

2.1.17 Title IX Policy

TITLE IX POLICY

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Supersedes:	Not Applicable.
Issuing Authority:	University President
Responsible Officer:	Title IX Coordinator
Applicability:	All members of the University community.
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XI. REVISION HISTORY

I. PURPOSE

The University of Providence (hereinafter collectively referred to as “UP”), seeks to maintain a safe learning, living, and working environment for all members of its community. In addition, UP subscribes to all federal, state, and institutional laws and regulations necessary to ensure that goal.

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX’s prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student’s ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, UP has implemented the following Title IX Policy as of the effective date of August 14, 2020.

As such, this policy is meant to work in harmony with other applicable UP policies and procedures that address sexual and discriminatory misconduct. In the event that the alleged violation falls within the scope of Title IX, this policy serves as the operating process for addressing the violation while also subscribing to any regulations or reporting requirements of other federal and state laws.

II. POLICY

All areas of the UP community seek to foster a collegial atmosphere where students are nurtured and educated through close faculty-student relationships, student camaraderie, and individualized attention. Sexual Harassment of any kind, is detrimental to UP’s mission, history, and identity. UP will resolve any Covered Sexual Harassment in a timely and effective manner. Compliance with UP’s policies and procedures is a necessary step in achieving a safe environment in our educational community.

The policy set forth was developed to promote a safe educational environment in compliance with Final Rule under Title IX of the Educational Amendments of 1972. Those believing that they have been subject to Sexual Harassment, as defined in the Final Rules under Title IX, should immediately

contact the Title IX Coordinator.

When the Title IX Coordinator has received a Formal Notice of the occurrence, UP is compelled to take immediate and effective corrective action reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

III. DEFINITIONS

1. **Advisor:** For the purpose of Title IX, this is an any individual identified by either party (and selected by the parties), to be present during any grievance proceeding or meeting, who may be, but is not required to be, an attorney.
2. **Complainant:** A Complainant (CP) is a person who is alleged to be the victim of conduct that could constitute sexual harassment. Typically, this is the person submitting the Title IX report.
3. **Consent:** The act of willingly agreeing to engage in each specific sexual contact or activity. Consent must be clear, knowing, voluntary, and expressed prior to engaging in and during each sexual act.
4. **Formal Complaint:** A written document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. Submission of a written Formal Complaint document is a request of the University to initiate the Grievance Process. The Title IX Coordinator may also file and sign a Formal Complaint based on any incident report received which will initiate the Grievance Process.
5. **Gender Discrimination** is defined as the following by Title IX:
 - a. Discrimination or harassment based upon one's gender (sex)
 - b. Unfair treatment, attitudes, or behaviors towards an individual based upon their gender (sex)
 - c. Gender identity discrimination as covered by Title VII
 - d. Sexism, sexist attitudes, and sex stereotyping
 - e. Unproportioned athletic programs or activities offered to all genders in relationship to the college's enrollment
6. **Hostile Environment** is defined as the following by Title IX:
 - a. A situation of discriminatory or sexual nature that has occurred and created a adverse setting
 - b. An intimidating or offensive environment that causes a person to be fearful
 - c. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies, limits, or interferes with a person's equal access to participate in or benefit from a University program, activity, or job.
7. **Mandatory Reporter:** A UP employee designated by the Title IX Coordinator who is required to report incidents of alleged prohibited conduct under Title IX to the university. This designation applies to the Title IX Coordinator and the Deputy Title IX Coordinator, all UP faculty and staff, as well as certain student employees including but not limited to, RAs and paid mentors.
8. **Potential Complainant:** A person identified by a witness or other individual as a person who may have experienced sexual harassment or retaliation in violation of the policy. This individual is one who has not submitted a formal complaint.

9. **Potential Respondent:** Individual identified by a witness or potential complainant as having been the perpetrator of conduct that could constitute sexual harassment. This individual is not yet one associated with a formal complaint.
10. **Respondent:** A Respondent (or Responding Party, RP) is someone who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
11. **Retaliation** is defined as the following by Title IX:
 - a. A strike back in response to another's action or accusation
 - b. a form of revenge or reaction because of a filed complaint against a person
 - c. refusal to promote, advance, or accurately support/qualify a person due to a complaint filed
12. **Sexual Assault** means an offense classified as a sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sex offenses include:
 - a. Sex Offenses, Forcible: Any sexual act directed against the Complainant, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 - b. Forcible 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 the Complainant, without the consent of the Complainant.
 - c. Forcible Sodomy: Oral or anal sexual intercourse with the Complainant, forcibly, and/or against the Complainant's will (non-consensually), or not forcibly or against the Complainant's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - d. Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of the Complainant, forcibly, and/or against the Complainant's will (non-consensually), or not forcibly or against the Complainant's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - e. Forcible Fondling: The touching of the private body parts of the Complainant (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against the Complainant's will (non-consensually), or not forcibly or against the Complainant's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - f. Sex Offenses, Non-forcible:
 - Incest: Non-forcible sexual intercourse, between persons who are related to each other by blood or adoption as prohibited by Massachusetts law.
 - Statutory Rape: Non-forcible sexual intercourse, with a Complainant who is under the statutory age of consent of sixteen-years-old.
13. **Sexual Harassment** is unwelcome conduct on the basis of sex, including sexual orientation and gender identity. Sexual harassment includes:
 - a. Unwanted sexual behavior, advances, or requests for favors
 - b. Unwelcomed verbal, visual, or physical sexual conduct
 - c. Offensive, severe, and/or frequent remarks about a person's sex
 - d. Harassment of a sexual nature which interferes with an individual's right to an education and participation in a program or activity
 - e. Sexual Harassment occurs when any conduct on the basis of sex, satisfies one or more of the following:
 - An employee conditioning educational benefits on participation in unwelcome

- sexual conduct (i.e., quid pro quo);
 - 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 educational institution’s education program or activity;
 - Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
 - Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes 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 (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes 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 applicable state and local 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 the State or local jurisdiction.
 - Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.
14. **Sex Violence** is defined as the following by Title IX:
- a. Sexual abuse or assault, battery, or coercion
 - b. Unwanted sexual contact that stops short of rape or completed rape
 - c. Use of force or manipulation of unwanted sexual activity
 - d. Physical acts where a person is incapable of giving consent or is against a person's will
15. **Stalking** means engaging in a course of conduct directed at the Complainant that would cause a reasonable person to:
- a. Fear for their safety or the safety of others; or
 - b. suffer substantial emotional distress.
16. **Supportive Measures:** Intended to restore or preserve equal access to UP’s education programs and activities, including work environments, without burdening the other party. These measures may help individuals access UP environments safely or may be designed to deter any sex-or gender-based violence, harassment, or discrimination. Supportive measures may be available regardless of whether a complaint is filed, or an investigation is requested. Services are offered when appropriate and reasonable. They are available to any individual who has experienced or is alleged to have engaged in behavior that may be considered sex-or gender-based violence, harassment, or discrimination.

IV. PROCEDURES/GUIDELINES

A. HOW DOES THE TITLE IX POLICY IMPACT OTHER CAMPUS DISCIPLINARY POLICIES?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, UP must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Policy defined below.

UP remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has: A Code of Conduct that defines certain behavior as a violation of campus policy, that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the Title IX Policy, or misconduct falling outside the Title IX Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Code of Conduct or other institutional policy through a separate grievance proceeding.

B. MAKING A REPORT REGARDING COVERED SEXUAL HARASSMENT

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be harmed by the conduct that could constitute sex discrimination or sexual harassment), in person, by telephone, by electronic mail, or by submitting an online report. using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

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Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

A mandatory reporter is a UP employee designated by the Title IX Coordinator who is required to report incidents of alleged prohibited conduct under Title IX to the university. This designation applies to all UP faculty and staff, Deputy Title IX Coordinators, as well as certain student employees including, but not limited to, Residence Life Staff, and paid mentors.

C. INITIAL ASSESSMENT

Note: The Title IX Coordinator is the individual designated to investigate claims and to determine if

the alleged misconduct meets the relevant requirements under the Title IX policy. In addition, an individual who makes a report of alleged misconduct is referred to as the “Potential Complainant” until he or she makes a written, formal complaint, as required by the Title IX regulations, at which point only the term “Complainant” will be used under this Title IX Policy.

Whenever the Title IX Coordinator receives notice of alleged misconduct, they will promptly contact the Potential Complainant regarding the alleged misconduct for an initial assessment. At that point, the Title IX Coordinator will (in no particular order):

- assess the nature and circumstances of the report;
- assess immediate concerns including physical safety and emotional well-being of the Potential Complainant;
- discuss the Potential Complainant’s right to contact law enforcement and right to seek medical treatment;
- provide the Potential Complainant information about resources (on-campus and off-campus) and the availability of appropriate and supportive measures;
- advise on UP’s policy regarding confidentiality and retaliation; and
- explain the process and requirements for filing a formal complaint under Title IX.

By law, a formal written complaint must be made before the Title IX process can begin. Before a Potential Complainant can file a formal complaint under Title IX, the Responsible Administrator will determine whether:

- the alleged misconduct can be classified under Title IX;
- the Title IX Coordinator has the ability to file a formal complaint on behalf of the Potential Complainant;
- the alleged misconduct should be handled under a separate college policy or procedure.

D. NON-INVESTIGATORY MEASURES AVAILABLE UNDER THE TITLE IX POLICY

Both Complainants and Respondents (as defined above), who are reported in association to allegations which could constitute sexual harassment under this policy, have the right to receive supportive measures from UP regardless of a formal complaint being filed. Supportive measures are non-disciplinary and non-punitive and may include, but are not limited to, the following as appropriate:

- 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

- Emergency Removal

UP retains the authority to remove a respondent from UP program or activity on an emergency basis, where UP (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 UP determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

UP retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

E. DETERMINATION OF TITLE IX RESPONSE

If a complaint is to be addressed under Title IX, the alleged misconduct must first meet the definition of Covered Sexual Harassment, as defined under Title IX (and outlined in the definitions section of this policy above).

Note that conduct that does not meet one or more of these criteria may still be prohibited under the UP Code of Conduct or other relevant policy.

If the alleged misconduct meets the Title IX definition of Sexual Harassment provided above, the Title IX grievance process below then applies to the conduct of members of the UP community, including students, employees, and third parties, who are located in the United States, and occurred in:

- Any on-campus premises
- Any off-campus premises that UP has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of UP's programs and activities over which UP has substantial control.

For Avoidance of doubt, the Title IX process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in UP's education program or activity; and
- The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If the alleged misconduct meets these requirements, then the Title IX grievance process applies and the Potential Complainant may file a Formal Complaint or their prior Complaint submission will become a Formal Complaint.

If the alleged misconduct does not meet these Title IX requirements, it requires a mandatory dismissal under Title IX, but it may be addressed by another applicable UP policy. In the event of a dismissal, the Title IX Coordinator will provide written reasoning for the dismissal determination to the Potential Complainant with information on how to appeal, if desired.

F. DISMISSAL OF COMPLAINTS

Under Title IX, there are instances when complaints are dismissed. These dismissals fall into two categories:

(1) mandatory dismissals and (2) discretionary dismissals.

Mandatory Dismissal

A mandatory dismissal occurs in the event that the conduct:

- is alleged to have occurred before August 14, 2020;
- does not meet the Title IX definition of Sexual Harassment;
- did not occur in UP’s education program or activity; or
- did not occur against a person in the United States.

If any of these three situations are present, then UP must dismiss the complaint under Title IX. UP will provide notice of dismissal to the Parties, including information on how to appeal the dismissal. At the same time, if applicable, the alleged conduct may be addressed under another UP policy.

Discretionary Dismissal

A discretionary dismissal may occur in a few situations:

- the Complainant wishes to withdraw or does not submit the formal complaint,
- the Respondent is no longer enrolled at or employed by UP, or
- the specific circumstances prevent UP from gathering sufficient evidence to investigate or make a determination toward the allegations; or
- Does not follow the process or protocols established in this Title IX policy.

In these events, UP may choose to dismiss the complaint. UP will provide notice of the dismissal to the parties currently involved and information on how to appeal the dismissal.

G. FORMAL COMPLAINT

Filing a Formal Complaint

If the alleged misconduct meets the Title IX requirements, the Title IX Coordinator will advise. The Title IX Coordinator will then advise the Potential Complainant on the process to proceed with a Formal Complaint.

For the purposes of this Title IX Policy, “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 UP’s education program or activity and

requesting initiation of the procedures consistent with the Title IX Policy to investigate the allegation of sexual harassment.

The timeframe for the Title IX Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, provided that the Process may be extended in situations that, include but are not limited to, the absence of a party, a party's Advisor (as defined above), or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of UP, including as an employee. For complainants who do not meet this criteria, UP will utilize existing policy in the Code of Conduct, or any other relevant policy.

If a Potential Complainant chooses not to file a Formal Complaint and the matter is determined to fall under Title IX, the Title IX Coordinator may, in their sole discretion, choose to file a Formal Complaint on the individual's behalf. The Title IX Coordinator must determine that failure to file the Formal Complaint would be clearly unreasonable and not in the best interests of the UP community. In the case of the Title IX Coordinator filing a Formal Complaint on the individual's behalf, the Potential Complainant then becomes a Witness and is not entitled to any information, and loses the option of supportive measures and access to any and all information related to the case.

Nothing in this Title IX Policy or the Code of Conduct, or any other UP policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Notice of Formal Complaint

If a Potential Complainant chooses to file a Formal Complaint in a Title IX matter, their status will be adjusted to Complainant. UP will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate. The notice of the Formal Complaint will be sent promptly to all relevant parties, as soon as practicable, after the institution receives a Formal Complaint of the allegations if there are no extenuating circumstances, which includes:

- the identities of the parties involved in the alleged incident, if known;
- the alleged conduct constituting Sexual Harassment;
- the date and location of the alleged incident, if known;
- the prospective grievance process and next steps;
- a statement that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at conclusion of the grievance process;

- a statement informing both parties that they may choose an Advisor, who may be, but is not required to be an attorney;
- any measures taken by UP that affects both parties;
- a notice informing parties of any provisions of other UP policies that prohibit knowingly making false statements, or knowingly submitting false information; and
- a notice of UP’s retaliation policy.
- The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

After notice of the Formal Complaint has been received by both parties, and UP has provided sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview, the Title IX Coordinator, or their designee, will initiate the Title IX informal resolution process or investigation process.

H. INFORMAL RESOLUTION PROCESS

At any time after a Formal Complaint is filed, the Title IX Coordinator or their designee may, in their discretion, choose to offer and facilitate an Informal Resolution process, so long as both Parties give voluntary, informed, written consent to attempt Informal Resolution. UP may not require the Parties to participate in an Informal Resolution process or require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal Investigation and adjudication of Formal Complaints of Title IX Prohibited Conduct. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

Withdrawing from an Informal Resolution Process

At any time prior to agreeing to an Informal Resolution, any Party has the right to withdraw from the Informal Resolution process and resume the process with respect to the Formal Complaint.

Matters Not Eligible for Informal Resolution

- No Informal Resolution process will be offered before a Formal Complaint is filed.
- No Informal Resolution process will be offered to resolve Formal Complaints involving a student as Complainant and a staff or faculty member as Respondent.

I. INVESTIGATION

General Rules of Investigations

External or internal investigators (2 at minimum) will be designated by the Title IX Coordinator to perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Covered Sexual Harassment under Title IX after issuing the Notice of Allegations.

UP cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. UP will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Process

As a first step in the investigation process, the Title IX Coordinator will send the names of the Title IX Investigator to the Complainant and Respondent. The Complainant and Respondent will have 3 business days to object to the identified Title IX Investigators for bias or conflict of interest.

The Title IX Investigators will be designated to conduct a prompt, thorough, and impartial investigation into the alleged conduct identified in the Formal Complaint.

The Title IX Investigators will, at a minimum, interview both the Complainant and the Respondent who will each have an equal opportunity to:

- speak about the complaint;
- to submit any inculpatory or exculpatory evidence or information; and
- to identify witnesses who may have information directly related to the alleged conduct.
- The Title IX Investigators may also interview any relevant witnesses and interested parties, and re-interview the Complainant or Respondent, if appropriate.

Both parties may also have an Advisor of their choice present with them during any phase of the investigation. UP may, at its discretion, establish restrictions on an Advisor's participation. The restrictions must apply equally to both parties including, but not limited to, barring an Advisor's participation during the interview process.

Relevant Evidence and Questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege (g., attorney-client privilege).
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the relevant evidence obtained through the investigation. The purpose of the inspection and

review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

Investigation – Investigative Report

Prior to the investigative report being provided to both parties, the parties and their Advisor must sign a Non-Disclosure Agreement which requires parties to not share any documentation references or used throughout the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn. Failure to sign or adhere to this agreement may result in a negative inference against the party and the immediate withdrawal of that Party from the Title IX grievance process. The purpose of the NDA is to prohibit dissemination of the referenced documents since doing so could violate FERPA or lead to a lawsuit for defamation of character or publication of private facts.

After both parties have had an opportunity to review directly related evidence and information, the Title IX Investigators will then draft an investigative report that compiles and fairly summarizes all of the relevant evidence.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

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.

The investigators may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Both the Complainant and Respondent will then be given a ten (10) business day review period to examine the draft of the investigative report. At the conclusion of the ten (10) business day review period, each party has the right to submit a written response to the Title IX Investigators to comment on the investigative report.

The Title IX Investigators will prepare the final investigative report for the adjudication phase of the grievance process.

Confidentiality/Destruction of Evidence, Information and Documents

Each Party is responsible to keep private (by not disseminating beyond Advisor's) documents, materials, and information received from UP during this process. Failure to comply will be considered a violation of UP policy and may incur separate sanctions. Additionally, the responsibility to destroy, when so directed by UP, evidentiary materials and/or writings submitted by the other Party as party of the process.

J. ADJUDICATION/HEARINGS

General Rules of Hearings

UP 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 will be conducted with all parties physically present in the same geographic location, or, at UP's sole discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other. At its discretion, UP may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through either recording and/or transcript. The choice of medium is at UP's sole discretion.

Notice of Hearing

Upon completion of the investigation, and after the investigative report is complete, the Complainant and Respondent will be notified in writing of:

- the date, time, and location of the live hearing;
- the applicable grievance process;
- that both Parties can have a Process Support Person of their choice;
- that they may inspect and review evidence obtained in the investigation;
- the allegations and conduct that potentially constitute Sexual Harassment;
- the identities of the Parties involved (if known); and
- the date and location of the alleged offense (if known).

Depending on the circumstances and, at the sole discretion of UP, the hearing may be conducted in-person or virtually, but will always be conducted in real-time. Permission to postpone a hearing may be granted provided that the request to postpone is reasonable.

Prior to the scheduled hearing, internal or external Decision-makers will be appointed to be the fact-finder of responsibility for the alleged conduct. The Title IX Coordinator will provide the Decision-makers with the finalized investigative report for review prior to the hearing.

While the Complainant, Respondent and witnesses are expected to be present and fully participate in the hearing (including being subject to questioning by an Advisor), it is the right of any and all parties

to choose not to participate in the hearing of the alleged conduct. In the event that any party chooses not to participate fully in the hearing process, their statements (including those made in the investigation stage) will be taken under advisement and given the weight properly due.

If the hearing is held in-person (not virtually), by request of either the Complainant or Respondent, questioning by an Advisor can be conducted in separate rooms with technology available that enables the other party to see and hear the questioning in real-time. The entire hearing will be recorded, either by electronic means or transcription. The recording will be made available, upon request, for inspection and review to both Parties. This recording will be kept on file by UP in accordance with applicable rules and regulations.

Continuances or Granting Extensions

UP may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, UP will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Before the Hearing

The Decision-makers, will determine the relevancy of questions asked during the hearing. If deemed relevant, the question is permissible to be asked during the hearing. If the Decision-makers determine that a question is not relevant, they will state as such and the question will not be permitted to be asked during the Hearing. Parties may appeal the relevance determinations at the beginning of the Hearing.

Understanding Relevance:

For these adjudications, the basic test for relevance is whether the question posed is probative to the question of responsibility. This includes an Advisor asking questions that addresses the credibility of the party. However, there are some topics that are presumptively never relevant unless an exception applies or a party has waived a privilege. These topics include questions and evidence:

- about the Complainant's sexual predisposition or prior sexual behavior, unless offered to prove that someone other than the Respondent committed the alleged conduct;
- that concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, unless offered to prove consent;
- that would traditionally be protected by a legally recognized privilege (e.g., attorney-client privilege), unless the party has waived the privilege;
- in reference to a party's psychological or medical records unless the party has given voluntary, written consent.

Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.
- UP will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation.
- If a party does not submit to cross-examination, the Decision-Makers will give it the weight that’s appropriately due and will reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions.

The Decision-maker(s)

- The hearing body will consist of 2-3 Decision-Makers.
- The Decision-Makers will also not have served as the Title IX Coordinator, Title IX investigator, or Advisor to any party in the case, nor may the Decision-Makers serve on the appeals body in the case.
- The Decision-Makers will not 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.
- The Decision-Makers will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.

Process Support Person

- Both the Complainant and Respondent have the right to choose an Advisor. The Advisor will be the person of choice for such Party at the Hearing and may be, but does not have to be, an attorney. An attorney acting in this role has no different role in the process and serves in the same capacity as a non-attorney.
- The Advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties themselves are not permitted to conduct cross-examination; it must be conducted by the Advisor. As a result, if a party does not select an Advisor, the institution will select an Advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The Advisor is not prohibited from having 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.
- The Advisor is not prohibited from being a witness in the matter.

- If a party does not attend the live hearing, the party’s Advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their Advisor appear at the hearing, UP will provide an Advisor to appear on behalf of the non-appearing party.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker will give it the weight that’s appropriately due.

Hearing Process

1. The hearing may begin with any appeals by the Parties to the Pre-Hearing relevancy determinations, if deemed appropriate by the Decision-makers.
2. The Decision-makers will then open the hearing by establishing the rules and expectations. The Decision-makers will then read the charges.
3. The Title IX Investigators will then provide a statement summarizing the investigation findings as recorded in the investigative report.
4. Either party (Complainant or Respondent) that has provided a statement that is included in the investigative report may subsequently request to provide a brief statement of additional clarification of no more than five (5) minutes in duration.
5. Upon conclusion of any clarification statement, the Decision-Makers will ask questions of the Parties and Witnesses.
6. Parties will be given the opportunity for live cross-examination after the Decision-Makers conduct their initial round of questioning; During the Parties’ cross-examination, Decision-Makers will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions; and at any time necessary in order to enforce the established rules of decorum. The Complainant, then followed by the Respondent, may have their Advisor ask any approved, relevant questions that have not already been addressed in the investigation or hearing.

Should a Party or the Party’s Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-Makers. A Party’s waiver of cross-examination does not eliminate the ability of the Decision-Makers to use statements made by the Party.

7. Each Party will have an opportunity to submit additional questions after the initial Oral Cross-Examination has concluded. The Complainant, followed by the Respondent, may have their Advisor ask any additional questions. There will only be one round of additional questions allowed.
8. Oral Direct Examination may be allowed if a Party identifies and provides sufficient justification for an “Expert Witness” prior to the Hearing. If an “Expert Witness” is identified by one party, the other party will have an opportunity to Cross-Examine that “Expert Witness”, if they so choose.
9. Upon completion of questioning, any Party must raise any procedural, substantive, bias,

conflict or other perceived irregularity to the Decision-Maker's attention for review and consideration. Failure to do so will forever waive such complaint.

10. Thereafter the Decision-makers will conclude the hearing.

Live Cross-Examination Procedure

Each party's Advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the Advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Cross-examination questions that are duplicative of those already asked, including by the Decision-Makers, may be deemed irrelevant if they have been asked and answered.

Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing. If new evidence shows up at a hearing, the hearing is stopped.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-Makers will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-Makers answer in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing, or at the Decision-Maker's sole discretion an adjournment, to review the evidence or prepare for questioning of the witness.

K. DETERMINATION OF RESPONSIBILITY

Standard of Proof

UP uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-makers.

Decision-Makers shall not draw inferences regarding a party or witness' credibility based on the party

or witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.

Generally, credibility judgments rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

It is well within the Decision-Maker's purview to make credibility determinations and the Decision-Makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a Witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that UP allow parties to call "expert witnesses" for direct and cross examination. UP does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross-examined as required by the Final Rule, the Decision-makers will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that UP allows parties to call character witnesses to testify. UP does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision-Makers will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that UP admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision-Makers will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-Makers may draw an adverse inference as to that party or witness' credibility.

Components of the Determination of Responsibility

Upon reviewing the investigative report and considering the statements and questions made by the Parties at the Hearing, within a reasonable time thereafter, the Decision-makers will make a determination of responsibility under the Preponderance of the Evidence standard. The Decision-makers will provide a written determination of whether the Respondent is found to be responsible or not responsible. This written determination will be provided to both the Complainant and the Respondent simultaneously. The Decision- Maker's written determination will also include the following information:

- identification of the allegations potentially constituting Sexual Harassment;
- a description of the procedural steps taken from receipt of the formal complaint through the making of the determination;
- the findings of fact used to make the determination;
- conclusions regarding the application of UP's Code of Conduct to the facts;
- a statement, and rationale for, the result of each allegation, including a determination regarding responsibility, any disciplinary sanctions, recommendation of or referral for disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to UP's education program or activity will be provided to the Complainant; and
- information on the procedures and permissible bases for parties to appeal the determination.

While both the Complainant and Respondent will be made aware of the determination of responsibility and the specifics of sanctions imposed on the Respondent (if any), any remedies provided to the Complainant will only be specified in the event that the remedy implicates and affects both parties. Further, the Title IX Coordinator has the responsibility to ensure the effective implementation of any remedies set forth in the written determination.

The decision is considered served and delivered on the date it is transmitted electronically to the Complainant and Respondent at their UP provided email address. The time to appeal shall run from and including the date of such transmission.

L. APPEALS

The Complainant and Respondent will both be provided with at least one level of appeal. The Complainant and Respondent are eligible to file an appeal to the final determination based on:

- 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, Investigators, or Decision-makers had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter.

The Complainant and Respondent may also appeal the mandatory or discretionary dismissal of a complaint based on the three points listed above.

The submitted appeal must include the grounds for which the request is based and be submitted in writing to the Title IX Coordinator within seven (7) business days following the date of the written determination. The appeal should also state the remedy sought by the appealing party. Upon receipt of the appeal, the other party will receive notification of the appeal and be provided opportunity to respond in writing. Written responses to the other party's appeal must be submitted within three (3) business days following the delivery of notice of the appeal.

In order to ensure a neutral and unbiased review, a party's request for appeal will be sent to an Appeals Panel (by the Title IX Coordinator) comprised of individuals with no connection to the initial determination, which serves as separate Decision-makers. An appeal decision will be rendered within twenty (20) business days after the receipt of the formal appeal request. The appeal decision will be provided in writing to both parties.

Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" above, or if an appeal is not filed, the date on which the opportunity to appeal expires.

M. RETALIATION

UP will keep the identity of any individual who has made a report or complaint of sex discrimination confidential (to the extent possible), including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute or FERPA regulations or as required by law, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed with UP Human Resources Department at hr.up@uprovidence.edu.

N. PRIVACY AND CONFIDENTIALITY

References made to confidentiality refer to the ability of identified confidential resources (e.g. priests/clergy) to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to confidentiality or privacy mean UP offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. UP will endeavor to limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality or privacy cannot be honored.

O. DISABILITY ACCOMMODATIONS

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

P. NON-DISCRIMINATION IN APPLICATION

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about UP's policy or process may contact the 24/7 Integrity Hotline at 888-294-8455 or www.integrityonline.ethicspoint.com.

Q. TRAINING

Section 106.45(b) of the 2020 Final Title IX Rules require the sharing of "All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public."

V. ENFORCEMENT

This policy applies to all members of the University of Providence, including students, faculty, and administrators as well as third-parties (including, but not limited to, vendors, invitees, etc.).

This policy applies to events that occur in the United States in any on-campus premises, any off-campus premises that UP has substantial control over or in any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by,

or used in the operations of UP’s programs and activities over which UP has substantial control.

VI. POLICY MANAGEMENT

The Office of Risk and Compliance oversees and manages this policy. The Compliance Officer reports directly to the President and has a dotted line to the UP Board of Trustees.

VII. EXCLUSIONS

N/A

VIII. EFFECTIVE DATE

This Title IX Policy became effective on August 14, 2020, and only applies to formal complaints of sexual harassment alleged to have occurred on or after August 14, 2020.

ADOPTION

This policy is hereby adopted on this 14 day of August 2020.



Fr. Oliver Doyle
President

IX. APPENDICES, REFERENCES, AND RELATED MATERIALS

UP Community Policies

2.1.9 Standards of Ethical Conduct

2.1.12 Title IX UP Student

Policies

6.1.1 Student Code of Conduct

6.1.2 Student Grievance (Non-Academic) Policy

6.1.7 External Student Compliant Policy

XI. REVISION HISTORY

08/01/2020 Created by Kylie Carranza

02/2024 Revisions by Brittany Budeski