



Sex Discrimination Complaints

Types of Complaints

- Sex Discrimination
- **Sexual Harassment** is one form of Sex Discrimination
- Sexual Harassment includes range of gender-based harassment & gender-based violence



Will Cover

- Title IX
- Xavier policies & procedures
- Key concepts

Confidentiality & Impartiality

- All matters related to complaint & any related proceeding are strictly confidential
- Failure to maintain confidentiality may result in disciplinary action

Title IX Office

Knowledge. Accountability. Care.

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What is Title IX?

- **PROHIBITS** sex-based discrimination, including sexual harassment and sexual violence, in federally funded education programs and activities
- **PROTECTS** *any* person from sex discrimination
- **REQUIRES** us to have a prompt, equitable complaint resolution process in place
- **ENFORCED** by Dept. of Education Office for Civil Rights (OCR)

Role of TIX Coordinator

- Neutral fact-finder- no “side”
- Conduct impartial, fair investigations
- Provide Investigation Report to Harassment Hearing Panel
- Ensure process through appeals is TIX compliant

Role of TIXC cont'd

- **Title IX Investigation**
 - Comprehensive accounts from parties, witnesses with direct knowledge, and other relevant sources (i.e. law enforcement, medical personnel)
 - Gather all relevant documents
- **Title IX Investigation Report**
 - Purpose
 - No surprises
- **Role in Harassment Complaint Hearing**

Criminal vs. Xavier Process

- Some behavior may violate Xavier policies but NOT the law
- Xavier must have an independent complaint resolution process regardless of criminal investigation
- Person reporting may pursue both at the same time, one at a time, neither
- Accused person can be investigated by both campus or local police AND Title IX Coordinator

Harassment Broadly

- Creation of hostile or intimidating environment
- In which conduct, because of its severity and/or persistence
- Is likely to interfere significantly with an individual's life
- By affecting that person physically or emotionally

Harassment cont'd

- Uninvited or unwelcome
- Is often (but does not have to be) in reference to an aspect(s) of individual's identity
- Harassing conduct can be
 - ▣ verbal (oral or written)
 - ▣ physical (e.g. unwanted touching, assault)
 - ▣ visual (i.e. drawings, pictures, cartoons, posters)

Examples of Harassment

- Intentional, willful or malicious abuse, mocking or disparaging of a person as to affect their educational performance or living or working environment
- Actions or expressions that may cause or contribute to violent situations, or that create a clear and present danger of violent situations
- Acts of violence, stalking, unwelcome physical touch, physical, verbal, or written threats, and/or inappropriate communications
- **Sexual harassment**



Sexual Harassment



Defining Sexual Harassment

Title IX/Dept. of Education

- Conduct of a sexual nature
- That is unwelcome, *and*
- Denies or limits student's ability to participate in or receive benefits, services or opportunities of Xavier programs or activities

Defining Sexual Harassment

Xavier HCAP

- Unwelcome sexual advances or
- Explicit or implicit requests for sexual favors or
- Other verbal or physical conduct of a sexual nature WHEN...

Xavier HCAP cont'd

- Submission to or rejection of conduct is an explicit or implicit term or condition of education, employment, or participation in other Xavier activities or
- Is used as basis for an employment, academic, or research decision affecting the individual or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic performance, or status or
- Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive University environment

Conduct of a Sexual Nature

- Behavior is sexual in nature if a reasonable person could have interpreted it to be sexual
- Fact specific, but examples include:
 - Unwelcome sexual advances
 - Requests for sexual favors
 - Comments about someone's body, sexual activity or sexual attractiveness
 - Sexually suggestive touching, leering, gestures, sounds, comments, or displays of sexually suggestive objects

Subjective & Objective Standard

To determine whether the conduct constitutes sexual harassment, consider:

- The conduct from subjective & objective perspectives
- Whether conduct is sufficiently pervasive, persistent or severe
- Effect of conduct on student's education
- All other relevant circumstances, such as:
 - type, frequency, location, & duration of conduct;
 - # of students involved; and
 - Relationship/roles of parties

Purpose or Effect

Respondent *intentionally engaging in the*
action reported

VS.

Respondent's *intent to harass* with his/her
behavior

Sexual Harassment: Examples

- Unwelcome attention of a sexual nature after requesting the attention be stopped
- Ongoing use of offensive language or discussions of a sexual nature that creates a hostile or offensive environment
- A supervisor or professor promising a raise or better grade in exchange for sexual contact
- Repeated, unwanted attempts to change a professional relationship to a personal one

Examples cont'd

- Repeated joking or teasing about sexual orientation or gender identity
- Whistling, touching or repeated unwanted flirtation
- Displaying graphic pictures that create a hostile or offensive working or living environment
- Unwanted sexual contact, sexual assault & rape



HCAP Formal Hearing Process

Formal Hearing Participants

- Chair facilitates the process
- Affirmative Action Officer oversees procedural elements & provides guidance
- Complainant: individual reporting alleged violation(s)
- Respondent: the individual accused of policy violation(s)
- Party advisors
- Title IX Coordinator (in sex discrimination complaints)
- Witnesses with direct knowledge

Key Rights of Parties in Hearing

- Right to attend hearing
- Right to present evidence & call reasonable # of witnesses
- Right to an advisor of choice- may help prepare party position, but may not present it or speak for or on behalf of party during hearing
- Complainant has right to request to be separated from respondent during hearing

Key Rights cont'd

- Failure of one party to appear will have no effect on hearing proceeding- HP will reach decision based on evidence available
- HP determines what testimony & evidence will be considered based on general measure of relevance & credibility



Pre-Hearing Preparation

- Review HCAP carefully
- Read all materials, including alleged violations and applicable policies
- Determine incident timeline
- Decide primary issues which need determination
- Think about questions you want to ask
- Consider witness information

Hearing Flow

- Chair will begin proceedings with introductions
- Parties and HP will have opportunity to ask TIX Coordinator question about report
- Complainant will share perspective & present witnesses
- Respondent will share perspective & present witnesses
- Chair will ensure all relevant information has been gathered, provide information on next steps & close the proceedings

Questioning

- Guidelines
 - ▣ Remember this is not a legal proceeding
 - ▣ Not about grilling, trapping, setting parties up- respectful questions with purpose of gathering comprehensive information
- Techniques
 - ▣ Use open-ended questions primarily
 - ▣ Clarifying questions
 - ▣ Limited closed questions
- Clarify ANY conflicting info before close of hearing

Managing Questioning Logistics

- Work together to maintain flow of conversation
- If you have a process question during hearing, ask for a moment to speak with AAO outside of hearing
- Special considerations in sex discrimination complaints



Post-Hearing

- Deliberation & decision-making as a group
 - What happened?
 - Does it violate the HCAP?
 - Policy element analysis
 - Group discussion considerations

Post-Hearing cont'd

- Decision must be based on **preponderance of the evidence** standard- that is:
 - ▣ Based on TOTALITY of the evidence, is it more likely than not that the accused individual has violated our policy(ies)?
- Complainant has burden of showing the evidence establishes this
- Goal is consensus- if unable to reach, majority vote will decide and a tie results in a finding that the violation did not occur

Deliberation & Dialectical Analysis

- Deliberation is the act of analyzing the evidence to determine if the HCAP has been violated

- Dialectical analysis:
 - ▣ method of investigating the truth by logical analysis
 - ▣ applies evaluation of evidence against specific policy language

Xavier Sexual Harassment Definition

Unwelcome sexual advances or explicit or implicit requests for sexual favors or other verbal or physical conduct of a sexual nature when submission to or rejection of conduct is an explicit or implicit term or condition of education, employment, or participation in other Xavier activities or is used as basis for an employment, academic, or research decision affecting the individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic performance, or status or such conduct has the purpose or effect of creating an intimidating, hostile, or offensive University environment.

Sexual Harassment: Elemental Analysis Approach

WERE THERE

Unwelcome
sexual
advances

OR

explicit **or**
implicit
requests for
sexual favors

OR

other verbal
or physical
conduct of a
sexual nature

WHEN

submission to **or** rejection of the conduct was

An explicit **or** implicit
condition of
education,
employment **or**
participation in other
Xavier activities

OR

Used as a basis for
an employment,
academic, **or** research
decision affecting the
individual

OR WHEN

Such conduct had the purpose **or** effect of unreasonably interfering with an individual's work, academic performance, **or** status

OR

Such conduct had the purpose **or** effect of creating an intimidating, hostile **or** offensive University environment

Evaluating Evidence

- Direct
 - ▣ Testimony from parties/witnesses
- Inferential
 - Drawing a conclusion or making a logical judgment on the basis of circumstantial evidence or other conclusions that people have made that come from things other than direct observation

Determining Credibility

□ **Motive**

- What is this witnesses' motivation to be dishonest or honest about what they're sharing?
- Why they may have behaved in manner they did

□ **Inconsistencies**

- Are there significant difference(s) btw person's story now from when they first talked about it?
- Between what they said in the report to now in the hearing?
- As they tell story throughout the hearing?

Sanctioning

- If you find the accused responsible, you will recommend a sanction
- Consider
 - ▣ Prior conduct history
 - ▣ Precedent
 - ▣ Benchmarks

Examples of Sanctions

- Participation in counseling
- Required community service
- Prohibition of respondent from participating in grading, honors, recommendations, reappointment and promotion decisions, or other evaluations of the complainant
- Letter of reprimand and copy of grievance record placed in respondent's permanent file
- Restrictions on respondent's access to University resources, such as merit pay or other salary increases for a specific period
- Suspension
- Dismissal from University

Examples of Sanctions

- HP may also seek to make complainant whole by requiring review of her/his grade, denial of promotion or similar benefit denied to complainant, in whole or in part by respondent
- Any such decision given to respondent's supervisor in position to conduct such a review to determine if change is proper, and to effect the change

Outcome

- Written report of HP findings & determination of sanctions recorded, signed by all
- Submitted by Chair to AAO
- AAO responsible for implementing decision
- Outcome communicated to BOTH parties in sex discrimination complaints

Implementation of HP Decision

- If HP finds respondent violated the HCAP, the decision & sanctions will be implemented by the official responsible for respondent:
 - ▣ If respondent is faculty = Dean of school to which respondent belongs
 - ▣ If respondent is non-faculty staff member = divisional leader or designee
 - ▣ If respondent is not otherwise defined = immediate supervisor in consultation with his/her dept. head or dean

Appeal Process

- Both parties have right to appeal
- To appeal HP decision, request for appeal must be filed with President or designee within 5 business days
- Two part process- request for appeal & actual appeal

Selection of Hearing Panel Chair

- Chair will lead the proceedings
- Chair will ask the questions to and from the respondent and the complainant to each other
- Chair has oversight for the Hearing Panel's written report and delivery of such to the AAO, the respondent and the complainant

Questions or Concerns

- Do you have any final questions or concerns?