

Title IX Sexual Harassment Policy

The University of Portland (the "University") prohibits all forms of sexual and gender-based harassment. The University provides more details about specific examples of behavior that is considered sexual and gender-based harassment on its Title IX Website, <https://www.up.edu/titleix>.

This Policy addresses sexual harassment that falls within the definition of Title IX of the Education Amendments of 1972. If at any point a report of sexual harassment does not meet the jurisdictional requirements of Title IX, as further described below, the University may address the conduct pursuant to the University's Student Code of Conduct, Faculty Handbook, Human Resources policies, and/or other relevant departmental or university policies.

Definitions

1. Complainant – The Complainant is an individual who is alleged to have experienced conduct that could constitute sexual harassment. The Complainant can be a student, employee or third party.
2. Respondent – The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
3. Sexual Harassment - For purposes of Title IX, sexual harassment is conduct on the basis of sex that satisfies one or more of the following:
 - i. A University employee conditioning education or employment benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
 - ii. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
 - iii. "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined below.
4. Sexual Assault – Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

5. Dating Violence – Dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. 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.
6. Domestic Violence – Domestic violence means 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 the domestic or family violence laws of the jurisdiction receiving grant monies, 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 jurisdiction.
7. Stalking – Stalking means 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.
8. Education program or activity – “Education program or activity” includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any buildings owned or controlled by the University or by a student organization that is officially recognized by the University.
9. Actual Knowledge – Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University’s Title IX Coordinator or any official of the University who has the authority to institute corrective measures on behalf of the University.
10. Supportive Measures – Supportive measures are non-disciplinary, non-punitive, individualized services. Supportive measures may be offered as appropriate and as reasonably available, and without fee or charge to the complainant, respondent, or other impacted individuals, before and after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are to restore or preserve equal access to the University’s educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University as a whole, or to deter sexual harassment. Supportive measures provided to the complainant and respondent will be confidential to the extent that maintaining confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator or designee shall be responsible for the determination of any supportive measures, including but not limited to:

- Temporary restrictions from contacting specific individuals including mutual no contact orders.
- Safety planning.
- Changes to residence hall living arrangements.
- Changes to class schedules, work assignments, or work schedules.
- Residence hall restriction, and/or restrictions from other specific University locations.
- Academic accommodations.
- Connection to mental, emotional, and/or physical wellness resources.

11. Informal Resolution – In some cases, Informal Resolution may be offered as an opportunity to resolve a formal complaint prior to completion of the grievance process. Informal Resolution will only occur if both parties give voluntary, informed, written consent. At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint. The University does not require, as a condition of enrollment or continued enrollment, or employment or continued employment, or enjoyment or any other right, waive the right to an investigation and adjudication of formal complaints. Under no circumstances will informal resolution be offered or facilitated to resolve allegations that an employee sexually harassed a student.

12. Emergency Removal – A student respondent may be removed from the institution, educational program, and/ or activity on an emergency basis if the respondent is determined to be an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. This is undertaken through an individualized assessment of the safety and risk analysis.

Employees may be placed on administrative leave during the pendency of a grievance process without an emergency removal assessment.

13. Formal Complaint – A formal complaint is the document signed and filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment pursuant to the Title IX grievance procedures. Not all reports of sexual harassment will constitute a formal complaint. A formal complaint may be filed at any time with the Title IX Coordinator in person, by mail, or by electronic mail, or in any other manner designated by the University. In cases where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during the grievance process, and must comply with the requirement for all Title IX personnel to be free from conflicts and bias.

14. Advisor – The Advisor is a person chosen by a complainant or respondent to accompany that party to meetings or proceedings, to receive and review evidence and reports that the party receives, and to conduct cross-examination of the opposing party and witnesses at a

Live Hearing. The Advisor may be, but is not required to be, an attorney. Advisors must follow the University's rules of decorum or be removed and replaced by an Advisor selected by the University. If a party does not have an Advisor at the Live Hearing, the University will provide an Advisor during the Live Hearing.

15. Decision-maker(s) –The Decision-maker(s) is responsible for conducting a Live Hearing and making a determination regarding responsibility. The Decision-maker(s) may be an individual or a hearing panel, which consists of a presiding officer, the "lead hearing officer", who will make evidentiary rulings and enforce the rules of decorum, and two hearings officers. The Decision-maker(s) is responsible for objectively evaluating all relevant evidence both inculpatory and exculpatory and preparing the final "determination of responsibility" report. The Decision-maker(s), along with each party's Advisor, has the right and responsibility to ask questions and elicit information from parties and witnesses to aid in obtaining relevant evidence. A person who serves as a Decision-maker in a particular matter cannot be the Investigator, or the Title IX Coordinator, or the person who determines the outcome of an appeal in that matter.
16. Sanctions - Sanctions are disciplinary actions taken against a respondent if the respondent is determined to be responsible for the alleged sexual harassment. The range of potential sanctions includes, but is not limited to, permanent implementation of mutual no contact orders; to expulsion or termination of employment; and permanent bans from campus or other aspects of an education program or activity.
17. Remedies – Remedies are designed to restore or preserve equal access to the University's education program or activity. The range of potential remedies includes education and training requirements for respondents, the campus community, or specific groups, to permanent implementation of changes to class or work schedules, or living arrangements. Remedies will be provided to a complainant if the respondent is determined to be responsible for the alleged sexual harassment.
18. Business Days – Business days are the days between and including Monday to Friday and do not include University holidays, closures, and weekends.
19. Calendar Days – Calendar days include weekends and holidays.

University Procedures for Responding to Reports of Title IX Sexual Harassment

All reports and allegations of sexual misconduct will be directed to the Title IX Coordinator.

Unless designated as an On-Campus Confidential Employee in the Student Code of Conduct for the purpose of receiving confidential information from students, any employee with knowledge about sexual harassment as defined in this policy has the duty to report it immediately. The University will make supportive measures available to complainant irrespective of whether a complainant chooses to report to local law enforcement or Public Safety-or pursues a formal

complaint through the Title IX Grievance Process.

Any person may report sexual harassment, whether or not the person reporting is the person alleged to have experienced the conduct that could constitute sex discrimination or sexual harassment. Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator, or by reporting to a member of the Title IX Team which will result in the Title IX Coordinator receiving the person's verbal or written report.

When the University has actual knowledge of sexual harassment, the allegations of sexual harassment will be forwarded to the Title IX Coordinator if the Title IX Coordinator is not already on notice of the allegations. The Title IX Coordinator will first determine if the misconduct meets the jurisdictional requirements of Title IX:

1. The conduct falls within the definition of sexual harassment for purposes of Title IX;
2. The conduct occurred against a person in the United States;
3. The conduct occurred when the complainant was participating or attempting to participate in the education program or activity of the University.

If the conduct meets all the Title IX jurisdictional requirements, the matter will proceed according to the Title IX grievance process, which is further described below. The Title IX Coordinator will take into account the complainant's wishes in how the University will respond to allegations of sexual harassment, but is not limited to the complainant's wishes. Circumstances in which the Title IX Coordinator may sign a formal complaint include allegations of violence, threats, use of weapons, and serial predation, or similar factors.

An employee-respondent may be placed on administrative leave prior to the conclusion of a grievance process, including before a formal complaint is filed. The University may also pursue emergency removal of a student-respondent.

If the conduct does not meet all Title IX jurisdictional requirements, the Title IX Coordinator will follow up according to the process within the University's Student Code of Conduct, Faculty Handbook, or Human Resources policies.

Amnesty

To foster the safety and security of the entire community, the University encourages community members to report all incidents of sexual or gender-based harassment, misconduct, and violence. Students, for instance, are sometimes afraid to report such incidents for fear of being held accountable for other, lesser policy violations such as intervisitation, alcohol, drug, or sexual intimacy.

In order to encourage students to obtain resources and report incidents, the University will not pursue the conduct process against a student who reports an incident of sexual and gender-

based harassment, misconduct, and violence for lesser policy violations that occur in connection with the reported incident. Students who are interviewed as witnesses in such cases will not be subject to the student conduct process for lesser policy violations that occur in connection with the reported incident.

Title IX Training

Title IX Training will be required of all persons designated as a Title IX Coordinator, Investigator, lead hearings officer or hearings officer, or any person designated by a recipient to facilitate an informal resolution process or to decide an appeal.

Title IX Training includes training on the definition of sexual harassment for purposes of Title IX; the scope of the University's education program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University will ensure that decision-makers receive training on any technology to be used at a Live Hearing and on 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, except as described further in the Live Hearing section of this policy. Investigators will also receive training on issues of relevance in order to create an Investigative Report that fairly summarizes relevant evidence. Any person serving in these roles must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Title IX Grievance Process

Once the University has received a formal complaint, the Title IX Coordinator or designee will provide written notice of the formal complaint to the parties. The written notice will include the following:

- Notice of the investigation and the University's grievance process, including any informal process.
- The identities of the parties involved in the incident, if known.
- The conduct allegedly constituting sexual harassment under Title IX.
- The date and location of the alleged incident, if known.
- 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.
- Notice to the parties that each may have an Advisor of their choice, who may be, but is not required to be, an attorney and who may inspect and review evidence and reports.
- A description of the range of possible disciplinary actions or sanctions based on the outcome of a "preponderance of the evidence" standard.
- A description of any available informal resolution process.
- Inform the parties of any provision in the University's policies that prohibits knowingly

making false statements or knowingly submitting false information during the grievance process. The notice will be updated if allegations are added after the initial notice.

The Title IX Coordinator, or designee, will contact the complainant and the respondent individually to discuss the availability of supportive measures and consider the complainant's and respondent's wishes with respect to supportive measures.

Dismissing a Formal Title IX Complaint

The Title IX Coordinator must dismiss a formal complaint if:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined by Title IX even if proved, or
- The conduct did not occur in the University's education program or activity, or
- The conduct did not occur against a person in the United States, or
- At the time of filing a formal complaint, a complainant is not participating or attempting to participate in the education program or activity of the University.

The Title IX Coordinator has the authority to dismiss a formal complaint if:

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

Notification of dismissal will be sent to the complainant and respondent, along with the reason for dismissal. Following dismissal under the Title IX policy, the Title IX Coordinator may also consider pursuing the complaint as violation of another policy located within the Employee Handbook or Student Code of Conduct.

Acceptable bases for appeal of the dismissal of a formal complaint and the process for filing an appeal are described in the Appeals section below. A party may also appeal the University's failure to dismiss a formal complaint at various points in the Process, as described in the Appeals section below. Parties will have five (5) business days to appeal the University's decision to dismiss or not to dismiss the formal complaint.

Title IX Investigation Process

The Title IX Coordinator will assign an Investigator to the case. The Investigator will collect evidence, interview involved parties, request statements, inquire about additional witnesses, and document their findings, and submit an Investigative Report to the Title IX Coordinator. Prior to finalizing the Investigative Report, the Investigator will send to each party and the party's Advisor, if any, all evidence obtained that is directly related to the complaint to review,

including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. Each party will be given a minimum of 10 days to submit a meaningful written response, which the Investigator will consider prior to finalizing the Investigative Report.

After the 10-day review period, the Investigator will finalize the Investigative Report summarizing relevant evidence. At least 10 days prior to a hearing, the Investigator will send to each party and the party's Advisor, if any, the Investigative Report for their review and written response. Additionally, each party will be provided at least 10 days to submit meaningful written response to the Investigative Report prior to the Live Hearing. If either party disagrees with the Investigator's determination about relevance, the party can raise that issue in the party's written response to the Investigator's Report and/or to the Decision-maker(s) at the Live Hearing.

The Title IX Coordinator will review the Investigative Report and determine whether to dismiss the formal complaint for Title IX purposes using the criteria outlined in the Dismissing the Formal Complaint section above. If the formal complaint is not dismissed, the Title IX Coordinator will transmit the Investigative Report, including the parties' responses to the report, to the Decision-maker(s).

If an incident results in a Respondent being simultaneously charged with Title IX sexual harassment and other University policy violations that do not constitute sexual harassment, the University may choose to address all allegations according to the procedures outlined in this Policy or to address separate misconduct under a different policy.

Title IX Live Hearing

Live Hearings are generally conducted before a Decision-maker(s) with all parties in the same or generally adjacent rooms and able to simultaneously hear and see the party or witness answering questions. Reasonable arrangements, such as the use of a physical barrier, will be made to prevent the complainant and respondent from directly facing one another. At the request of either party, the University may conduct a virtual hearing with the parties in separate rooms, with technology enabling participants simultaneously to see and hear each other. The University will maintain an audio/visual recording, or transcript, of any Live Hearing and make it available to the parties for inspection and review.

At the Live Hearing, the Decision-maker(s) will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination question or any other question from an Advisor, the Decision-maker or lead hearings officer, will determine whether the question is relevant and explain any decision that exclude a question as not relevant.

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 concerns specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party does not have an Advisor present at the Live Hearing, the University will provide, free of charge to that party, an Advisor of the University’s choice, who may be, but not required to be, an attorney, to conduct cross-examinations on behalf of that party.

If a party or witness does not submit to cross-examination at the Live Hearing, the Decision-maker(s) may nevertheless rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that 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.¹

Title IX Written Determination

In determining responsibility, the Decision-maker(s) will use the “preponderance of the evidence” standard for formal complaints involving students and employees. A preponderance of the evidence means that it is more likely than not that the alleged policy violation occurred.

The written determination will be provided to the parties simultaneously. The written determination will include:

- Identification of the allegations potentially constituting sexual harassment under Title IX
- 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 University’s policies or code of conduct to the facts.
- A statement of, and rationale for, the result as to each allegation including:
 - The determination regarding responsibility.
 - Any disciplinary sanctions the University will impose on the Respondent.
- Whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the complainant. Upon a finding of responsibility, remedies provided need not avoid burdening the Respondent.

¹ This section was revised and is effective as of January 7, 2022, based on a nationwide injunction imposed in *Victim Rights Law Center, et al v. Cardona*, and resulting information from the United States Department of Education.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Title IX Appeals

Either the complainant or respondent can make a written appeal (1) if they are not satisfied with the determination regarding responsibility, or (2) from the University's dismissal of a formal complaint or dismissal of any allegation in a formal complaint, or (3) from the University's failure to dismiss a formal complaint or any allegation in a formal complaint (a) when the formal complaint is filed, (b) after the conclusion of the Investigation, or (c) after the Live Hearing. The University allows both parties to appeal on the following grounds:

- 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 or decision not to dismiss was made and 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.

The Title IX Coordinator will notify the other party in writing when an appeal is filed.

Appeals must be submitted within five (5) business days of the notification to a party of dismissal or failure to dismiss a formal complaint or the receipt of determination regarding responsibility from decision-maker(s). Either party may send written appeals to the Title IX Office to be distributed to the person(s) who will decide the appeal. Any person designated by the University to decide the appeal will not be the Title IX Coordinator, Investigator, Decision-maker, or any person who facilitated an informal resolution process in the matter.

Upon accepting the appeal, the decision-maker will review the investigation documentation and may let the original outcome stand or, if new information is discovered that is significant enough to alter the original decision, reopen the investigation. The decision-maker will issue a written decision describing the results of the appeal and the rationale for the results. This written decision will be simultaneously sent to both parties. Each party may appeal the written determination only once, except for in extraordinary circumstances as described below.

The University will reopen the appeal period only if:

- The Respondent is still a student or employee at the University, or the appeal could cause a substantial change to Respondent's transcript, or other student or employee records that may be required to be disclosed outside the University;
- Either party discovers new evidence that—

- Was not reasonably available at any time prior to the expiration of the appeal period, and,
- Could affect the outcome of the matter; and
- The party files an appeal within five (5) business days of the discovery of the evidence.

Sanctions and remedies, if any, will be applied and will remain in effect throughout the second appeal and any additional process.

Recordkeeping

The University will maintain for a period of seven years:

- Each sexual harassment investigation including any determination regarding responsibility.
- Any audio or audiovisual recording or transcript of the Live Hearing.
- Any disciplinary actions/sanctions imposed on the respondent.
- Any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity.
- Any appeal and the result therefrom.
- Any informal resolution and the result therefrom.
- All materials used to train the Title IX Coordinator, Investigators, decision-makers, any person who facilitates an informal resolution process.
- Records of any action, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

Retaliation

The University of Portland strongly encourages students to report all incidents of sexual or gender-based harassment, misconduct, or violence. The University prohibits intimidation, retaliation, threats, harassment, or other types of conduct that attempts to prevent the reporting of such an incident or participation in an investigation, conduct process, or other University process related to such an incident. Any individual who feels subjected to this type of conduct should immediately report their concerns to the Title IX Office, Student Conduct, or call Campus Safety.

Furthermore, this policy and Title IX prohibit retaliation against a complainant or witnesses for filing or participating in the investigation of a sexual harassment complaint.

No person at the University may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

Charges against an individual for a policy or code of conduct violation that does not involve sexual harassment, but arise out of the same facts or circumstances as a report of 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, constitutes retaliation.

In addition to the prohibitions against retaliation outlined in this process, the University prohibits participants and others from engaging in disrespectful communication, slander, libel, or dishonesty related to any person's reporting of sexual harassment or participation in the Title IX Grievance Process. Those prohibitions are further described in the University's Student Code of Conduct, Faculty Handbook, Human Resources policies, and/or other relevant departmental or university policies. The University will investigate any reports of retaliation and take appropriate disciplinary action. State and federal law also provide protections for whistleblowers who bring allegations of non-compliance with the Clery Act and/or Title IX to the attention of appropriate campus administrators. Any concerns regarding retaliation should be brought to the immediate attention of the campus Title IX Coordinator.

Compliance with Federal and State Law

The University intends to comply with all applicable requirements under federal and Oregon law. If there are any inconsistencies between the University's policies/procedures and such requirements, the University will follow federal and Oregon requirements.

Additional Resources

Additional resources regarding amnesty, confidential resources, and non-confidential resources may be found on the Title IX Website.

Effective Date

This Policy is effective as of August 14, 2020 and will be applied to conduct that occurs on or after August 14, 2020.

** This policy is effective as of August 14, 2020.*

*** This policy was approved by the PLC as of August 14, 2020.*

**** This policy was amended and approved by the PLC on January 7, 2022.*