title IX Coordinator determines whether recusal is necessary.
- What is **not** Considered a Conflict?
  - Knowing a student beforehand.
  - Having previously disciplined a student.

# Due Process in Sanctioning Decision

- Sanction Deliberations should be fair and allow for all viewpoints to be heard.
  - **Neutralize power imbalances** among UDC members, particularly based on position at institution.
- A decision must:
  - Be appropriately impartial and fair.
  - Be neither arbitrary nor capricious.
    - Do not base decision on “outside” evidence/information.
  - Be based on a fundamentally fair rule or policy.
  - Be made in good faith (without malice, ill-will, conflict, or bias).
  - Have a rational relationship (be substantially based upon, and a reasonable conclusion from) the evidence.

# Due Process in Sanctioning Decision

- **Separate Findings from Sanctions**

- Do not use impact-based rationale for findings (intent, impact on Complainant, impact on the Respondent, etc.)
- Use impact-based rationales/evidence for sanctions only.

- **Title IX requires:**

- WKU to act reasonably to bring an end to the discriminatory/harassing conduct (**STOP**).
- WKU to act reasonably to prevent future reoccurrence of the discriminatory conduct (**PREVENT**).
- WKU to restore the Complainant as best they can to their pre-deprivation status (**REMEDY**).
- **THEREFORE** – Sanctions should not just focus on educational and developmental aspects!

# Common Student Sanctions

- Warning
- Probation
- Loss of Privileges
- Suspension
- Expulsion
- Limited Access to Campus / No Trespass Orders
- No Contact Order
- Residence Hall relocation, suspension, or expulsion
- Service hours / other educational opportunities
- Online education
- Referral to counseling, alcohol and drug assessment

THANK YOU!

Questions? Concerns?

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