



Interim Sexual Misconduct Policy

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Agenda

1. Introduction & Background
2. Policy & Jurisdiction
3. Prohibited Conduct
4. Definitions
5. Reporting
6. Supportive Measures
7. Formal Complaints & Investigations
8. Hearing Procedures
9. Alternative Resolutions
10. Questions and Discussion



Purpose of this training

- In depth review of the Carnegie Mellon University Sexual Misconduct Policy.
- This training is designed for university administrators who serve various functions in the operation of the policy.
- This training supplements training modules on Title IX Foundations, Investigator Training, Hearing Officer Training, and Appeal Officer Training.



Background

- Title IX Final Regulations released by the Department of Education on May 6, 2020, with an effective date of August 14, 2020.
- Effective August 14, 2020, Carnegie Mellon adopted a new **Sexual Misconduct Policy (Interim)**.
- The Sexual Misconduct Policy superseded and replaced the university's 2013 Policy Against Sexual Harassment and Sexual Assault.

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Sexual Misconduct Policy - Organization

The Policy is organized into 9 sections:

- | | |
|-------------------------------------------|---------------------------------------------|
| I. Policy Statement | VI. How a Complaint is Resolved |
| II. Jurisdiction | VII. Additional Information about Reporting |
| III. Prohibited Conduct | VIII. Obligations of University Employees |
| IV. Reporting | IX. Definitions |
| V. How the University Responds to Reports | |



Sexual Misconduct Policy

It is the policy of Carnegie Mellon University to maintain an academic and work environment that promotes the confidence to work, study, innovate and perform without fear of sexual misconduct. Such misconduct diminishes individual dignity, is contrary to the values of the university and is a barrier to fulfilling the university's mission. It will not be tolerated at Carnegie Mellon University.



Sexual Misconduct Policy

This Policy is intended to:

- 1. Prevent, eliminate and remedy the effects of Prohibited Conduct;*
- 2. (2) foster an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; and*
- 3. (3) **provide a prompt, fair and impartial process** for all parties once the university is made aware of possible Prohibited Conduct.*



Policy Jurisdiction

- Applies to all faculty, staff, students and third-parties, when prohibited conduct occurs:
 1. In a University Program or Activity, including, but not limited to
 - conduct that occurs on a university campus or other property owned or controlled by the university;
 - in the context of university employment; or
 - in the context of university-sponsored study abroad, research, field work, practica, or internship programs.



Policy Jurisdiction

- Applies to all faculty, staff, students and third-parties, when prohibited conduct occurs:
 2. Outside of a University Program or Activity
 - But poses a serious threat of harm;
 - has a continuing adverse effect on, or impedes equal access to educational programs or activities, or
 - creates a hostile environment for Students, Faculty, Staff, or third parties.



Policy Jurisdiction

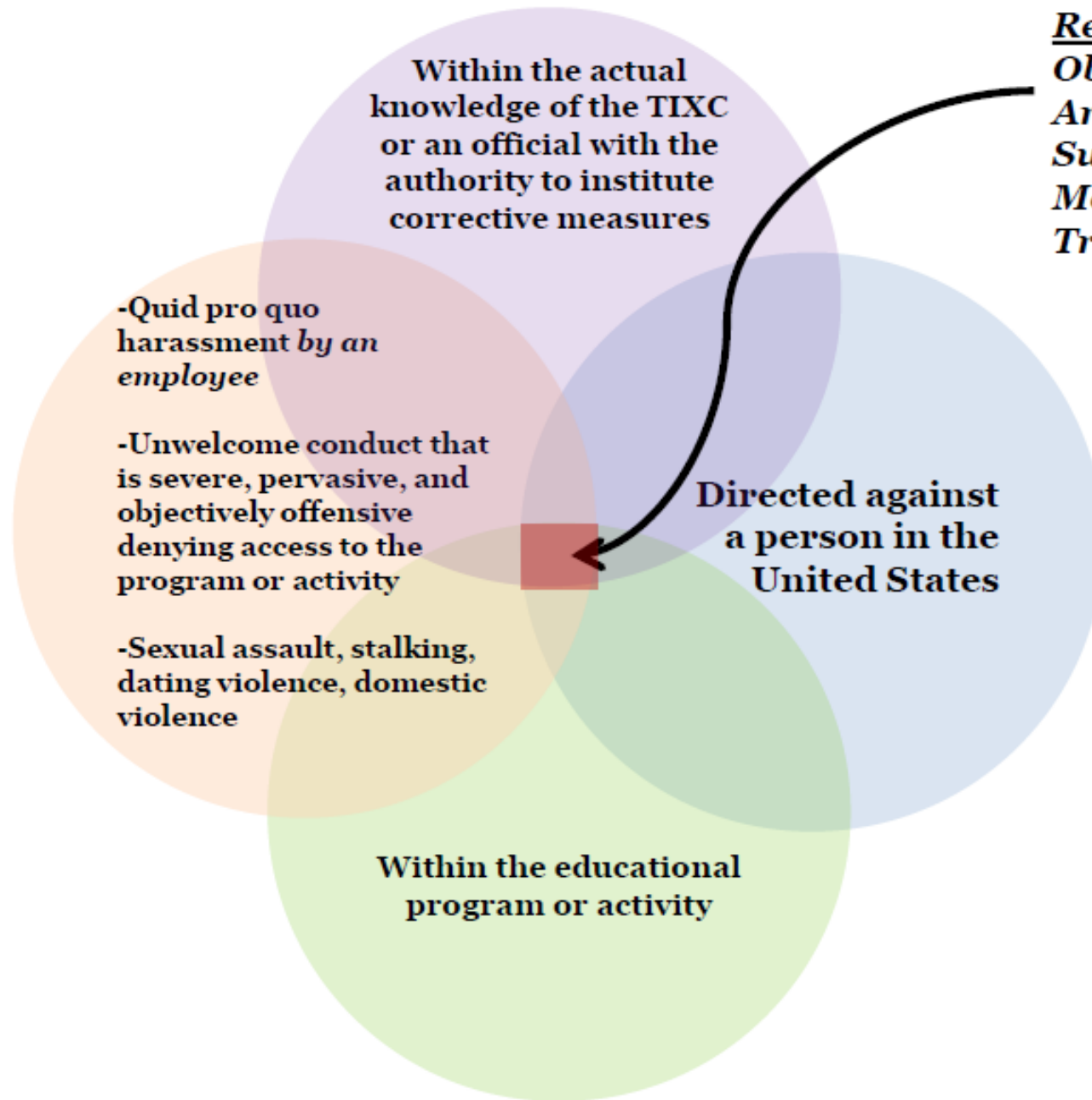
The university retains discretion to determine whether out-of-program conduct is within its jurisdiction. In making this determination, including off-campus or online conduct that is not part of a University Program or Activity, the university will consider:

- the severity of the alleged conduct,*
- the risk of ongoing harm,*
- whether both parties are members of the University Community,*
- impact on University Programs or Activities, and*
- whether off-campus conduct is part of a series of actions that occurred both on and off campus.*



Jurisdiction is Broader than Title IX

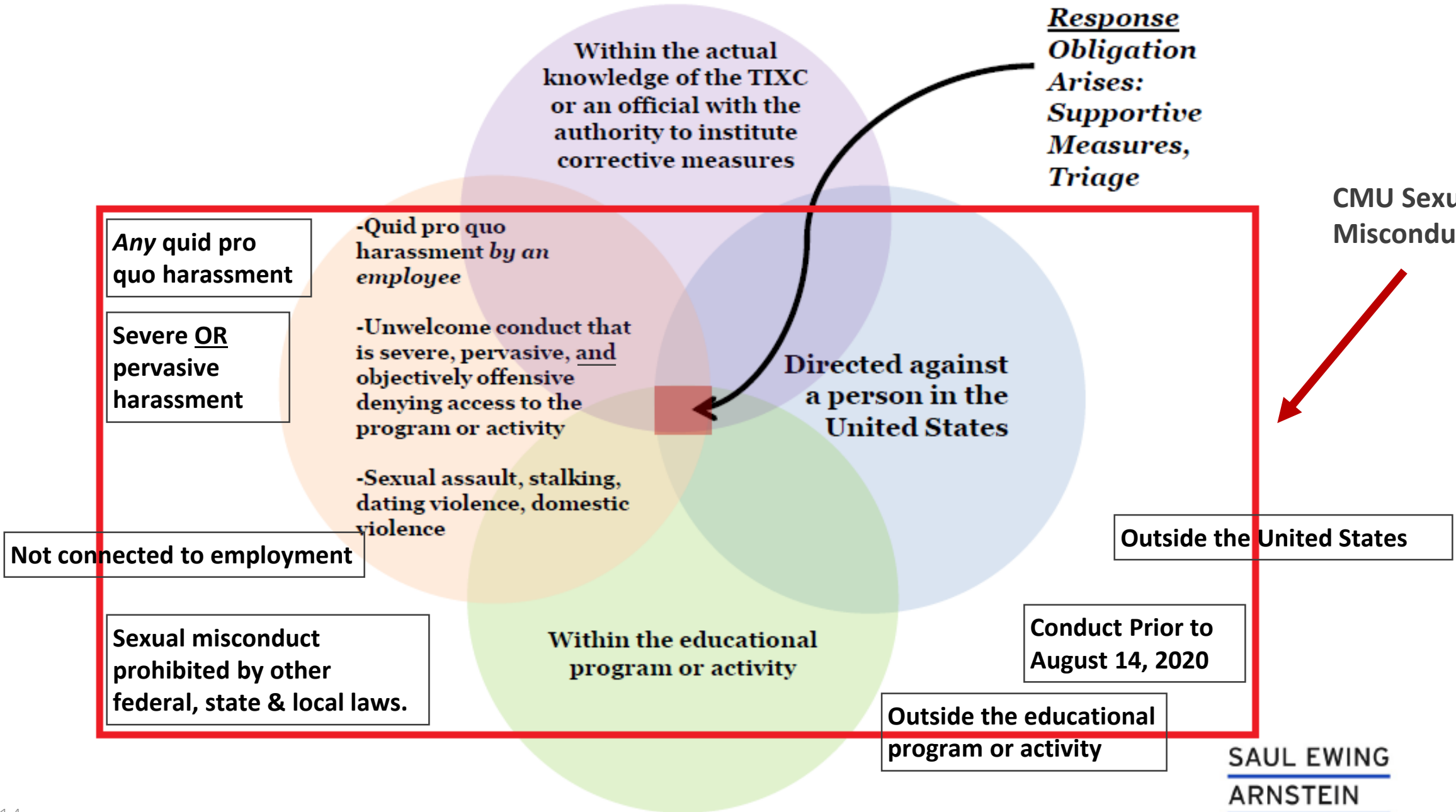
- The Sexual Misconduct Policy encompasses a range of conduct that is broader than the jurisdiction of Title IX.
- Violations of Title IX are a subset of Prohibited Conduct under the policy.
- The Sexual Misconduct Policy also covers sexual misconduct prohibited by other federal, state and local laws, including but not limited to Title VII, the PA Human Relations Act and the City of Pittsburgh Human Relations Ordinance.
- The Policy has separate processes for handling conduct that may violate Title IX and conduct that does not violate Title IX.
- The Sexual Misconduct Policy applies to all operations of Carnegie Mellon University world-wide.



***Title IX
Response
Obligation
Arises:
Supportive
Measures,
Triage***

***Title IX
Response
Obligation
Arises:
Supportive
Measures,
Triage***

**CMU Sexual
Misconduct
Policy**



Any quid pro quo harassment

Severe OR pervasive harassment

Not connected to employment

Sexual misconduct prohibited by other federal, state & local laws.

Within the actual knowledge of the TIXC or an official with the authority to institute corrective measures

-Quid pro quo harassment by an employee

-Unwelcome conduct that is severe, pervasive, and objectively offensive denying access to the program or activity

-Sexual assault, stalking, dating violence, domestic violence

Directed against a person in the United States

Outside the United States

Within the educational program or activity

Conduct Prior to August 14, 2020

Outside the educational program or activity

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Prohibited Conduct - Definition

Offenses within the Definition of Prohibited Conduct

Sexual Assault;

Sexual Exploitation;

Sexual Harassment;

Stalking;

Dating Violence;

Domestic Violence;

Retaliation; and

Violation of Protective Measures.



Prohibited Conduct

Procedural Categories of Prohibited Conduct

Federal Rule Sexual Misconduct

- Prohibited Conduct that falls within the jurisdiction of Title IX.

Other Prohibited Conduct

- Prohibited Conduct that falls within the jurisdiction of the Sexual Misconduct Policy but that does not fall within the jurisdiction of Title IX.



Federal Rule Sexual Misconduct

- Prohibited Conduct rises to the level of Federal Rule Sexual Misconduct when it meets ALL of the following three conditions:
 1. The alleged conduct was perpetrated against a person in the United States; and
 2. The conduct took place within the University's Programs or Activities.
 3. **PLUS one or more** of the following conditions:
 - An Employee engages in Quid Pro Quo Sexual Harassment against a Student; and/or
 - An individual engages in hostile environment Sexual Harassment that is so severe, pervasive, and objectively offensive that it denies another person equal access to the University's Programs or Activities; and/or
 - An individual engages in Sexual Assault, Dating Violence, Domestic Violence, or Stalking.
- At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the University's Programs or Activities.

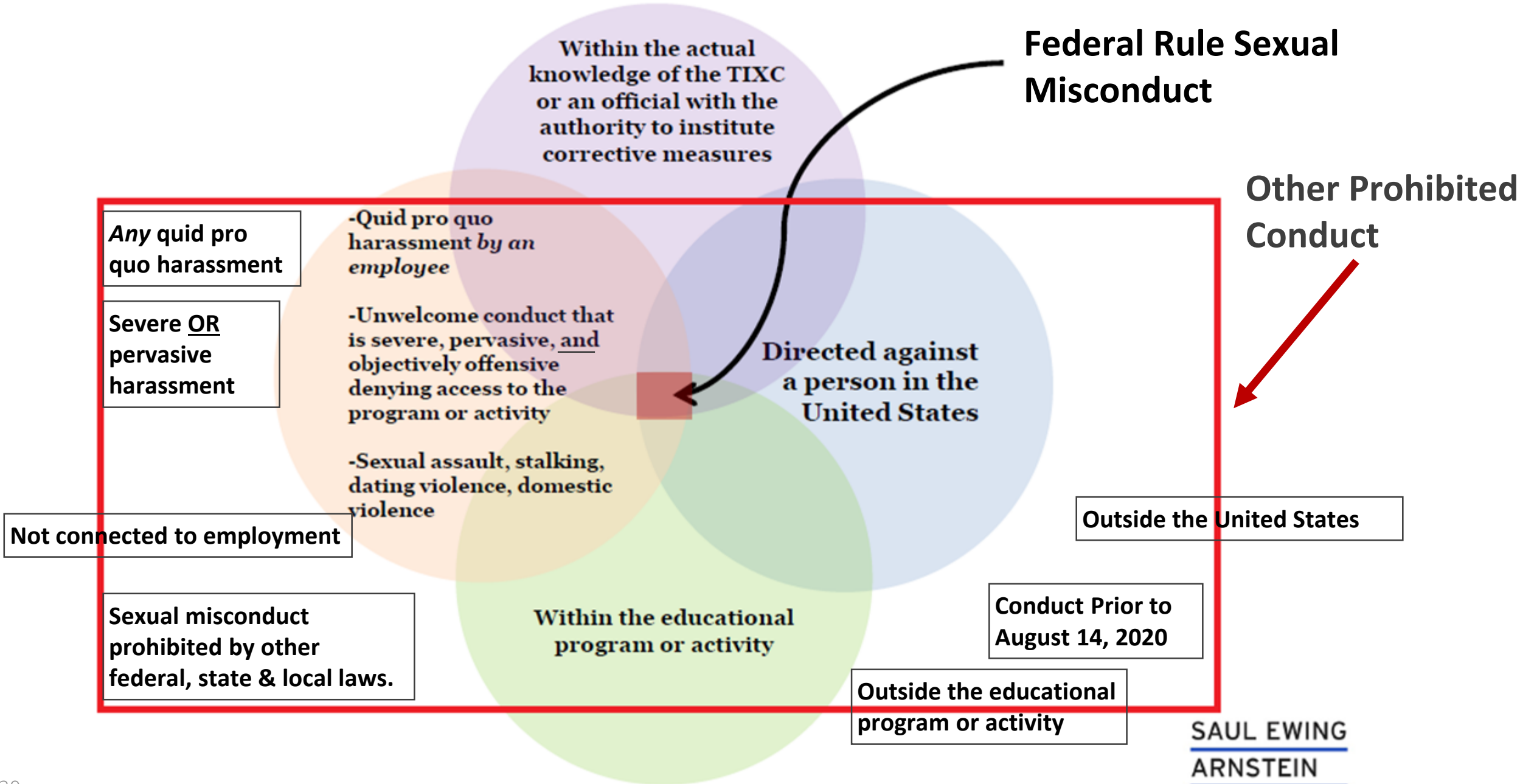


Other Prohibited Conduct

- Any Prohibited Conduct that does not meet the definition of Federal Rule Sexual Misconduct.
- Where the university exercises its discretion to assert jurisdiction (see slide 11).

Federal Rule Sexual Misconduct

Other Prohibited Conduct





Prohibit Conduct - Allegations

- Alleged violations of the Sexual Misconduct Policy must be identified as both:
 1. Type of offense, and
 2. Procedural category
- Examples:
 - Sexual Harassment – Federal Rule Sexual Misconduct
 - Sexual Assault, Rape – Other Prohibited Conduct
 - Sexual Assault, Fondling – Federal Rule Sexual Misconduct
 - Dating Violence – Other Prohibited Conduct

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The Parties

- **Complainant** - In most circumstances, Complainant means a person who is reported to have experienced Prohibited Conduct. The term Complainant also includes such individuals who file a Formal Complaint and who participates in a process undertaken by the university to address the report of Prohibited Conduct (including Federal Rule Sexual Misconduct). In some cases, a Complainant may be different than the person who initially reports information to the university.
- **Respondent** - an individual who is reported to have engaged in Prohibited Conduct (including Federal Rule Sexual Misconduct).



University Programs or Activities

- Conduct takes place in the “University’s Programs or Activities” when that conduct occurs:
 1. (1) in a location, at an event, or in a circumstance where the university exercises substantial control over both the Respondent and the context in which the conduct occurs; or
 2. (2) in any building owned or controlled by a student organization recognized by the university.
- *Examples:* Conduct that occurs on-campus occurs within the University’s Programs or Activities. Conduct that occurs off campus in locations or at events with no connection to the university is unlikely to occur in a program or activity of the university.



Prohibited Conduct - Sexual Harassment

- means any unwelcome conduct or cues of a sexual nature, whether verbal/aural (sounds), visual/graphic (e.g. pictures and videos), physical, or otherwise, when:
 - Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or participation in any University Program or Activity (commonly known as Quid Pro Quo);
 - Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University Program or Activity (commonly known as Quid Pro Quo); and/or
 - Such conduct creates a hostile environment. A hostile environment exists when the unwelcome conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a university program or activity or creates an intimidating, hostile, offensive, or abusive environment for that individual's participation in a University Program or Activity (commonly known as Hostile Environment).



Prohibited Conduct Sexual Harassment (cont.)

- The definition of Sexual Harassment addresses intentional conduct. It also includes conduct that results in negative effects even though such negative effects were unintended.
- Unwelcome conduct of a sexual nature constitutes Sexual Harassment if a **Reasonable Person** would consider it sufficiently severe, persistent, or pervasive as to interfere unreasonably with academic, other educational, or employment performance or participation in a university activity or living environment.



Prohibited Conduct - Sexual Assault

- Means a physical, sexual act directed against another person without their Consent, including instances where the victim is incapable of giving Consent. Sexual Assault can occur between two individual of the same or different sexes and/or genders.
- Includes:
 - Rape
 - Sodomy
 - Sexual Assault with an object
 - Fondling
 - Incest
 - Statutory Rape



Prohibited Conduct - Dating Violence

- Means any act of violence, including sexual violence, physical violence, or the threat of such violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship is determined based on a consideration of the length, type, and frequency of interactions between the persons involved in the relationship.



Prohibited Conduct - Domestic Violence

- Means any act of violence, including sexual violence, physical violence, or the threat of such 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.



Prohibited Conduct - Stalking

- Means engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to fear for his or her safety or the safety of others or suffer substantial emotional distress.



Prohibited Conduct - Sexual Exploitation

- Means intentionally or knowingly taking sexual advantage of another person or violating the sexual privacy of another when Consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):
 - engaging in sexual voyeurism including observing or permitting others to witness or observe the sexual or intimate activity (e.g., disrobing, bathing, toileting) of another person without that person's Consent;
 - engaging in indecent exposure, or exposing intimate parts (including genitalia, groin, breasts and/or buttocks), or causing another to expose intimate parts when Consent is not present;
 - recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
 - prostituting another individual;
 - causing Incapacitation of another person (through alcohol, drugs or other means) for the purpose of compromising that person's ability to give Consent to non-consensual sexual activity; or
 - actively aiding or assisting another person in committing an act of Prohibited Conduct.



Prohibited Conduct - Retaliation

- Means an adverse (negative) action taken against a person for making a good faith report of Prohibited Conduct, being alleged to have committed Prohibited Conduct, participating, or refusing to participate, in any proceeding under this Policy.
 - Retaliation may include intimidation, threats, coercion, harassment, or discrimination (including charging a Respondent under a different university policy instead of this Policy for the purpose of interfering with any right or privileged secured by Title IX or its implementing regulations).
 - Retaliation may also include adverse employment or educational actions that would discourage a Reasonable Person from engaging in a Protected Activity protected under this Policy.
- Retaliation is also prohibited by the university's Policy Against Retaliation.



Prohibited Conduct – Violation of Protective Measures

- Any violation of an agreement or order that limits an individual's contact or interactions with another individual. Such agreement or order may have been issued under the authority of the university, another institution, or a local, state or federal government or court.




Consent

- Means a knowing and voluntary agreement to engage in sexual activity at the time of the activity. In order to be valid, consent must be knowing, voluntary, active, present and ongoing. Consent should be demonstrated through mutually understandable words or actions.
 - Silence, remaining still or inactive (passive), or not actively resisting sexual activity does not imply consent.
 - Consent to engage in one sexual activity does not mean consent to engage in another sexual activity. Consent must be obtained each time, at each step of sexual activity.
 - Prior consent does not mean future consent. Consent must be obtained each time, at each step of sexual activity, even for those in an ongoing sexual relationship.
 - Consent can be withdrawn at any time. If one individual withdraws consent through clear words or actions, the other person must cease sexual activity immediately.
 - Consent cannot be obtained through Force, Incapacitation or Coercion (as defined here in).



Consent - Force

- Means using physical control (such as restraining a person), physical violence (such as hitting, choking or displaying a weapon), or threats of either to cause a person to submit to unwanted sexual activity.



Consent - Coercion

- Means using an unreasonable amount of pressure or threats that would overcome the will of a Reasonable Person and cause them to submit to unwanted sexual activity. Coercion requires more than an attempt to persuade someone to engage in sexual activity. Coercion can include threats, such as threats to cause academic, employment, reputational or economic harm. When one person expresses that they do not consent to sexual activity or are withdrawing consent for sexual activity, applying continued pressure in order to get the person to submit to unwanted sexual activity can be considered Coercion.



Consent - Incapacitation

- Means that a person lacks the ability to make informed, deliberate choices about whether or not to engage in sexual activity. A person is Incapacitated — unable to give consent — because they are:
 - under the age of consent (generally 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information);
 - physically or mentally helpless;
 - asleep or unconscious; or
 - unaware that sexual activity was requested, suggested, initiated and/or is taking place



Consent - Capacity

- means that the person has the ability under the law to give Consent to engage in sexual activity. This means that the person must be:
 - Of legal age to give Consent (generally at least 16 years of age in Pennsylvania; see definition of Statutory Rape for additional information); and
 - Able to make informed, deliberate choices about whether or not to engage in sexual activity.
- *A person who is not able to give consent is considered to be Incapacitated.*

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Report vs. Formal Complaint

- Policy distinguishes the action of reporting from filing a Formal Complaint.
- Any individual may report Prohibited Conduct.
- **Filing a report of Prohibited Conduct does not initiate a Formal Complaint.**
- Individuals are encouraged to report directly to the Office of Title IX Initiatives but may also submit reports to Student Affairs, Human Resources, University Policy, the Confidential Ethics Reporting Hotline or any other “Responsible Employee.”



Actual Knowledge

- The response obligations under the Sexual Misconduct Policy are triggered only when the university has actual knowledge of the Prohibited Conduct.
- **Actual Knowledge** means that the university has notice of alleged Sexual Misconduct because the alleged misconduct has been reported to the Title IX Coordinator or any official of the university who has the authority to institute corrective measures on behalf of the university. These are individuals whose “actual knowledge” may be imputed to the university.



Responsible Employees

- The Policy requires “Responsible Employees” to promptly notify the Title IX Coordinator of any reports of Prohibited Conduct.
- Responsible Employees includes:
 - University administrators and supervisors
 - Positions designated by the university (see next slide)

Responsible Employees

Designated Responsible Employees

1. President
2. Provost
3. Vice Presidents / Vice Provosts
4. Deans
5. Assistant / Associate Deans
6. Department Heads
7. Supervisors
8. University Police
9. Community Advisors & Resident Assistants
10. Student Affairs and Athletics staff (excluding administrative, custodial, maintenance and dining staff)
11. Community Advisors & Resident Assistants
12. HR Staff (excluding clerical / transactional staff)
13. Faculty or staff members in student study-abroad programs.
14. Faculty or staff advisors to student organizations.



Reminder – Child Abuse Reporting

- All University Employees are Mandatory Reporters of suspected child abuse.
- Pennsylvania law requires both external and internal reporting.
 - External – PA Childline Hotline
 - Internal – Supervisor, UPD, OGC, Title IX, etc.

Response Obligations

Actual Knowledge -- What now?

To a report:

- *Offer of supportive measures*
- *Explain formal complaint process*

To a formal complaint:

- *Investigation followed by*
- *Live hearing/compliant grievance process*

Unless facts require or permit dismissal

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Supportive Measures

- When the Office of Title IX Initiatives receives a report (i.e. actual knowledge), the university must:
 1. Promptly contact the complaint to discuss the availability of supportive measures
 2. Consider the complainant's wishes with respect to supportive measures
 3. Inform the complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and
 4. Explain to the complaint the process for filing a Formal Complaint.

Supportive Measures

- Non-disciplinary, non-punitive individualized services,
- offered as appropriate, as reasonably available, and without fee or charge,
- to the complainant or the respondent,
- including as designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

§ 106.45(a)(3)

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Examples of Supportive Measures

- Academic support & accommodations
- Academic schedule modifications
- Work schedule adjustments or workplace accommodations
- Changes in university housing
- Counseling
- Assistance in seeking medical services
- No contact agreements
- Temporarily limiting access to university facilities or services
- Information about and/or assistance in obtaining legal protective orders
- Leaves of absence
- Increased security
- Individualized limitations on the parties' communications with each other
- A combination of these measures.



Confidential Support & Resources

For individuals who may not be ready or willing to report to the Office of Title IX Initiatives, there are a variety of confidential resources available:

- **On-Campus**
 - Counseling and Psychological Services
 - University Health Services
 - Employee Assistance Program (employees only)
- **Community Resources**
 - Women's Shelter and Center of Greater Pittsburgh
 - Pittsburgh Action Against Rape
 - Center for Victims
 - Persad

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Formal Complaint

- A Complainant who chooses to pursue an alternative or formal resolution to address any reported Prohibited Conduct **must begin by filing a Formal Complaint** with the Office of Title IX Initiatives.
- A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by email with submission of a Formal Complaint Form. The Formal Complaint must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is the person filing.



Formal Complaint Form

Title IX Formal Complaint Form

Please complete the below information to the best of your knowledge. Once it is complete, submit the form to the Office of Title IX Initiatives in person at Cyert Hall, Suite 140, by email to TIX@cmu.edu, or mail to Title IX Coordinator, 5000 Forbes Ave., Cyert Hall, Suite 140, Pittsburgh, PA 15213.

Complainant Name _____ Andrew ID: _____

Contact Information:

Local address: _____

Phone: _____ Preferred email: _____

CMU Affiliation: Undergraduate Student (specify year) _____
 Graduate Student (specify master's or PhD) _____
 Faculty Staff Alumna/Alumnus Unknown Applicant
 Not Affiliated Other (specify) _____

Department/School _____

Nature of Incident(s) (check all that apply)

- Sexual Assault (includes but not limited to: rape, sodomy, sexual assault with an object, fondling, incest, statutory rape)
 Sexual Exploitation Stalking Retaliation Violation of Protective Measures Dating Violence
 Domestic Violence Sexual Harassment Undisclosed Other _____ I'm not sure

Date of Incident _____ or is this concern ongoing? _____ Date of First Incident _____

Location of Incident(s) (Check all that apply) _____

- On-Campus Property On-Campus Residential Facility Off-Campus Academic or Administrative Building
 Public Property CMU Branch Campus
 Other Pittsburgh Location Outside of Pittsburgh Unknown or Unreported Location

Brief Description of Misconduct:



Formal Complaint by Title IX Coordinator

- In addition, the Title IX Coordinator may file a Formal Complaint,
- Factors in this decision include, but are not limited to:
 - the wishes of the Complainant,
 - the nature and scope of the alleged Prohibited Conduct,
 - the risk posed to any individual or to the campus community by not proceeding, and/or
 - the University's determination about whether its legal obligations compel it to pursue the resolution of a report.

Dismissal

Mandatory Dismissal (Federal Rule Sexual Misconduct)

If the conduct alleged in the Formal Complaint:

- would not constitute sexual harassment even if proved,
- did not occur within the recipient's program or activity, or
- did not occur against a person in the United States,

the recipient **must terminate** its grievance process with regard to that conduct for the purposes of sexual harassment under Title IX.

Discretionary Dismissal

If one (or more) of the following conditions is **not met**, the Title IX Coordinator **may dismiss** the Formal Complaint for Title IX purposes:

- Complainant withdraws Formal Complaint or allegations in writing;
- Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding responsibility.

Dismissal does not preclude action under another provision of the recipient's code of conduct.

§ 106.45(b)(3)

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Dismissal

- **Mandatory Dismissal** (of Federal Rule Sexual Misconduct)
 - Where dismissal of Federal Rule Sexual Misconduct is mandatory under Title IX, the university may still investigate & adjudicate the matter as Other Prohibited Conduct.
- **Discretionary Dismissal**
 - Maybe applied to both Federal Rule Sexual Misconduct and Other Prohibited conduct when appropriate.
- Dismissal may occur at any time during the investigation or adjudication.
- In some cases, it may be prudent to charge both Federal Rule Sexual Misconduct and Other Prohibited Conduct.



Presumption of Innocence

- In all cases, throughout the investigation and adjudication of the Formal Complaint, the Respondent is considered innocent until found to be Responsible through a formal resolution process or an alternative resolution process.



Advisors

- Throughout the investigation and adjudication of the Formal Complaint, both the Complainant and the Respondent may select an Advisor of their choice.
- The Advisor may be an attorney.
- Advisors have right to participate in meetings/interviews and have the same rights to receive and access the Notice of Investigation, draft investigative reports, and evidence collected.
- The role of the Advisor during meetings/interviews may be limited (e.g. no speaking – aka “potted plant”).
 - Exception for Advisor conducted cross examination Federal Rule Sexual Misconduct Hearings.



Investigation

- Title IX Coordinator triages Formal Complaint to determine whether the allegations, if true constitute Other Prohibited Conduct and/or Federal Rule Sexual Misconduct.
 - What offenses are alleged?
 - What procedural category applies to each offense.
- Title IX Coordinator appoints an investigator.
 - In most cases, the investigator will be TIX Staff Member.
 - But the investigator could be a CMU employee in another department (e.g. HR or Student Affairs) or even an external investigator.
- The investigator must be unbiased and free of conflict of interest.

Written Notice of Investigation

Written Notice of Investigation

Source: 106.45(b)(2)(B)

Update as needed throughout the investigation

- To Whom?
 - “parties who are known”

- What to Include?
 - Identities of parties involved in incident
 - Conduct allegedly constituting sexual harassment
 - Date and location of alleged incident.
 - Statement that respondent is presumed not responsible; determination regarding responsibility will be made at conclusion of process.
 - Right to an advisor
 - Right to inspect and review
 - Statement of policy re false allegations
 - Federal Rule Sexual Misconduct or Other Prohbt. Conduct

- When to Send?
 - “With sufficient time to prepare a response before any initial interview”.

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Preliminary Investigative Report

- Investigator conducts investigation (see separate Investigator Training).
- Prepares a preliminary investigative report.
- Provides the preliminary investigative report and evidence collected to the Complainant, Respondent and their respective Advisors.
- At least 10 business days to review and comment.
- Investigator must “consider” comments from the parties.



Final Investigative Report

- When complete, Investigator provides the Investigative Report to the Title IX Coordinator.
- The Title IX Coordinator reviews the report and all relevant evidence to determine whether the allegations, if true, would constitute Federal Rule Sexual Misconduct and/or Other Prohibited Conduct.
- Based on this determination, the Title IX Coordinator advances the Investigative Report to the appropriate adjudication process.
- If the investigation reveals potential violations of other university' policies, the university has discretion to adjudicate under a separate process or as a part of the Sexual Misconduct Process.

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Adjudication Procedures

The Sexual Misconduct Policy has five separate adjudication procedures depending on the affiliation of the respondent and whether the allegations may constitute Federal Rule Sexual Misconduct:

1. Procedures for Federal Rule Sexual Misconduct
2. Other Prohibited Conduct Involving Student Respondents
3. Other Prohibited Conduct Involving Faculty Respondents
4. Other Prohibited Conduct Involving Staff Respondents
5. Other Prohibited Conduct Involving Third-Party Respondents

All procedures use the preponderance of the evidence standard.



Clery / VAWA Requirements

- Separate from Title IX, all procedures must comply with the Clery Act, as amended by the Violence Against Women Act (VAWA).
- For all allegations of sexual assault, dating violence, domestic violence and stalking, the resolution process must:
 - Be prompt, fair and impartial,
 - Be conducted by officials who receive annual training,
 - Permit the advisor of choice for Complainant/Respondent.
- Clery/VAWA applies to both Federal Rule Sexual Misconduct and Other Prohibited Conduct for allegations of sexual assault, dating violence, domestic violence and stalking.



Adjudication of Federal Rule Sexual Misconduct

- Hearing Officer
 - Appointed by the Title IX Coordinator.
 - Presides over a live hearing and makes findings regarding responsibility after objectively evaluating all relevant evidence (inculpatory and exculpatory).
 - Serves impartially.
 - Must independently reach a determination regarding responsibility. Cannot give deference to the investigative report.
 - No role in determining sanctions.
- Process Coordinator
 - Supports the Hearing Officer by providing administrative support for scheduling, preparing, and running the live hearing.



Adjudication of Federal Rule Sexual Misconduct

- Sanctioning Officer
 - If and only if the Hearing Officer determines the Respondent is Responsible for a violation...
 - The Sanctioning Officer will have sole responsibility for determining the appropriate sanctions and remedies related to any finding of responsibility made by the Hearing Officer.
 - The Sanctioning Officer does not make findings of fact or findings of responsibility.
 - The Sanctioning Officer will provide a written determination regarding sanctions to the Hearing Officer to be incorporated and/or attached into the final decision of the Hearing Officer.
 - The Sanctioning Officer does not participate in the live hearing.



Adjudication of Federal Rule Sexual Misconduct

- Sanctioning Officers
 - For Student Respondents - Associate Vice President of Student Affairs for Community Life or designee
 - For Staff Respondents - Associate Vice President & Chief Human Resources Officer or designee
 - For Faculty Respondents - Provost or designee



Adjudication of Federal Rule Sexual Misconduct

- Cross Examination
 - Must be conducted by the Advisor for the party;
 - If a party or witness does not submit for cross examination, no statement from that party or witness may be used in reaching a determination;
- Advisors
 - Each party has the right to an “Advisor of their choice” who may be an attorney;
 - If a party does not have an Advisor at the hearing, the university must provide an Advisor of the university’s choice (who may be but is not required to be an attorney)– for the purpose of conducting cross examination;



Adjudication of Federal Rule Sexual Misconduct

- Hearing Procedures – see <https://www.cmu.edu/policies/forms-and-documents/procedures-federal-rule-misconduct.pdf>
 - Scheduling the Hearing
 - Access to evidence
 - Pre-Hearing Decisions on Evidence
 - Registration of witnesses
 - Rules of Evidence
 - Rules of Decorum



Adjudication of Federal Rule Sexual Misconduct

- Rules of Evidence
 - Except as noted below, any relevant evidence may be admitted for consideration by the Hearing Officer.
 - “Relevant evidence” is any evidence (or a question seeking evidence) that, in the discretion of the Hearing Officer, makes the truth of a material fact more or less probable.
 - Exclusions from Evidence
 - Prior Sexual History / Rape Shield
 - Statements by individuals who do not submit to cross examination
 - See Hearing Officer training for more details.



Adjudication of Federal Rule Sexual Misconduct

- Rules of Decorum (highlights)
 - Address all questions, answers and remarks to Hearing Officer or Process Coordinator (except during Cross-Examination);
 - Advisors may not participate in proceedings or speak on behalf of the Complainant or Respondent (except during Cross-Examination);
 - No interrupting during testimony;
 - No profane or vulgar language (unless relevant – e.g. quoting prior statement)
 - No gestures, facial expressions, audible comments, or other manifestations of approval/disapproval of testimony;
 - Cell phones / tables must be on silent.



Adjudication of Federal Rule Sexual Misconduct

- **Deliberations** - At the conclusion of the hearing, the Hearing Officer will make findings of fact and a determination of responsibility with respect to each allegation using the preponderance of evidence standard.
- **Referral to Sanctioning Officer** - If there is a finding of Responsibility, the Hearing Officer contacts the appropriate Sanctioning Officer.
- **Written Decision** - The Hearing Officer will prepare a written determination regarding the findings of fact and the determination regarding responsibility for each allegation. Where applicable, the written decision of the Sanctioning Officer regarding sanctions and remedies will be attached to or incorporated into the written determination prepared by the Hearing Officer.
- **Delivery of Decision** – Simultaneous delivery to both parties.

Written Determination - Key Elements

1. **Identification of the allegations** alleged to constitute sexual harassment as defined in § 106.30;
2. **The procedural steps taken** from receipt of the formal complaint through the determination regarding responsibility;
3. **Findings of fact** supporting the determination;
4. **Conclusions** regarding the application of the **recipient's code of conduct** to the facts;
5. The decision-maker's **rationale for the result** of each allegation, including rationale for the determination regarding responsibility;
6. **Any disciplinary sanctions (as determined by the Santioning Officer)** the recipient imposes on the respondent, and **whether** the recipient will provide **remedies** to the complainant; and
7. Information regarding the **appeals process**. § 106.45(b)(7)(ii)

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Adjudication of Other Prohibited Conduct

- **Student Respondents** - Referral to the existing Student Conduct Process contained in the Community Standards section of *The Word* (no changes to hearing process).
 - Resolved via:
 - Administrative Resolution Process
 - Live Hearing of the University Disciplinary Committee with recommendation to an Associate Dean of Student Affairs.
 - Must comply with Clery/VAWA for sexual assault, dating violence, domestic violence and stalking.



Adjudication of Other Prohibited Conduct

- **Staff Respondents** – Referral to a new process in the Staff Handbook
 - AVP-POE or designee has discretion to determine appropriate level of review. Live hearing not required.
 - Supervisor consulted regarding sanctions, if necessary.
 - Must comply with Clery/VAWA for sexual assault, dating violence, domestic violence and stalking.



Adjudication of Other Prohibited Conduct

- **Faculty Respondents** – Streamlined version of the hearing procedures for Federal Rule Sexual Misconduct to make the process more similar to past practice.
 - Live hearing adjudicated by a single Hearing Officer appointed by the Provost;
 - Moderated cross-examination similar to UDC/ARB hearings;
 - Less restrictive rules of evidence;
 - Advisors (who may be attorneys) are not permitted to speak at the hearing but may only advise their party.
 - Must comply with Clery/VAWA for sexual assault, dating violence, domestic violence and stalking.



Adjudication of Other Prohibited Conduct

- **Third Party Respondents** — The university's ability to take appropriate corrective action against a third party is determined by the nature of the third party's relationship to the university.
 - The Title IX Coordinator determines the appropriate manner of resolution in accordance with the university's commitment to a prompt and equitable process and consistent with state and federal law, regulations, guidance, and this Policy.
 - No hearing process required.
 - If determined responsible, in most cases summary action (e.g. ban from campus, revocation of visitor status, termination of contract, etc.).



Appeals

- Consistent appeal procedures for Federal Rule Sexual Misconduct and Other Prohibited Conduct.
- Appeal to the President on any of the following grounds:
 - Procedural irregularity;
 - New evidence (previously unavailable) that could affect the outcome;
 - Conflict of interest or bias by the Investigator or Hearing Officer;
 - Disproportionate sanctions.
- The President may refer appeals to a designee.



Appeals

- Complainant and Respondent have equal rights of appeal.
- The Appeal Officer (i.e. the President or designee) has the authority to modify the decision as deemed appropriate:
 - Send the matter back to an Investigator, the Hearing Officer, or a new Hearing Officer, as necessary to remedy the error,
 - Decrease sanctions or change the nature of the sanctions,
 - Remand the matter for a new live hearing.



Additional Procedures for Faculty Respondents

- Consistent with the provisions in the existing and longstanding Appointment, Tenure and Renewal Process, any/all sanctions will be recommended sanctions to the President.
- After completion of appeal (or where no appeal is filed by deadline), the President (or designee) renders a decision on sanctions.
- If the President decides to initiate the procedure for dismissal for cause or for the imposition of another sanction then the matter is referred to the Faculty Review Committee, consistent with the RPT Policy.
- **Process for review by the FRC remains unchanged from prior policy** (although the procedures leading up to FRC review have changed).

Agenda

1. Introduction & Background
2. Policy & Jurisdiction
3. Prohibited Conduct
4. Definitions
5. Reporting
6. Supportive Measures
7. Formal Complaints & Investigations
8. Hearing Procedures
9. **Alternative Resolutions**
10. Questions and Discussion



Alternative Resolutions

- 2011 guidance from the Department of Education – now rescinded - prohibited informal or alternative resolutions (e.g. mediation) in sexual violence cases.
- Anticipate that alternative resolutions options (e.g. mediation, restorative justice, etc.) will be a valuable tool to resolve complaints.
- However, since alternative resolutions were previously prohibited, CMU (and most other schools) need to rebuild their alternative resolution structures.



Alternative Resolutions

- Title IX permits nearly any form of Alternative Resolution, so long as both parties are informed, in writing, that:
 - the parties voluntarily agree to participate,
 - The parties are informed of the process and possible outcomes, and
 - The parties have the right to switch to the formal process at anytime prior to the conclusion of the process.
- Alternative resolution process may be initiated at any time prior to reaching a determination regarding responsibility



Alternative Resolutions

- As a matter of university policy:
 - Alternative Resolutions are not available in cases involving a Student Complainant and a Faculty or Staff Respondent.
 - In general, mediation and other Alternative Resolution procedures that are similar to mediation will not be used to resolve matters involving an allegation of sexual violence (i.e. Sexual Assault, Dating Violence, Domestic Violence or any other form of Prohibited Conduct that involves the use of violence).



Examples of Alternative Resolutions

- Mediation
- Restorative Justice
- Admission of responsibility and agreement on sanctions (aka Administrative Resolution under the Student Conduct process)

Agenda

1. Introduction & Background
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9. Informal Resolutions
10. Questions and Discussion



QUESTIONS?