HUSCH BLACKWELL

Title IX UMD Appellate Officer Training

October 23, 2026

© 2026 Husch Blackwell LLP

Agenda

- Title IX Scope, Jurisdiction, and Prohibited Conduct
- Institutional Response to Sexual Harassment
- The Grievance Process
- Confidentiality and Other Expectations
- Appeal Procedures
- Written Decisions



© 2026 Husch Blackwell LLP

UMD Policy and Procedures

Definition of Appellate Hearing Officer

- **"Appellate Hearing Officer"** means an individual designated to review decisions concerning responsibility and sanctions, based on the Respondent's status as a student, staff member, faculty member, or third party.

- Appellate Hearing Officers shall have had no previous involvement with the substance of the Formal Complaint.

© 2026 Husch Blackwell LLP

Appellate Hearing Officers Based on Status of Respondent

UMD Policy and Procedures

- Appeals involving a **student Respondent** shall be reviewed by a panel of trained Appellate Hearing Officers known as the University Senate Student Conduct Committee.
- Appeals involving a **staff or third-party Respondent** shall be reviewed by the Vice President and Chief Administrative Officer (VP&CAO) or designee. The VP&CAO or designee may appoint trained staff members available to serve as an Appellate Hearing Officer. Appeals involving staff or third-party Respondents may be assigned to one such Appellate Hearing Officer on a rotating case basis.
- Appeals involving a **faculty Respondent** shall be reviewed by the Senior Vice President and Provost (Provost) or designee. The Provost or designee may appoint trained faculty members available to serve as an Appellate Hearing Officer. Appeals involving faculty Respondents may be assigned to one such Appellate Hearing Officer on a rotating case basis.

© 2026 Husch Blackwell LLP

Title IX Scope, Jurisdiction, and Prohibited Conduct

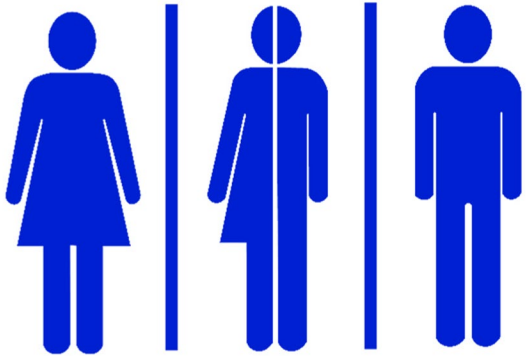
HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What is Title IX?

"[N]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. . . "

20 U.S.C. § 1681



© 2026 Husch Blackwell LLP

Title IX Regulations

- Contained at 34 C.F.R. §, Part 106 (Department of Education)
- Regulations address a host of subjects, including general non-discrimination, scholarships, athletics, housing, employment, and sexual harassment response
- The “August 2020 regulations” refer to a series of amendments to Part 106 made by the first Trump Administration that addressed sexual harassment response and imposed significant due process requirements (including live hearings)
- August 2020 regulations presumably in force through at least 2028

© 2026 Husch Blackwell LLP

What sexual harassment does Title IX apply to?

- Title IX applies to sexual harassment in the "education program or activity" of a federal funding recipient within the geographic boundaries of the United States
  - Title IX defines "education program or activity" to include the "operations" of educational institutions
- Title IX does ***not*** apply to private conduct occurring in a private location that is not part of education program/activity

© 2026 Husch Blackwell LLP

What are examples of education programs and activities?

Admissions	Hiring	Workplace
Academic instruction	Residence life	Amenities on campus
Sports teams	Work-study	Games, concerts, and speeches on-campus
Off-campus trips or experiences organized by the institution	Sponsored organization activities	Anything else that happens on-campus

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Does Title IX apply to off-campus sexual harassment?



Yes, if the conduct at issue occurs in the context of an education program or activity



Yes, if the conduct at issue occurs in a house owned or controlled by an officially-recognized Greek organization or other student organization



No, if it occurs in a private location and is not part of an institution's education program or activity

© 2026 Husch Blackwell LLP

Example

The University's swimming and diving team holds its annual overnight team-bonding retreat at a cabin the athletic department rents each year, with assistant coaches present and transportation arranged by the athletic department. During a late-night bonfire activity, a sophomore swimmer is cornered by a senior teammate. The senior repeatedly tries to get the sophomore to go "somewhere private" despite being told no multiple times, and the senior briefly grabs the sophomore's arm to stop him from walking away.



© 2026 Husch Blackwell LLP

What about misconduct that happens abroad?



- Title IX only requires response to sex discrimination and sex-based harassment “in the United States”
- But institutions may investigate things that happen abroad if they are relevant to misconduct occurring in the United States

© 2026 Husch Blackwell LLP

Example

Two students, Devon and Casey, are placed as roommates in the same host-family arrangement during a semester abroad in Japan. Devon begins reading Casey's private messages when Casey leaves a phone unattended and confronts Casey about conversations with other students, becoming controlling about who Casey spends time with. After the program ends, Devon, now back on the home campus in the U.S., shows up uninvited to a class Casey is enrolled in that Devon has no reason to attend, and later creates a fake social media account to continue monitoring Casey's posts.



© 2026 Husch Blackwell LLP

UMD Policy – Purpose

The University is committed to:

Creating and maintaining a working and learning environment ***free*** from all forms of Sexual Harassment.

The University accomplishes this through training, education, prevention programs, policies and procedures that promote:

- Prompt reporting and response;
- Providing support to persons alleged to be victimized;
- Prohibiting Retaliation; and
- The implementation of timely, fair and impartial investigations and resolutions that ensure due process and remedy policy violations.

© 2026 Husch Blackwell LLP

Scope of Policy

UMD Policy and Procedures

- The University of Maryland is committed to taking the appropriate steps to ***eliminate*** Prohibited Conduct, ***prevent*** its recurrence and ***address*** its effects.
- The policy applies to all members of the University community, including:
  - Students, faculty and University of Maryland staff;
  - Contractors and other third parties who are engaged in any University Education Program or Activity; or
  - Those who are otherwise interacting with the University including, but not limited to volunteers, vendors, guests and visitors.

© 2026 Husch Blackwell LLP

Reach of Policy ("Jurisdiction")

UMD Policy and Procedures

- Acts of ***Prohibited Conduct*** committed by or against students, employees, and third parties when:
  - The conduct occurs ***on*** University premises, in any University facility, or on property owned or controlled by the University;
  - The conduct occurs ***in the context*** of a University Education Program or Activity, including, but not limited to, University-sponsored academic, athletic, extracurricular, study abroad, research, online or internship programs or activities; *(Cont.)*

© 2026 Husch Blackwell LLP

Reach of Policy ("Jurisdiction") *(Cont.)*

UMD Policy and Procedures

- The conduct occurs outside the context of a University Education Program or Activity, but has ***continuing adverse effects*** on or creates a hostile environment for students, employees or third parties while on University premise or other property owned or controlled by the University or in any University Education Program or Activity; or
- Conduct otherwise ***threatens*** the health and/or safety of University members.

© 2026 Husch Blackwell LLP

Maryland's Title IX & Non-Title IX Conduct ("Other Sexual Misconduct")

UMD Policy and Procedures

- This Policy also addresses allegations of ***Other Sexual Misconduct***, which includes:
  - Sexual Harassment that occurred against a person outside of the United States or not within an Education Program or Activity;
  - Sexual Coercion;
  - Sexual Exploitation;
  - Sexual Intimidation;
  - Attempted Sexual Assault;
  - Retaliation; and
  - Other Sex-based Offenses.

© 2026 Husch Blackwell LLP

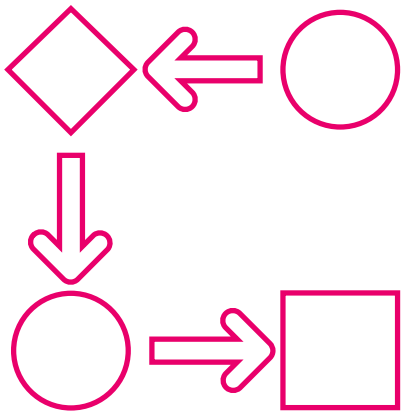
What misconduct does the Title IX regulation address?

- Sex discrimination
    - Sexual harassment



© 2026 Husch Blackwell LLP

What is sex discrimination?



- Adverse treatment of a person on the basis of sex
- Limits or excludes the person from participating in the institution's education program or activity or denies or limits the benefits thereof

© 2026 Husch Blackwell LLP

Programmatic Discrimination

- Where discrimination occurs in a systematic way due to an *institutional* policy or practice
- Programmatic discrimination adversely affects persons as a group or by category, rather than by individualized decision
- Programmatic discrimination is usually *not* attributed to an individual perpetrator (e.g., “respondent”)

© 2026 Husch Blackwell LLP

Individualized Discrimination

A particular decision is made, or particular action taken, that results in adverse treatment of a particular person that limits or excludes that person from participation or denies or limits benefits

Typically, individualized discrimination has an identifiable “respondent” who makes the discriminatory decision

© 2026 Husch Blackwell LLP

Example: Individualized Discrimination

The Math Department currently has six male professors and one female professor. A male and female candidate are equally qualified for an open faculty position, but the Chair elects to hire the female candidate to "improve the faculty gender balance."



© 2026 Husch Blackwell LLP

Practical Point

Individualized discrimination involves adverse treatment that is taken *because of* or *based on* the target's sex. If a person is treated the same way as similarly situated individuals, *despite* sex, then there is no individualized discrimination, even if the treatment is adverse.

© 2026 Husch Blackwell LLP

Example: Similarly Situated

There are ten students in a biology class, eight women and two men. Seven of the women receive passing grades, but one fails. One of the men receives a passing grade, but the other fails. The male student who failed accuses the faculty member of discrimination because, "87% of the women passed, but only 50% of the men passed." Yet, the failing male student's coursework and test scores are very similar to the work of the failing female student.



© 2026 Husch Blackwell LLP

Sexual Harassment

Conduct on the basis of sex

And that constitutes:

- Quid pro quo harassment
- Hostile environment harassment
- Certain specific offenses

Sexual harassment generally involves conduct that is *sexual* in nature, that arises from a *romantic* setting, or that otherwise meets the elements of a *crime*

© 2026 Husch Blackwell LLP

Conduct that is "Sexual" in Nature

- Asking for sex
- Talking about sex
- Expressing sexual or romantic desire
- Telling sexual jokes
- Physical touch of a romantic nature (e.g., rubbing shoulders or hair)
- Sexual acts
- Sexual blackmail
- Creating sexual deepfakes
- Violence within a romantic relationship
- Leering or following because of romantic interest

© 2026 Husch Blackwell LLP

Different Categories of Sexual Harassment

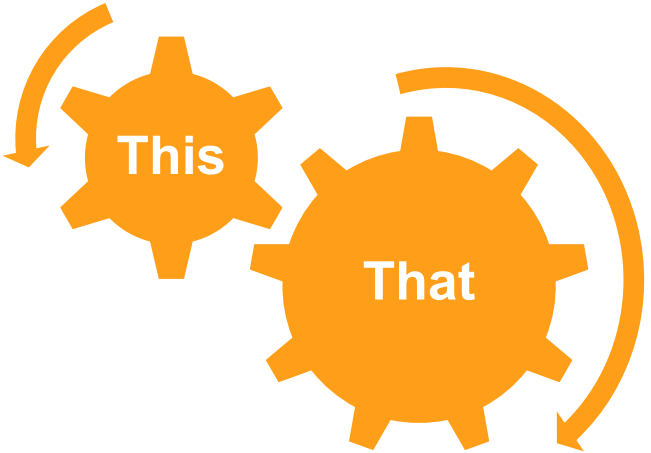
- Quid Pro Quo Harassment
- Hostile Environment Harassment
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What is quid pro quo?

- An employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in ***unwelcome*** sexual conduct
    - Often arises in the employment context or where an employee holds a position of authority over a student



© 2026 Husch Blackwell LLP

Examples: Quid Pro Quo

A graduate teaching assistant offers to "make sure" an undergraduate student earns a "top grade" if he will send her sexually explicit pictures.

A coach routinely attempts to discuss sexual topics with an athlete and offers the athlete more playing time if the athlete participates in the discussion, shares intimate details and doesn't tell anyone about their discussions.

A supervisor threatens to deny a subordinate a pay increase unless she tells him her "deepest sexual fantasies."



© 2026 Husch Blackwell LLP

What is hostile environment?

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, ***and*** objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.



© 2026 Husch Blackwell LLP

Example A: Hostile Environment

A biological male student, Jensen, is openly gay. Other male students in the residence hall frequently whistle and cat call when Jensen walks by and make crass comments about sexual acts Jensen has supposedly engaged in with his boyfriends. These male students leave sex objects outside Jensen's door, write "gay sex jokes" on Jensen's white board, and often slap Jensen on the behind when he walks by in the hallway.



© 2026 Husch Blackwell LLP

Example B: Hostile Environment

A male student Luis works part time in the dining hall. His female supervisor repeatedly comments on Luis's appearance, asks Luis about his sex life, rubs Luis's shoulders, and occasionally references sexual acts she would like to perform on Luis, "If I weren't your boss and you didn't have a girlfriend."



© 2026 Husch Blackwell LLP

What factors do we consider in determining a hostile environment?

- The degree to which the conduct affected the complainant's ability to access
- Type
- Frequency
- Duration
- Parties' ages
- Parties' roles and other factors about each party
- Previous interactions
- Location of the conduct and context
- Other sex-based harassment at the institution

© 2026 Husch Blackwell LLP

Example

A resident assistant in a first-year dorm begins singling out one resident during floor meetings, making comments in front of the group about the resident's weight and suggesting the resident "could use help getting a partner." The RA also starts showing up at the resident's door late at night under the pretext of "room checks" that aren't scheduled for that night and posts vague but recognizable jokes about the resident in the floor's group chat. The resident stops attending floor events, asks for a room transfer, and tells a friend they now avoid the common areas entirely.



© 2026 Husch Blackwell LLP

Question for Discussion

- **What factors in this scenario weigh in favor of a finding of hostile environment harassment?**



© 2026 Husch Blackwell LLP

Example

A club sports coach, who is a fellow student rather than a staff member, tells a teammate during a single car ride home from practice that he's "had a crush on her for a while" and asks if she'd ever consider dating him. She tells him she's not interested and would rather keep things focused on the team. He says, "okay, no worries" and the subject never comes up again. They continue to practice and compete together for the rest of the season without further incident, though she mentions feeling slightly awkward around him for a couple of weeks.



© 2026 Husch Blackwell LLP

Question for Discussion

- **What factors in this scenario weigh against a finding of a hostile environment harassment?**



© 2026 Husch Blackwell LLP

What is sexual assault?

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.



© 2026 Husch Blackwell LLP

Sex Offense Categories

Key Categories Under VAWA / Clery Act

Rape

Statutory Rape

Fondling

Incest

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What is rape?

Penetration, no matter how slight, of the genital or anal opening of the body of another person with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

© 2026 Husch Blackwell LLP

Consent

Consent in fact

- Determined by whether the relevant facts establish conduct that amounts to agreement to engage in sexual activity--as agreement is defined by the institution

Ability to consent

- Determined by whether a person has capacity to consent or whether they have lost such capacity

© 2026 Husch Blackwell LLP

What is consent? – UMD Policy

- **“Consent”** means a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make a rational, reasonable judgment can give Consent.
- Consent may be expressed either by words and/or actions, as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity.
- It is the responsibility of the person who wants to engage in sexual activity to ensure that the person has Consent from the other party, and that the other party is capable of providing Consent.

© 2026 Husch Blackwell LLP

What is consent? – UMD Policy *(Cont.)*

- Lack of protest or resistance is not Consent. Nor may silence, in and of itself, be interpreted as Consent.
- Previous relationships, including past sexual relationships, do not imply Consent to future sexual acts.
- Consent to one form of sexual activity cannot automatically imply Consent to other forms of sexual activity.
- Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is Consent or whether prior Consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
- Consent cannot be obtained by use of physical force or Sexual Coercion.
- An individual who is Incapacitated is unable to give Consent.

© 2026 Husch Blackwell LLP

Example: Consent In Fact?

Jonah and Eloise have been dating for several months. One night while "making out," Jonah says, "I want to have sex with you." Eloise responds, "I don't know if I'm ready. . . ." The two continue to make out for several more minutes, until Jonah unbuttons Eloise's pants. Eloise then lifts her hips up and helps Jonah pull off her pants and underwear. The two then have sexual intercourse.

© 2026 Husch Blackwell LLP

What is incapacity?

Incapacity refers to a state where a person cannot make an informed and rational decision to engage in sexual contact because the individual lacks conscious knowledge of the “who, what, where, when, why, or how” of the situation or is physically or mentally helpless.






© 2026 Husch Blackwell LLP

Example: Incapacity

Charlie and Kelly meet at a party where Kelly has six shots and two beers. After the party, Charlie carries Kelly up the stairs to his apartment because Kelly cannot walk. Kelly is having trouble keeping their eyes open and repeatedly mutters, “where am I?” Charlie says to Kelly, “Are you okay with this?,” and Kelly slurs, “Okay. . .” and then closes their eyes. Charlie starts to have sex with Kelly and realizes that Kelly’s eyes are closed and Charlie proceeds.



© 2026 Husch Blackwell LLP

Questions for Discussion

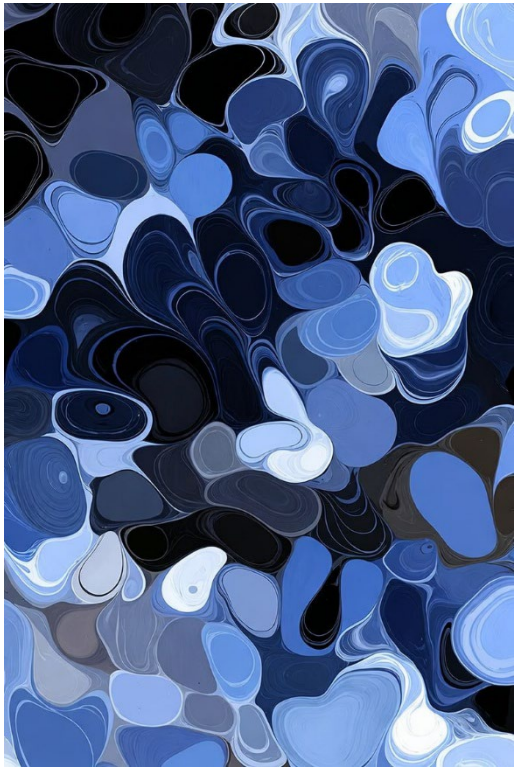
- **Is Kelly incapacitated?**
- **What factors in the scenario lead you to that conclusion?**



© 2026 Husch Blackwell LLP

Identifying Incapacity

- Loss of ability to make a reasoned decision and communicate it
- Loss of appreciation of the nature and fact of sexual activity
- Loss of appreciation of the “who, what, when, where, and how”



© 2026 Husch Blackwell LLP

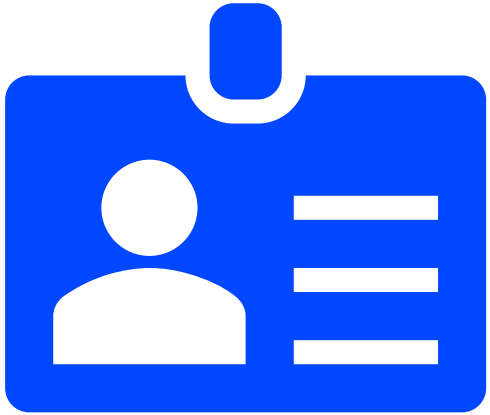
What facts may be relevant to determining incapacity due to alcohol or drugs?

- Ability to speak coherently
- Ability to track conversation
- Ability to appreciate and weigh risks and benefits
- Ability to walk or stand
- Ability to engage in behaviors requiring presence of mind
- Time period of consumption
- Nature of alcohol or drugs
- Amount of alcohol or drugs
- Size of the person consuming
- Others?

© 2026 Husch Blackwell LLP

What is statutory rape?

Sexual intercourse with a person who is under the statutory age of consent as defined by law (16).



© 2026 Husch Blackwell LLP

What is fondling?

- “Fondling” includes:
  - 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 their age or because of their temporary or permanent mental or physical incapacity.

© 2026 Husch Blackwell LLP

What is incest?

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

© 2026 Husch Blackwell LLP

What is domestic violence?

Crimes of 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 state, 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 state.

© 2026 Husch Blackwell LLP

What is dating violence?

"Dating Violence" is 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 will be determined based on consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

© 2026 Husch Blackwell LLP

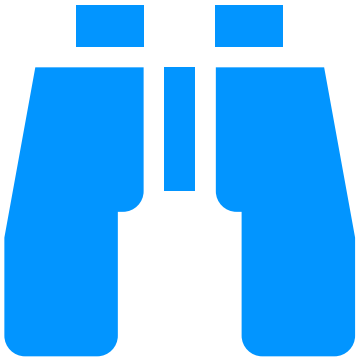
Example: Dating Violence

Student T and Student U have been friends for a few years, and over the past couple of weeks, they have started a romantic relationship, where they have engaged in consensual sexual activity numerous times. Neither of them have defined the relationship to say they are boyfriend and girlfriend. When Student U explains they need space and aren't sure the relationship is working, Student T refuses to leave the dorm lobby, blocks the exit when Student U tries to walk to the elevator, grabs Student U's phone out of their hand to see who they've been texting, and then throws the phone on the ground.



© 2026 Husch Blackwell LLP

What is stalking?



Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

© 2026 Husch Blackwell LLP

Example: Stalking

Jazz is sexually attracted to Naomi, who won't give Jazz the time of day. After Naomi rebuffs Jazz's repeated requests to go on a date, Jazz starts to follow Naomi around campus, appearing outside of her classrooms when Jazz has no other reason to be there. Jazz also drives by Naomi's apartment at night, which Naomi notices. Next, Jazz takes Naomi's photo off her social media page and uses AI to alter it—creating an image of Naomi in a revealing outfit, which Jazz sets as Jazz's home screen. Naomi notices the photo when Jazz comes up to her (again) trying to initiate a conversation. Naomi then reports Jazz for stalking.



© 2026 Husch Blackwell LLP

Question for Discussion

- **What if Jazz never interacted with Naomi, but still created the AI picture and set it as Jazz's home screen? Assuming Naomi found out, would she have a viable complaint of sexual harassment? If so, what form of sexual harassment?**



© 2026 Husch Blackwell LLP

Does Title IX also prohibit retaliation?

Yes – Title IX prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution's policy.

© 2026 Husch Blackwell LLP

Does retaliation require intent?



- “[F]or the purpose of interfering with any right or privilege secured by Title IX . . .”
- Requires a subjective state of mind of the respondent

© 2026 Husch Blackwell LLP

Group Scenario

A graduate student in the political science department files a formal complaint alleging that her faculty advisor, Professor Hale, made repeated unwelcome comments about her appearance and once suggested that her "cooperation" outside of academic work could help her secure a sought-after fellowship recommendation.

Another student in the same research group, Daniel, is interviewed during the investigation and confirms that he personally witnessed Professor Hale make a similar comment to the complainant after a meeting, and that the complainant told him about the fellowship comment the same week it happened.

At the conclusion of the investigation and hearing, Professor Hale is found responsible for sexual harassment and is removed from supervising graduate students for two years. *(Cont.)*



© 2026 Husch Blackwell LLP

Group Scenario (Cont.)

In the following weeks:

- **Professor Hale, who remains on the department's graduate curriculum committee, votes to reassign Daniel's teaching assistantship from a section he had specifically requested to a different, less desirable section, citing "departmental needs."**
- **Professor Hale tells two colleagues in a hallway conversation that Daniel "clearly has it out for me" and was "not a team player" during the investigation.**
- **Daniel later learns that Professor Hale declined to write him a previously-promised letter of recommendation for an external summer research program, citing only that his "schedule didn't allow it," despite having agreed to write the letter months earlier, before the investigation began.**
- **Separately, the complainant reports that since the determination, several of Professor Hale's close colleagues in the department have stopped greeting her in the hallway and that one made a pointed comment in a seminar about "people who make things difficult for everyone."**



© 2026 Husch Blackwell LLP

Questions for Discussion

- **Does Professor Hale's reassignment of Daniel's teaching assistantship constitute retaliation? What additional facts, if any, would you want to know to decide?**
- **Do Professor Hale's hallway comments about Daniel qualify as retaliatory conduct, or are they protected opinion/venting? Where is the line?**
- **Does declining to write the letter of recommendation meet the standard for retaliation? Does it matter that Professor Hale had agreed to write it before the investigation began?**
- **Retaliation requires a showing of intent — "for the purpose of interfering with" a protected right. What facts in this scenario would you point to as evidence of that intent (or the lack of it) for each of the three actions involving Professor Hale?**
- **Is the treatment the complainant describes from other colleagues (being avoided, the pointed seminar comment) attributable to Professor Hale, or could this raise a separate or additional concern?**



© 2026 Husch Blackwell LLP



Questions

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Institutional Response to Sexual Harassment

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What do we call the parties in a grievance process?

- ***Complainant**:* Means the individual who is alleged to be the victim of conduct that could constitute a violation of the Policy
- ***Respondent**:* Means the individual alleged to have engaged in Prohibited Conduct under this Policy.

© 2026 Husch Blackwell LLP

Title IX Coordinator

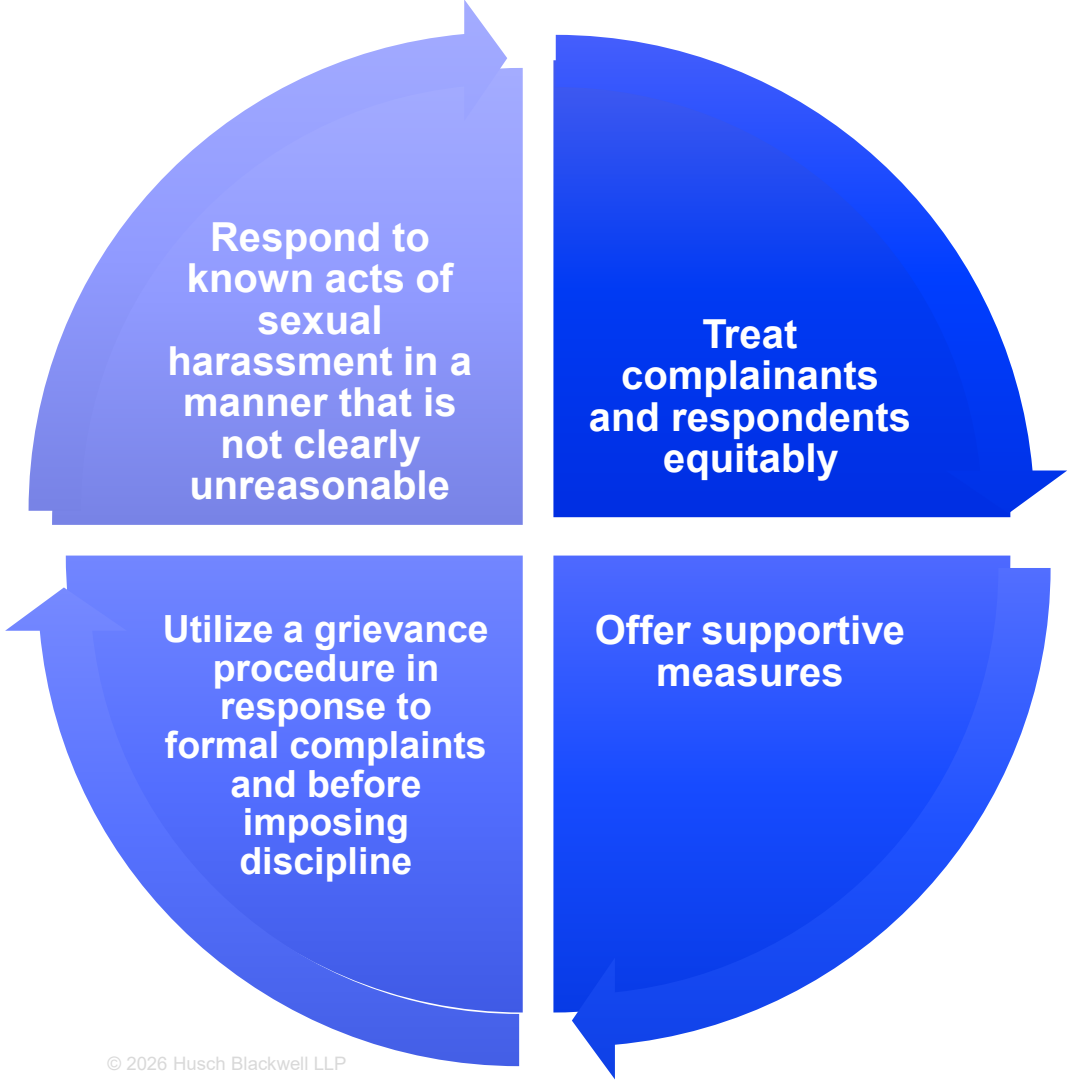
Angela Nastase, JD
Title IX Coordinator and Director
Office of Civil Rights and Sexual Misconduct
(OCRSM: *http://www.ocrsm.umd.edu/*)

University of Maryland, College Park
3101 Susquehanna Hall
4200 Lehigh Rd.
College Park, MD 20742
E-mail: *anastase@umd.edu*
Phone: 301.405.1701

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

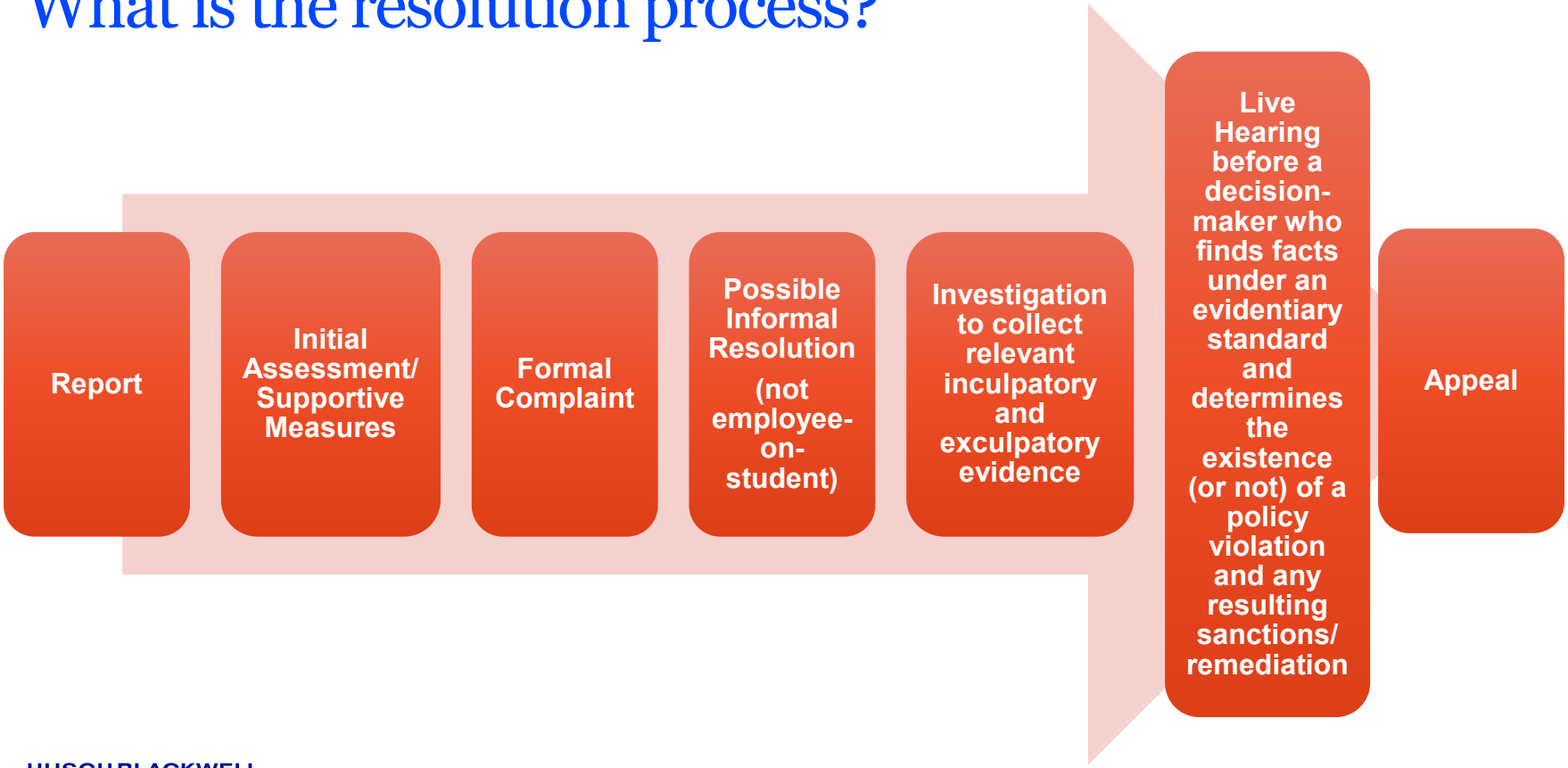
What are the institution's overall duties?



HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What is the resolution process?



HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

When ***must*** we dismiss a formal complaint?

- If filed by the alleged victim, and the alleged victim is not a current or attempted participant in education programs and activities
- Complaint does not allege sexual harassment in the institution's education programs or activities
- Complaint alleges sexual harassment abroad
- Conduct alleged would not amount to sexual harassment even if it occurred as reported

© 2026 Husch Blackwell LLP

When ***may*** we dismiss a formal complaint?

- Alleged victim indicates in writing a desire to withdraw the complaint (or particular allegations)
- Respondent is no longer enrolled in or employed by the institution
- Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

© 2026 Husch Blackwell LLP

What principles do we use to determine remediation?

If a violation is found,

- Institution must take steps to restore or preserve the complainant's access to education
- Various types of supportive measures may be used after the determination to restore or preserve access
- Discipline for the respondent as determined by those with authority over the respondent

© 2026 Husch Blackwell LLP

Question for Discussion

- **Why is it important to follow the University's Policy and Procedures on Sexual Harassment and Other Sexual Misconduct?**



© 2026 Husch Blackwell LLP

What general principles govern the grievance process?

- Equitable treatment of complainants and respondents
- Presumption respondent did not violate policy ***unless and until*** a determination is made after hearing
- Fair notice and meaningful opportunity to be heard
- No stereotypes based on a party's status as complainant or respondent
- Conflict and bias-free institutional participants

© 2026 Husch Blackwell LLP

Qualifications

- Appropriately trained in their duties and relevant policy
- Competent
- Free of conflicts of interest
- Free of bias and not relying on stereotypes

© 2026 Husch Blackwell LLP

Conflict of Interest

- When an individual has a material connection to a dispute, or the parties involved, such that a reasonable person would question the individual's ability to be impartial
- May be based on prior or existing relationships, professional interest, financial interest, prior involvement, and/or nature of position



© 2026 Husch Blackwell LLP

Examples: Conflicts of Interest

An investigator assigned to a case used to date the brother of the respondent

A hearing officer attends the same church as the complainant and serves with the complainant on the church council

An appeal officer is the subordinate of the hearing panel chair

A complaint is filed by a resident advisor against another RA. One of the two assigned investigators is married to the hall director who directly supervises both RAs.



© 2026 Husch Blackwell LLP

Bias



- A prejudice, predisposition, or inclination in favor of or against a thing or person
- Team members must be free of bias against complainants or respondents generally, or a specific complainant or respondent

© 2026 Husch Blackwell LLP

Example: Bias

While actively serving as an investigator, the same individual maintains a professional social media profile and occasionally posts or reshares content about campus Title IX work. One recent post (still visible when a new case is assigned to them) states:

"After years of doing this work, I've concluded that the 'false accusation' narrative is almost always a myth pushed by respondents and their lawyers. When a student comes forward, the real risk is that the institution will protect the accused. My job is to make sure that doesn't happen."



© 2026 Husch Blackwell LLP

Stereotypes

- A form of bias that operates as a preconceived, generalized, and sometimes inaccurate belief about a person based on their membership in a group or some other characteristic



© 2026 Husch Blackwell LLP

Examples: Impermissible Stereotypes

Only promiscuous people get sexually assaulted

Transgender or non-binary students are more likely to make false reports

Athletes are inherently more aggressive and more likely to commit sexual violence

Believing the men cannot be the victims of dating or domestic violence

© 2026 Husch Blackwell LLP

How long does a grievance process take?

- There is no firm deadline, and the length of the grievance process varies depending on a variety of factors
- Institution must be reasonably prompt, advise parties of timelines for particular phases of the process, and notify parties of extensions of timelines and the reasons for the same

© 2026 Husch Blackwell LLP

Do parties get assistance in the grievance process?

- Yes
- The parties have the right to be accompanied by an advisor of their choice during the investigation and hearing
- The institution ***must*** provide the party an advisor for purposes of conducting questioning at the hearing if the party does not have an advisor

© 2026 Husch Blackwell LLP

Supportive Measures

- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party



© 2026 Husch Blackwell LLP

Examples of supportive measures

- Counseling
- Academic accommodations
- Housing accommodations
- Security escorts
- Leave of absence
- Increased security or monitoring
- Modified work schedules
- Mutual no-contact order if implicated by facts

© 2026 Husch Blackwell LLP

Can supportive measures affect the respondent?

Yes, but cannot create an unreasonable burden

Cannot be a form of *de facto* discipline

Supportive measures are not a substitute for the investigation and hearing processes

© 2026 Husch Blackwell LLP

Example A: Supportive Measures

Employee who works in the business office has accused supervisor of quid pro quo harassment and requests to be allowed to work remotely and be reassigned to a different supervisor in the same office. Employee is allowed to work remotely for at least two weeks, with reassessment thereafter, and is reassigned to a different supervisor for the pendency of the investigation and resolution with the potential for a permanent reassignment depending on the outcome.



© 2026 Husch Blackwell LLP

Example B: Supportive Measures

A student reports dating violence by their romantic partner. Student's romantic partner lives in the same housing complex on campus. Student wishes to be relocated to a new housing complex, but no student spots are currently available. Institution temporarily relocates student to an empty RA apartment until a student spot opens in the alternative complex.



© 2026 Husch Blackwell LLP

Can an institution immediately suspend a student?

- ***Students*** may be removed on emergency basis if:
  - Individualized safety and risk analysis
  - Determines an immediate threat to physical health or safety of any student or other individual arising from the alleged sexual harassment justifies removal
  - Student is given immediate notice and opportunity to contest the removal

© 2026 Husch Blackwell LLP

Do students and employees have other rights?

- Yes—other laws may trigger accommodations when a medical condition or disability is present:
  - Americans with Disabilities Act
  - Family and Medical Leave Act
  - Section 504 of the Rehabilitation Act



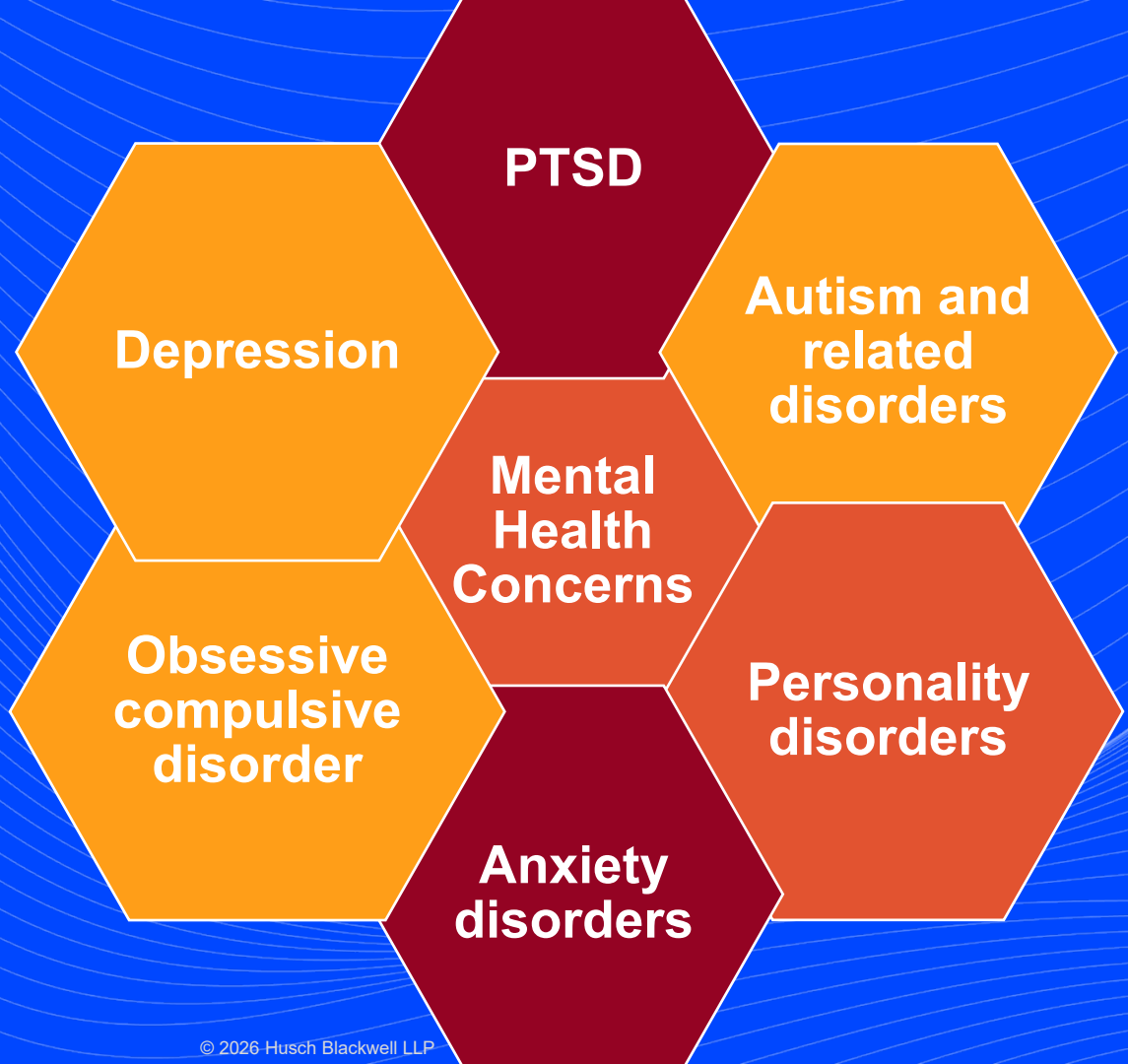
© 2026 Husch Blackwell LLP

Does a “disability” include mental health conditions?

- Yes
- A ***physical or mental*** impairment that substantially limits one or more major life activities
- A record of having an impairment that is substantially limiting to a major life activity; or
- Being regarded as having an impairment that is substantially limiting to a major life activity

© 2026 Husch Blackwell LLP

What are some examples?



HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What are reasonable accommodations?

- Depends on the nature of the disability, how the disability limits the person, and the fundamental requirements of the program/activity at issue.
- *Practice Point*: Approved accommodations may apply during phases of the grievance process.
- *Example from Policy:* The Parties may contact the Title IX Officer or designee to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the Hearing. Such accommodations must be requested at least seven (7) Days prior to the Hearing.

© 2026 Husch Blackwell LLP

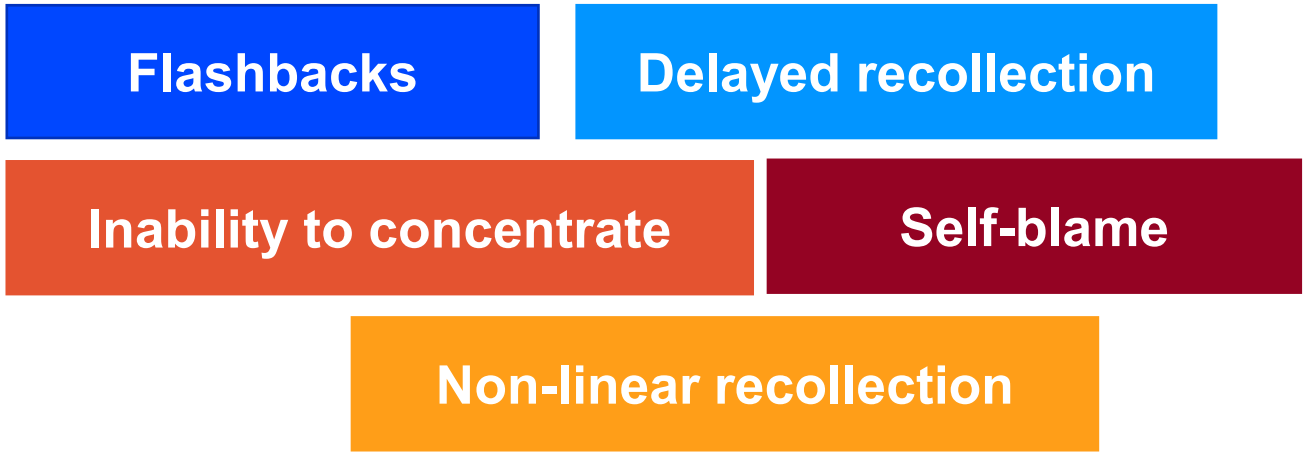
Trauma might affect any party or participant

- Not in every case
- Not just one party
  - Complainant
  - Respondent
  - Witnesses
  - Support persons
- Never assume anyone interviewed or questioned suffered any trauma

© 2026 Husch Blackwell LLP

Possible trauma impact

People who have suffered trauma may, but may not, experience any or a mix of the following:



© 2026 Husch Blackwell LLP

Trauma & credibility

- Do not assume information is not credible due to the manner delivered
- Understand memory may be clarified in time
- Address inconsistencies
- Ascertain fair and impartial assessment of the facts and give appropriate weight to party and witness statements

© 2026 Husch Blackwell LLP

Example: Trauma Effect?

When asked to describe what happened the night of the incident, the complainant begins mid-event, “I remember being unable to move and telling them to stop.” The complainant then jumps to leaving the apartment, then back to earlier in the evening when they were drinking, and later mentions how they ended up in the bedroom. When the investigator asks for the sequence, the complainant becomes frustrated and says, “I know it doesn’t make sense in that order, but that’s how it comes to me.”



© 2026 Husch Blackwell LLP

What is informal resolution?

A voluntary process to resolve formal complaints of sexual harassment through a mechanism other than the default investigation and hearing.



© 2026 Husch Blackwell LLP

Types of informal resolution

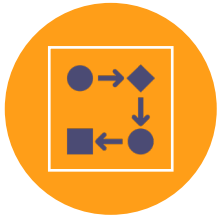
- Mediation
- Facilitated discussions led by Title IX Coordinator
- Restorative justice
- Attorneys for parties negotiate an agreement
- Arbitration without a live hearing

© 2026 Husch Blackwell LLP

What are the key concepts of informal resolution?



A formal complaint must first have been filed and written notice given to the parties



The parties must be apprised in writing of how the informal resolution process will work and the consequences of participating in it



The parties must voluntarily agree to participate in writing



The parties must be allowed to withdraw from informal resolution up until the point it is final

© 2026 Husch Blackwell LLP

What are the limitations?

- Sexual assault allegations under state law
- Informal resolution cannot be used where an employee is accused of sexually harassing a student
- Informal resolution cannot be used in the absence of a formal complaint
- Institution cannot require persons to consent to informal resolution as a condition of employment or enrollment



© 2026 Husch Blackwell LLP



Questions

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

The Grievance Process

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What steps does due process require under the grievance process?

- Examples of due process safeguards under Title IX include:
  - ***Written notice*** to parties of complaints, dismissals, and rights;
  - A ***meaningful opportunity*** to be heard free of bias or conflicts of interests, including an opportunity for advisors to question witnesses and parties;
  - ***Written explanation*** of the decision-maker's determination; and
  - An ***opportunity to appeal.***

85 Fed. Reg. 30,026, 30,053 (May 19, 2020) (citations omitted).

© 2026 Husch Blackwell LLP

What are parties provided timely written notice of?

UMD Policy and Procedures

- Reported violation, including the date, time and location (if known), of the alleged violation, and range of potential sanctions
- Rights and responsibilities under the policy and information regarding civil and criminal options
- Date, time, location, participants, and purpose of each Hearing, meeting, or interview the Party is invited or expected to attend, with sufficient time for the Party to prepare
- Final determination by Hearing Officer regarding whether a policy violation occurred and basis for determination
- Sanctions
- Right to appeal and description of appeal process

© 2026 Husch Blackwell LLP

What are the parties' rights?

UMD Policy and Procedures

- Access to case file and evidence obtained during the investigation or considered by the Hearing Officer
- Opportunity to be heard through the process
- Opportunity to offer testimony at a Hearing
- Opportunity to submit evidence, witness lists, and suggest specific questions to be posed to the other party during the investigation or Hearing
- Opportunity to review testimony
- Opportunity to review and provide written responses to draft and final investigation reports
- Opportunity to participate at Hearing without being in physical presence of other party
- Opportunity to appeal determination and/or sanction
- Notice before the resolution process

© 2026 Husch Blackwell LLP

What is the purpose of an investigation?

- For the institution
- To collect relevant inculpatory and exculpatory evidence
- Sufficient to permit an impartial decision-maker to determine
- Whether or not the reported sexual harassment occurred

© 2026 Husch Blackwell LLP

What is inculpatory evidence?

- Evidence tending to support the proposition a respondent committed sexual harassment as alleged
- *Example:* Security camera footage from a dorm hallway shows the respondent following closely behind the complainant into her room at 2:14 am and remaining inside for the next 40 minutes, despite the respondent's statement claiming he never entered her room that night.



© 2026 Husch Blackwell LLP

What is exculpatory evidence?



- Evidence tending to support that the respondent did ***not*** commit sexual harassment as alleged
- *Example:* A text message sent by the complainant to the respondent the morning after the alleged incident reads: “I agreed to everything last night and I remember what happened, but I wish things had gone differently between us.”

© 2026 Husch Blackwell LLP

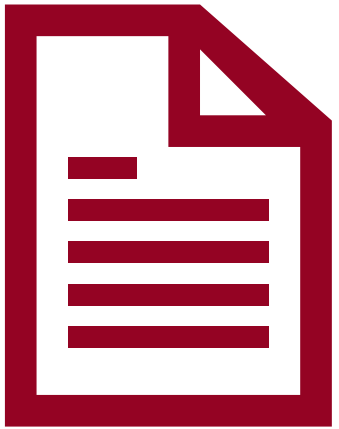
What is a formal complaint?

- Signed in writing
- From the alleged victim or the Title IX Coordinator
- Alleging sexual harassment
- Indicating desire to initiate the grievance process (i.e., investigation and hearing)

© 2026 Husch Blackwell LLP

How do we tell the parties about an investigation?

Institution must provide the parties written notice of a formal complaint that includes sufficient details about the "who, what, when, where, and how."



© 2026 Husch Blackwell LLP

What else does the notice need to say?

UMD Policy and Procedures

Written notice must also include:

- Statement of presumption respondent is not responsible unless and until a determination is made at the end of the process
- That parties have the right to an advisor of their choice
- That parties have the right to inspect and review evidence
- Any prohibition on providing knowingly false statements or information

© 2026 Husch Blackwell LLP

Core Elements of the Investigation

INTERVIEWS

Parties
Complainant and Respondent interviews (and any advisors present)

Fact Witnesses
Individuals with firsthand knowledge of relevant events or context

Experts (if allowed and relevant)
SANE examiners, digital forensics, medical, or other subject-matter experts

NON-TESTIMONIAL EVIDENCE

Electronic & Documentary
Emails, texts, DMs, social media, photos, videos, documents

Access & Records
Key swipes, door logs, camera footage, academic/HR records

Forensic & Official
SANE exams, police reports, medical records, lab results

Note: Both interviews and non-testimonial evidence must be collected, preserved, and evaluated fairly and impartially.

© 2026 Husch Blackwell LLP

Are parties subject to a "gag" order during the investigation?

- Generally, no – the institution may not restrict the ability of parties to discuss the allegations or to gather and present relevant evidence, which includes talking to witnesses
- But institution can still enforce prohibitions on witness intimidation, witness manipulation, false statements, retaliation, harassment, etc.

© 2026 Husch Blackwell LLP

Discussion

A respondent in a stalking case posts a public story on social media, visible to mutual friends, that reads: “Funny how people only remember things a certain way when they’re mad at you. If you were actually there and saw what really went down, you know I didn’t do anything wrong.”



© 2026 Husch Blackwell LLP

May an investigation collect evidence on sexual history?

Generally, no – Evidence of a complainant's prior sexual behavior is relevant only if offered to prove that someone other than the respondent committed the conduct, or if evidence of specific incidents of the complainant's prior sexual behavior ***with the respondent*** are offered to prove consent.

© 2026 Husch Blackwell LLP

May an investigation collect and rely on privileged records?

- Only if a party waives the privilege
- An institution may not access information under a legally recognized privilege unless the holder of the privilege waives it
- Institution cannot unilaterally access its own counseling and health files for investigation purposes



© 2026 Husch Blackwell LLP

Do the parties have access to the evidence?



- Parties must be given access to all inculpatory and exculpatory evidence directly related to the allegations (regardless of whether the institution intends to rely on it) at least 10 days before the investigation report is finalized
- Evidence must be provided to a party and their advisor in physical copy or electronically
- Any earlier access to the evidence must be provided equally

© 2026 Husch Blackwell LLP

Do the parties get to respond to the evidence?



Yes – after they review the evidence provided at least 10 days prior to issuance of the investigation report, parties can provide written responses



Depending on written responses, additional investigation may be needed



Investigator should consider the written responses in drafting final language of investigation report

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Review of Preliminary Investigation Report

- The Investigator will provide the Preliminary Investigation Report to each party.
- The parties will be provided 10 days to review the Preliminary Investigation Report and provide any additional and/or clarifying information to the Investigator. This period of 10 days will be the final opportunity for parties to submit any additional information to the Investigator.



© 2026 Husch Blackwell LLP

Is the evidence “confidential?”

- Institution may require parties and advisors to agree not to disclose investigation evidence to third-parties
- But cannot prohibit parties from speaking about the allegations themselves



© 2026 Husch Blackwell LLP

Question for Discussion

- **Are there any techniques the University uses to encourage parties to keep investigation materials confidential?**



© 2026 Husch Blackwell LLP

How is the investigation concluded?

- Issuance of a written investigation report
- Must fairly summarize the evidence collected, including both inculpatory and exculpatory evidence
- Must be provided to each party and their advisor at least 10 days prior to any hearing
- Factual findings and determinations of policy violations are made at a subsequent hearing

© 2026 Husch Blackwell LLP

What is the purpose of the hearing?

- To hear testimony and receive non-testimonial evidence so that
- The hearing officer or panel can determine facts under a standard of evidence
- Apply those facts to the policy, and
- Issue a written determination resolving the formal complaint and imposing discipline/remedial measures as necessary

© 2026 Husch Blackwell LLP

What does “preponderance” of the evidence mean?

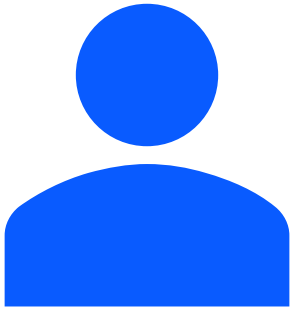
- Preponderance of the evidence:
  - “More likely than not”
  - “Greater than 50% likely”



© 2026 Husch Blackwell LLP

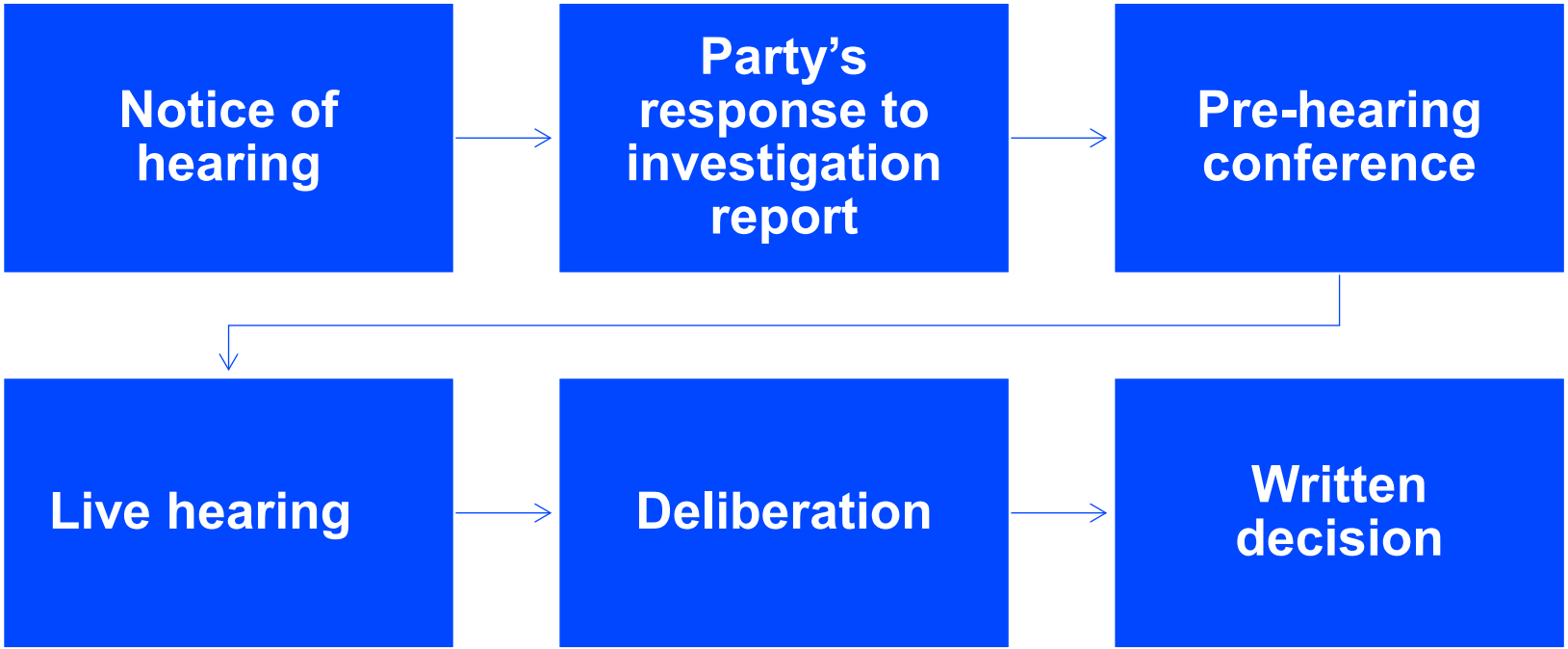
Who runs the hearing?

- The Hearing Officer
- Decides all procedural issues
- Rules on admissibility of evidence



© 2026 Husch Blackwell LLP

What are the phases of a typical hearing process?



HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What does the notice say?

- **Identity of the hearing officer**
- **Deadline for the parties to submit responses to investigation report**
- **Date for the pre-hearing conference**
- **Date and time for the hearing (no earlier than 10 days after investigation report is issued)**

© 2026 Husch Blackwell LLP

What is the pre-hearing conference?

- Discuss hearing procedures
- Discuss any stipulations that may be made to expedite the hearing
- Discuss what witnesses need to attend
- Resolve other matters raised in the party's written responses to the investigation report

© 2026 Husch Blackwell LLP

Pre-Hearing Conference: What is covered?

- Introductions, including the Hearing Officer's role as a neutral, independent decision-maker responsible for maintaining order and making all necessary rulings
- Confirmation of each party's advisor (and support person, if any), and who may be physically present with a party during the hearing
- The hearing schedule
  - Start/end times, breaks, and that additional day(s) may be added if the hearing does not conclude as scheduled
- *Rules of Decorum*: no disrespectful, bullying, harassing, or disruptive conduct; no unnecessarily repetitive questions; and the consequences for violations (warning, forced break, possible removal)
- *Questioning procedures*: advisors (not parties) conduct all questioning, and every question is subject to a relevance ruling by the Hearing Officer
- Advisors and parties have an opportunity to review proposed questions with the Hearing Officer in advance of the hearing
- Any additional accommodation needs can be raised with the Title IX Coordinator at this stage

© 2026 Husch Blackwell LLP

What is a “live” hearing?

- A proceeding held by the hearing officer, either in-person or virtually where:
  - Parties are present with their advisors at the same time
  - Parties and witnesses testify with contemporaneous participation (i.e., no “pre-recording”)
  - Parties’ advisors ask live questions of the other party and witnesses

© 2026 Husch Blackwell LLP

Who attends a live hearing?

- The hearing officer
- Other necessary institutional personnel or institutional advisors (i.e., attorneys)
- The parties
- Each party's advisor
- Witnesses ***as they are called to testify***
- Other support persons for parties, if permitted by institution

© 2026 Husch Blackwell LLP

What are the logistics of a hearing?



Hearing must be recorded (audio or video) or transcribed



Hearing can be held in a single room or with the parties separated in different rooms



Hearing can be held virtually using suitable software

© 2026 Husch Blackwell LLP

Does the institution provide a party's advisor?

- Default rule is that a party selects and brings an advisor of their choice to the hearing
- If a party does not have an advisor, the institution must supply one for the purpose of questioning the other party and witnesses on behalf of the student in question

© 2026 Husch Blackwell LLP

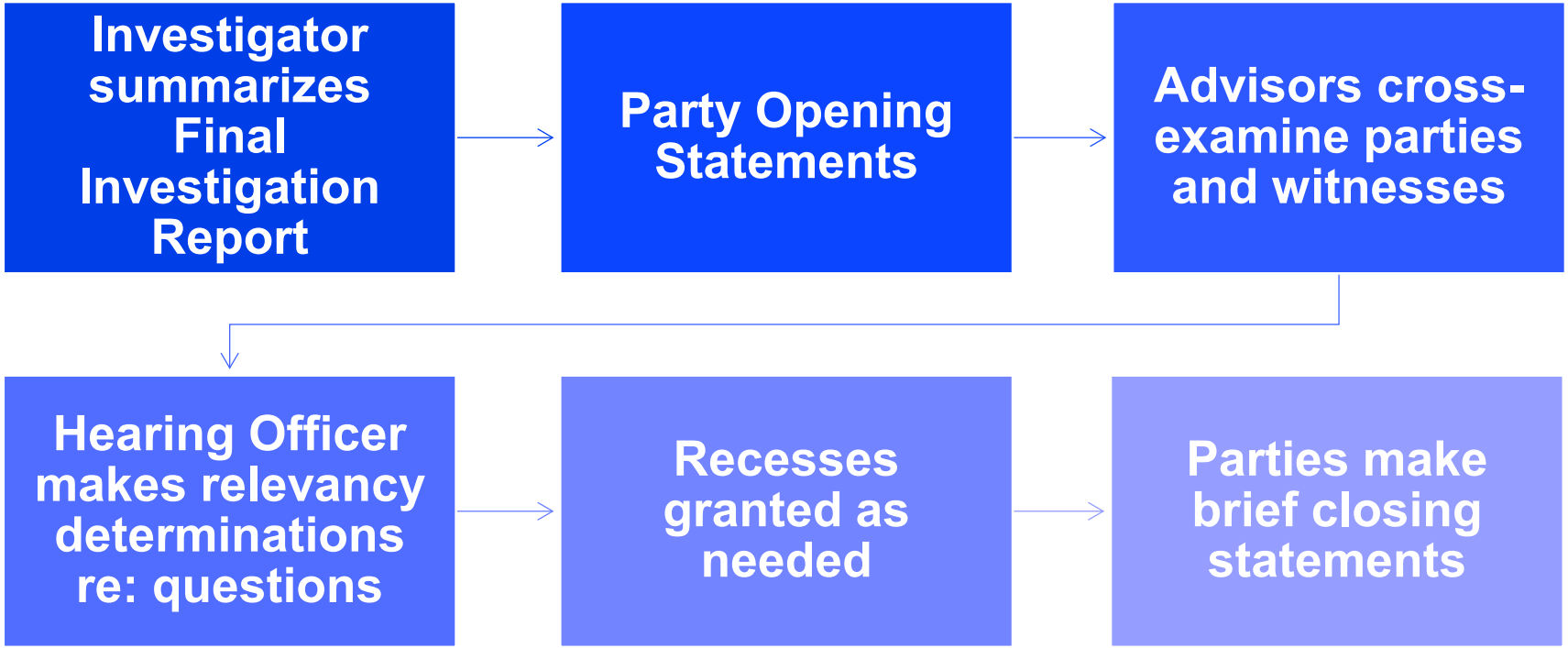
How does the hearing actually work?

Required elements include:

- Hearing officer or panel must independently evaluate questions for relevance and resolve relevancy objections
- Party's advisors must be allowed to conduct live questioning of other party and witnesses
- If a party or witness refuses to submit to live questioning this may diminish weight and/or credibility
- Questioning of sexual history generally not permitted

© 2026 Husch Blackwell LLP

UMD Policy – Hearing Sequence



© 2026 Husch Blackwell LLP

Who determines relevance?

- Hearing officer must screen questions for relevance and resolve relevance objections
- Hearing officer must explain any decision to exclude a question as not-relevant

© 2026 Husch Blackwell LLP

What is relevance?

- Evidence is relevant if:
  - It has a tendency to make ***a fact*** more or less probable than it would be without the evidence; and
  - The ***fact is of consequence*** in determining the action
- Relevance must be determined considering the form of sexual harassment alleged

© 2026 Husch Blackwell LLP

Example A: Relevant

A complainant alleges that a respondent exposed himself to her during a video call for a group project. The respondent claims the exposure was accidental and that he was unaware his camera was positioned the way it was. During the hearing, the complainant's advisor asks the respondent: "Isn't it true that you can be seen adjusting the camera angle twice in the screen recording, each time right before the exposure occurred?"



© 2026 Husch Blackwell LLP

Example B: Relevant

A resident advisor is accused of pressuring a resident into a sexual relationship by implying it would affect whether she could keep her room assignment for the following year. During the hearing, the complainant's advisor asks the respondent: "Didn't you tell her, in a message now in evidence, 'I control who gets to stay in this building next year, just so you know'?"



© 2026 Husch Blackwell LLP

Example: Not relevant

A complainant alleges that a coworker made repeated unwanted sexual comments to her during closing shifts at a campus dining facility. During the hearing, the respondent's advisor asks the complainant: "Isn't it true that you've filed workplace complaints at two other jobs before this one?"

© 2026 Husch Blackwell LLP

Example: Likely not relevant

A graduate student alleges that a fellow lab member groped her at a department social event. During the hearing, the respondent's advisor asks the complainant: "Isn't it true that you've been on academic probation for the last two semesters?"



© 2026 Husch Blackwell LLP

Is sexual history considered?

- Generally, no – Evidence of a complainant's prior sexual behavior is relevant and appropriately considered only if:
  - Offered to prove that someone other than the respondent committed the conduct, or
  - If evidence of specific incidents of the complainant's prior sexual behavior ***with the respondent*** are offered to prove consent

© 2026 Husch Blackwell LLP

Example: Impermissible

A student alleges a classmate sexually assaulted her in his car after a concert. During the hearing, the respondent's advisor asks: "Have you had multiple one-night stands since you broke up with your last boyfriend?"



© 2026 Husch Blackwell LLP

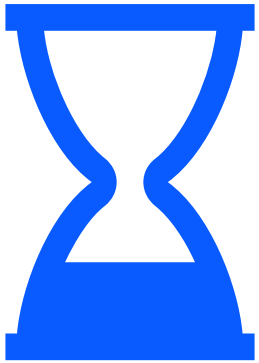
Example: Permissible

A student alleges that a non-consensual sexual encounter occurred with a classmate in a shared practice room reserved for music majors, and states he would never have agreed to anything sexual in that specific room because of its glass door and high foot traffic. During the hearing, the respondent's advisor asks: "Did the two of you had a consensual sexual encounter in that exact same practice room two weeks earlier? Did you tell the respondent afterward you liked that no one could fully see in because of how the blinds were angled?"



© 2026 Husch Blackwell LLP

How long does a hearing last?



- The length of the hearing is set by the hearing officer or panel
- Hearing officer or panel may set time limits for questioning of each witness
- Hearing officer or panel may preclude questioning that is cumulative or duplicative

© 2026 Husch Blackwell LLP

How does the hearing officer decide a case?



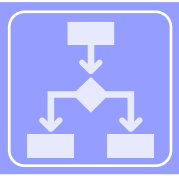
After hearing, the hearing officer must deliberate and consider all the relevant testimony and relevant non-testimonial evidence



Evaluate evidence for weight and credibility



Resolve disputed issues of fact under the standard of evidence adopted by the institution

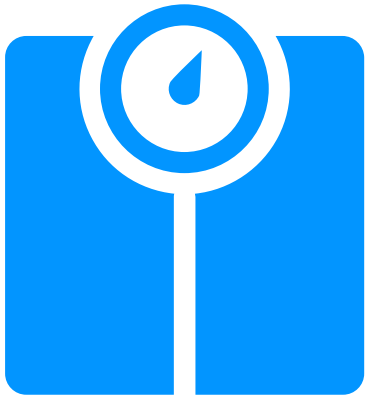


Using the facts as found, apply the policy's definitions to those facts to determine whether sexual harassment occurred

© 2026 Husch Blackwell LLP

What does it mean to weigh evidence?

- Not all evidence has equal value
- Some evidence may be more reliable and probative than other evidence
- Weight may vary depending on a range of factors, such as credibility; corroboration; consistency; level of detail; expertise of the witness; whether a witness is disinterested, etc.



© 2026 Husch Blackwell LLP

Example: Considerable weight

A witness testifies that he overheard the respondent on a phone call in the dining hall, roughly an hour after the alleged incident, apologizing to someone and saying “I shouldn’t have pushed it, I'm sorry.” The witness testified he remembers the exact day because it was the day of his economics midterm, which he had just finished, and he recalls checking the time on the dining hall clock as 1:15 pm because he was rushing to his next class. His class attendance records confirm he was marked present for a 1:30 pm class that day, consistent with leaving the dining hall at that time.



© 2026 Husch Blackwell LLP

Example: Less weight

A witness says he “might have” seen the two parties arguing near the quad “at some point that week” but can’t remember which day. He says he “thinks” he heard raised voices but admits he had headphones in and “wasn’t really listening.” He also acknowledges he doesn’t know either party well and “could be mixing them up with someone else.”



© 2026 Husch Blackwell LLP

What if evidence is presented at a hearing but not in the investigation?

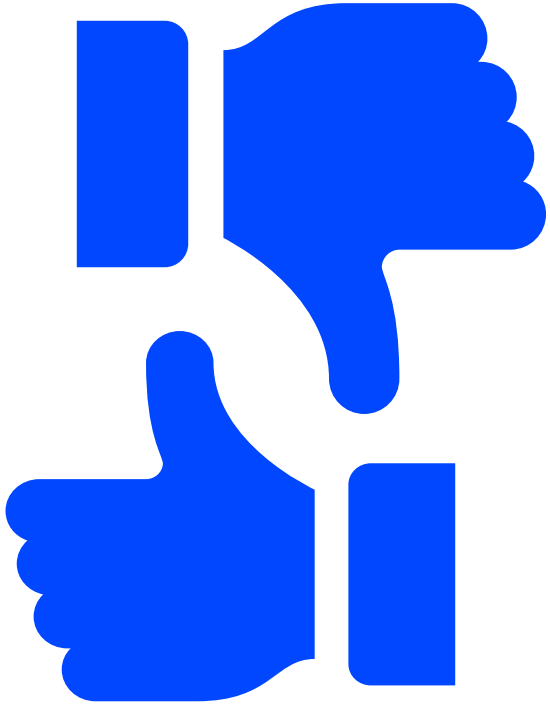
UMD Procedures

- Any and all information for consideration by the Hearing Officer must be provided to the Investigator during the investigation phase of the process and otherwise will not be allowed during the Hearing.
  - If a Party requests that additional information be considered during the Hearing, the Party must clearly demonstrate that such information was not reasonably available to the Parties at the time of the investigation, or that the evidence has significant relevance to a material fact at issue in the investigation.
  - If a Party provides or identifies evidence after the Final Investigation Report is issued, and the Hearing Officer determines that it was reasonably available to them during the investigation process, the Hearing Officer has the discretion to choose to consider such information and may draw a negative inference from the Party's delay in providing or identifying the evidence.
  - The Hearing Officer may, at their discretion, instruct that the investigation be re-opened to consider the evidence. In such cases, the evidence will be made available to the Parties for their review and comment prior to the Hearing.

© 2026 Husch Blackwell LLP

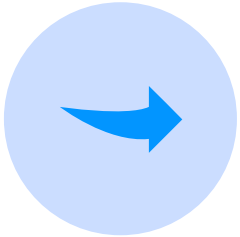
What is a determination?

- The decision as to whether or not prohibited misconduct occurred
- Results in a finding of “violation” or a finding of “no violation” as determined under standard of proof



© 2026 Husch Blackwell LLP

Purpose of a determination



Moves matter to next procedural step



Record of following process



Documents fair process



Provides parties and subsequent decision-makers with information

© 2026 Husch Blackwell LLP

How does a decision get issued?

UMD Updated Procedures; Section VI(D)(7)

In a written document, provided contemporaneously to the parties that:

- Identifies the allegations of sexual harassment
- Describes the various procedural steps taken from the time the formal complaint was made
- States findings of facts supporting the determination
- Reaches conclusions regarding application of relevant policy definitions to the facts
- Includes a rationale for each finding for each allegation
- States the disciplinary sanctions and remedies, if implicated by the determination made, and
- Explains the procedures and grounds for appeal

© 2026 Husch Blackwell LLP



Questions

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Confidentiality and Other Expectations

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Are sexual harassment cases confidential?

- Sexual harassment cases should be treated as confidential by the institution, with information only shared as necessary to effectuate the policy
- Records containing identifying information on students are subject to FERPA analysis
- The Title IX regulation contains an express preemption, permitting FERPA-protected material to be used only as required by Title IX itself



© 2026 Husch Blackwell LLP

Family Educational Rights and Privacy Act ("FERPA")



- Protects student records from impermissible disclosures of their education records ***and*** provides students rights to access their education records
- How it applies in an investigation context:
  - Records containing identifying information on students are subject to FERPA analysis

© 2026 Husch Blackwell LLP

Family Educational Rights and Privacy Act ("FERPA") *(Cont.)*

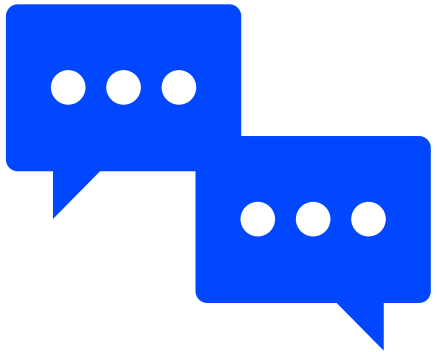
- Discrimination and harassment cases should be treated as confidential by the institution, with information only shared as necessary to effectuate the policy
- Title IX regulations contain an express preemption provision, permitting FERPA-protected material to be used (and shared) in Title IX proceedings, as required by Title IX itself



© 2026 Husch Blackwell LLP

Must an advisor maintain confidentiality?

- Yes
- If you are an institutional employee, you must abide by the same confidentiality rules as the institution itself, including FERPA
- You should maintain the confidentiality of the process and not disclose information to any third-party except as the process itself permits



© 2026 Husch Blackwell LLP

Example A: Not permitted

An appeal officer posts in a private online forum for current and former institutional advisors, describing the general facts of their assigned case (without using names) and asking other members what kinds of questions worked well for them "in a similar situation."



© 2026 Husch Blackwell LLP

Example B: Not permitted

A close friend of the respondent, who is not involved in the case in any capacity, texts the Appeal Officer directly, saying the respondent mentioned the Appeal Officer's name and asking "just to get a sense of how bad this looks" and whether the Appeal Officer thinks the respondent will be found responsible.



© 2026 Husch Blackwell LLP

Example C: Not permitted

Appeal Officer, who works in a different department from the party, emails a coworker to ask for scheduling flexibility around the hearing dates, and when the coworker asks "what's this for, is everything okay?", the Appeal Officer responds with a detailed explanation of the allegations and the identities of both parties to "make sure they understand why it is important."

© 2026 Husch Blackwell LLP

Do you have a role in the appeal?



- The University only provides an advisor for purposes of the hearing phase
- If a party wants to utilize an advisor for the appeal, they must secure one on their own and Policy provisions about advisor participation apply

© 2026 Husch Blackwell LLP



Questions

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Appeal Procedures

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

What is the purpose of the appeal?

- Appeal permits challenge of a dismissal or determination on certain limited grounds
- Appeals are not an opportunity to re-argue an outcome or seek “de novo” review



© 2026 Husch Blackwell LLP

Practice Tip: Stay within the scope of the appeal



- It is best practice for an appeals process to be designed to *catch errors* and ensure that the underlying investigation and adjudication process was *fair and thorough*.
- In contrast to an appeal process that provides another party the opportunity to second-guess decisions, absent clear error.

© 2026 Husch Blackwell LLP

Appeal Rights

UMD Policy and Procedures

- Either Party may appeal the Written Notice of Designation or Written Notice of Determination within 5 days of receipt.
- Parties will be notified if the other Party files a written appeal statement and given notice in writing of the general grounds for the appeal. The other Party will be given five (5) Days from receipt of the other Party's written appeal statement to submit a written appeal statement in support of the designation or written determination.
- The bases for appeal are limited to:
  - Procedural irregularity
  - New evidence
  - Conflict of interest or bias
  - Substantially disproportionate sanction *(applicable ONLY to Written Notice of Determination)*

© 2026 Husch Blackwell LLP

Appellate Hearing Officer Obligations

UMD Policy and Procedures

- All Appellate Hearing Officers will have had no previous involvement with the case that the Appellate Hearing Officer(s) are assigned to review.
- No conflict of interest or bias.

© 2026 Husch Blackwell LLP

Bases for Appeal

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Procedural Irregularity

UMD Policy and Procedures

- In all cases, the procedural irregularity must be one that affects the ultimate outcome of the designation or the written determination.
- A procedural irregularity affecting the designation or the written determination may include:
  - A failure to follow the University's procedures;
  - A failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence; or
  - A determination regarding what evidence was excluded as irrelevant.

© 2026 Husch Blackwell LLP

Example: Procedural irregularity

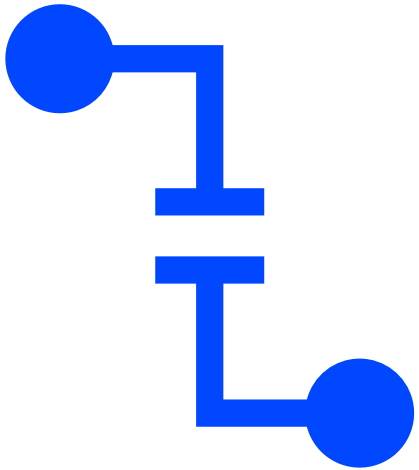
During a hearing, the Hearing Officer allows the respondent's advisor only two questions for a witness before moving on, citing time pressure, without any prior notice that time limits would apply to witness questioning. The respondent appeals, arguing the truncated questioning prevented the advisor from addressing material inconsistencies in the witness's account, and that the determination relied heavily on that witness's testimony.



© 2026 Husch Blackwell LLP

Are all procedural errors appealable?

- No – the procedural irregularity must be one that “affected the outcome of the matter”
- Errors that affect the outcome may be referred to as “prejudicial” errors
- Errors that do not affect the outcome may be called “non-prejudicial” or “harmless” errors



© 2026 Husch Blackwell LLP

Scenario for Discussion: Harmless error

Policy required the written investigation report to be shared with both parties at least 10 days before the hearing. Due to an administrative delay, the report was shared 9 days before the hearing instead of 10. Neither party requested additional time to review the report, and both parties confirmed at the start of the hearing that they had no additional questions or evidence arising from their review.



© 2026 Husch Blackwell LLP

Scenario for Discussion: Procedural error

Appellate Hearing Officer finds there was a prejudicial procedural error because the Hearing Officer excluded the complainant's entire written impact statement from consideration at the sanctioning stage, despite the policy expressly permitting parties to submit impact statements prior to the determination. The Appellate Hearing Officer remands the case for the sanctioning decision to be reconsidered with the impact statement included.



© 2026 Husch Blackwell LLP

Scenario For Discussion: Procedural error?

Respondent contends that the investigator failed to collect or review surveillance footage from seven different building entrances that Respondent identified as potentially showing the parties' movements on the night in question. The investigator obtained and reviewed footage from only two of those entrances, citing storage and retention limitations at the other five locations.



© 2026 Husch Blackwell LLP

Scenario and Discussion Questions: Procedural error?

Complainant contends that the Hearing Officer, in weighing evidence about whether a hostile environment existed, unfairly disregarded testimony from four classmates describing a consistent pattern of the respondent making similar comments about other students' appearances in the same class over two semesters, not just toward the complainant. Each of the four witnesses described specific instances they personally observed, and two witnesses were in the classroom on multiple occasions when the respondent's comments toward the complainant occurred. The written determination did not address this pattern evidence at all.

- **Is this procedural error?**
- **Should the appellate officer review the hearing recording?**



© 2026 Husch Blackwell LLP

New Evidence

UMD Policy and Procedures

- Evidence that ***was not reasonably available*** at the time the designation or written determination was made, ***that could affect the outcome***.

- Evidence presented prior to the time the designation or written determination is issued ***DOES NOT QUALIFY*** as new evidence that was not reasonably available.



© 2026 Husch Blackwell LLP

Scenario for Discussion: New Evidence

After the determination is made that the respondent violated the University's policy, the respondent obtains a sworn statement from a former coworker at the respondent's off-campus job, describing a conversation in which the complainant allegedly told the coworker, several weeks after the alleged incident, that she had "gotten mixed up about what actually happened that night" and no longer trusted her own memory of events. The coworker had changed jobs and had no knowledge of the case or the need to come forward until contacted by the respondent's family after the determination was issued.



© 2026 Husch Blackwell LLP

Scenario and Discussion Questions: New Evidence

Respondent appeals a finding of responsibility, submitting a voicemail recording in which the complainant's roommate can be heard telling a third party that the complainant had asked her to "back up my story even though it's not exactly what happened." Respondent wants the voicemail considered and the roommate questioned about it.

- **Can the request for appeal be accepted if this is the only information submitted?**
- **If accepted, could this constitute "new evidence" for purposes of an appeal?**



© 2026 Husch Blackwell LLP

Scenario and Discussion Question: New Evidence

Complainant told investigators that her suitemate was present in their shared common room when Complainant returned that evening and could confirm Complainant seemed visibly shaken and went straight to her room without speaking to anyone. Complainant's account of this was accepted at the hearing without the suitemate being interviewed.

On appeal, Respondent presents a new affidavit from that same suitemate, who confirms Complainant came home and went straight to her room, but also states that Complainant told her, that same night, a version of events that omitted two details Complainant later included in her hearing testimony. Complainant had never previously disclosed having spoken to the suitemate about the specifics that night.

- **Does this constitute "new evidence" or "procedural error" for purposes of an appeal?**



© 2026 Husch Blackwell LLP

Conflict of Interest or Bias

UMD Policy and Procedures

- The Title IX Officer or designee, Investigator, or Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that affected the designation or written determination.
- Claims of conflict of interest or bias should be based on the current case and process in question and will be assessed accordingly.

© 2026 Husch Blackwell LLP

Discussion Questions: Conflict of Interest

Do the following circumstances constitute evidence of bias?

- **The Hearing Officer asked questions of the complainant for 20 minutes of the hearing and only asked one question of the respondent.**
- **The Hearing Officer granted a break to the complainant for 15 minutes, but when the respondent asked for a break, the Hearing Office limited the break to two minutes without explanation.**



© 2026 Husch Blackwell LLP

Substantially Disproportionate Sanction

UMD Policy and Procedures

- Applicable **ONLY** to Written Notice of Determination
- The Sanction set forth in the written determination is substantially disproportionate to the facts of the particular Policy violation.



© 2026 Husch Blackwell LLP

Discussion Questions

- **Have you handled an appeal on this basis?**

- **What was helpful in making a determination about whether to overturn the sanction?**



© 2026 Husch Blackwell LLP

What principles do decision-makers use to determine discipline?

- Discipline should vary depending on the nature of the violation found considering aggravating and mitigating factors
- All things being equal, like violations should have like punishments

→ **Appeal officials looking for whether sanctioning decision was unsupported or clearly unreasonable**

© 2026 Husch Blackwell LLP

Sanctioning Goals

- Punitive
- Safety
- Reduce recidivism / recurrence
- Advance educational and developmental growth of offender (learning from one's mistake)
- Appropriate fit for circumstances



© 2026 Husch Blackwell LLP

Prior to Issuing the Written Notice of Determination

UMD Policy and Procedures

- Parties have the option to provide written impact statements
- Hearing Officer confers with the Title IX Coordinator or designee and other University administrator—these individuals provide input with respect to recommended sanction
    - Other University administrators may include UHR/Staff Relations and department/unit heads and supervisors for staff, and the Provost's Office/Faculty Affairs and department/unit heads and supervisors for faculty.

© 2026 Husch Blackwell LLP

Factors Considered Before Imposing Sanctions

UMD Policy and Procedures

- Nature and degree of violence involved in the conduct at issue
- Impact of the conduct on the complainant
- Impact of the conduct on the community and/or the University
- Prior relevant misconduct by the Respondent
- Maintenance of a safe and respectful environment conducive to working and learning
- Protection of the University community
- Any other mitigating, aggravating or compelling circumstances

© 2026 Husch Blackwell LLP

Range of Sanctions for Students

- Degree revocation
- Expulsion
- Suspension
- Disciplinary Probation
- Disciplinary Reprimand
- Educational Sanctions
- Housing Sanctions
- No Contact Order
- Denial of Access to campus and/or buildings

© 2026 Husch Blackwell LLP

Range of Sanctions for Faculty and Staff

- Separation from employment, up to and including termination and loss of tenure (if applicable)
- Suspension without pay
- Reassignment
- Written reprimand
- Education and training
- No Contact Order
- Denial of access to campus and/or buildings

© 2026 Husch Blackwell LLP

Practice Tip: Sanctions

Remember to consider factors and processes decision-makers will have already applied to determining the sanctions. When factors have been considered by decision-makers and appropriate administrators have been involved in making determinations, carefully consider whether appeal will be granted.

© 2026 Husch Blackwell LLP

Appeal Policy and Process

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Appeal Procedures Generally

- Appeals will be in writing only
- There will be no hearing
- The appeal deliberation is closed to the parties
- Written decision will be issued, including rationale, and shall be shared with both Parties, within ten (10) of the deliberations
- The appeal decision is final and is not subject to further appeal

© 2026 Husch Blackwell LLP

Should we ever dismiss an appeal?

- Yes – dismissal is appropriate if:
  - Appeal is filed after the reasonable deadline set in the policy (5 days)
  - Appealing party does not articulate one of the grounds for appeal



© 2026 Husch Blackwell LLP

Appeal Official Options

UMD Policy and Procedures

- The Appellate Hearing Officer(s) may:
  - ***Affirm*** the designation or written determination;
  - ***Overturn*** the designation or written determination;
  - ***Affirm*** the determination of responsibility and modify the sanction if disproportionate;
  - ***Remand*** the case to remedy procedural errors or to consider new evidence.

© 2026 Husch Blackwell LLP

Conclusion of Adjudication

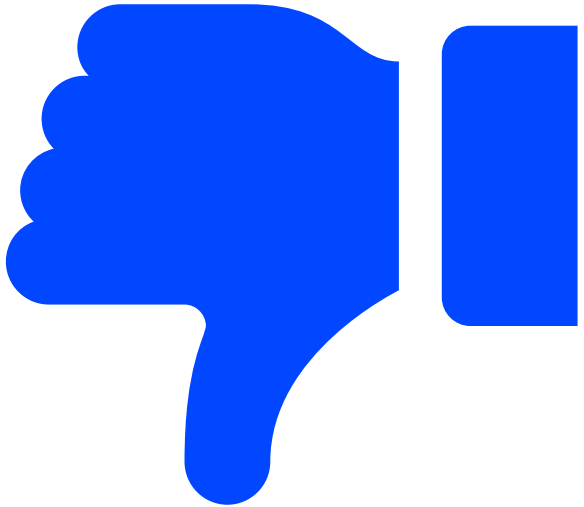
UMD Policy and Procedures

- The determination regarding responsibility for a violation becomes final either:
  - On the date that the University provides the Parties with the written decision of the result of the appeal if an appeal is filed, or
  - If an appeal is not filed, on the date after which an appeal would no longer be considered timely, subject to any remanded proceedings.

© 2026 Husch Blackwell LLP

May the institution appeal if the parties do not?

- No – the institution does not take appeals of its own determinations
- In the event a formal complaint is filed by the Title IX Coordinator, the Title IX Coordinator should ***not*** have the right to appeal



© 2026 Husch Blackwell LLP

Appeal Preparation

- ***Step 1*: Review relevant policy and procedures**
- ***Step 2:* Review appeal and any response (and supporting documents)**
  - What arguments have been raised in the appeal?
  - What arguments have been raised in the response?
- ***Step 3:* Consider whether the grounds have been satisfied**
  - If yes, proceed; if no, prepare explanation of decision
- ***Step 4:* Review investigative report, hearing transcript, outcome letter, and any sanction decision**
  - Do you understand what decision was reached and why?

© 2026 Husch Blackwell LLP

Discussion Questions

- **For those of you who have handled appeals, what have you found helpful in preparing to consider the appeal?**

- **What have you learned from any deliberations or discussions with your fellow Appeal Panel members?**



© 2026 Husch Blackwell LLP

Practical Tips

Do you think you need any additional information:

- **From the investigator? (e.g., why was a witness interviewed or not interviewed?)**
- **From the sanctioner? (e.g., how does this sanction compare to sanctions in other similar cases?)**
- **From either party?**
- **From anyone else?**

© 2026 Husch Blackwell LLP

Practical Tips

Does the information you have reviewed/gathered:

- **Constitute new evidence or information sufficient to alter initial decision**
  - **Three Issues: (i) new evidence; (ii) was it reasonably available at time (of investigation/hearing); (iii) does it matter**
- **Show that the investigator or hearing officer deviated from procedures in a way that substantially altered outcome**
  - **Two Issues: (i) procedural error; (ii) does it matter**

© 2026 Husch Blackwell LLP

Written Decisions

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP

Documenting the Decision

- Each appeal decision should be explained in writing in careful detail. Why?
  - The act of documenting helps appeal official consider all relevant issues
  - Demonstrates that the decision was informed and not based on actual or perceived bias
  - Demonstrates that the decision was not without thought, arbitrary, or capricious
  - Demonstrates alignment with institution's disciplinary philosophy, if applicable
  - Provides any reviewing court with a reason to grant the appeal official discretion in his/her decision

© 2026 Husch Blackwell LLP

Appeal Decision Letter

Structure of a Decision Letter:

- ***(I) Background Information***
  - When was complaint submitted?
  - What was alleged?
  - What did investigation find?
  - What sanction was found, if any?
  - When was appeal submitted and was it timely?
- ***(II) Summary of Appeal***
  - What is the appealing party alleging, and is that allowable under policy?
  - Address cross appeals in same way.



© 2026 Husch Blackwell LLP

Appeal Decision Letter *(Cont.)*



Structure of a Decision Letter *(Cont.)*

- ***(III) Analysis of each basis of appeal separately***
  - What factors support or contradict the appeal argument?
  - What information/argument was provided to support basis for appeal?
  - If error is alleged, did an error occur?
  - If an error occurred, would it have been sufficient to significantly impact the outcome of the determination? (Same with new evidence basis)
- ***(IV) Conclusion***
  - Is the appeal granted or denied?
  - If granted, what outcome?

© 2026 Husch Blackwell LLP

Practice Tip: Documenting the decision

- Summarize appeal decision, *upfront*
- Address the appeal grounds
- Address all arguments raised in appeal, cross-appeal, and in any response
- Address all relevant policy definitions and procedural provisions
- Consult with administrators and legal counsel regarding any procedural or legal questions or issues
- *Show your work:* explain what decision you reached and why
- It is a best practice for appeal decision letters to tell the whole story within the "four corners" of the letter.

© 2026 Husch Blackwell LLP

Scenario and Discussion Question

During consideration of an appeal where the Respondent was found responsible and a one-year suspension was imposed, an Appeal Panel member separately serves as a faculty advisor to a student organization and overhears, at an unrelated social event, two students discussing that the Complainant has "told a few different versions" of what happened that night to different friend groups. The Appeal Panel had already completed its review of the record and deliberations and had decided to affirm the finding and sanction before the panel member heard this conversation.

- **Can the Appeal Panel continue with drafting the written decision? Should the decision address what the panel member overheard?**



© 2026 Husch Blackwell LLP

HUSCH BLACKWELL

© 2026 Husch Blackwell LLP