



ASSU Advisory Panel on Sexual Violence Prevention and Survivor Support Requests for new Title IX Regulations Implementation

General

1. Do not implement the new policy until it is legally required. Even if the policy is ready, do not implement it until it is required by law after litigation concludes.
2. Declare that all academic and professional conferences are a school activity or program for purposes of Title IX.

Process

3. Keep the 60 day timeline.
4. Provide interim measures to those reporting sexual violence even in cases outside of Title IX jurisdiction, as required by the Clery Act (for example, off-campus or online victimization).
5. Continue to provide attorney time to parties and remove the 9-hour cap. Provide equal and adequate funding for attorneys to both sides and allow students a lawyer of their choice in addition to university to recommended options. Provide attorneys for all cases or complaints of sexual or intimate partner violence by a student victim, regardless of whether the perpetrator is a student, staff, or faculty member.
6. Keep the preponderance of the evidence standard, as is consistent with California law.

Penalties

7. Mark transcripts and personnel files when someone is found responsible of any type of sexual harassment/assault. We acknowledge that it may not be possible to mark students' transcripts without an amendment to the ASSU Constitution.
8. Create a penalty code with defined ranges specified for each offense.
9. Bar the use of precedent to guide penalties. Such precedents are too few to be informative, are distorted by the pattern of informal resolutions, and were imposed under different policies, making them inappropriate.
10. Though expulsion is currently the default penalty for serious offenses (penetration through force or unconsciousness), in practice Stanford has expelled shockingly few individuals. Clearly, the "default"

expectation of expulsion does not result in the actual implementation of this punishment. The new Title IX policies should therefore ensure that expulsion is not just the default for the most serious offenses, but is the mandatory outcome when an individual is found responsible for penetration through force or unconsciousness. The “default” rule has been tried and failed to achieve the desired result.

Definitions

11. Make failing or refusing to participate in a disciplinary process in which one is accused of sexual misconduct a Fundamental Standard violation or some other violation of university policy.
12. Change the current narrow definition of sexual assault to mirror the Clery Act definition of sexual assault, which is as follows:

*"Sexual assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart." Rape is defined in that subpart as "the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, **without the consent of the victim.**" Fondling is defined in the Clery Act as "The touching of the private body parts of another person for the purpose of sexual gratification, **without the consent of the victim**, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity."*

Decision Makers

13. Replace the current Title IX panels with an external, independent, and well-trained decision maker who will conduct the Title IX hearings and impose sanctions.
 - a. Bar the use of Stanford alumni, donors, and parents, and others who might have a conflict of interest as Title IX decision makers.
 - b. Ensure that the pool of potential decision makers is diverse in terms of race, ethnicity, gender, age, sexual orientation, and other marginalized identities.
 - c. Classification of “independent” and unbiased should be based on an externally reviewed metric.
 - d. Stanford should make the criteria used to pick and dismiss decision makers public.
14. Make the appeal decision maker external and independent as well. Bar the use of individuals who have connections to Stanford, as specified above: Stanford alumni, donors, and parents.
15. Ensure that the (independent, external) appeal decision maker cannot impose different sanctions but can only send the matter back to the initial decision-maker for a new hearing or other further proceedings.

Alternative Resolutions

16. We generally feel that mediation (i.e. non-hearing resolution) in cases of sexual violence is problematic because it can prevent true accountability and replicate harmful gendered patterns of pressure to be agreeable and forgiving. However, because the new TIX regulations create a very hostile hearing environment for survivors (e.g. cross-examination requirement), we appreciate the potential usefulness of non-hearing resolutions as a path to harm reduction.

To make sure non-hearing resolutions are not used as a way to allow unchecked sexual violence from happening on campus, some members of the Student Advisory Board have suggested imposing the following guardrails:

- i. No repeat offenders (individuals who have already been found responsible for a Title IX violation) should be allowed to participate in mediation. This applies to faculty, staff, and students.
- ii. The marking of transcripts of accused individuals who are found to be responsible, as described in point #7, should also occur when this finding of responsibility occurs through a non-hearing resolution
- iii. There must be Campus safety measures in all cases of sexual assault, even in non-hearing resolutions, in order to protect the community.
- iv. Only one chance at mediated outcome. If an individual who had one non-hearing resolution – regardless of its outcome – is accused again, then no non-hearing resolution is allowed. This applies to faculty, staff, and students.
- v. Complaints of retaliation following an initial complaint are ineligible for mediation.
- vi. A violation of a mediation agreement should be a violation of the Title IX policy in and of itself.
- vii. Non-hearing resolutions should be effectively and impartially administered using mediators trained similarly to decision-makers in the Title IX hearings

Barring aggravating circumstances (such as serial perpetrators), survivors should be free to pursue whichever process they prefer. Therefore, we believe that it is important to ensure that there are no external pressures which unduly interfere with a survivor's decision to pursue the process which is right for them. We are cognizant of a number of pressures which may impact this decision:

- 1) The currently provided 9 hours of legal aid are generally insufficient to complete a hearing; survivors may feel pressured to choose a non-hearing resolution so that they do not run out of hours before the case is concluded. See item #5 regarding the expansion of legal aid resources.
 - 2) Survivors should have full access to accommodations and interim measures regardless of the type of process they want to pursue: non-hearing resolution or a hearing.
17. We suggest that Stanford should explore the feasibility of instating a Restorative Justice (RJ) framework for some cases of sexual violence. This RJ option could be added to the Pilot Title IX Process after the initial implementation deadline (August 14, 2020).
- a. Stanford should invite experts on RJ to discuss possible approaches to implementing an RJ option.
 - b. We will establish a Subcommittee on Restorative Justice to provide student feedback on the experts' proposals regarding RJ options at Stanford.

Cross Examination Protections

18. An option presented in which both parties (a) mutually agree to abstain from cross-examining each other and (b) instead each submits proposed questions for the panel to ask the opposing party.

19. Require training for decision-makers on common strategies to reduce victim-blaming within the hearing process and other traumatizing effects of cross-examination in order for decision-makers to recognize such behavior when or if it appears in a hearing.
20. Advisors should state for the record their relationship with both parties to the hearing. The decision-maker will take into account any power disparity between the advisor and the opposite party.
21. Explicit acknowledgment prior to and during the hearing that parties may take a break at any time during cross-examination and at any other point during the hearing
22. University should urge parties to utilize a predetermined procedure for question approval by both parties. This process should require that advisors of either party submit their questions to the other party in advance of the hearing, allowing for negotiation of questions between advisors prior to the hearing. Alternatively, questions could be submitted to the external decision maker, who would rule on the admissibility of each question in advance of the hearing. This would mean that no direct negotiation between the parties would occur.
23. Explicit instructions to witnesses at the time of the hearing on the rights they are afforded during questioning including:
 - a. encouragement of providing complete answers when relevant, as opposed to complying with simplistic yes or no questions
 - b. be informed of their right to take a break at any time and that they should not feel time pressure when answering questions
 - c. If the advisor's question or wording is confusing, witnesses should be able to ask for the question to be repeated or reworded
 - d. If the advisor issues a compound question, the witness may ask for it to be broken up.
24. Explicit instructions should also be given to advisors on the decorum they must follow when asking questions including:
 - a. the restriction of abusive, repetitive, harassing, misleading, or privileged questions
 - b. comply with requests from the witness or panel for compound questions to be broken up and for wording clarification when needed
 - c. If advisors issue a question with the use of a double-negative, they should be expected to reword the question at the request of the witness or panel
 - d. If the panel or party challenges the relevance of a question, as is required under the regulations, the advisor must be able to explain the relevance to the satisfaction of the panel
25. Stanford should expect to conduct the cross-examination through an accessible virtual option, unless an in-person hearing is requested by both parties . This should be actively communicated to both parties and honor that if either party prefers to conduct the hearing in separate rooms so as to avoid the potential for re-traumatization. Such a request must be met without institutional barriers. If desired by either party, this separation should be accessible for all procedures throughout the hearing process. If conducted virtually, this virtual option should:
 - a. Allow for three separate rooms: one for panelists, one for complainant party, one for respondent party
 - b. The party and their advisor who is testifying, offering a statement, or being questioned, should be permitted to be in person before the panel if they chose, while the other party

remains in their separate room, using the technology enabling that party simultaneously see and hear the party speaking

- i. If either party asks, the panel should be able to visually shield one party from seeing the other on video while testifying
- c. The hearing should not take place in a building or location relevant to the facts of the case
- d. Measures should be put in place to ensure parties don't encounter unwanted interaction with each other by having an advocate or staff member monitoring the shared spaces during bathroom breaks, meal breaks, and entrance and exits from the building for the hearing
- e. If either party requests security during the hearing, Stanford should provide it at no cost
- f. All relevant components of the hearing facilities and cross-examination process should be compliant with ADA standards of accessibility and meet the accessibility needs of both parties
- g. Parties should also have access to printing, water, outlets, and the internet
- h. Stanford should offer to have a copy of the report and all relevant case information printed and available at the hearing to all parties.
- i. Given the added psychological and time burden of hearings and the cross-examination process, parties should be granted the option of supportive measures, even if they did not request such measures at earlier points in time.