

Title IX and Prohibited Conduct Policy Training

For UMW Title IX Coordinators, investigators,
decision-makers, and informal resolution facilitators
assigned under UMW's *Policy on Sexual and Gender-
Based Harassment and Other Forms of Interpersonal
Violence (Prohibited Conduct Policy)*

Agenda

- Background and Important Terms
- UMW's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (Policy)
 - Prohibited Conduct
 - The definition of sexual harassment in § 106.30
 - The scope UMW's education program or activity
 - The scope and jurisdiction of UMW's Policy
- How to conduct an investigation and grievance process
 - Hearings
 - Appeals
 - Informal Resolution
- How to serve impartially
 - Avoiding prejudgment of the facts at issue
 - Conflicts of interest
 - Bias

The content of this training is based on 34 C.F.R. part 106, as amended, ("Title IX Regulations") and UMW's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.

Agenda

- For Decision-Makers
 - Technology to be used at live hearings
 - Issues of relevance of questions and evidence (including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant (§ 106.45(b)(6))
- For Investigators
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence (§ 106.45(b)(5)(vii))
- Informal Resolution

Key Principles

- Eliminating, preventing, and addressing the effects of Prohibited Conduct
- Prompt, impartial, and equitable investigations and adjudications of formal complaints of sexual harassment and other Prohibited Conduct
- Ensure that each individual case is decided on its merits

Title IX

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972. This law protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. Title IX states that:

“No 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.”

Important Terms

- Complainant – any individual who is alleged to be the victim of conduct that could constitute Prohibited Conduct
- Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct
- Supportive Measures - non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to UMW’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or UMW’s educational environment or to deter Prohibited Conduct.
 - Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absences, increased security and monitoring of certain areas of the campus, and other similar measures.

Confidentiality

- The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including:
 - any individual who has made a report or filed a formal complaint of sexual harassment,
 - any complainant,
 - any individual who has been reported to be the perpetrator of sex discrimination,
 - any respondent, and
 - any witness

except as may be permitted by FERPA, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

- **Confidential Relationships Under Law:** Distinct from the meaning of confidentiality for the purposes of laws that protect certain relationships, including with medical and clinical care providers, mental health providers, counselors, and ordained clergy, all of whom may engage in confidential communications under Virginia law (privileged communications).

Confidentiality – Records

- **FERPA:** The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the University’s FERPA Policy.
- **Health Records:** The privacy of an individual’s medical and related records generally is protected by Virginia’s Health Records Privacy Statute, Va. Code § 32.1-127.1:03.
 - The University cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless UMW obtains that party’s voluntary, written consent to do so for the Grievance Process and Procedures under the Policy.
- **Employee Personnel Records:** Access to an employee’s personnel records in Virginia may be restricted in accordance with the Virginia Freedom of Information Act, and, where applicable, Department of Human Resources Management (“DHRM”) Policy 6.05 Personnel Records Disclosure and DHRM Policy 6.10 Records Management.

Role of the Title IX Coordinator

- Coordinate UMW's efforts to comply with its responsibilities under Title IX of the Education Amendments of 1972 (Title IX), 34 C.F.R. Part 106
- Ensuring appropriate education and training
- Coordinating and reviewing UMW's investigation, response, and resolution of all reports under this Policy
- Ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and address its effects
- Ensuring effective implementation of any remedies imposed under the Grievance Policy and Procedures

Responsible Employees

- All University employees (except Confidential Employees) are Responsible Employees, including student workers employed as Resident Assistants, Orientation Staff, Peer Mentors, and Graduate Teaching Assistants, when disclosures are made to them in their capacities as University employees.
- Responsible Employees who, in the course of employment, obtain information (directly or indirectly) about:
 - an incident(s) that may constitute Prohibited Conduct that may involve a student and/or
 - incident(s) of Prohibited Conduct that may have occurred on campus, in or on a noncampus building or property, or on public property,*

shall report such information (including dates, times, locations, and names of the parties and witnesses, if known) to the Title IX Coordinator as soon as practicable after addressing the immediate needs of the Complainant.

- Va. Code § 23.1-806 (the Virginia Reporting Statute) requires Responsible Employees to report the information to the Title IX Coordinator

* See UMW's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence or Va. Code § 23.1-806 for definitions of these terms

Responsible Employees

- Supervisors, management, and human resources professionals are required to report to the University's Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Prohibited Conduct where either the Complainant or the Respondent is an employee.
- Reporting is required when supervisors, management, and human resources professionals knew (by reason of a direct or indirect disclosure) or should have known of such Prohibited Conduct.
- For academic faculty, supervisors include department chairs, deans, and other unit administrators.

Confidential Employees

- Licensed medical, clinical, or mental health professional when acting in their professional role providing services to a patient who is a student and any employee providing administrative, operational, and/or related support for such health care providers
- A Confidential Employee will not disclose information about Prohibited Conduct to the University's Title IX Coordinator without the student's permission, subject to the exceptions set forth in the Policy and as required under state and federal law.

UMW's Policy on Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence Covers:

1. Definitions
2. Policy Statement
3. Resources and Support
4. Reporting Options
5. Informal Resolution Procedures
6. Formal Resolution Procedures

Prohibited Conduct

- ❖ Sexual Harassment

- ❖ Including Sexual Assault, Domestic Violence, Dating Violence, and Stalking

- ❖ Sexual or Gender-Based Misconduct

- ❖ Including Non-Consensual Sexual Conduct, Intimate Partner Violence, and Stalking II

- ❖ Sexual Exploitation

- ❖ Retaliation

- ❖ Complicity

Sexual Harassment

The Definition of Sexual Harassment for the Purposes of Title IX and 34 C.F.R § 106.30

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Sexual Assault

- Sex Offenses, Forcible – Any sexual act directed against another person, without the consent of the Complainant including instances where the Complainant is incapable of giving consent.
 - 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 another person, without the consent of the Complainant.
 - Forcible Sodomy – Oral or anal sexual intercourse with another person, forcibly and/or against that person’s will (non-consensually) or not forcibly or against the person’s will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Sexual Assault with an Object – to use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will (non-consensually) or not forcibly or against the person’s will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - Forcible Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person’s will (non-consensually) or not forcibly or against the person’s will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sex Offenses, Nonforcible – Nonforcible sexual intercourse.
 - Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Virginia law.
 - Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent of Virginia.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence

A felony or misdemeanor crime of violence committed: by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Virginia; by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Virginia.

- To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Other Prohibited Conduct

Sexual or Gender-Based Misconduct

Sexual or Gender-Based Misconduct means conduct that satisfies one or more of the below that does not otherwise meet the definition of *Sexual Harassment* under the Policy:

- Non-Consensual Sexual Conduct
- Intimate Partner Violence
- Stalking II

Non-Consensual Sexual Conduct

Non-consensual bodily contact of a sexual nature; intentional and non-consensual touching of or coercing, forcing, or attempting to coerce or force another to touch a person's genital area, groin, inner thigh, buttocks or breast, clothed or unclothed; and non-consensual sexual intercourse, defined as anal, oral, or vaginal penetration, however slight, with any body part or object.

Intimate Partner Violence

Any act of violence or emotional abuse or threatened act of violence or abuse that occurs between individuals who are or have been in a sexual, dating, spousal, domestic, or other intimate relationship. Intimate Partner Violence may include but is not limited to the following forms of conduct: physical abuse of the Complainant by a spouse or partner, such as hitting, slapping, pushing, or strangling; sexual violence of the Complainant by a spouse or partner; and extreme verbal abuse of the Complainant by a spouse or partner.

Consistent with the Violence Against Women Reauthorization Act of 2013 (“VAWA”), the existence of an intimate relationship will be determined based on the Complainant’s statement and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking II

An intentional course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

- “Course of Conduct” means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, communicates to or about another person, or interferes with another person’s property.
- “Substantial Emotional Distress” means significant mental suffering or anguish. Stalking II includes “cyberstalking,” a particular form of stalking in which a person uses electronic media, such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.
- Stalking II constitutes Prohibited Conduct under the Policy when the course of conduct is directed at a specific person because of that person’s sex, sexual orientation, or gender.

Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the other forms of Prohibited Conduct. Sexual Exploitation includes but is not limited to prostituting another person; non-consensual visual or audio recording of sexual activity; non-consensual distribution of photographic, audio, video, other image, or text-based content of an individual's sexual activity or intimate body parts; non-consensual voyeurism; knowingly exposing someone to or transmitting an STI, STD, or HIV; exposing one's genitals to another in non-consensual circumstances, or intentionally removing or compromising contraception without the other party's consent.

Retaliation

It is a violation of the Policy to intimidate, threaten, coerce, or discriminate against any individual for the purposes of interfering with any right or privilege secured by Title IX of 34 C.F.R. part 106, as amended, or 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 Policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or 34 C.F.R. part 106, constitutes Retaliation.

Complicity

Any act that knowingly facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

Consent

Consent

- Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity.
- Silence, in and of itself, does not constitute consent.
- Past consent to sexual activities, or a current or previous intimate relationship, does not imply ongoing or future consent.
- Consent to some sexual activity (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).
- Once consent is clearly communicated as withdrawn, that withdrawal requires that the sexual activity cease.
- The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred.
- Consent is not considered to be knowing and voluntary if obtained through force or coercion or obtained while the Complainant was incapacitated.

Coercion and Force

- **Coercion:** the improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will.
 - May include intimidation, manipulation, threats, and blackmail.
 - A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity.
 - The University will evaluate the following in determining whether coercion was used: (a) frequency of the application of pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure.
- **Force:** the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threat), and coercion that overcomes free will, overcomes resistance, or produces consent.

Incapacitation

- **Incapacitation** means a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, and/or how” of their sexual interaction).
- Sexual activity with someone who is mentally or physically incapacitated (e.g., by alcohol, other drug use, or unconsciousness), constitutes a violation of University Policy.
- A Respondent is not responsible for a violation of this Policy for engaging in sexual activity with someone who is incapacitated if the Respondent both did not know of that individual’s incapacitation and should not reasonably have known of that individual’s incapacitation.
- The Policy covers a person whose incapacitation results from mental disability, sleep, involuntary physical restraints, or drugs or other substances.

Scope and Jurisdiction of Policy

The Scope of UMW's Education Program or Activity for the Purposes of Title IX and 34 C.F.R. part 106

Education Program or Activity means locations, events, or circumstances over which the University of Mary Washington exercises substantial control over both the respondent and the context in which the sexual harassment occurs. It also includes any building owned or controlled by a student organization that is officially recognized by the University. This definition applies to formal complaints filed for the purposes of Title IX, 34 C.F.R. part 106, as amended, and does not limit the University of Mary Washington's response to allegations of other Policy violations contained in the Prohibited Conduct Policy.

Scope and Jurisdiction of the Prohibited Conduct Policy

The Policy applies to:

- All UMW students who are registered or enrolled for credit- or non-credit-bearing coursework;
- All UMW employees, consisting of all full-time and part-time faculty, administrative/professional faculty, classified, and wage employees; and
- Any contractors, vendors, visitors, guests, or other third parties.

The Policy pertains to acts of Prohibited Conduct committed by or against students or employees when:

- The conduct occurs on campus, in a noncampus building or property, or on public property;
- The conduct occurs in the context of a UMW employment or education program or activity, including, but not limited to, UMW-sponsored study abroad, research, online, or internship programs; or
- The conduct occurs outside the context of a UMW employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on campus or other property owned or controlled by UMW or in any UMW employment or education program or activity.

“Campus” means (i) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner relating to, the institution’s educational purposes, including residence halls, and (ii) any building or property that is within or reasonably contiguous to the area described in clause (i) that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes, such as a food or other retail vender. Va. Code § 23.1-806 (the “Virginia Reporting Statute”).

“Noncampus building or property” means (i) any building or property owned or controlled by a student organization officially recognized by an institution of higher education or (ii) any building or property owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution’s education purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution. Va. Code § 23.1-806 (the “Virginia Reporting Statute”).

“Public Property” means all public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus. Va. Code § 23.1-806 (the “Virginia Reporting Statute”).

Report vs. Formal Complaint

- Any person may report Prohibited Conduct.
- *Formal Complaint* means a document filed by a complainant or signed by the Title IX Coordinator or designee(s) alleging Prohibited Conduct against a respondent and requesting that the recipient investigate the allegation of Prohibited Conduct.
 - “Document filed by a complainant” means a document or electronic submission (electronic mail) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator or designee(s) signs a formal complaint, the Title IX Coordinator or designee(s) is not a complainant or otherwise a party.
- “Report a Concern” form is not a formal complaint.

Reports to the University

- Reports may be made by contacting UMW's Title IX Coordinator in person, by mail, by telephone, or by electronic mail (e-mail) to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. 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.
- Additionally, reports involving student-Respondents may also be submitted through UMW's Online Reporting Form, located at <http://www.umw.edu/concerns/> (which allows for anonymous reporting).
- Anyone may report Prohibited Conduct whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Prohibited Conduct.
- **A report of Prohibited Conduct to the University does not automatically trigger a formal investigation and the formal Grievance Process.**

§106.44 Response to Report of Sexual Harassment

- Respond promptly in a manner that is not deliberately indifferent
- Treat complainants and respondents equitably by offering supportive measures to a complainant and by following a grievance process that complies with § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supporting measures against a respondent
- The Title IX Coordinator must:
 - Promptly contact the complainant to discuss the availability of supportive measures
 - Consider the complainant's wishes with respect to supportive measures
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
 - Explain to the complainant the process for filing a formal complaint

Supportive Measures

- The University will offer and implement appropriate and reasonable supportive measures to the parties upon actual notice of alleged harassment, discrimination, and/or retaliation.
- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to UMW's education program or activity, including measures designed to protect the safety of all parties or UMW's educational environment.
 - Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absences, increased security and monitoring of certain areas of the campus, and other similar measures.
- UMW will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of UMW to provide the supportive measures.
- A Complainant is not required to file a Formal Complaint to receive supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Filing a Formal Complaint

Filing a Formal Complaint

- Anyone may report Prohibited Conduct without filing a Formal Complaint, and a complainant may choose to report Prohibited Conduct before filing a Formal Complaint.
- A formal complaint may be filed by a complainant with the Title IX Coordinator in person, by mail, or by electronic mail.
- Additionally, a formal complaint may be signed by the Title IX Coordinator. A formal complaint signed by the Title IX Coordinator must allege Prohibited Conduct against a respondent and request that UMW investigate the allegation(s) of Prohibited Conduct.
 - Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

Reports and information submitted through UMW's "Report a Concern" (umw.edu/concerns) do not constitute a formal complaint. After a report of conduct potentially constituting Prohibited Conduct is made through UMW's "Report a Concern," the Title IX Coordinator will contact the Complainant, if known, to provide information including but not limited to how to file a Formal Complaint.

Components of a Formal Complaint

- A formal complaint is considered filed by the complainant when it meets the following requirements:
 - 1) It is a document or electronic submission (such as electronic mail) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint;
 - 2) It must allege Prohibited Conduct against a respondent; and
 - 3) It must request that UMW investigate the allegation(s) of Prohibited Conduct.

How to Conduct an Investigation and Grievance Process

*Investigations, Hearings, Appeals, and Informal
Resolution*

Summary of Procedures under UMW's Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence

For more information on the Office of Title IX and to view the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence (Prohibited Conduct Policy), please visit <https://diversity.umw.edu/title-ix/>.

Important Terms

Prohibited Conduct: Sexual Harassment, Sexual or Gender-Based Misconduct, Sexual Exploitation, Retaliation, Complicity.

Complainant: Person who is reported to have experienced Prohibited Conduct.

Respondent: Person who is reported to have committed Prohibited Conduct.

Supportive Measures: Supportive measures are available without filing a Formal Complaint. Supportive measures are available to both parties and include individualized services designed to restore or preserve equal access to UMW's education program or activity such as counseling, extensions of deadlines, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work or housing locations, parking accommodations, and other similar measures. Contact the Title IX Coordinator to discuss supportive measures.

Advisor: The Complainant and Respondent may have an advisor of their choice to assist them with the process. An Advisor must conduct questioning of the other party and witnesses if a hearing is held. The University will appoint an Advisor for the questioning if a party does not have one.

Informal Resolution: Complainants and Respondents may choose to proceed with Informal Resolution in certain cases.

Informal Resolution is a flexible process that concludes with an outcome agreed to by both parties and the Title IX Coordinator. More information is available in the Prohibited Conduct Policy available at <https://diversity.umw.edu/title-ix/>.

1. To report Prohibited Conduct or after a report is made, the Complainant may choose to meet with the Title IX Coordinator who will offer resources and supportive measures. The Complainant has the option of filing a Formal Complaint. If a Formal Complaint is filed, the Complainant and Respondent receive a Notice of Allegations disclosing the reported Policy violations.

2. The Investigator meets with the Complainant, Respondent, and witnesses to discuss the report and collect evidence such as text messages, social media posts, other electronic communications, photos, and videos.

3. The Investigator provides both parties with a copy of all directly related evidence collected during the investigation, and the parties have 10 days to review and provide a written response.

4. The Investigator will review the responses and draft an investigation report summarizing the relevant evidence that will be provided to the parties 10 days before a hearing. If 34 C.F.R. part 106, as amended, does not apply to any remaining allegations, the Investigator will include recommended finding(s) and sanction(s), if applicable, that the parties may choose to accept.* If they are not accepted, the case proceeds to a hearing.

5. If the case proceeds to a hearing, the Title IX Coordinator schedules a hearing with the decision-maker(s). The parties may meet with the Title IX Coordinator to discuss procedural aspects of the hearing before the hearing occurs.

6. During the hearing, the Complainant, Respondent, Investigator, and witnesses make statements and present evidence to the decision-maker(s) who has the opportunity to ask questions. Advisors will have the opportunity to ask relevant questions to the parties and witnesses.

7. After the hearing, the decision-maker(s) will deliberate and issue finding(s) and sanction(s), if applicable, that will be provided in writing to the parties, along with a written rationale for the decision. If neither party appeals, the finding(s) and sanction(s), if applicable, become final, and the case is closed.

8. If a party submits an appeal on the limited grounds specified in the Prohibited Conduct Policy and the Title IX Coordinator will appoint an appeal decision-maker(s) to review the case. The parties will have the opportunity to submit statements in writing to the appeal decision-maker(s). The appeal decision-maker(s) will determine whether to accept the appeal and whether the original finding(s) and sanction(s), if applicable, will be upheld or the case will be referred for further investigation or a new hearing. The decision of the appeal decision-maker is final.

*Dismissal for the Purposes of 34 C.F.R. part 106, as amended: If the conduct alleged in the formal complaint would not constitute Sexual Harassment even if proved, did not occur in UMW's education program or activity, or did not occur against a person in the United States, or if at the time of filing a formal complaint, the Complainant is not participating or attempting to participate in the education program or activity of UMW, UMW will dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX and 34 C.F.R. part 106, as amended. UMW may still proceed under the other provisions within the Prohibited Conduct Policy.

Disclaimer: In the event of any disagreement between this document and the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence, the Policy controls. To view the Policy, please visit diversity.umw.edu/title-ix/prohibited-conduct-policy/.

Grievance Process for Formal Complaints of Prohibited Conduct

Standard of Evidence

- The standard of evidence that will be used to determine responsibility in all cases involving allegations of Prohibited Conduct is the “preponderance of the evidence.”
- Preponderance of the evidence requires that the weight of the evidence, in totality, supports a finding that it is more likely than not that a violation occurred. A respondent will not be found in violation of this Policy absent a finding by a Preponderance of the Evidence that the violation occurred. This standard of evidence applies to all formal complaints against students and employees, including faculty.

Burden of Proof and Evidence Considerations

- The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.
- The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless UMW obtains that party's voluntary, written consent to do so for the Grievance Process and Procedures.

Presumption of Non-Responsibility

The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Reasonably Prompt Time Frames

- The University of Mary Washington is committed to concluding the Grievance Process in a reasonably prompt time frame including reasonably prompt time frames for filing and resolving appeals and informal resolution processes.
- The Grievance Process may be temporarily delayed or a limited extension of time frames may be granted for good cause.
- If the Grievance Process is temporarily delayed or a limited extension of time frames is granted, written notice that includes the reasons for the actions will be provided to the complainant and the respondent.
- The Title IX Coordinator, or designee(s) will determine whether good cause exists for a temporary delay of the grievance process or the limited extension of time frames. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity including, but not limited to, complying with requests from law enforcement for temporary delay for gathering evidence for a criminal investigation; the need for language assistance or accommodation or disabilities; if additional time is necessary to ensure the integrity and completeness of the investigation, including, but not limited to, considerations such as the complexity of the case including volume of witnesses and information; and/or other legitimate reasons.

Notice of Allegations

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee(s) will provide written notice to the parties who are known containing the following:

- Notice of UMW's Grievance Process including the informal resolution process;
- Notice of the allegations potentially constituting Prohibited Conduct including the following details if known at the time:
 - Identities of the parties involved in the incident
 - The conduct allegedly constituting Prohibited Conduct
 - The date and location of the alleged incident;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process;
- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney; and
- A statement informing the parties that they may inspect and review evidence in accordance with the Grievance Procedures described herein.

Must be provided with sufficient time to prepare a response before any initial interview.

Advisors

- During the Grievance Process, the Complainant and Respondent may be accompanied to any related meeting or proceeding by an advisor of their choice. The advisor may be, but is not required to be an attorney.
- The advisor is not allowed to speak on behalf of the individual that they are advising except to the extent necessary to conduct direct examination and cross-examination during a live hearing conducted under the procedures. If a party does not have an advisor present at the live hearing conducted under these procedures, the University will provide without charge or fee to that party, an advisor of the University's choice to conduct cross-examination on behalf of that party.

Investigations

Investigations

- During the investigation, the investigator(s) will meet separately with the Complainant, Respondent, and other relevant witnesses for a statement(s), which may be recorded by the investigator(s). The Complainant, Respondent, witnesses, advisors, or others present during the statement shall not record the interview. The statement(s) will be made available for the parties for review in accordance with the procedures under this Policy.
- The investigator(s) will gather available information and evidence, including, but not limited to, electronic records or communications, photographs, surveillance videos, records or logs, and other available evidence. Follow-up interviews may be conducted with one or both parties and witnesses who may be asked about or shown specific statements or documentary evidence.

Investigations – *10-day Review of the Evidence*

- Prior to conclusion of the investigation, the investigator(s) or designee(s) will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which UMW does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. This evidence will be provided to each party and the party's advisor, if any, in an electronic format.
- The parties will have 10 days to submit a written response to the investigator(s) which the investigator will consider prior to the completion of the investigative report.

Investigations – *10-day Review of the Investigative Report*

- The investigator(s) will create an investigative report that fairly summarizes the relevant evidence.
- The investigator(s) or designee(s) will send to each party and the party's advisor, if any, the investigative report in an electronic format for their review and written response.
- This report will be provided to each party and the party's advisor, if any, at least 10 days prior to a hearing.

Additional Investigation Procedures if 34 C.F.R. § 106.30 and § 106.45 Do Not Apply

- If 34 C.F.R. § 106.30 and §106.45 do not apply to any remaining allegations, the investigator will include in the investigative report a recommended finding(s) and sanction(s), if applicable.
- The parties will have 5 days from the provision of the investigative report pursuant to the paragraph above to notify the Title IX Coordinator if they accept the recommended finding(s) and sanction(s), if applicable, or request a hearing be held pursuant to the procedures described in this Policy.
- If neither party requests a hearing within 5 days of the provision of the investigative report pursuant to the above paragraph, the recommended finding(s) and sanction(s), if applicable, of the investigator contained within the investigative report will become final.
- If both parties accept the finding(s) and sanction(s), if applicable, prior to the conclusion of the 5-day period, the finding(s) and sanction(s) become final on the latest date on which a party accepted the finding(s) and sanction(s), if applicable. Both parties will be simultaneously notified of this date.
- Parties will have 3 days from the date the recommended finding(s) and sanction(s) become final to appeal pursuant to the Appeal procedures in this Policy. If an appeal is not timely filed, the Title IX Coordinator or designee(s) will implement finding(s) and sanction(s), if applicable, on the day an appeal is no longer considered timely.

Dismissal

Dismissal for the Purposes of Title IX and 34 C.F.R. part 106, as amended

Mandatory Dismissal: If at any time in the course of an investigation or other proceeding under this Policy it becomes clear that the conduct alleged in the formal complaint:

- Would not constitute Sexual Harassment even if proved,
- Did not occur in UMW's education program or activity, or
- Did not occur against a person in the United States, or
- If at the time of filing a formal complaint, the Complainant is not participating or attempting to participate in the education program or activity of UMW,

UMW will dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX and 34 C.F.R. part 106, as amended.

- The Title IX Coordinator or designee(s) will provide prompt written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- This provision does not limit UMW's ability to proceed under other provisions of the Policy or under any other UMW policies or procedures. Any written notice regarding the dismissal that is provided to the parties will indicate whether UMW is continuing to investigate allegations contained in the formal complaint under the process and procedures outlined in the Policy.

Dismissal for the Purposes of Title IX and 34 C.F.R. part 106, as amended

Permissive Dismissal: Additionally, UMW may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- the respondent is no longer enrolled or employed by UMW; or
- specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint or any allegations therein is dismissed pursuant to this paragraph, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Hearings

Hearing Participants

- Decision-maker(s) – appointed to the case at least 5 days prior to a scheduled hearing
- Parties
- Advisors
- Witnesses
- Investigator
- Other personnel assisting with facilitation

Questioning, Direct examination, and Cross-examination

- The decision-maker(s) may at any time throughout the hearing ask the parties and witnesses questions.
- **Direct Examination:** At the live hearing, each party's advisor will be permitted to ask relevant questions to the party they are advising.
- **Cross-Examination:** Additionally, at the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
 - This cross-examination must be conducted directly, orally, and in real time by the party's advisor. A party will not be permitted to personally cross-examine the other party or any witness.
- If a party does not have an advisor present at the live hearing, the University will provide an advisor of the University's choice without fee or charge to that party to conduct cross-examination on behalf of the party.

Relevance

- Only relevant direct examination and cross-examination questions may be asked of a party or witness. Questions that are immaterial or unduly repetitious are considered irrelevant.
- The decision-maker may exclude irrelevant, immaterial, or unduly repetitious questions and statements, including duplicative statements by multiple witnesses, and may limit the length of the hearing, questioning, and/ or statements in light of their relevance in relation to the matter(s) to be considered in the case.
- Before a complainant, respondent, or witness answers a question, the decision-maker must first determine whether the question will be permitted to be answered by the party or witness.

Relevance – *Sexual Predisposition or Prior Sexual Behavior*

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant,
 - Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - If the questions and evidence concern specific incidents of the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Absence or Refusal to Answer Questions

The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Determination Regarding Responsibility

- After the conclusion of the hearing, the decision-maker(s) and Title IX Coordinator or designee(s) will issue a written determination regarding responsibility. The determination regarding responsibility will be made using the Preponderance of the Evidence standard.
- The written determination will be provided simultaneously to the parties and will include the following information:
 - The allegations potentially constituting Prohibited Conduct;
 - A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of the Policy to the facts;
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to UMW's education program or activity will be provided to the Complainant; and
 - The procedures and permissible bases for the Complainant and Respondent to appeal.

Additional Hearing Procedures if 34 C.F.R. §106.30 or 106.45 Apply to Any Remaining Allegations

- The decision-maker(s) will not be the same person(s) as the Title IX Coordinator or investigator(s) assigned to the case.
- Before a complainant, respondent, or witness answers a direct examination or cross-examination, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.

Appeals

Grounds for Appeal

- Either party may appeal from a determination regarding responsibility and from the dismissal of a formal complaint or any allegations therein for the purposes of sexual harassment under Title IX or 34 C.F.R. § 106.30 and §106.45, as amended, on the following bases:
 - Procedural irregularity that affected the outcome of the matter;
 - New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; and
 - The Title IX Coordinator, investigator(s), or decision-maker(s) 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.

Request for Appeal

- The request for appeal must be made in writing to the Title IX Coordinator within 3 days of the provision of the determination regarding responsibility or the notification dismissal of a formal complaint or any allegations therein for the purposes of sexual harassment under Title IX or 34 C.F.R. part 106, as amended.
- The request must include specific information to support one or more of the aforementioned bases for appeal.
- Once an appeal is filed, the Title IX Coordinator or designee(s) will notify the other party in writing that an appeal was filed and provide a copy of the appeal.
- If the appeal is filed on the finding(s) and/ or sanction(s) contained within the investigative report pursuant to the Investigation Section of the Policy, the appeal must be filed within 3 days of the finding(s) and sanction(s), if applicable, becoming final (see investigation section for more information).

Appeal Process

- The appeal decision-maker(s) will review the request for appeal, the written statements of the parties, and other relevant information.
- The appeal decision-maker(s) may, at their discretion, ask additional questions (oral or written) to any party, witness, investigator, decision-maker(s), or Title IX Coordinator. The requestee will be given a reasonable time to prepare a written response if requested. The appeal decision-maker(s) will notify the requestee of the time at which any written response is due to the appeal decision-maker in writing when the questions are provided to the requestee.
- Within a reasonably prompt time frame after the period for submission of written statements from the parties and the period for responses to questions posed by the appeal decision-maker(s) have concluded, the appeal decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result. The preponderance of the evidence standard will be used for all matters of appeal.
- The results of an appeal may include: (1) referring the matter for further investigation; (2) referring the matter for a new hearing; or (3) the appeal may be denied and the previous findings regarding responsibility, dismissal, or sanctions becomes final.
- The appeal decision-maker may, at their discretion, refer the case for a new hearing in front of a decision-maker previously uninvolved in the case. Additionally, the grounds of this hearing may be limited, at the discretion of the appeal decision-maker, to specific grounds such as the sanction imposed.

How to Serve Impartially

Avoid Prejudgment of Facts at Issue

- The credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case.
- Research and data concerning sexual violence dynamics cannot be relied on to apply generalizations to particular allegations of sexual harassment.
- Don't base credibility determinations on a party's status as a complainant or respondent.
- Parties should be treated with equal dignity and respect.

Avoiding Conflicts of Interest

- Conflict of Interest: A situation in which someone cannot make a fair decision because they have an interest in the decision.
- Any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, must not have a conflict of interest for or against:
 - complainants or respondents generally or
 - an individual complainant or respondent.

Avoiding Bias

- Any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process, must not have a bias for or against:
 - complainants or respondents generally or
 - an individual complainant or respondent.
- Implicit bias is unconscious or unintentional judgement, prejudice, or favor against or toward a person or group. This may be based on factors of identity such as race, ethnicity, religion, age, gender, sexual orientation, ability status, etc.
- Biases can be either favorable or unfavorable.
- Ingroup bias is a form of implicit bias in which one favors one's own identity groups.

For Decision-Makers

Technology to Be Used at Live Hearings

Issues of Relevance of Questions and Evidence

*Questions and Evidence about the Complainant's
Sexual Predisposition or Prior Sexual Behavior*

Issues of Relevance of Questions and Evidence

- Evidence is relevant if:
 - It has any tendency to make a fact more or less probable than it would be without the evidence (probative); and
 - The fact is of consequence in determining the action (materiality).
- Ask relevant questions; will the question result in the provision of relevant information/ evidence?
- Other Evidence Considerations:
 - Direct Evidence – evidence that is based on personal knowledge or observation, and that, if true, proves a fact without inference or presumption
 - Circumstantial Evidence – (indirect evidence) evidence based on inference and not on personal knowledge or observation; evidence which is applied to the principal fact, indirectly, or through a medium of other facts, by establishing certain circumstances or minor facts, from which the principal fact is extracted and gathered by process of special inference.
 - Credibility – evidence that is trustworthy, believable

Questions and Evidence about the Complainant's Sexual Predisposition or Prior Sexual Behavior

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

- Such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- If the questions and evidence concern specific incidents of the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Technology to Be Used at Live Hearing

- If a Live Hearing will be conducted virtually, we may use Zoom. Please review the videos at the following link to become familiar with the technology.
<https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials>
- All hearings are recorded. Before starting the hearing, press the record button on the University-provided digital record. During breaks in the hearing and at the conclusion of the hearing, press the record button to stop the recording. Verify that the recorder is recording after all breaks before proceeding with the hearing.

For Investigators

Issues of Relevance in Creating an Investigative Report that Fairly Summarizes Relevant Evidence

§ 106.45(b)(5)(vii)

Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing, send to each party and the party's advisor the investigative report for their review and response.

Relevance

- Evidence is relevant if:
 - It has any tendency to make a fact more or less probable than it would be without the evidence (probative); and
 - The fact is of consequence in determining the action (materiality).
- Evidence about the complainant's sexual predisposition, prior sexual behavior, or specific incidents of the complainant's prior sexual behavior are not relevant unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant. If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent, it is not relevant unless offered to prove consent.

Creating the Investigative Report

- Review evidence and information gathered, including the parties' responses, if any, to the directly related evidence provided to them, to determine whether the evidence is relevant.
- If the evidence is relevant, summarize the evidence in the investigative report.

Informal Resolution

Informal Resolution - *Requirements*

- Formal Complaint must be filed.
- The parties may voluntarily and in writing consent to an informal resolution process facilitated by an informal resolution facilitator(s).
- Informal Resolution may be agreed to by the parties at any time prior to reaching a determination regarding responsibility including at any time during or after a formal investigation or at any other time during the Grievance Process as long as a final determination regarding responsibility has not been reached.

Informal Resolution – *Notice*

- In cases in which Informal Resolution is being considered by one or both parties, the Title IX Coordinator or designee(s) will provide a written notice disclosing the following:
 - The allegations of Prohibited Conduct;
 - The requirements of the informal resolution process including the circumstances the parties from resuming a formal complaint arising from the same allegations;
 - Whether, that as a condition of commencing informal resolution, the parties must agree not to introduce any evidence, including statements of the parties, learned solely through the informal resolution process into another proceeding under this Policy except to the extent necessary to enforce any terms of a resolution agreement;
 - Whether, that as a condition of commencing informal resolution, the parties must agree not to testify to any evidence, including statements of the parties, learned solely through the informal resolution process voluntarily in any other proceeding under this Policy except to the extent necessary to enforce any terms of a resolution agreement;
 - That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Process with respect to the formal complaint;
 - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
 - The identity of the informal resolution facilitator(s) who would be assigned to the case.

Informal Resolution – *After Notice is Provided*

- If the parties consent to using the Informal Resolution process, each party must provide their voluntary written consent to the Title IX Coordinator or designee(s) before the Informal Resolution process will be begin.
- At any time prior to the written consent of both parties to the resolution agreement, either party may withdraw consent to continue in the informal resolution process and the case will proceed under the Formal Grievance Procedures.
- With any form of informal resolution, each party has the right to choose and consult with an advisor subject to the requirements and restrictions provided in the section titled “*Advisors*” above.

Informal Resolution – *Agreement Between the Parties and Notification of Outcome*

- If an agreement made during the informal resolution process is acceptable to both parties and the Title IX Coordinator or designee(s), the informal resolution facilitator(s) will provide a written notification containing the agreement of the parties to both parties.
- If both parties and the Title IX Coordinator or designee(s) provide their voluntary written consent to the agreement, the terms of the agreement will be implemented and the matter will be resolved and closed.
- There is no right of appeal afforded to the Complainant or Respondent following Informal Resolution.
- If an agreement is not reached within a reasonable amount of time from commencing the Informal Resolution process, the informal resolution facilitator(s) will notify the Title IX Coordinator and the case will proceed under the formal grievance procedures.

Informal Resolution – Limitations

- The University of Mary Washington does not 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 an investigation and adjudication of formal complaints of sexual harassment under Title IX and 34 C.F.R. part 106, as amended. **Informal Resolution is not available to resolve allegations that an employee sexually harassed a student.**
- The Title IX Coordinator or designee(s) may at their discretion determine to proceed under the Formal Grievance Procedures even if both the Complainant and Respondent had agreed to proceed with Informal Resolution. When making this determination, the Title IX Coordinator or designee(s) will consider the totality of the known circumstances and factors including but not limited to those listed below.
 - Amenability of the parties
 - Likelihood of potential resolution
 - Motivation to participate
 - Imbalance of power between participants
 - Complexity of the case
 - Goals of the participants
 - Risk Factors Considered When Determining the Threat of Safety to the Complainant, other Individuals, or the University Community, as outlined in this Policy
 - Whether Emergency Removal occurred in the case
 - Any other factor or consideration deemed relevant by the Title IX Coordinator or designee(s)

Additional Resources

Resources on the New Regulations

- <https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>
- OCR Webinars
 - [OCR Webinar on New Title IX Protections Against Sexual Assault](#)
 - [OCR's Webinar on How to Report Sexual Harassment](#)
 - [OCR Webinar on Due Process and the New Regulations](#)
 - [OCR's Webinar on First Amendment and Title IX](#)
 - [OCR's Webinar on Conducting and Adjudicating Title IX Cases](#)

Questions

Questions on this training may be directed to UMW's Title IX Coordinator at the contact information provided at diversity.umw.edu/title-ix/.

In the event of any disagreement between the information contained in this presentation and the Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence, the Policy controls. To view the Policy, please visit diversity.umw.edu/title-ix/prohibited-conduct-policy/.