



SEXUAL HARASSMENT PROHIBITED BY TITLE IX: TRAINING FOR ALL PROCESS PARTICIPANTS

August 2020 (effective August 14, 2020)



WHY ARE YOU BEING TRAINED?

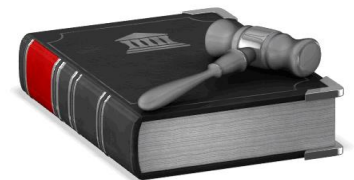
- ▶ You have been identified as someone who may be asked to serve a role in carrying out UMA's *Sexual Harassment Prohibited by Title IX* policy. You may be:
 - The Title IX Coordinator or an Associate Title IX Coordinator.
 - A potential investigator of a report of Sexual Harassment under Title IX.
 - A potential decision-maker as to the outcome of an individual Title IX proceeding, either at a hearing or on appeal.
 - A potential informal resolution facilitator.
 - A potential UMA-provided advisor to a party involved in a Title IX proceeding.
 - A Campus Director.
- ▶ Depending on your role, you may receive additional training as well.





WHAT IS TITLE IX?

- Title IX is a federal law that prohibits people from, **on the basis of sex**, being excluded from participation in, being denied the benefits of, or being subjected to **discrimination (including harassment)** under any educational program or activity receiving federal funds (including Title IV).
- New regulations effective August 14, 2020 replace the Department of Education's previous guidance on how Title IX should be administered by schools.





WHO'S WHO IN A TITLE IX PROCEEDING

- ▶ **The parties**
 - Complainant (the victim(s) of the alleged misconduct)
 - Respondent (the individual(s) being accused of misconduct)
- ▶ **Title IX Coordinator**
 - The individual ultimately responsible for overseeing UMA's compliance with Title IX
 - Can receive Title IX reports
- ▶ **Reporter**
 - Someone other than a complainant can bring a Title IX situation to UMA's attention, but only a complainant or Title IX Coordinator can bring a Formal Complaint.
- ▶ **Associate Title IX Coordinators**
 - May receive Title IX reports
 - May serve on hearing panel if not involved in investigation
 - May facilitate informal resolution
- ▶ **Investigators**
 - May facilitate informal resolution
- ▶ **Hearing panel members (including a chairperson)**
- ▶ **UMA-provided advisors**
- ▶ **Appeal decision-makers**
- ▶ **Campus Director**
 - May receive Title IX reports



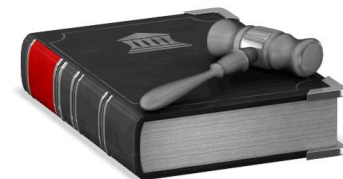
DEFINITION OF SEXUAL HARASSMENT

- ▶ UMA's *Sexual Harassment Prohibited by Title IX* policy defines "Sexual Harassment" as conduct on the basis of sex that satisfies one or more of the following:
 - (1) a team member conditioning the provision of an aid, benefit, or service from UMA on the complainant'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 the complainant equal access to a UMA Education Program or Activity; or
 - (3) the following crimes defined under the Violence Against Women Act: "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).
- ▶ If the alleged behavior does not meet this definition, it is not within the scope of Title IX.
 - Title IX also does not cover behavior that did not occur "against a person in the United States".



... IN OTHER WORDS

- ▶ “Sexual Harassment” that is covered by this process falls into one or more of three distinct categories:
 - Quid pro quo (“this for that”) harassment by a UMA team member, OR
 - Conduct that is **all** of the following:
 - Unwelcome
 - Severe
 - Pervasive (i.e., repetitive or widespread)
 - Objectively offensive, OR
 - Sexual assault, dating violence, domestic violence, or stalking.
- ▶ Remember that the conduct has to be “on the basis of sex”.
- ▶ Title IX Sexual Harassment is a subset of behavior that could constitute sexual harassment under UMA’s other policies (e.g., Non-Discrimination and Non-Harassment policy or Code of Conduct for Students).





DEFINITION OF UMA'S EDUCATIONAL PROGRAMS AND ACTIVITIES

- ▶ UMA's *Sexual Harassment Prohibited By Title IX* policy defines "Educational Programs or Activities" as:
 - a UMA-sponsored location or event, OR
 - another circumstance over which UMA exercised **substantial control** over **both**:
 - the context and
 - the respondent to an allegation of sexual harassment.
- ▶ UMA's online course environment is explicitly included in this definition.
- ▶ If the alleged behavior did not occur within the scope of UMA's "Educational Programs or Activities", it is not within the scope of Title IX (but may be within scope of another UMA policy).



PROCESS FOR ADDRESSING ALLEGATIONS COVERED BY TITLE IX

1. An **individual reports** an allegation of conduct that relates to sex or gender.
- If the concern is reported to the Title IX Coordinator, Associate Title IX Coordinator, or Campus Director, UMA has Actual Knowledge.
 - Associate Title IX Coordinator assesses whether the allegations, if true, could constitute Sexual Harassment and occurred in UMA's Educational Programs or Activities, as defined under Title IX policy.
 - If not, Associate Title IX Coordinator **documents the decision in Title IX log** and consider applicability of team member non-harassment policy, Student Code of Conduct, or other policies.
2. If the allegations could constitute Sexual Harassment, Title IX Coordinator:
- Reaches out to the Complainant/victim within **7 days** of report and discusses Supportive Measures and explains the process of filing a Formal Complaint.
 - Sends email documenting conversation [use **Initial Outreach to Complainant template**].
 - Can choose to file a Formal Complaint if the Complainant does not.
3. If a **Formal Complaint** is filed, HRBP or Director of Student Affairs issues a notice of allegations to the Complainant and Respondent [use **Notice of Formal Complaint template**] within **14 days** of filing of Formal Complaint.
- Title IX Coordinator assigns an advisor to the Complainant or Respondent if requested.
4. If informal resolution is sought at any point:
- Associate Title IX Coordinator determines whether both parties consent and if so, sends disclosure and consent form [use **Notice and Consent for Informal Resolution template**].
 - Informal resolution is conducted by Associate Title IX Coordinator and should normally be completed within **45 days**.
 - The terms of any informal resolution must be documented in an agreement signed by both the Complainant and Respondent [use **Informal Resolution Agreement template**].
5. HRBP or Director of Student Affairs investigates by:
- Interviewing the Complainant and witnesses via **recorded Teams meeting**.
 - Written notice of the date/time of interview must be provided [use **Notice of Formal Complaint and Notice of Interview of Witness templates**] to the person interviewed.
 - Gathering **evidence**, if any, (video, photos, chats/texts, etc.).
 - If needed, issuing revised notice of allegations with new allegations.
 - Interviewing Respondent via **recorded Teams meeting**.
 - Issuing notice of dismissal [use **Notice of Dismissal of Formal Complaint template**] if:
 - the investigation indicates that the allegations do not meet the definition of Sexual Harassment (required)
 - Complainant requests dismissal (optional)
 - Respondent is no longer a UMA student or team member (optional)
 - UMA cannot gather **sufficient** evidence (optional)
- Investigation should normally be completed within **60 days** of sending of notice of allegations.
6. HRBP or Director of Student Affairs prepares a draft investigation report and sends it to the Complainant and the Respondent [use **Investigation Report template**].
- Investigation report should summarize contents of interviews and evidence and attach recordings and copies of all evidence.
- Complainant and the Respondent must receive the draft report and be given **10 days** to provide a response to it.
7. HRBP or Director of Student Affairs finalizes investigation report and sends it to the Complainant and Respondent.
- The responses provided by the Complainant and Respondent (if any) should be incorporated into the report.
 - Investigation should normally be completed within **60 days** of filing of Formal Complaint.
 - The Complainant and Respondent must receive the finalized investigation report at least **10 days** in advance of the hearing.
8. Title IX Coordinator chooses hearing panel, chairperson, stand-by advisors, and appeal person; confirms training is current for selected individuals; and identifies date for hearing. Hearing should normally be held within **120 days** of filing of Formal Complaint.
9. Associate Title IX Coordinator prepares and sends notice of hearing [use **Notice of Hearing and Notice of Hearing – Non-Parties templates**].
10. Hearing is held by panel, led by the chairperson.
- Hearings are held remotely and **recorded through Teams**.
 - Panel may ask questions of parties and witnesses. Parties may only question each other and witnesses through advisors.
 - If either the Complainant or the Respondent does not bring an advisor to the hearing, UMA must provide one.
 - Chairperson determines relevancy of each question asked by a party's advisor before the question is answered.
 - Investigatory statements of parties or witnesses who do not appear at the hearing for cross-examination cannot be considered by the panel.
11. Panel deliberates in private, then chairperson issues written decision within **14 days** of hearing [use **Notice of Outcome template**] to Complainant and Respondent, including any sanctions and remedies.
- Appeal form [use **Appeal Form template**] must be included with written decision.
12. Complainant or Respondent may appeal the decision within **14 days** of receipt of the decision.
- The Title IX Coordinator confirms that an acceptable basis for appeal has been identified and if so, sends notice of the appeal [use **Notice of Appeal template**] to both the Complainant and the Respondent.
 - The Complainant and Respondent must be given **14 days** from receipt of the notice of appeal to submit information and documentation supporting or opposing the appeal.
13. The appeal person issues a written decision [use **Notice of Appeal Outcome template**] within **30 days** of the deadline for the parties to submit supporting information or documentation.
14. Associate Title IX Coordinator will, within a reasonable timeframe, upload all highlighted documentation (in PDF format for documents) in an access-restricted format to the files of the Complainant and the Respondent, in the HRIS and the SIS, which will be maintained for at least 7 years.

HOW CAN I REPORT AN INCIDENT THAT MIGHT BE SEXUAL HARASSMENT?

- UMATitleIX@Ultimatemedical.edu (preferred)
- Title IX Coordinator
 - Sue Edwards (sedwards@ultimatemedical.edu) or 813-387-6784
- Associate Title IX Coordinators
 - Employee matters: Kathleen Copersito (kcopersito@ultimatemedical.edu or 813-388-4766)
 - Student Matters: Lisa McClure (lmclure@ultimatemedical.edu) or 813-676-1653
- Campus Director
 - Rebecca Sarlo (rsarlo@ultimatemedical.edu; 727-298-8685)





REPORT AND INITIAL ASSESSMENT

- ▶ Only reports to the Title IX Coordinator, Associate Title IX Coordinator, or Campus Director (all of whom have access to UMATitleIX@ultimatemedical.edu) give UMA “Actual Knowledge” under the policy.
 - “Actual Knowledge” triggers a school’s obligation to respond.
- ▶ The applicable Associate Title IX Coordinator assesses whether the allegations, if true, could constitute sexual harassment and occurred in UMA’s educational programs or activities.
 - If not, UMA will consider whether other policies apply.
 - If so, the Title IX Coordinator reaches out to the complainant to offer “Supportive Measures” and explain the formal complaint process. Only the complainant and Title IX Coordinator can file a formal complaint.
 - “Supportive Measures” are non-disciplinary, non-punitive and designed to "restore or preserve equal access" to the school's programs without "unreasonably burdening" the other party. Examples: schedule modifications, mutual restrictions on contact.



INVESTIGATION

- If a written formal complaint is filed, an HRBP or Director of Student Affairs (or designee) issues a notice of allegations to the complainant and respondent.
- Complainant, witnesses, and respondent are interviewed.
 - A party's advisor may attend an interview to which that party is invited, but may only speak to the person being advised and may not disrupt the interview.
- Interviews and relevant evidence (video, photos, chats/texts, etc.) are compiled into an investigation report.
- Complainant and respondent are given 10 days to review the draft investigation report. Their additional input (if any) is noted in the report and the report is finalized.
- The hearing will be held no earlier than 10 days after the investigation report is finalized and provided to the complainant and respondent.



WHAT IS RELEVANT - INVESTIGATION

- ▶ An investigation report should include any information that tends to prove or to disprove the complainant's allegations and/or that the respondent violated UMA's *Sexual Harassment Prohibited by Title IX* policy.
 - Both "inculpatory" and "exculpatory" evidence
- ▶ The goal of the investigator is to compile available, relevant information (including evidence offered or identified by the complainant, the respondent, or a witness) into a report that will be used at the hearing.
 - Remember that witnesses who give statements during the investigation must also appear at the hearing for their statements to be considered by the panel.
- ▶ The investigator should screen information to include in the report based only on whether it is relevant, and not on whether the investigator finds the information to be credible. Credibility determinations are the responsibility of the hearing panel.
 - Questions and evidence about a complainants' sexual predisposition or prior sexual behavior are not relevant, except where they:
 - Are offered to prove someone other than the respondent committed alleged conduct, OR
 - Concern specific incidents of the complainant's prior sexual behavior with respect to the respondent AND are offered to prove consent on the occasion at issue in the investigation.



INTERVIEWS AND HEARINGS WILL BE CONDUCTED REMOTELY

- ▶ Investigatory interviews and the hearing will be conducted via recorded videoconference.
 - Microsoft Teams will be the platform of first resort, due to UMA team members' ready familiarity with it based on required use at work.
 - Should an interviewee or hearing attendee not have access to Microsoft Teams, the interview or hearing will be conducted via Zoom, which can be made available free of cost to participants.
 - Once an interview or hearing has been recorded, the investigator or hearing chairperson should contact IT for instructions on uploading to the storage area designated for the recordings.
- ▶ Even where participants may be in the same building, each person will be required to log in separately (for attendance tracking purposes) and show video for the entirety of their participation.
 - One exception to the separate log-in requirement is that a party's advisor may attend in the same room as the party, with a single log-in.
- ▶ If any party, advisor, witness, or panel member is unable to log into a hearing and be both seen and heard, the hearing should be postponed (and if necessary, rescheduled) until complete attendance and participation are possible.



HEARING

- ▶ Title IX Coordinator chooses hearing panel, chairperson, stand-by advisors, and appeal person.
- ▶ Hearing is held by panel, led by the chairperson.
- ▶ The panel may ask questions of parties and witnesses. Parties may only question each other and witnesses through advisors.
 - Advisors should participate in questioning and cross-examination on behalf of the party they are advising, but may not otherwise speak to participants at the hearing.
 - If either the complainant or the respondent does not bring an advisor to the hearing, UMA will provide one.
- ▶ Investigatory statements of parties or witnesses who do not appear at the hearing for cross-examination cannot be considered by the panel.
- ▶ Panel deliberates in private, then issues a written decision to complainant and respondent within 14 days of the hearing, including any sanctions and remedies.



WHAT IS RELEVANT - HEARING

- ▶ Before any party or witness at a hearing answers a question posed by someone other than the panel, the panel (through the chairperson) must determine if the question or related evidence is relevant.
 - The panel will consider the relevance of each question after it is asked but before it is answered. All participants in the hearing should be advised of this protocol at the outset to avoid a party or witness inadvertently answering an irrelevant question.
 - The panel should control the pace of questioning.
 - If the question or evidence is excluded, the chairperson must explain why.
 - If the party or the party's advisor disagrees with the panel's determination of relevance, the party or the party's advisor may state an objection for the recording, but may not otherwise obstruct or impede the progress of the hearing.
- ▶ As with the investigation report, questions and evidence about a complainants' sexual predisposition or prior sexual behavior are not relevant, except where they:
 - Are offered to prove someone other than the respondent committed alleged conduct, OR
 - Concern specific incidents of the complainant's prior sexual behavior with respect to the respondent AND are offered to prove consent on the occasion at issue in the investigation.
- ▶ Regardless of who poses the question or offers the evidence during a hearing, it should be done in a way that is:
 - Not needlessly duplicative
 - Respectful to all involved in the hearing



APPEAL

- ▶ An appeal form is included with the written decision.
- ▶ The complainant or respondent may appeal the decision within 14 days of receipt of the decision.
- ▶ When an appeal is received, the Title IX Coordinator confirms that an acceptable basis for appeal has been identified and if so, sends notice of the appeal to both the complainant and the respondent.
- ▶ The complainant and respondent are given 14 days from receipt of the notice of appeal to submit information and documentation supporting or opposing the appeal.
- ▶ The appeal person issues a written decision within 30 days of the deadline for the parties to submit supporting information or documentation.



INFORMAL RESOLUTION

- ▶ Can be requested by either party at any time before a final determination
- ▶ Cannot be used to resolve allegations that a team member sexually harassed a student
- ▶ The process is completely voluntary; the informal resolution process terminates if one or both parties want to withdraw and resume the formal complaint process.
- ▶ For an informal resolution to be binding, an agreement of resolution must be signed by both the complainant and respondent.



DISMISSAL SHORT OF A HEARING

- ▶ UMA **must** dismiss a formal complaint short of a hearing if the investigation indicates that the allegations do not meet the definition of sexual harassment.
- ▶ UMA **may** dismiss a formal complaint short of a hearing if:
 - the complainant requests dismissal in writing,
 - the respondent is no longer a student or team member of UMA, or
 - if UMA cannot gather sufficient evidence to make a determination.
- ▶ A dismissal short of a hearing can be appealed by either the complainant or the respondent.



DOCUMENTATION

- ▶ The relevant Associate Title IX Coordinator will, within a reasonable timeframe, upload all documentation and information highlighted on the checklist (in PDF format for documents) in an access-restricted format to the files of the complainant and the respondent, in the HRIS and the SIS.
 - Interview and hearing recordings may be stored separately in an area designated by UMA's IT team, due to restrictions posed by the recording file type.
- ▶ Documentation will be maintained for at least seven years.

RETALIATION

UMA prohibits retaliation against:

Any person who reports an incident of sexual harassment

Any person who assists or participates in a proceeding, investigation or hearing relating to such allegations

See the Retaliation Policy, the Sexual Harassment Prohibited By Title IX policy and the Team Member Complaint Procedure, in the Team Member Handbook and Catalog





CONFIDENTIALITY

Confidentiality will be maintained to the extent possible. The privacy of individuals involved, and compliance with the wishes of the complainant, respondent, or witnesses cannot be guaranteed, however, their wishes will be respected to the extent possible and appropriate.





CONFIDENTIALITY

- If students or employees wish to speak with someone who can assure confidentiality, they are encouraged to access third-party counseling services available below (toll free):
 - ❑ **Students:** UMA Student Guidance Center 866-797-1622 (“UMASAP” web ID)
 - ❑ **Employees:** UMA Guidance Center at 800-327-1850 (“HFL902” web ID)





RESOURCES FOR VICTIMS OF SEXUAL MISCONDUCT

- RAINN (Rape, Abuse & Incest National Network) is the nation's largest anti-sexual violence organization.
- The National Sexual Assault Hotline is available 24/7
 - Telephone: 1-800-656-HOPE (4673)
 - Online chat: [online.rainn.org](https://www.rainn.org)
 - State specific resources:
<https://www.rainn.org/state-resources>





QUESTIONS? CONTACT ...

- ▶ Title IX Coordinator, Sue Edwards
 - sedwards@ultimatemedical.edu
- ▶ Senior Counsel, Laura Sitarski
 - lsitarski@ultimatemedical.edu