

Title IX
Procedures
for OEE
Investigators

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Overview



Part 1: General Concepts



Part 2: Investigation



Part 3: Live Hearing



Part 4: Post-Hearing



Part 1: General Concepts

What is Title IX?

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs and activities that receive federal financial assistance

Enforced by the US Department of Education's Office for Civil Rights

New Title IX Regulations became effective on August 14, 2020

University's [Title IX Policy and Grievance Procedures](#), revised October 19, 2021, applies to Complaints submitted on or after August 14, 2020

TIX Offices at Rutgers

University-Wide

Judy Ryan, Enterprise
Risk and Institutional
Compliance Officer

Office of Employment Equity

Lisa Grosskreutz,
Director and Title IX
Coordinator

New Brunswick

Jackie Moran, Associate
Dean of Students and
Director for Student
Affairs Compliance and
Title IX

Newark

Jackie Moran, Associate
Dean of Students and
Director for Student
Affairs Compliance and
Title IX

Camden

Allison Wisniewski,
Associate Dean of
Students/Executive
Director

RBHS

Susan Hamilton, Assistant
Vice Chancellor for
Academic and Student
Affairs

Which Office will investigate (generally)?

OEE

- Reports against faculty, staff, and student employees (acting within the scope of their employment)
- Parties doing business with the University (vendors, contractors, interns, volunteers)
- Others affiliated with the University (who are not Rutgers' students)
- Applicants for employment

Campus Offices/RBHS

- Reports against University students
- Guests of students
- Non-students residing in University housing
- Participants in University programs or activities (summer camp, public event)

If Respondent has no affiliation with the University

- Investigating Office to be determined by Judy Ryan/UEC
- University's ability to take corrective action against the Respondent may be limited

Jurisdiction: Is it TIX?

The conduct is alleged to have occurred in the United States;

In a University program or activity;

- On campus
- Off-campus where Rutgers has substantial control
- Buildings owned or controlled by a recognized student organization
- Via computer or internet owned or operated by Rutgers/over which Rutgers has substantial control
- Conduct that involves Rutgers employees in the workplace

The alleged conduct, if true, would constitute Covered Sexual Harassment

Covered Sexual Harassment

An employee conditioning educational benefits on participating in unwelcome sexual conduct (quid pro quo)

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

Sexual Assault, which includes any sexual act directed at another person without their consent

Dating Violence

Domestic Violence

Stalking

The Policy also prohibits retaliation against any individual who, in good faith, asserts their right to bring a complaint under this Policy (including third party reports), participates or refuses to participate in an investigation or hearing, or protests alleged conduct prohibited by the Policy

Retaliation allegations are investigated under the Code of Student Conduct, RBHS Students Rights, Responsibilities and Disciplinary Procedure Policy, or OEE's Policy prohibiting Discrimination and Harassment

Retaliation

Conduct outside the scope of TIX

- May be investigated under other University Policies
 - OEE's Discrimination and Harassment Policy
 - Code of Student Conduct
 - RBHS Student Rights, Responsibilities, and Disciplinary Procedures
- Generally, when portions of a TIX complaint fall outside of TIX, only the TIX allegations would be investigated using the TIX Grievance Process
- However, the TIX Coordinator has the discretion to determine whether the non-TIX allegations will be addressed under the TIX Policy

Reporting Requirements

Any person may make a report to a TIX Office

- If someone other than the Complainant reports, the TIX Office will contact the Complainant to inform them of the report, offer supportive measures, and inform them of the option to file a Formal Complaint (intake)
- Complainant will not be required to participate in any resulting process

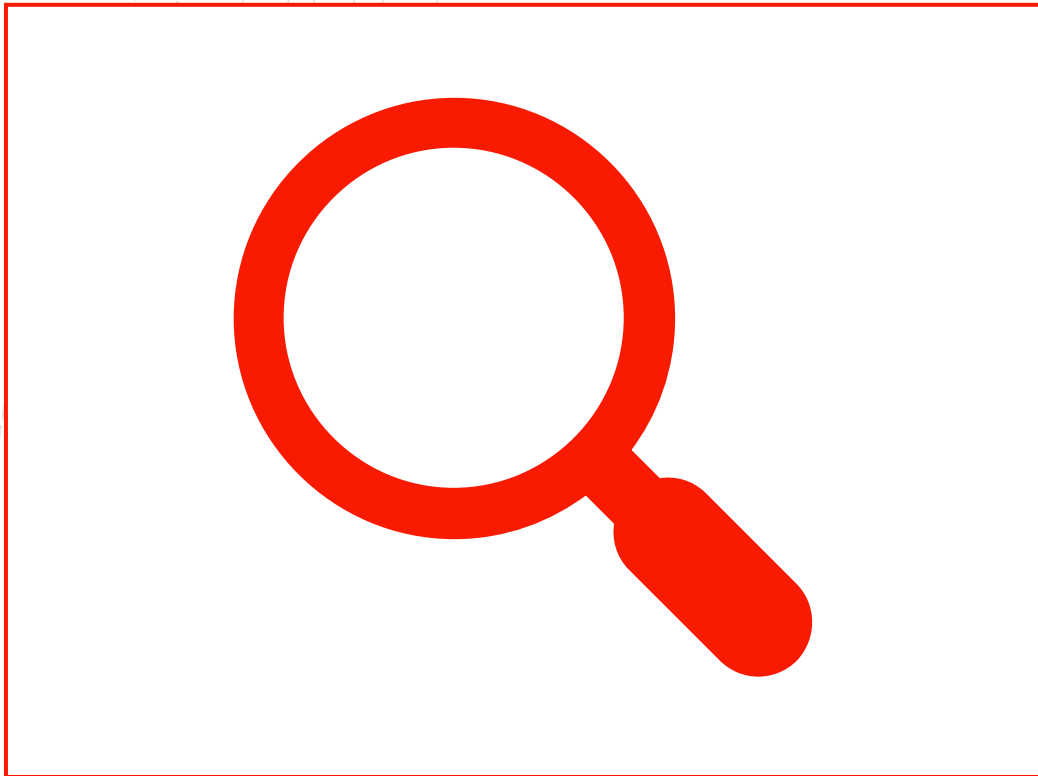
Any University employee, who is not a confidential resource, who receives a report involving a student is required to inform a TIX Coordinator

University supervisors and managers who receive reports involving employees must inform OEE

Those required to report must report all relevant details, including names of those involved

Intakes:

A Report has been received, but a Formal Complaint has not been filed



- Investigator will contact the Complainant to explain OEE policies and procedures
- Investigator will gather facts from the Complainant to determine if the case falls under TIX or another OEE policy
- Investigator will discuss Supportive Measures with Complainant, which are available even if the Complainant does not file a Formal Complaint, as well as their option to file a Formal Complaint under the TIX Policy
- “Formal Complaint” means a written document (hard copy or electronic) that alleges that a Respondent committed Covered Sexual Harassment within a Rutgers education program or activity and requests initiation of the procedures consistent with the Policy to investigate the allegation of Covered Sexual Harassment
- A Formal Complaint can only be filed by a Complainant with a signature or other indication that the Complainant is filing the formal complaint, or it must be signed by the TIX Coordinator
- A Formal Complaint can only be filed by the Complainant if the Complainant is currently participating in or seeking to participate in a University program or activity
- “Complainant” means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment

University Action (UA) Decision

If a Complainant does not wish to make a Formal Complaint, OEE will determine if it is necessary to institute a UA and consider:

If there is independent evidence of the allegations

The nature of the allegations

If the University received similar complaints against the same Respondent



If the TIX Coordinator initiates a Formal Complaint, the University will inform the Complainant of this decision in writing



The Complainant will not be required to participate in the process but will receive all procedural notices issued under this Policy

Supportive Measures



Non-disciplinary and non-punitive



Without fee to any Party



Designed to restore or preserve equal access to education without unreasonably burdening the other Party



Made in consultation with the TIX Coordinator, relevant University Administrators, and requesting Party



Failure to comply with Supportive Measures may be a violation of other University Policies

Examples of Supportive Measures

Counseling

Deadline extensions

Modification of work or class schedules

Tutoring

Campus escort

No contact order

Change in work or housing location

Leave of absence

Increased security on campus

Emergency Removal and Administrative Leave

Emergency Removal

The University can remove a Respondent on an emergency basis where: (1) the University undertakes an individualized safety and risk assessment; and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegation justifies a removal

Administrative Leave (AL)

Rutgers retains the authority to place student and non-student employee respondents on AL from their employment during the TIX Grievance Process in accordance with applicable laws, polices, and collective negotiations agreements (CNAs)

Support Persons, Advisors, and Campus Liaisons



Support Persons

May attend meetings and hearings to provide support to a Party



Advisors

May attend meetings and hearings

Role is to conduct cross-examination at the hearing

Can be the same person as the support person

If a Party does not have an advisor, the University will provide one



Campus Liaisons

For student Parties only
Cannot attend meetings or hearings unless also designated as a support person or advisor

Support Persons, Advisors, and Campus Liaisons (continued)



Parties are expected to participate in the process directly, not through their advisor, support person, or campus liaison (except with respect to conducting cross-examination at the hearing, which may only be done by an advisor)



Parties must be provided with equal access to information about advisors and support persons, and restrictions on support person/advisor participation must be applied equally




The University cannot agree to extensive delays to accommodate schedules of support persons, advisors, or campus liaisons and is not obligated to delay more than 5 days due to their unavailability

Conflicts of Interest/Bias

TIX Coordinators, investigators, decision-makers, facilitators of informal resolution processes, and appeals officers have a duty to disclose any potential or actual conflict of interest or bias



Parties may raise any issues of bias/conflict to the TIX Coordinator (or if the bias concerns the TIX Coordinator, to UEC) in writing within 3 days after notification of that person's involvement in the process



Party must include a description of the bias or conflict



Part 2 : The Investigation

A Formal Complaint has been filed, what are the next steps?

Contact Complainant to discuss the OEE process, Supportive Measures, and gather details for the Notice of Allegations (if not done at intake)

Issue the Notice of Allegations to the Parties (via University email, if applicable) as soon as practicable, but not more than 5 days after the Formal Complaint was received, absent extenuating circumstances, or if more time is needed to gather all required information for the Notice of Allegations

The University must provide the Parties with “sufficient time” for the Parties to review the Notice of Allegations and prepare a response before their initial interview (at least 5 days, unless waived)

If the University decides to investigate additional allegations, it must provide an updated Notice of Allegations and provide the Parties with sufficient time to review before any interviews

What must I include in the Notice of Allegations?

Attach the TIX Policy and Grievance Procedures

Allegations that will be investigated with sufficient details to allow the Parties to prepare for the initial interview

Statement that the Respondent is presumed not responsible

Statement that the Parties may have a support person of their choice

Statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney

For student Parties, a statement that they will have access to a list of campus liaisons (attach list)

Statement regarding inspection and review of evidence

Statement prohibiting false statements

Dismissal Determination: After the Notice of Allegations is issued

TIX Coordinator must notify all Parties in writing of dismissal decision with reasons, and include information on how to appeal



Parties may appeal decision within 3 days only on the grounds of conflict/bias by the TIX Coordinator or error in conclusion



Appeal decision will be rendered within 5 days



Dismissed complaints may be investigated under other University Policies

Bases for Dismissal

Mandatory Dismissal

- Jurisdictional elements not met: Did not occur in the US, did not occur in a Rutgers educational program or activity; or allegations, if true, would not constitute Covered Sexual Harassment

Discretionary Dismissal (available at any time)

- Complainant notifies TIX Coordinator of desire to withdraw the Complaint
- Respondent is no longer enrolled or employed at the University
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination

Informal Resolution



Cannot be used for complaints by students against employees



Formal complaint must be filed



Either party can request at any time

Timeframe for Investigation

- 90 working days after Formal Complaint filed, excluding all appeals processes
- Can be delayed for “good cause”
- Either Party may request an extension for “good cause,” upon reasonable notice, and the delay cannot overly inconvenience the other Party
- TIX Coordinator or investigator has sole judgment whether to grant or deny an extension
- OEE will notify the Parties in writing of any extensions and the reason(s) for it
- Case may be delayed at the request of law enforcement, but will resume as soon as possible, and generally will not wait for the outcome of a criminal matter

What is “good cause”

Absence of Party

Absence of a
Party’s advisor

Absence of a
witness

Concurrent law
enforcement
activity

Complexity of the
case (number of
witnesses, volume
of information)

Need for language
assistance or
accommodations

Necessary to
ensure the integrity
and completeness
of the process

Burden of Proof

Preponderance of the evidence (more likely than not)

University has the burden of proof and burden of collecting evidence

Parties do not have to participate in the process

Notice of Interviews and Meetings

Provide notice 5 days in advance of date, time, location, participants, and purpose of the meeting, with sufficient time for the person to prepare



Person may waive 5-day notice and agree to meet sooner



Notify Parties in writing that they may bring one support person and/or one advisor to the meeting

Gathering Information

Determine relevancy of information gathered

Provide equal opportunity for the Parties to identify witnesses and provide information

May collect a written statement from a witness in lieu of an interview

Can decide not to interview a witness if the witness does not have relevant information

Information gathered must be stored in a secure manner

Relevant Evidence

Tends to make allegations of Covered Sexual Harassment more or less likely to be true

Does not include:

- **Complainant's sexual behaviors unless: (1) to prove someone other than the Respondent committed the alleged conduct; or (2) they concern incidents with the Respondent and are offered to prove consent**
- **Information protected by a legally recognized privilege**
- **Medical or psychological records unless the Party has given voluntary, written consent**

Inspection and Response to Evidence



Parties must submit any information they would like the investigator to consider before the Parties' time to inspect and review evidence begins



Parties must be given access to all evidence directly related to the allegations (can use the University's Box application – “previewer” option will ensure the evidence cannot be downloaded or shared)



Parties, support persons, and advisors must sign an evidence disclosure agreement before obtaining access to the evidence



Upon receiving access to the evidence, Parties have 10 days to review and submit a written response by email



Investigator will consider responses to evidence before completing the draft investigation report



Investigator will provide copies of each Party's written response to all other Parties and advisors (via Box)

Investigative Reports: Draft and Final

After reviewing the responses to evidence, complete draft report and distribute to the Parties and advisors (via Box)

Draft report:

- Must fairly summarize relevant evidence (inculpatory and exculpatory)
- May include a timeline and summary of relevant supporting documentation
- May include investigator's assessment of credibility
- May redact personal/private information
- Keep irrelevant information in secure case file

Parties have 10 days to review and respond to the draft report in writing

Upon receipt of written responses, investigator may (but is not required to) amend the report

Provide Parties with final investigation report, including Party responses to the draft report, at least 10 days prior to the hearing

At the end of the investigation, what should be in Box?

Evidence from
Parties and
witnesses (if
provided)

Parties' responses to
the evidence (if
provided)

Draft Investigation
Report

Parties' Responses
to the Draft
Investigation Report
(if provided)


Final Investigation
Report



Part 3: Live Hearing

General Requirements for Decision-makers

Cannot be someone who served as a TIX Coordinator, investigator, advisor, or appeals officer in same case



Cannot have a conflict of interest or bias for or against complainants or respondents in general, or in favor or against a Party in a particular case



Must attend live hearing

Training Requirements for Decision-makers*

Training covered by SUNY modules:

- How to serve impartially/avoiding prejudgment of the facts, conflicts of interest and bias
- Issues of relevance (including Rape Shield)
- Decorum
- Technology to be used at the hearing

Training provided by the University

- OEE Investigation and Hearing Process for TIX Complaints
- Sanctions (where necessary)

*There are also training requirements for investigators and others involved in the TIX process

Two Decision-Maker Model

First Decision-Maker/Hearing Officer: Determines Responsibility

- Select from pool of decision-makers
- Will need to execute retainer letter
- Determines responsibility and issues final written decision
- Confirm that required training complete/if additional training is needed

Second Decision-Maker: Determines Sanctions

- Appointed by the employee's department or other appropriate office
- Must have authority to issue sanctions per applicable University policy and/or CNAs
- Determines sanctions and communicates determination to first decision-maker for inclusion in the final written decision
- Confirm that required training complete/if additional training is needed

Selecting University-Appointed Advisors

Select from pool of advisors

Provide training on the OEE investigation and hearing process for TIX complaints (there are no training requirements per the Policy or Regs)

Advisors of choice, selected by the Parties, are not required to complete training

Must execute retainer letter (different from decision-maker retainer letter)

Limited purpose to conduct cross-examination at hearing

A party can waive the right to have an advisor conduct cross-examination through a written statement prior to the hearing, or a verbal statement during the hearing, but the party may not conduct cross-examination in lieu of an advisor

Hearing Notice

Provide at least 10 days prior to the hearing

Parties may request complete access to the case file prior to the hearing

Hearing Notice must include:

- **Allegations**
- **Name(s) of decision-makers**
- **Time, location, and date of hearing**
- **For student parties, a list of campus liaisons**
- **Information on requesting disability-related accommodations and/or a translator**
- **Statement directing each Party to supply additional witnesses and/or evidence at least 5 days in advance**
- **Statement that each party may object to the decision-maker(s) actual or perceived bias**
- **Statement that each party is entitled to have an advisor of choice conduct cross-examination at the hearing, and if they do not have one, to notify OEE at least 5 days in advance so that one may be provided to them**
- **Copy of Hearing Decorum Guidelines and a statement that a participant's failure to comply with the guidelines may result in their removal from the hearing**

Pre-hearing Conferences

Conducted separately with each Party, their support person, and their advisor

At least 2 days prior to the hearing

Inability to schedule, or a Party's absence from the pre-hearing conference, is not grounds to postpone the hearing

Conference will cover:

- Hearing procedures
- Technology
- Time allotted for hearing
- Names of witnesses that will be asked to appear at hearing (this should be done in advance)
- Determine if the Party seeks to introduce new evidence
- Resolve any other issues

Hearing Overview

The hearing is not public

- Only Parties, advisors, support persons, decision-makers, witnesses, and University staff (managing logistical and technical aspects of the hearing) may attend

Participation is voluntary

- Decision-maker(s) may consider prior statements of Parties and witnesses who do not attend the hearing
- Decision-maker(s) cannot draw inferences about the determination of responsibility based on a Party or witness's absence from the hearing or refusal to answer questions
- The hearing will proceed in the absence of any Party

All participants must comply with the Hearing Decorum Guidelines

Hearing Technology



Hearing can be conducted via Zoom or in-person

If in-person, the Parties are not required to be in the same room, may still need to use Zoom



Recorded by OEE (on Zoom)

No other participants may record



All Participants must always keep their camera on



Cell phones and recording devices are not permitted, unless approved by the decision-maker(s)

May be approved for communication between a Party and their support persons/advisors during the hearing

Cross-Examination

Advisor may conduct cross-examination even if their Party does not attend the hearing

Cannot be conducted by a Party, must be conducted through an advisor

Questions include all relevant questions, including those challenging credibility, that are not specifically excluded

Decision-maker determines relevancy after each question

Character and expert witnesses permitted

What questions are not relevant?

Repetitive questions

Rape Shield

Information protected by legal privilege

Medical or psychological records without the Party's consent

Non-Questions

- **Accusatory statements**
- **Personal opinions**

Format of Hearing

Introductory remarks by the first decision-maker/hearing officer

Decision-maker reads allegations

- Respondent can answer "responsible or "not responsible"
- If "responsible," option to proceed to impact statement/mitigating statement

Opening statements of Parties

- Questions from decision-maker
- Questions (cross-examination) by advisors

Format of Hearing (continued)

Presentation of witnesses, including investigator

- Investigator will be called as the first witness and may remain present for the hearing if managing logistical and/or technical aspects of the hearing
- All other witnesses will generally be sequestered
- Questions from decision-maker
- Questions (cross-examination) by advisors

Closing statements by Parties

Complainant's impact statement/Respondent's mitigation statement

Concluding remarks and appeals information

What if new information is presented at the hearing?

- Decision-maker may:
 - Ask Party to demonstrate the information was not reasonably available before
 - Accept the evidence as admissible, adjourn the hearing, or take other appropriate measures



Part 4: Post-Hearing

Decision and Appeals

Audio Recording of Hearing



Store in a secure manner



Made available to the Parties within 24 hours, absent extenuating circumstances



Parties and advisors will not receive a copy of the recording

Written Decision

Issued within 5 days, absent extenuating circumstances, simultaneously to the Parties

Standard of Proof: Preponderance of the Evidence (more likely than not)

Decision is final upon receipt of appeal determination, or after the opportunity to appeal expires

Decision will include:

- Allegations
- Procedural history
- Findings of fact
- Determination of responsibility and rationale
- Determination of sanctions and rationale, if applicable
- Determination of remedies and rationale, if applicable
- Appeal process

Considerations for Employee Sanctions

Discipline, up to and including termination

Decision-maker may consult with TIX Coordinator about sanctions imposed in similar cases

Must be consistent with University CNAs and Policies, as applicable

University may also require training or recommend counseling or other support services to the Respondent

Factors the Decision-maker may consider when determining sanctions:

Facts and circumstances of the event

Nature of the prohibited conduct

Circumstances concerning issue of consent

Actor's state of mind

Impact on the Complainant

Prior disciplinary history

Safety of community

Sanctions in similar cases

Any other aggravating or mitigating factors

Appeals: General Considerations

- Appeals officer cannot have a conflict of interest/bias or have served as an investigator, TIX Coordinator, or decision-maker in the same matter
- Appeals officer may solicit clarification from decision-maker, investigator, TIX Coordinator, or the Parties before arriving at a decision
- For employee Respondents, the appeals officer may:
 - affirm the finding
 - remand the case for a new hearing
- Appeals officer cannot modify sanctions against employee Respondents
- Appeal decisions are not subject to further review as part of the TIX Grievance Procedures

Appeals (continued)

Timeframe (up to 20 days)

- Party must submit in writing within 5 days of the decision and include grounds for appeal
- Time to appeal shall not be extended solely because the other Party filed an appeal
- Upon receipt of an appeal, the TIX Coordinator shall notify the other Party in writing and include the grounds for appeal
- The non-appealing Party may provide a response to the appeal within 5 days
- Appeal decision must be rendered within 10 days after the non-appealing Party's time to submit their written response expires

Submission of appeal stays sanctions

Supportive measures remain available during appeals process

Grounds for Appeal

Include:

- Procedural irregularity that affected the outcome
- New information not previously available that could affect the outcome
- Conflict of interest or bias that affected the outcome
- Disproportionate sanction (only available for student Respondents)

Do not include:

- Disagreement with finding
- Results of any criminal charges/civil proceeding

Additional Resources

