• Overview of the new Sexual Misconduct Policy
  • New definitions
  • Relationship to other policies

• Overview of the new procedures
  • Reporting concerns
  • Intake and assessment
  • Supportive measures
  • Emergency removals
  • Interim actions

• Overview of process
  • Formal complaints
  • Informal resolution options
  • Formal resolution phases
AGENDA (Day 2)

- Questions From Day 1
- Informal Resolution Options
- Formal Resolution Process
- Discussion of Case
- Appeals
- Other Policies
- Final Q&A
• Title IX Coordinators:
  
  • Lauren Cosentino  
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    Vice President for Campus Operations and Human Resources  
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  • La Shonda Coleman  
    Title IX Coordinator for Students  
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    Associate Dean of Student Affairs  
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Introductions in the Chat

• Name
• Role
• One goal for today
(1) Prerequisites
(2) Types of Cases
(3) Types of Processes
(4) Other Rules
What Prerequisites Must Be Met?

• Requires a Formal Complaint.
• Voluntary for both parties.
• Title IX Coordinator must approve the use.
Types of Cases?

• Parties must be appropriate.
  • Student/Student
  • Employee/Employee

• NOTE: Formal Complaint may be assessed and dismissed; case may be referred to informal resolution or another policy.
Types of Informal Resolution

- Asynchronous discussions
- Mediated discussions
- Restorative justice
- Other
Other Rules

• Either party can stop the process and pursue a formal resolution.
• Not subject to appeal.
• Written agreement ends the process.
• Failure of the informal resolution process restarts the formal process.
• Information from the informal process cannot be used.
Questions?
Formal Resolution Process

(1) Initial Assessment of the Formal Complaint
(2) Dismissal/Referral
(3) Written Notice
(4) Formal Investigation
(5) Review of Report
(6) Notice of Hearing
(7) Hearing
(8) Written Letter of Determination
(9) Appeal
Initial Assessment

• Formal Complaint by Complainant
• Formal Complaint signed by Title IX Coordinator
Definitions Under the Sexual Misconduct Policy

• Sexual Assault
• Dating Violence
• Domestic Violence
• Stalking
• Sexual Harassment (environment)
• Quid Pro Quo
Sex Discrimination and Sexual Exploitation are not considered Title IX "sexual harassment," the University is not obligated to follow the procedures required by the Title IX regulations in Sex Discrimination and Sexual Exploitation cases.
Process Note

Formal complaints of Sex Discrimination or Sexual Exploitation by a student against another student may be resolved using the procedures in this Policy.

Formal complaints of Sex Discrimination or Sexual Exploitation by a student against a Pepperdine employee may be resolved using the school's Non-Academic Student Grievance Procedure.

Formal complaints of Sex Discrimination or Sexual Exploitation by an employee against another employee may be resolved through the Employee Grievance Procedure in Section 31 of the University Policy Manual.
Jurisdiction of the Sexual Misconduct Policy

• Complainant must be participating or attempting to participate in the University’s programs or activities.
Jurisdiction of the Sexual Misconduct Policy

• Respondent enrolled or employed (generally).
Jurisdiction of the Sexual Misconduct Policy

- Where did the alleged conduct take place?
Sexual Misconduct Policy

Applies to the education programs and activities of Pepperdine, to conduct that takes place:

• on the campus or on property owned or controlled by Pepperdine,
• at University-sponsored events, or
• in buildings owned or controlled by Pepperdine's recognized student organizations.
Sexual Misconduct Policy

Can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Pepperdine's educational programs or activities.

The University may also extend jurisdiction to International Programs and/or to off-campus or online conduct.
Relationship to Other Policies

• Employee Grievance Procedure in Section 31 of the University’s Policy Manual
• University Tenure Policy
• Non-Academic Student Grievance Procedure
• Student Code of Conduct
Under the Title IX regulations, Pepperdine must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute Title IX "sexual harassment" as described under [Title IX and Jurisdiction of the Policy](#), even if proved; and/or
- The alleged conduct did not occur in Pepperdine's educational programs or activities (includes locations, events, or circumstances over which Pepperdine exercises substantial control over both the Respondent and the context in which the "sexual harassment" occurs, and also includes buildings or property controlled by officially recognized student organizations); and/or
Dismissal

Under the Title IX regulations, Pepperdine must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

• The alleged conduct did not occur against a person in the United States; and/or

• At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education programs or activities of the University.
Discretionary Dismissal

Pepperdine *may* dismiss a 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 (a Complainant who decides to withdraw a complaint may later request to reinstate it or refile it); or
Discretionary Dismissal

Pepperdine *may* dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent Pepperdine from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
Impact of Dismissal

In some cases, the dismissal may only be a procedural requirement under the Title IX regulations, because the regulations also allow the University to still address the allegations using the [formal grievance process](#) or the [informal resolution process](#).

Dismissal can be appealed.
Initial Assessment

The Title IX coordinator will indicate in the written notice if Pepperdine will continue with the informal resolution process or the formal grievance process (including the investigation and hearing) or under this Policy even though it has been dismissed as a Title IX matter.

If Pepperdine proceeds using the formal grievance process, the parties will be notified of any procedural modification in the written notice of the allegations and/or the written notice of the hearing before the procedure begins (e.g., to time frames and cross examination requirements).
The Title IX coordinator will consider a range of factors, including the following:

- the effect that non-participation by the Complainant may have on the availability of evidence and Pepperdine's ability to pursue the formal grievance process fairly and effectively;
- whether there have been other Sexual Misconduct complaints about the same Respondent;
- whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
Signed by Title IX Coordinator

The Title IX coordinator will consider a range of factors, including the following:

• whether the Respondent threatened further Sexual Misconduct or other violence against the individual or others;
• whether the Sexual Misconduct was committed by multiple Respondents;
• whether the Sexual Misconduct was perpetrated with a weapon;
• whether the individual is a minor;
• whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.
Signed by Title IX Coordinator

• If none of these factors are present, the Title IX coordinator will typically honor the Complainant's decision not to file a formal complaint.
Signed by Title IX Coordinator

• If the Title IX coordinator determines that a formal investigation is necessary over the wishes of a Complainant, Pepperdine will inform the Complainant prior to starting an investigation and will offer supportive measures and informal resolution options when appropriate.

• When Pepperdine proceeds with the formal grievance process (including the investigation and hearing), the Complainant (or their Advisor) may have as much or as little involvement in the process as desired.

• The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.
• Note that Pepperdine's ability to respond to the report may be limited if the Complainant does not want to proceed with an investigation and/or hearing process or requests that their identity remain confidential.

• The goal is to provide the Complainant with as much control over the process as possible, while balancing Pepperdine's obligation to protect the Complainant and the community.

• Complainants who elect to take no action can change that decision if they decide to pursue a formal complaint at a later date.

• After a formal complaint is filed, both parties will be given timely notice of meetings at which the parties (one or all) may be present.
Written Notice

• Reporting concerns
• Intake and Assessment
• Support Measures
• Emergency Removals/Interim Actions
Investigative Phase (usually 90 business days)

- Fact-Gathering by DPS
- Evidence Sharing
- Draft Report Review and Comment
- Final Report Shared
Standards of Evidence

- Relevancy
- Burden on the institution, not the parties
- Fact-gathering (later, preponderance of the evidence)
Relevancy

The investigation does not consider:

1) incidents not directly related to the possible violation, unless they are considered relevant because, for example, they evidence a pattern;

2) evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such 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 evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
Relevancy

The investigation does not consider:

3) Treatment records without the patient’s consent
4) Information protected by a legally recognized privilege
September 4, 2020 Open Center

• Guidance (not part of the Title IX Regulations)
• Cannot adopt a rule excluding relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence.
Evaluating Evidence (Generally)

- Relevancy
- Weight
- Credibility

Caution: the investigative phase is a fact-gathering process for conduct covered by Title IX – not a fact-finding process.
Zoom Break

2:15-2:30 p.m.
(approximately)
Decision-Making Phase

- Notice of Hearing
- Hearing
- Written Letter of Determination
Notice of Hearing (see policy for full list)

- Type of Hearing
- Procedural rules
- Hearing cannot be less than ten days from conclusion of investigation.
- Notice of hearing to Written Letter of Determination is normally 15 business days (add time for employee sanction review)
- Scope of review (related claims)
Hearing

- Administrative Hearing
- Hearing Panel (chair plus 2 faculty/staff)
- Conducted by videoconferencing
- Respondent = student: Office of Community Standards
- Respondent = employee: Human Resources
- May designate a facilitator
Hearing Order

- Introductions
- Overview, agenda, list of witnesses
- Parties can make opening statements
- Testimony by parties and witnesses
- Closing statement by parties
Evidence at the Hearing

• Same relevancy standard.
• Witnesses must submit to cross examination or their personal statements cannot be considered.
  • What they said to others can be considered if presented.
• Witnesses must have participated in the investigation.
• Leeway for new evidence.
Evidence at the Hearing

• Cross examination by party’s advisor for Title IX conduct.

• Pepperdine Advisors will relay questions on behalf of the party – not develop questions independently.

• Must follow rules of decorum.
Determination of Responsibility

- Preponderance of the evidence
- Simple majority
- Impact statements considered for sanctions only
- Prior discipline considered for sanctions
- Students – panel makes sanction recommendation to Hearing Officer
- Employees – decision maker makes sanction recommendation to HR & Dean of the faculty member’s school
Written Letter of Determination

- Policy establishes elements
- Issued simultaneously (remedies not shared with Respondent unless directly relate to Respondent)
- Sanctions stayed pending appeal
Zoom Break

3:30-3:45
(approximately)
1. Why might a party prefer the informal resolution process?

2. If the case is not appropriate for informal resolution, why might a member of Pepperdine’s community hesitate to use the formal process?

3. From your vantage point, what could help parties feel more comfortable using the formal process? What steps need to be taken?
Breakout Room

• Discussion of Questions (3:45 – 4:15 approximately)
Report Back from Breakout Room
Appeals

• Grounds
• Student Respondents – Dean of Students
• Employee Respondents – Appeal Officer appointed by HR or the Provost
Other Appeal Provisions

- Shared with other party, who may respond.
- Normally 20 business days.
- File review.
- Affirm, reverse or modify the sanction.
- Remand to decision-maker for further consideration.
- Decision with rational shared simultaneously.
Grounds

1. New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter. The appealing party must provide a summary of this new evidence and its impact.

2. Procedural irregularity that affected the outcome of the matter. The appealing party must identify the specific investigative or hearing procedure that was not followed, along with a summary of how it affected the outcome of the matter.
Grounds

3. Bias or conflict of interest by the Title IX coordinator, investigator(s) or decision maker(s) for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. The appealing party must state the basis for this belief and provide any supporting information.

4. Inappropriateness of the sanction for the violation of the Policy.
Other Policies

• Modify the Formal Grievance Process
• Refer to other policies.
  • Upon filing.
  • After investigative phase.
  • After the formal grievance phase.
Q&A on Topics Covered