

Title IX Procedures

Conduct covered by Title IX:

Title IX of the Education Amendments of 1972 prohibits any form of discrimination on the basis of sex in the University's programs and activities. Sex discrimination includes a variety of behaviors which can limit or negatively impact educational opportunity, including sexual harassment.

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- 1.) An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- 2.) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive as to deny a person equal access to the institution's education program or activity; or
- 3.) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v)¹, "dating violence" as defined in 34 U.S.C. 12291(a)(10)², "domestic violence" as defined in 34 U.S.C. 12291(a)(8)³, or "stalking" as defined in 34 U.S.C. 12291(a)(30)⁴.

All students, faculty, staff and affiliates participating in University programs and activities in the United States are subject to this Title IX procedure.

Title IX Coordinator:

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¹ The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v).

² The term "dating violence" means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship. 34 U.S.C. 12291(a)(10).

³ The term "domestic violence" includes felony or misdemeanor 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 jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. 34 U.S.C. 12291(a)(8).

⁴ The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. 34 U.S.C. 12291(a)(30).

Any person may report Title IX prohibited conduct (regardless of whether the individual reporting is the person alleged to have experienced conduct) in person, by mail, telephone or email, and may be made at any time.

I. Initial Assessment

After receiving a report, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate concerns raised by the report.

As part of the initial assessment, the Title IX Coordinator will:

- a.) Assess whether the alleged behavior meets the conduct standards required by Title IX. Those alleged behaviors that fall outside Title IX will still be pursued in accordance with the University's Sexual Misconduct policy and procedures found in the Student Handbook;
- b.) Assess the Complainant's safety and well-being and offer the University's support measures and assistance, regardless of whether the Complainant chooses to participate in the University grievance process. Supportive measures may be available to both the Complainant⁵ and Respondent⁶ and may include, but not be limited to, counseling, modifications of work or class schedules, campus escort services, no-contact orders between the parties, increased security and monitoring of certain areas of the campus and other similar measures; and
- c.) Provide information regarding the steps necessary to file a formal complaint and explain the investigative and hearing process.

II. Title IX Process

Upon completion of an Initial Assessment, a party may choose to proceed with formal resolution by filing a complaint.

a. Complaint

A formal complaint must be filed with the Title IX Coordinator in person, by mail, or by electronic mail using the contact information provided above. The complaint must be in writing and contain the Complainant's physical or digital signature. The complaint should include, at a minimum the identities of the parties, if known, a concise summary of the alleged misconduct at issue, the date and location of the alleged misconduct.

Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the parties including notice of the University's grievance process

⁵ Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

⁶ Respondent is an individual who has been reported to be the alleged perpetrator of conduct that could constitute sexual harassment.

(including formal and informal processes), notice of the allegations, including details such as the identities of the parties, the conduct alleged, and the date and location of the alleged incident/s, if known. Notice will include a statement that the Respondent is presumed not responsible and that a determination regarding responsibility will only be made at the conclusion of the grievance process. Notice will inform the parties that they may have an advisor of their choice, who may, but is not required to be, an attorney and that parties may inspect and review the evidence submitted in the course of the investigation. Advisors' roles in the Title IX process will be limited to receipt and review of all evidence and the investigative report and participating in the examination and cross-examination of parties and witnesses. Parties are put on notice of the University Code of Conduct prohibiting knowingly making false statement or submitting false information to University personnel.

The institution will keep confidential the identity of any individual who has made a report or complaint of any form of prohibited sex discrimination, including any reporter, claimant, respondent or witness, except as may be permitted by FERPA, required by law, or to carry out the Title IX regulations, including the conduct of any investigation, hearing, or proceeding arising thereunder.

In the course of an investigation, should additional allegations be investigated, additional notice will be provided to the parties.

A formal complaint **MUST** be dismissed if:

- i.) The conduct alleged would not constitute sexual harassment as defined above;
- ii.) Even if proven, the conduct did not occur in the University's education program or activity⁷; or
- iii.) The conduct did not occur against a person in the United States.

However, such dismissal does not preclude action in accordance with the University's Sexual Misconduct policy.

A formal complaint **MAY** be dismissed, at any time during the investigation or hearing, if:

- i.) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
- ii.) The Respondent is no longer enrolled or employed by the University; or

⁷ Education program or activity includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also include any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- iii.) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will send written notice of the dismissal and reasons therefor, simultaneously to the parties.

b. Informal Resolution

After the filing of a formal Complaint and prior to reaching a determination of responsibility, the University may facilitate an informal resolution process that does not involve a full investigation and adjudication.

The informal resolution process is only applicable to student versus student or employee versus employee matters. All student versus employee matters, or vice versa, must proceed via the formal resolution process.

The process may be initiated by the Title IX Coordinator offering the parties the opportunity to become involved in an informal resolution process or either party may petition the Title IX Coordinator in writing to offer an informal resolution process to the other party. The Title IX Coordinator is the sole administrator who determines if an Informal Resolution is appropriate given the allegations.

The Title IX Coordinator or the coordinator's trained designee will supervise the informal resolution process. The coordinator or designee will present the option of an Informal Resolution and proposed terms to each party independently and in writing. All related communication will go through the coordinator or designee. Participation in an Informal Resolution is voluntary for all parties and requires informed and written consent. If either party does not agree with the proposed terms, or is uninterested in engaging in negotiations, the party may continue with the University's grievance process at any time before signing the Informal Resolution Agreement. Additionally, the coordinator or designee has the authority to end the resolution process if he/she believes that one or both parties are not operating in good faith. If this happens, the formal grievance process will resume.

The Informal Resolution will not require the parties to confront each other or even be present in the same room. Either party may withdraw, without penalty, from the Informal Resolution process up until a written resolution agreement is signed by both parties. If either party withdraws from the Informal Resolution process, the formal grievance process will resume.

The coordinator or designee and both parties must all agree to the outcome of the Informal Resolution. The coordinator or designee will write a binding Informal

Resolution agreement based upon the parties' verbal agreement with the negotiated outcome. Both parties will be required to sign the agreement. If either party refuses to sign this agreement, the informal resolution will be considered failed and the grievance process will resume. A signed resolution agreement is binding on both parties. Once the informal process is complete and the agreement signed, it precludes the parties from then resuming a formal complaint arising from the same allegations.

The informal resolution process shall proceed as expeditiously as possible. The process may be temporarily delayed or limited extensions of time may be granted for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reason for the action. Good cause may include, but is not limited to, considerations such as the absence of a party or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

c. Investigation

The formal resolution process continues with an investigation that will be handled by one of the University's designated Title IX investigators. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. Investigators do not function as advisors for Complainants or Respondents.

In all instances, there is a presumption that the Respondent is not responsible for the alleged conduct. This presumption may be overcome only where the result of a University hearing is a conclusion that there is a sufficient basis, by a preponderance of the evidence, to support a finding that the Respondent violated the Title IX policy. A preponderance of the evidence means that it is more likely than not, based upon the totality of all the relevant evidence and reasonable inferences from the evidence, that the Respondent violated the Title IX policy.

An investigation will afford both the Complainant and Respondent a full and fair opportunity to be heard, to submit information and other evidence, both inculpatory⁸ and exculpatory⁹, and to identify witnesses, both fact and expert. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The investigator, along with assistance from the Complainant, Respondent, and witnesses, is responsible for gathering relevant evidence to the extent reasonably possible. Parties will be asked to identify witnesses and provide other relevant information, such as documents, communications, text messages, social media postings, photographs, and other evidence. Both parties are encouraged to

⁸ Evidence that shows or tends to show respondent's responsibility.

⁹ Evidence that shows or tends to show the respondent is not responsible.

provide all relevant information as promptly as possible. If appropriate, the parties are encouraged to provide necessary releases to allow the investigator to gather additional, relevant, information. In general, a person's medical and counseling records are confidential and not accessible to the investigator unless that person voluntarily chooses to share those records with the investigator.

The investigator will provide, to parties and witnesses, whose participation is invited or expected to be interviewed by the investigator, written notice of the date, time, location, participants and purpose of the meeting, giving sufficient time for the party to prepare to participate. Advisors will not be allowed to speak for a party during the investigation or to be present during any investigative interview with either parties or witnesses to the matter.

Prior to the completion of the investigative report, the University will send to both the Complainant and Respondent and their advisors, if any, an electronic or hard copy, of any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint. The parties will have ten (10) business days to review and submit a written response, which the investigator will consider prior to completion of the investigative report. All such evidence will also be available to both parties, and their advisor, at any hearing in order to provide each party equal opportunity to refer to such evidence during the hearing for the purposes of cross-examination.

The investigator will then prepare an investigative report that summarizes the relevant evidence and will provide the report to each party and the party's advisor, if any, in either electronic or a hard copy, at least ten (10) business days prior to any hearing, to allow for their review and written response.

The investigation shall proceed as expeditiously as possible. The process may be temporarily delayed or limited extensions of time may be granted for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reason for the action. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity or the need for language assistance or accommodation of disabilities.

d. Hearing

Following the investigation, a live hearing will be scheduled in which each party's advisor will be provided the opportunity to ask the opposing party and any witnesses all relevant questions and follow-up questions. Cross-examination must be conducted directly, orally and in real time by the party's advisor of choice and never by a party personally. At no time will an advisor be allowed to be disruptive or address a party or witness in an abusive or disrespectful manner.

If a party does not have an advisor present at the live hearing, the University must provide without fee to that party, an advisor, who is not required to be an attorney.

The University will provide for the live hearing to occur with the parties located in separate rooms on campus with technology enabling the University's decision-maker and parties and each party's advisor to simultaneously see and hear the party or witness answering questions. Prior to answering, the decision-maker will make a determination regarding the relevance of a question asked of any party or witness and will prohibit any questions and evidence about the Complainant's prior sexual behavior, unless such questions are offered to: (1) prove that someone other than the Respondent committed the conduct alleged, or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent¹⁰. Neither a party nor an advisor may challenge the relevance determination during the hearing.

If deemed reliable and relevant by the decision-maker, and not otherwise subject to exclusion under Title IX, the decision-maker may consider the statements of persons who were not present at the hearing or persons who were present at the hearing, but who nevertheless were not subject to cross-examination. This includes, but is not limited to, opinions and statements in police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like.

An audio or audiovisual recording or transcript will be made of hearings by the University and will be made available to the parties for inspection and review.

Following a hearing, the decision-maker must issue a written determination regarding responsibility simultaneously to the parties, which will include:

- i.) Identification of the allegation potentially constituting sexual harassment,
- ii.) A description of the procedural steps taken from the receipt of the formal complaint through the determination,
- iii.) Findings of fact supporting the determination,

¹⁰ Consent is defined as clear, unambiguous, and voluntary agreement between the participants, communicated by clearly understandable words or actions, to engage in each form of sexual activity. The lack of informed, freely given consent to sexual contact constitutes sexual misconduct.

- Consent is a voluntary agreement to engage in sexual activity
- Someone who is incapacitated cannot consent
- Past consent does not imply future consent
- Silence or an absence of resistance does not imply consent
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another
- Consent can be withdrawn at any time
- Coercion, force, or threat of either invalidates consent

- iv.) Conclusions regarding the application of the Title IX policy to the facts,
- v.) A statement of the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether there are additional remedies designed to restore equal access to the education program or activity to the Complainant, and
- vi.) The procedures and permissible bases for either party to appeal.

Upon a determination of responsibility, the decision maker will issue remedies, which may include, but are not limited to, suspension, dismissal or termination from the University.

e. Appeal

An appeal may be filed by either party regarding a determination of responsibility or from a dismissal of a formal complaint, only for the following circumstances:

- i.) Procedural irregularity that affected the outcome of the matter;
- ii.) New evidence is discovered, not reasonably available at the time of the original proceeding; or
- iii.) The Title IX coordinator, investigator, or decision-maker had an alleged bias or conflict of interest.

Upon the filing of an appeal, the University must:

- i.) Notify the other party,
- ii.) Appoint a new decision-maker,
- iii.) Provide both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome, to be presented within five (5) business days of the notice of appeal,
- iv.) Issue a written decision describing the result of the appeal and the rationale for the result, and
- v.) Provide the written appeal decision simultaneously to both parties.

The appeal process shall proceed as expeditiously as possible.

III. Retaliation

Retaliation against any individual for the purpose of interfering with any right secured by Title IX or because the individual has participated in any manner of an investigation or hearing will not be tolerated.