University of Mary

Title IX Training

Coordinator • Investigator • Decision-Maker • Appeal Decision-Maker

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This presentation is meant to give you some basic information and nothing in this presentation is intended to be relied upon as legal advice. If you have any questions, please contact your attorney or Pemberton Law.

Today’s Framework

The governing rule, the process architecture, and the boundaries of each role.

01 Framework

- What controls and when

02 Coordinator

- Intake, supports, jurisdiction

03 Investigator

- Evidence and fair process

04 Decision-Maker

- Hearing and determination

05 Appeal

- Limited, impartial review

Core objective: a prompt, equitable, impartial process with documented role separation.

Current Regulatory Framework

Use the policy and regulatory framework applicable to the alleged conduct.

Federal baseline

- Title IX of the Education Amendments of 1972
- 34 C.F.R. Part 106
- The 2020 regulations are the current federal framework.

2024 rule status

- The 2024 regulations were vacated and are not the governing federal rule.
- Do not blend standards from the two frameworks.

Operational checkpoint

- Confirm the date of alleged conduct, the policy in effect, and any transition issue before assigning roles or sending notice.

Training is educational. Consult University counsel regarding specific matters.

The University of Mary Title IX Policy

The University's policy supplies the institution-specific standards, procedures, and timelines used throughout this training.

Process Structure

- Coordinator.
- Investigator.
- Decision-Maker.
- Appellate Decision-Maker.
- Required role separation, impartiality, and conflict screening.

University Standards

- Clear and convincing evidence standard.
- 10-day evidence-response period.
- Investigative report provided at least 10 days before the hearing.
- Five-day appeal deadline.
- 120-calendar-day target for completing the process, including appeal.

Training and Records

- Role-appropriate training for Title IX personnel.
- Training resources listed on the University's website.
- Title IX records retained indefinitely unless destruction or expungement is authorized under the policy

Confirm the applicable policy and consult University counsel when needed.

What Falls Within the 2020 Sexual-Harassment Framework

The definition and jurisdiction determine whether the formal Title IX process applies.

Employee quid pro quo

- An employee conditions an aid, benefit, or service on participation in unwelcome sexual conduct.

Hostile environment

- Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies equal access.

Enumerated offenses

- Sexual assault, dating violence, domestic violence, or stalking as defined by referenced federal statutes.

Jurisdiction also requires conduct in the University's education program or activity and against a person in the United States.

01

The Four Functions

A coordinated process with deliberately separated judgment roles.

Four Functions, One Process

A function may be staffed internally or externally, but separation and impartiality are mandatory.

Coordinator

- Owns response, supports, notices, process integrity

Investigator

- Gathers and fairly summarizes relevant evidence

Decision-Maker

- Conducts hearing and determines responsibility

Appeal Decision-Maker

- Reviews asserted appeal grounds and permitted record

The Decision-Maker and Appellate Decision-Maker must remain separate from the earlier roles as required by University policy.

Role Separation: The Bright Lines

Use this screen before every assignment.

01

Coordinate

Oversees and coordinates the Title IX response and grievance process

02

Investigate

May not decide responsibility

03

Decide

Must be independent of Coordinator and Investigator

04

Review appeal

Must be different from all earlier roles

05

Maintain bench

Train backups before assignment

Every role must be screened for conflicts of interest, bias, and prejudgment.

02

Coordinator

From report and supportive measures through final implementation.

Report ≠ Formal Complaint

The University responds to both, but they trigger different procedural consequences.

Report

- Any person may report.
- Triggers a prompt response.
- Coordinator contacts the complainant and discusses supportive measures.
- Explain how to file a formal complaint.
- Supportive measures do not depend on filing.

Formal complaint

- Initiates the formal grievance process.
- Filed by a complainant participating or attempting to participate or signed by the Coordinator.
- A Coordinator signature does not make the Coordinator a party.
- Requires formal notices and process protections.

Third parties may report. Filing authority is a separate question.

Coordinator Workflow

Document each decision point and keep the parties informed.

01

Receive

Report or actual knowledge

02

Contact

Offer supportive measures

03

Assess

Definition, jurisdiction, safety

04

Route

Formal process, dismissal, or other policy

05

Monitor

Notices, timeframes, records, remedies

Prompt and equitable does not mean rushed. Document good-cause delays and extensions.

Dismissal Is a Routing Decision

Dismissal from the Title IX sexual-harassment process does not erase other University obligations.

Mandatory dismissal

As alleged, the conduct would not meet the Title IX definition; did not occur in the education program or activity; or did not occur against a person in the United States.

Provide written notice to both parties, including the reasons for dismissal.

Permissive dismissal

Written withdrawal; respondent no longer enrolled or employed; or circumstances prevent gathering sufficient evidence.

Make an individualized, impartial decision.

After dismissal

Assess student or employee conduct, broader discrimination policy, Clery/VAWA, campus safety, mandatory reporting, accommodations, and supportive measures.

Supportive Measures and Emergency Action

Keep support, safety action, and discipline conceptually separate.

Supportive measures

Non-disciplinary, non-punitive, reasonably available, and designed to restore or preserve equal access.

Student emergency removal

Requires an individualized safety and risk analysis finding an immediate threat to physical health or safety arising from the allegations, plus notice and opportunity to challenge.

Employee administrative leave

Non-student employee may be placed on administrative leave during the grievance process.

Written Notice and Process Integrity

Give enough information and time for meaningful participation.

- Applicable grievance process and allegations.
- Known parties, alleged conduct, date, and location.
- Presumption of non-responsibility.
- Right to an advisor of choice.
- Right to inspect and review evidence.
- Applicable policy on knowingly false information.
- Supplemental written notice for additional allegations.
- A listing of available supportive measures and a copy of the applicable University policy.
- A statement referring the parties to the University's retaliation provision.

Coordinator control points

- Send notices simultaneously when required.
- Track service, response periods, extensions, and good-cause delays.
- Maintain privacy without restricting a party's ability to discuss allegations or gather relevant evidence.

03

Investigator

Build a reliable record without prejudgment or ultimate decision-making.

Investigator’s Assignment

The record must be thorough, equitable, and usable by a separate Decision-Maker.

Investigator perspective

- Build a complete, neutral record. Follow relevant leads, give each party equal opportunity to participate, and keep the fact-gathering function separate from the responsibility determination.

Core responsibilities

- Gather inculpatory and exculpatory evidence.
- Follow relevant leads.
- Give parties equal opportunities to present evidence and witnesses.
- Avoid prejudgment and sex stereotypes.
- Prepare a report that fairly summarizes relevant evidence.
- Do not make the final determination regarding responsibility.

Investigation Plan

A clear plan reduces missed evidence, delay, and inconsistent treatment.

Allegations

What exactly is being investigated?

Jurisdiction

Which process and policy apply?

Evidence map

What records, systems, locations, or people may have relevant information?

Interview sequence

What order preserves evidence and meaningful response?

Timeline

What notices, review periods, and good-cause issues must be tracked?

Parallel duties

Campus safety, law enforcement, Clery/VAWA, HR, accommodations?

Evidence Preservation and Interviews

Preserve first. Then gather information through neutral, purposeful questioning.

Preserve lawfully

- Documents, email, messages, recordings, access logs, and system data.
- University-approved legal holds and secure storage.
- Original files and metadata where feasible.
- Coordination with IT, campus safety, records personnel, and counsel.
- No access to personal devices or accounts without appropriate authority.

Interview accurately

- Written notice when a party’s participation is invited or expected.
- Open-ended questions before detailed follow-up.
- Neutral language and clear chronology.
- Record only under University policy and applicable law.
- Preserve recordings and notes securely.
- Allow appropriate clarification and follow-up.

Credibility and Reliability

Assess evidence with neutral factors. Demeanor alone is not proof of truthfulness.

- Internal consistency
- Consistency with other evidence
- Corroboration
- Level of detail
- Plausibility
- Motive to misrepresent
- Admissions
- Perception and memory

Context matters

Consider trauma, disability, culture, language, stress, and the formality of the process. Explain what evidence supports or undermines an account without relying on stereotypes or behavioral “tells.”

University policy permits the Investigator to include credibility determinations in the investigative report, provided those determinations are not based on a person's status as a complainant, respondent, or witness.

The Two 10-Day Review Periods

These are distinct stages, not two reviews of the same draft.

01

Gather

Investigator collects relevant evidence

02

Evidence review

Parties receive directly related evidence and have 10 days to submit a written response.

03

Consider

Investigator considers responses

04

Report review

The completed investigative report is provided at least 10 days before the hearing.

05

Proceed

Decision-Maker conducts hearing and decides

The Investigative Report

Organize the record so the Decision-Maker can evaluate each allegation independently.

- Fairly summarize relevant evidence
- Separate undisputed and disputed facts
- Identify evidence supporting each account
- Address material evidentiary conflicts
- Distinguish quotations from summaries
- Describe unresolved evidentiary issues
- Avoid an ultimate responsibility determination

Write for review

- Assume the report may be examined during a hearing, appeal, OCR review, or litigation. Use neutral labels, consistent chronology, accurate citations to the record, and clear treatment of party responses.

04

Decision-Maker

Independent evaluation, live hearing management, and a reasoned written determination.

Live Hearing and Questioning

A postsecondary grievance process requires a live hearing under the 2020 framework.

Hearing structure

- The Decision-Maker manages relevance rulings and the orderly presentation of questions.
- Advisors conduct cross-examination; parties do not personally question one another.
- The hearing must preserve meaningful participation and an impartial record.

Decision-Maker duties

- Each party's advisor may ask relevant questions and follow-ups.
- Parties do not personally conduct cross-examination.
- If a party does not have an advisor, the University arranges for one so that questioning can occur.
- Rule on relevance before an answer and explain exclusions.
- Apply rape-shield limitations.
- Maintain an orderly, equitable hearing.

Hearing Logistics and Evidence

Technology and evidence rulings must preserve meaningful participation.

Participation

- At a party's request, conduct the hearing with parties in separate rooms using technology that permits simultaneous sight and sound.

Record

- Create an audio or audiovisual recording, or transcript, and make it available to the parties for inspection and review.

Statements and weight

- Do not apply the vacated provision that categorically excluded every statement from a person who did not submit to cross-examination.
- Consult University counsel before addressing nonparticipation or determining the weight assigned to a statement.

Standard of Evidence and Written Determination

The University must apply its selected standard consistently to student and employee respondents.

Standard

The University's grievance process applies the clear and convincing evidence standard to all formal complaints under Title IX.

Evidence weight

Formal court rules generally do not control. Evaluate relevance, reliability, probative value, and appropriate weight consistently.

- Allegations and procedural steps
- Findings of fact
- Conclusions applying policy to facts
- Result and rationale for each allegation
- Sanctions imposed on the respondent
- Whether remedies will be provided
- Appeal procedures and permissible bases

The written determination is provided simultaneously to both parties.

05

Appeal and Closeout

A limited, independent review followed by final implementation and recordkeeping.

Appeal: Grounds and Process

Appeal is not a complete reinvestigation.

Required grounds

- Procedural irregularity that affected the outcome.
- New evidence not reasonably available that could affect the outcome.
- Conflict of interest or bias that affected the outcome.

Any additional policy grounds must be equally available.

Equal opportunity

- Notify the other party when an appeal is filed. Give both parties an equal, reasonable opportunity to submit written statements.
- Appeals must be received within five days of the determination or dismissal.

Reasoned decision

- The Appeal Decision-Maker reviews the permitted record and asserted grounds, then provides both parties a simultaneous written decision describing the result and rationale.

Informal Resolution

Use only with voluntary, informed participation and an impartial facilitator.

01

Provide written notice of allegations, process, and consequences

02

Obtain informed written consent

03

Permit withdrawal before agreement and return to grievance process

04

Use a trained, impartial facilitator

05

Do not offer for allegations that an employee sexually harassed a student

Retaliation, Training, Publication, and Records

Close the loop after the determination.

Retaliation

- Prohibit intimidation, threats, coercion, or discrimination for reporting, participating, refusing to participate, or exercising Title IX rights.
- A finding of no responsibility does not itself prove bad faith.

Training and publication

- Provide role-appropriate training on jurisdiction, procedures, hearings, appeals, informal resolution, relevance, impartiality, conflicts, bias, and prejudgment.
- List the resources used to train Title IX personnel on the University's website.

University Record Retention

- University policy requires Title IX records to be retained indefinitely unless destruction or expungement is authorized in accordance with the policy.

Readiness Checklist

Before the next matter arrives, make sure the infrastructure is ready.

- Current policy mapped to the 2020 framework
- Trained Coordinator and backups
- Trained impartial Investigator bench
- Independent Decision-Maker and Appeal Decision-Maker
- Hearing technology and recording plan
- Advisor process and relevance protocol
- Evidence-review and report templates
- Supportive-measure menu and safety protocol
- Clery/VAWA, HR, disability, campus-safety coordination
- University policy retention requirements and website listing of training resources

Prepared roles protect both fairness and institutional credibility.

Questions?

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