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Title IX Grievance Policy

The purpose of the Title IX Grievance Policy Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

Only incidents falling within the definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

The University remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is not being investigated

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code of Conduct or University policies.

Consent

Consent means informed, freely and actively given, mutually understandable words or action, which indicate a willingness to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.
- Silence or lack of resistance, in and of itself, cannot be interpreted as consent.
- Consent can be given by words, actions, or behaviors as long as those words, actions or behaviors create mutually understandable clear permission regarding willingness to engage in the conditions of sexual activity: who, what, when, where, why, and how sexual activity will take place.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time by word or action.
- Previous relationships or prior consent cannot imply consent to current or future sexual acts.

To be effective, consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion.

- Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion.
- Coercion is unreasonable pressure for sexual activity. When a person indicates by words or actions that they do not want to engage in sexual activity, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- Intimidation is implied threats, including the exertion of perceived or actual power resulting from position or stature.
- A person must be of legal age (16) to give consent.

An incapacitated person cannot give consent. Sexual activity with someone who one should know to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) is not consented sexual activity and therefore is a violation of this policy.

- Incapacitation is a state where someone cannot make rational, reasonable decisions
- Incapacitation may result from mental disability, sleep, involuntary physical restraint, and alcohol or drug

any drug intentionally used to incapacitate another victim to assist in the execution of [drug facilitated sexual assault](#).

- Possession, use and/or distribution of any so-called drugs to another person is a violation of this policy.
- Being under the influence of alcohol or other drugs will not excuse behavior that violates this policy.

Education Program or Activity

Education program or activity includes:

- Any on-campus premises.
- Any off-campus premises that the University has substantial control over.

Contact Information for the Title IX Coordinator

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Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Confidential Reporting

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Julie Saker, Director, Title IX

Officials of Authority

President

Provost

Vice President of Business Affairs

Vice President of Institutional Advancement

Vice President of Enrollment Management

Vice President of Student Affairs

Chief Diversity Officer

Executive Director of the Point

Director of Residence Life

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Emergency Removal

The University retains the authority to remove a respondent from where the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If the University determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The student may immediately submit a written appeal of the removal decision to the Vice President of Student Affairs. The Vice President of Student Affairs or designee must issue a written decision with a written appeal.

Administrative Leave

The University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

The Title IX Grievance Process

Filing a Formal Complaint

The time frame for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than one hundred twenty days (120) calendar days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee. For complainants who do not meet these criteria, the University will utilize existing policy in the Student Code of Conduct and/or Sexual Misconduct Policy.

allegations of covered sexual harassment arise out of the same facts or circumstances.

Discretionary Dismissal

The Title IX Coordinator or another appropriate official without a conflict of interest or bias may dismiss a Formal Complaint brought under t

Notice of Meetings and Interviews

The University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

The Title IX Coordinator shall have sole judgment to grant further pauses in the Process.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

The University and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indrnotN away from

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include

discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and

Newly-Discovered Evidence

As a general rule, no evidence or witnesses may be submitted during the live hearing.

If a party identifies newly discovered evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding whether such evidence or witness testimony was actually discoverable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions in the preponderance of the evidence.

If the Decision-maker answers the affirmative to both questions, then the party will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

Participants in the live hearing

Live hearings are not public and the only individuals permitted to participate in the hearing are the following:

Complainant and Respondent (and their representatives)

- The parties cannot waive their right to participate in the hearing.
- The University may still

- A statement is an _____ account written to convey information about the allegation.
- A statement would not include a document, audio recording, audiovisual reading, and digital media, that is

- See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

Advisor of choice

- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- adviser may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing party.

Witnesses

Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after Decision-maker conducts its initial

examinatio

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Determination Regarding Responsibility Standard of Proof

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title

mony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

While the expert witness will be allowed to testify and be crossed, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the University admit and allow te other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision- maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

matter (i.e. a failure to follow the U procedures);

- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than ten (10) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards. The appeal will be submitted to the Title IX Coordinator.

free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

The University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a

authorities.

- To learn about possible protective measures, including but not limited to, change in class schedules, alternative housing assignments, campus employment, and restricted contact.
- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.
- To suggest names of witness to be interviewed during the investigation process and provide the investigator with questions that they would like asked of the complainant or witnesses.
- To review, consistent with FERPA, any evidence gathered.
- To be informed in writing of the outcome of the student conduct proceeding and appeal procedure at the same time the Respondent is informed.
- To be notified of any change in the investigation results prior to when they become final.
- To be notified when the results become final.

Respondent

- To be informed of all allegations of sexual misconduct in a timely and respectful manner.
- To be given amnesty (Respondent and witness) for minor student misconduct violations (such as alcohol or drug use) that is secondary to the sexual misconduct incident.
- To be informed about University and community support services and resources.
- To learn about possible measures, including but not

limited to, change in class schedules, alternative housing assignments, campus employment and restricted contact.

- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.

The CampusLife Handbook is updated by the Student Affairs Office. If you have any questions, please call 614.823.1250 and we will be glad to help you.

Office of Student Affairs
614-823-1250

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