

Policies & Procedures

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Miscellaneous

Title IX Policy & Title IX Sexual Harassment Complaint Procedures - 2C9 & 3C8

Introduction

This Title IX Sexual Harassment Policy is based on definitions set forth in regulations promulgated by the U.S. Department of Education in 2020 under Title IX of the Education Amendments Act of 1972, and this Policy limits the scope of Title IX Sexual Harassment to, among other things, conduct that occurs within the United States and conduct that occurs within the University's education program or activity (a concept further defined and discussed below).

In order to address incidents of sexual misconduct that do not fall within the definition of Title IX Sexual Harassment, the University has two policies that address sexual misconduct: (1) this Title IX Sexual Harassment Policy and (2) the University Non-Discrimination and Non-Harassment Policy. If the allegations forming the basis of a formal complaint (defined below), if substantiated, would constitute prohibited conduct under this Policy, then the grievance process set forth in this Title IX Sexual Harassment Policy will be applied in the investigation and adjudication of all of the allegations.

Title IX Policy & Title IX Sexual Harassment Complaint Procedures Subsections

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I. General Policy Statement

- A. Southern Illinois University Edwardsville (“SIUE” or “the University”) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; and the Campus Sexual Violence Elimination Act (SaVE Act), Violence Against Women Act (VAWA), and Clery Act. Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy will not be tolerated and will be subject to disciplinary action.
- B. The University does not tolerate sexual misconduct, including sexual harassment. Such conduct is harmful to the well-being of our community members, our learning and working environments, and the collegial relationships among students, faculty, and staff that characterize the culture of SIUE. All forms of prohibited conduct under this policy are regarded as serious University offenses, and violations may result in discipline, including the possibility of separation from the University. State and federal laws also address conduct that may meet the University’s definitions of prohibited conduct, and criminal prosecution may take place independently of any disciplinary action instituted by the University.

II. Background

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

In recent years, “Title IX” cases have become a shorthand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. Under the Final Rule, the University is required to narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. Only incidents falling within the Final Rule’s 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 Non-Discrimination Policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy. The University Non-Discrimination Policy also applies to certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Sexual Harassment policy), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements.

The University will respond to reports or formal complaints (as defined below) of conduct prohibited under this Policy with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in University- related programs or activities.

III. The University Title IX Coordinator

The Director of Equal Opportunity, Access, and Title IX Coordination serves as the University Title IX Coordinator and coordinates the University's compliance with Title IX and all University policies related to sexual misconduct.

The Title IX Coordinator shall be informed of all reports or formal complaints of violations of this Policy and oversees the University's centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA). The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable policies, including this Policy and the University Non-Discrimination Policy and all related record keeping, timeframes, and other procedural requirements;
- Providing training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and
- Responding to any report or formal complaint regarding conduct that violates this Policy. For any report of which the University has actual knowledge (and any formal complaint), the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

The Title IX Coordinator may delegate certain responsibilities under this Policy to designated administrators, who will be appropriately trained.

The Title IX Coordinator's contact information is as follows:

Mary Zabriskie
Director for Equal Opportunity, Access & Title IX Coordination
Title IX Coordination & ADA/504 Coordinator
618-650-2333
EOA-TitleIX@siue.edu
Rendleman Hall 3314
Campus Mail Box 1025

SIUE student-athletes with inquiries concerning the application of Title IX to Athletics programs and activities may contact the Assistant Title IX Coordinator: Mr. Mark Izquierdo, Associate Athletic Director, Intercollegiate Athletics, Vadalabene Center, Room 1602, Campus Box 1129, SIUE Campus, Edwardsville, IL 62026-1129, Telephone: (618) 650-5475, Email: maizqui@siue.edu.

* Throughout this Policy/Procedure, where Title IX Coordinator is referenced, "or their designee" should be assumed to follow unless specifically noted otherwise.

IV. Sex Discrimination Concerns Not Covered Under Title IX Sexual Harassment Policy

To the extent that alleged misconduct falls outside of this Title IX Sexual Harassment Policy, or misconduct falling outside of this Title IX Sexual Harassment Policy is discovered in the course of investigating covered Title IX misconduct, the University retains authority to investigate and adjudicate the allegations either as a part of the pending Title IX resolution process or under the policies and procedures defined within other relevant University Policy. The determination as to whether or not additional allegations will be covered as part of a pending Title IX matter or referred to another University resolution process will be made by the Title IX Coordinator in collaboration with involved departments as appropriate.

V. General Rules of Application

A. Non-Discrimination in Application

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals, regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>.

B. Applicability of the Title IX Sexual Harassment Complaint Process

This Policy applies to all University administrators, faculty, staff, students, and third parties within the University's control, including visitors and applicants for admission or employment.

C. Jurisdiction of Procedure

The Title IX Coordinator will determine if this Complaint Process applies to a Complaint. This Process will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2020;
- The conduct alleged occurred in the United States;
- The conduct alleged occurred in the University's Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Complaint Process.

VI. Prohibited Conduct

This Policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the University's education program or activity, meaning a) locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and b) any building owned or controlled by a student organization that is officially recognized by the University; and
- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the University.

Allegations of sexual misconduct that do not fall under this Policy because they do not constitute prohibited conduct as defined in this section may constitute violations of the University Non-Discrimination Policy.

In determining whether alleged conduct violates this Policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this Policy can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses. Those found to have violated this Policy face University-imposed sanctions. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this Policy.

A. Prohibited Behaviors Are:

For the purpose of this Title IX Sexual Harassment Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without their consent, including instances where the victim is incapable of giving consent. This includes:
 - a. Rape - the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
 - b. Fondling - 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.
 - c. Statutory Rape is sexual intercourse with a person who is under the statutory age of consent. If force was used or threatened, or if the victim was incapable of giving consent because of his/her age or temporary or permanent mental impairment, the offense is Rape, not Statutory Rape. In the State of Illinois, persons under the age of 17 cannot legally consent to sexual activity. Thus, in Illinois, any sexual activity with persons under the age of 17 could constitute sexual assault of a minor and necessitate mandatory child

abuse reporting. (For additional information regarding child abuse and mandatory reporting see Human Resources web site.

- d. Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any 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 a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any 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 Illinois domestic or family violence laws 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 Illinois.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
7. Retaliation under this Policy: No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
8. Complaints alleging retaliation under this Policy, including for the exercise of rights under this Policy, will be filed in accordance with this Policy, or under another appropriate accountability process such as the Student Code of Conduct at the discretion of the Title IX Coordinator, and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise subject to its policies, the University will process the complaint and take appropriate measures.
9. Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy; and charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
10. The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this Policy, but

will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

VII. Consent

A. For purposes of this Policy, consent is defined as follows:

Consent is a freely and knowingly given agreement to the act of sexual conduct or sexual penetration in question. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. While consent can be given by words or actions, non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Silence cannot be assumed to indicate consent. Lack of verbal or physical resistance or submission resulting from the use of force or threat of force by the accused shall not constitute consent.

Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one individual overcomes the physical limitations of another individual; and when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.

B. Guidance for Consent:

One is expected to obtain consent to each act of sexual activity prior to initiating such activity. Consent to one form of sexual activity does not constitute consent to engage in other forms of sexual activity.

Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify verbally the other's willingness to continue before continuing such activity.

Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

Individuals with a previous or current sexual relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity.

Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

Consent is not valid if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact. A person's manner of dress does not constitute consent.

An individual who is incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent.

C. Incapacitation, Alcohol, Coercion, and Related Concepts

A person violates this Policy if they have sexual contact with someone they know, or should know, to be mentally incapacitated or has reached the degree of intoxication that results in incapacitation. The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person would recognize the incapacitation. An accused person cannot rebut a Sexual Assault or Sexual Misconduct charge merely by asserting that they, the accused person, was intoxicated or otherwise impaired and, as a result, did not know that the other person was incapacitated. Alcohol, drugs or other intoxicants do not dismiss the responsibility of an individual to obtain valid consent.

A person is considered incapacitated, or unable to give consent, if they are unable to understand the nature of the activity or give knowing consent due to the circumstances at the time in question.

D. A person is NOT able to give effective consent in the following situations:

- An individual who is incapacitated due to the consumption of alcohol or other drugs cannot consent to sexual activity. An individual is incapacitated if they are physically helpless, unconscious, or unaware due to drug or alcohol consumption (voluntarily or involuntarily) or for some other reason.
- Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include but are not limited to, lack of control over physical movements, being unaware of circumstances or surroundings, slurred speech, vomiting, or being unable to communicate for any reason.
- When an individual is sleeping or unconscious.
- When a person's mental capacity is not at the level of an adult, such as an individual with a mental or developmental disability.

In some situations, an individual's ability to freely, willingly, and knowingly consent is taken away by another person or circumstance. Examples include, but are not limited to:

- When an individual is physically forced to participate. Force is the use of physical violence and/or imposing on someone physically in order to gain sexual access. There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. Any sexual activity that is forced is, by definition, without consent.

- When an individual is intimidated, threatened – even by a perceived threat – isolated or confined.
- When an individual is coerced or unreasonably pressured for sexual activity. When someone makes clear that they do not want to engage in sexual activity, that they want something to stop, or that they do not want to go past a certain point of sexual interaction – continued pressure past that point can be coercive behavior. When evaluating coercive behavior, factors such as the frequency, duration, location (isolation of recipient of unwanted contact), and intensity of coercive behaviors will be considered.

For purposes of this Policy, incapacitation (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes Title IX Sexual Harassment as defined by this Policy.

VIII. Terminology

The following definitions clarify key terminology as used in this Policy.

- **Business Days**
“Business Days” are weekdays that are not specified as University holidays or closure days.
- **Complainant**
“Complainant” For the purposes of this Title IX Sexual Harassment Policy, Complainant means any individual who has reported being or is alleged to have experienced conduct by another person that could constitute covered sexual harassment as defined under this Policy.
- **Formal Complaint**
“Formal Complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the procedures consistent with the Title IX Sexual Harassment Policy to investigate the allegation of sexual harassment.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University.

Formal complaint may also refer to a document signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a respondent. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

- **Party or Parties**
“Party or Parties” refers to the complainant(s) and the respondent(s).
- **Relevant Evidence and Questions**
“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege. Legally recognized privileges include, e.g., attorney-client privilege; doctor-patient privilege; pastoral/religious privilege, etc.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).
- **Respondent**

For the purposes of this Title IX Sexual Harassment Policy, “Respondent” means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this Policy.
- **Privacy vs. Confidentiality**
 - Confidentiality – References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse.
 - Privacy – References made to *privacy* mean University offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.
- **Disability Accommodations**

This Process does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Sexual Harassment Complaint Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.
- **Third Party**

“Third Party” refers to any individual who is not a University student, or an employee (e.g., vendors, alumni/ae, or local residents).
- **Witness**

“Witness” refers to any individual who shares information relating to an allegation of prohibited

conduct under this Policy.

IX. Making a Report Regarding Covered Title IX Sexual Harassment

Any person may report sex discrimination, including Title IX sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, by electronic mail, or submit an online complaint form using information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Mary Zabriskie
Director for Equal Opportunity, Access & Title IX Coordination
Title IX Coordination & ADA/504 Coordinator
[618-650-2333](tel:618-650-2333)
EOA-TitleIX@siue.edu
Rendleman Hall 3314
Campus Mail Box 1025
Edwardsville, IL 62026

- **Anonymous Reports.** Individuals may submit anonymous reports of Title IX sexual harassment by telephone, in writing or electronically on forms found on the EOA website. The University's ability to respond to such complaints is often quite limited when it comes to stopping the alleged conduct, collecting evidence, or taking action against parties accused of violating this Policy.
- **Confidentiality.** An incident or concern can be discussed in strict confidence by using the confidential resources outlined in this Policy.
- **Responsible Employees - Obligation to Report**
In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must immediately contact the SIUE Police Department by dialing 911.

In non-emergency situations, employees, including student employees (other than those formally designated as Confidential Resources under this Policy), must promptly report suspected incidents of sexual harassment to the University Title IX Coordinator.

Students are encouraged to report any suspected violation of this Policy (after consulting a Confidential Resource as appropriate).

- **Timeliness of Reporting.** Responsible Employees are required to report known incidents and information of Sexual Misconduct promptly to the Title IX Coordinator. For others in the University community, you are strongly encouraged to report Sexual Misconduct, Retaliation, and any other conduct prohibited under this Policy as soon as you become aware of such conduct.
- **Reporting to Law Enforcement.** Individuals may also file a police report with Southern Illinois University Edwardsville Police Department at [618-650-3324](tel:618-650-3324) (non-emergency) or 911 (emergency), the City of Edwardsville Police Department [618-656-2131](tel:618-656-2131) (non-emergency) (if the incident in question occurred within the City of Edwardsville) or to other local law enforcement authorities

where the incident in question occurred. The EOA Office can also help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy of such order(s) to the University Police Department.

- **Reporting to Outside Entities.** Individuals may also contact the following external agencies to learn more about complaint processes/resolution options outside of the University:

For students:

Office for Civil Rights
Chicago Office
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604
Telephone: (312) 730-1560
Facsimile: (312) 730-1576
Email: OCR.Chicago@ed.gov

Illinois Department of Human Rights

Chicago Office	Springfield Office
100 West Randolph Street	535 West Jefferson
10th Floor	1st Floor
Intake Unit	Intake Unit
Chicago, IL 60601	Springfield, IL 62702
<u>(312) 814-6200</u>	<u>(217) 785-5100</u>
<u>(866) 740-3953 (TTY)</u>	<u>(866) 740-3953 (TTY)</u>
<u>(312) 814-1436 (FAX)</u>	<u>(217) 785-5106 (FAX)</u>

For employees:

U.S. Equal Employment Opportunity Commission
St. Louis District Office
1222 Spruce Street
Room 8.1000
St. Louis, MO 6313
Phone: 1-800-669-4000

Illinois Department of Human Rights

Chicago Office	Springfield Office
100 West Randolph Street	535 West Jefferson
10th Floor	1st Floor
Intake Unit	Intake Unit
Chicago, IL 60601	Springfield, IL 62702

(312) 814-6200

(217) 785-5100

(866) 740-3953 (TTY)

(866) 740-3953 (TTY)

(312) 814-1436 (FAX)

(217) 785-5106 (FAX)

SIU Ethics Officer

900 S. Normal Ave.

Woody Hall, Room 491

Carbondale, IL 62901

Ethics1@siu.edu

1-844-597-6463 Ethics Hotline

Office of Executive Inspector General (OEIG)

69 West Washington, Suite 3400

Chicago, IL 60602

(866) 814-1113 (Toll-free hotline)

(888) 261-2734 (TTY)

(312) 814-5479 (fax)

- **Confidential Reporting**

- **Confidential Support and Resources.** Students may discuss an incident with Confidential Employees or an off-campus resource (e.g. rape crisis center, doctor, psychologist, clergyperson, etc.) without concern that the person's identity will be reported to the Title IX (EOA) Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the person's identity will be reported to the Title IX (EOA) Office.

The following resources are considered Confidential Resources and would not be obligated to share information that you disclose without explicit permission:

- **Confidential Advisor** provides emergency and ongoing support to a student who experiences sexual violence and relationship violence. The Confidential Advisor offers confidential services and provides privileged and confidential communications with an impacted student including possible next steps regarding reporting options and possible outcomes, will notify them of resources and services on-campus and in the community, will inform them of their rights and the University's responsibilities to enforce orders of protection and no contact orders; and if requested by the impacted student, the Confidential Advisor will liaise with campus officials to secure interim protective measures and accommodations, and will liaise with campus officials, law enforcement and community resources to assist the impacted student with making contact and/or reporting an assault.

The Confidential Advisor is:

Metro East Every Survivor Counts

Metro East Every Survivor Counts | Sexual Assault Help and Services | Illinois

618-397-0975

- **SIUE Counseling and Health Services** is committed to providing compassionate and inclusive outpatient clinical care to promote and maintain the health and overall well-being of our students. Walk-ins are welcome, however, to serve students most efficiently, they are asked to schedule an appointment with a healthcare provider. Enrolled students may make an appointment by calling [618-650-2842](tel:618-650-2842) or by visiting us on the lower level of the Student Success Center, Room 0222 (adjacent to the Visitor Parking Lot B).
- **Timely Care** - SIUE students and employees now have FREE, 24/7 access to virtual care services from TimelyCare. Student and Employees do not need insurance to access TimelyCare services. Download the app.

As part of SIUE’s partnership with TimelyCare, SIUE students and employees have access to services in TimelyCare, including:

- **TalkNow:** 24/7, on-demand emotional support to talk about anything, including anxiety, relationships, depression, and school or work-related stressors.
- **Scheduled Counseling:** Choose the day, time, and mental health provider that best works for you. (9 visits per year)
- **Health Coaching:** Develop healthy lifestyle behaviors, including nutrition, sleep habits, time management, and mindfulness.
- **Self-Care Content:** Visit the “Explore” page within TimelyCare for guided self-care content, including yoga and meditation sessions, as well as group conversations with our providers on a variety of health and well-being topics.

X. Non-Investigatory Measures Available Under the Title IX Sexual Harassment Complaint Procedures

A. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Complaint or where no Complaint has been filed. These measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University’s education environment, or deter sexual harassment. The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures. The Title IX Coordinator is responsible for the effective implementation of Supportive Measures.

Complainants (as defined above), who report allegations that could constitute covered sexual

harassment under this Policy, have the right to receive supportive measures from the University regardless of whether they desire to file a complaint, which may include those listed below as appropriate. Supportive measures are non-disciplinary and non-punitive.

If a Respondent is given notice of their involvement in allegations of sexual harassment, they will also be provided with supportive resources.

Supportive Measures that may be available include (as appropriate), but are not limited to:

- counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

B. Mutual Restriction on Contact

Pursuant to this Policy, only the Title IX Coordinator may issue a mutual restriction on contact between the parties as an interim measure.

The Title IX Coordinator shall not impose a mutual restriction on contact as an interim measure unless the allegations and the information available to it indicate that (i) discriminatory harassment or other unlawful conduct may have occurred, and (ii) further discriminatory harassment or unlawful conduct is likely to result if the no-contact order is not issued.

Any such mutual restriction on contact issued shall automatically expire at the conclusion of the resolution process, unless terms to the contrary are otherwise specified in decisions regarding the final outcome of the reported matter.

At any time during which a mutual restriction on contact is in effect, a party may object to the mutual restriction on contact, and the University will review the decision and the basis for the objection. Based on the review, EOA may rescind, modify, or leave in place the mutual restriction on contact. Repeated objections and requests for review of mutual restriction on the parties may be denied by the Title IX Coordinator absent a party providing evidence as to a change of circumstances such that measures in place are unduly burdensome to the requesting party and is the basis for the requested review.

Upon issuing any mutual restriction on contact as an interim measure, EOA shall inform the respondent of the identity of the complainant(s) and the conduct alleged against the respondent, including the date(s), time(s), and location(s) of alleged conduct known by EOA.

Notwithstanding the above, EOA may issue a mutual restriction on contact between the parties with the consent of both parties.

C. Counseling Services provides individual counseling to students who have been sexually assaulted or have experienced sexual misconduct or relationship violence. Students in need of information, emotional support, and/or counseling for issues of sexual assault, sexual

misconduct, and relationship violence may seek confidential help at the Counseling Services office. Speaking with a trained counselor may be helpful in deciding how to proceed. Because of the privileged nature of these conversations, Counseling Services will not share information about a patient/client (including whether or not that individual has received services) with the Title IX Coordinator or any other employee of the University without that person's express written permission. Counseling Services may submit, however, non-identifying information about the incident for purposes of making a statistical report under the Clery Act.

Counseling Services is located on the Edwardsville Campus in the Student Success Center, lower level, Room 0220. Office hours are Monday-Friday, 8:00 am - 4:30 pm, phone [618/650-2842](tel:6186502842). A counselor from Counseling Services can be available at the Alton Campus. After hours or weekend services may be obtained by calling University Police, [618/650-3324](tel:6186503324) and requesting a callback from a counselor.

- D. **Health Service** can provide students with non-emergent or follow-up medical services, including STD testing, and provide an opportunity to discuss any health care concerns related to the incident in a confidential medical setting. Health Service is committed to protecting the privacy and confidentiality of all patient/client health information. All patient interactions with Health Service are considered strictly confidential.

Health Service is located on the Edwardsville Campus in the Student Success Center, lower level, Room 0222. Office hours are Monday-Friday, 8:00am-4:30pm, phone [618-650-2842](tel:6186502842).

- E. **Employee Assistance Program & Counseling (EAP)**, Employees have access to counseling support through EAP, which is a free and confidential resource. More information is available on the Central Management Services Employee Assistance Program web site.

F. **Emergency Removal**

The University retains the authority to remove a respondent from a University program or activity on an emergency basis, where it (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 it is determined that such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

G. **Administrative Leave**

The University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Sexual Harassment Complaint Process. Such actions may be at the recommendation of the EOA Director/Title IX Coordinator or upon consideration by the employee's supervisor, or University leadership as appropriate.

H. **Other Resources and Assistance**

- Immediate Assistance
Timely Care - SIUE students and employees now have FREE, 24/7 access to virtual care services from TimelyCare. Student and Employees do not need insurance to access TimelyCare services.
- Sexual Assault
 - Metro East Every Survivor Counts: [618-397-0975](tel:6183970975); Metro East Every Survivor Counts website

- Anderson Hospital – Sexual Assault Nurse Examiners (SANE) are medical professionals trained to collect forensic evidence from sexual assault survivors. Address: 6800 Illinois 162, Maryville, Illinois 62062; Phone: 618-288-5711
- Illinois Coalition Against Sexual Assault: 217-753-4117 or [icasa](http://icasa.org)
- National Sexual Assault Hotline: 800-656-HOPE (4673); National Sexual Assault Hotline website
- Relationship Violence
 - Oasis Women’s Center: 618-465-1978 or 800-244-1978
 - Wellspring Resources: 24-hour adult crisis line 618/465-4388 or 618/462-2331 (Alton), 618/639-2016 (Jerseyville) or 24-hour child crisis line (800)345-9049 or go to Wellspring Resources website for more information
 - National Domestic Violence Help Line: 877-TO END DV (877-863-6338); reference
 - AARDVARC – An Abuse, Rape and Domestic Violence Aid and Resource Collection at AARDVARC website
 - The Illinois Coalition Against Domestic Violence: 217-789-2830; ILCADV website
 - Madison County State’s Attorney Domestic Violence Special Prosecution Unit: 618-692-6290; reference
 - Illinois Department of Children and Family Services: 800-25-ABUSE (800-252-2873); Illinois DCFS website

XI. Title IX Sexual Harassment Complaint Resolution Procedures

A. Filing a Formal Complaint

The timeframe for the Title IX Sexual Harassment Complaint Process begins with the filing of a Formal Complaint. The Complaint Process will be concluded within a reasonably prompt manner, and generally no longer than ninety (90) business days after Notice of Title IX Complaint Allegations are sent to the Parties. The Process may be extended for a good reason, including but not limited to 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.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator with 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 may utilize other existing policies.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The Title IX Coordinator will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Sexual Harassment Complaint Procedures prevents a complainant from

seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

B. Informal Resolution

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the Institution's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent.

C. Multi-Party Situations

The University may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

D. Assessment and Dismissal of Formal Complaints

1. Assessment of Formal Complaints

a. The Title IX Coordinator will determine if the Title IX Sexual Harassment Complaint Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- i. The conduct is alleged to have occurred on or after August 14, 2020;
- ii. The conduct is alleged to have occurred in the United States;
- iii. The conduct is alleged to have occurred in a University education program or activity; and
- iv. The alleged conduct, if true, would constitute covered sexual harassment as defined in this Policy.

b. Upon receipt of a formal complaint, the Title IX Coordinator will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this Policy. The University will seek to complete this initial assessment within ten (10) business days of receipt of the formal complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- i. If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this Policy, the Title IX Coordinator will offer appropriate supportive measures. In addition, the Title IX Coordinator shall initiate an investigation of the allegations under this Policy in a formal complaint, as described herein. However, if the Title IX Coordinator deems the formal complaint appropriate for the Informal Resolution Process, the Title IX Coordinator may instead refer the matter to the Informal Resolution, as described in this Policy.
- ii. If the allegations forming the basis of the formal complaint would not, if substantiated, constitute prohibited conduct as defined in this Policy, the Title IX Coordinator will dismiss the formal complaint from the Title IX Sexual Harassment Complaint Process (and either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter for consideration under provisions of other relevant University policy including the Non-Discrimination Complaint Process, Student Code of

Conduct, and/or employee accountability processes (in consultation with Human Resources and the employee Respondent supervisor/department leadership).

Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties via electronic format. Both parties will have equal right to appeal dismissal from the Title IX Sexual Harassment Complaint Process through the appeal process provided in this Policy.

The determination regarding dismissal becomes final either on the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a complainant cannot file a formal complaint under this Policy concerning the same alleged conduct.

2. Mandatory Dismissal

If any one of the required jurisdictional elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

3. Discretionary Dismissal

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Sexual Harassment Complaint Procedures, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- a. A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, or any allegations raised in the Formal Complaint;
- b. The respondent is no longer enrolled or employed by the University; or,
- c. If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) simultaneously to the parties via electronic format. Both parties will have equal right to appeal dismissal from the Title IX Sexual Harassment Complaint Process through the appeal process provided in this Policy.

4. Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their University email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

5. Notice of Removal

Upon dismissal for the purposes of Title IX, the University retains discretion to determine if the allegations should be addressed utilizing another University policy such as the Student Code of Conduct, or the Non-Discrimination Complaint Process. If so, the University will promptly send

written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and give notice of the removal of the complaint/concerns to the selected University resolution process.

6. Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations of Title IX sexual harassment to all parties. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances. In most circumstances, this will occur within ten (10) business days of the Title IX Coordinator completing the initial assessment of the complaint.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

7. Contents of Notice

The Notice of Allegations will include the following:

- a. Notice of the institution's Title IX Sexual Harassment Complaint Process including any informal resolution process, and information on where to access a copy of the relevant policy and procedures.
- b. Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- c. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv), or in matters involving employee respondents, a union representative.
- e. A statement that, before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi).

8. Ongoing Notice

If, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Sexual Harassment Policy, the University will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

9. Advisor of Choice and Participation of Advisor of Choice

The University has a long-standing practice of requiring students and employees to participate in the process directly and not through an advocate or representative. Individuals participating as complainant or respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the University.

The University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The University will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice.

10. 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. Each party is responsible for communicating with their own Advisor of Choice regarding scheduled meetings.

11. Delays

Each party may request a one-time delay in the Title IX Sexual Harassment Complaint Process of up to five (5) business days for good cause (granted or denied in the sole judgment of the Title IX Coordinator) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties/participants.

For example, a request to take a five-day pause made an hour before a hearing for which multiple parties and their advisors have prepared for shall generally not be granted, while a request for a five-day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

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

E. Investigation

1. General Rules of Investigations

An Investigator (or Investigators) 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 indicate responsibility.

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 information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

2. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- a. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
 - i. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties are expected to submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307.

The University will make the evidence available for each party and each party's advisor, if any, to inspect and review. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the Investigator. The Investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension if needed, to review relevant evidence.

Any evidence subject to inspection and review will be available at any hearing, including for the purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX Sexual Harassment Complaint Process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors must also agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

b. Inclusion of Evidence Not Directly Related to the Allegations:

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

3. Investigative Report

The Investigator will create an Investigative Report that fairly summarizes relevant evidence. A copy of the Investigative Report will be provided to the parties at least ten (10) business days prior to the hearing for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

4. Hearing

a. General Rules of Hearings

- i. The University will not issue a disciplinary sanction arising from an allegation of covered Title IX sexual harassment without holding a live hearing, unless the matter is otherwise resolved through an informal resolution process.
- ii. The live hearing may be conducted with all parties physically present in the same geographic location, or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a remote video conferencing option. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.
- iii. All proceedings will be recorded through audio recording; audiovisual recording; or transcript. That recording or transcript will be made available to the parties for inspection and review.
- iv. Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the

Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

b. Continuances or Granting Extensions

The University may determine that multiple sessions, or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

c. Newly Discovered Evidence

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

If a party identifies new 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 (Hearing Officer or Hearing Panel Chair) will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable 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 by the preponderance of the evidence.

If the Decision Maker (Hearing Officer or Hearing Panel Chair) answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

d. Participants in the Live Hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

i. Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in their absence, The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties and their advisors shall be subject to the institution's Rules of Decorum.

ii. The Decision Maker(s)

- The hearing body will consist of a single decision maker, Hearing Officer; or a Hearing Panel of three (3) decision makers.
- The Title IX Coordinator will appoint the Decision Maker(s) for each hearing.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.

- No member of the hearing body will have 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 hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

iii. *Advisor of Choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney. In the event that a party is an employee, they may select but are not required to select as their Advisor of Choice a union representative.
- The Advisor of Choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination at hearing.
- 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.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- 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. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's Rules of Decorum and may be removed upon violation of those Rules.

iv. *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- Witnesses shall be subject to the institution's Rules of Decorum.

5. Hearing Procedures

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

- The Hearing Officer or Hearing Panel Chair (as designated by the Title IX Coordinator) will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Hearing Officer or Hearing Panel Chair will ask questions of the Parties (questions from Hearing Panel members will be solicited by the Chair) Witnesses and Hearing Panel Members;

- Parties will be given the opportunity for live cross-examination after the Hearing Officer/Hearing Panel conducts its initial round of questioning. During the Parties' cross-examination, the Hearing Officer/Hearing Panel Chair will have the authority to pause cross-examination at any time for the purposes of asking follow-up questions, and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer/Hearing Panel Chair. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Officer/Hearing Panel to use statements made by the Party.

6. Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination, the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Hearing Officer/Hearing Panel Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.

7. Hearing Panel Deliberations

When the Decision Makers at a hearing are a Hearing Panel, at the conclusion of the hearing, panel members will meet privately to engage in deliberations regarding the pending matter and determine by vote of the majority whether the Respondent is responsible for violating the University's Title IX policy. The Hearing Panel members will decide together the rationale for their decision. The Hearing Panel chair will write the Determination Regarding Responsibility on behalf of the group.

8. Review of Transcript/Recording

The recording/transcript of the hearing will be available for review by the parties within ten (10) business days, unless there are any extenuating circumstances. The recording/transcript of the hearing will not be provided to parties or Advisors of Choice.

F. Determination Regarding Responsibility

1. 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 Decision Maker will consider information included in the investigation and hearing to determine whether it is more likely than not that a violation of the Policy occurred.

2. General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision maker(s).

Decision makers shall not draw inferences regarding a party or witness' credibility based on

the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony 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.

The Final Rule requires that the University allow parties to call "expert witnesses" for direct and cross examination. While the expert witness 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 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 Final Rule requires that the University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, 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 testimony regarding polygraph tests ("lie detector tests") and 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 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.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer/Hearing Panel may draw an adverse inference as to that party or witness' credibility.

3. Components of the Determination Regarding Responsibility

At the conclusion of the hearing, in cases where a Hearing Panel has been convened, the three panel members will meet privately to deliberate and determine the responsibility of the Respondent. The agreement by a simple majority of panel members is needed for a

Respondent to be found responsible for violating University policy.

The Hearing Officer (or Hearing Panel Chair) will prepare a written Determination Regarding Responsibility that will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

- a. Identification of the allegations potentially constituting covered Title IX sexual harassment;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding which section of University Policy (other than Title IX), if any, the respondent has or has not violated.
- e. For each allegation:
 - i. A statement of, and rationale for, a determination regarding responsibility;
 - ii. If the decision maker(s) elects to recommend sanctions for the Respondent, a statement of, and rationale for, any disciplinary sanction(s) will be prepared in consultation with the Title IX Coordinator and noted in the findings; and
 - iii. If the decision maker(s) elects to recommend remedies for the Complainant, a statement of, and rationale for, remedies designed to restore or preserve equal access to the recipient's education program or activity will be prepared in collaboration with the Title IX Coordinator and noted in the findings.
 - iv. In matters involving employee parties, Human Resources, appropriate supervisors, and Vice Chancellor level leadership will also be consulted regarding sanctions and remedies.
 - v. The University's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

4. Sanctions and Remedies

- a. Possible Sanctions and Remedies for Student Respondents:
 - Educational training;
 - No shared classes or extra-curricular activities;
 - Disciplinary probation;
 - Withholding of grades, official transcript, and/or degree;
 - Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
 - Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities;
 - Denial of degree;
 - Suspension from the University for a specific period of time. Suspension is noted on the academic transcript with the term "Disciplinary Suspension." The notation can be removed upon the request of the student in accordance with the University's procedures when all conditions of the suspension are met;
 - Expulsion (permanent separation from the University). Expulsion creates a permanent notation on the student's academic transcript;
 - Revocation of degree and withdrawal of diploma; and/or
- b. Possible Sanctions and Remedies for Employee Respondents:
 - Employment probation;

- Job demotion or reassignment;
- Suspension with or without pay for a specific period of time;
- Dismissal or termination;
- Ineligible for rehire; and/or

To impose a mutual restriction on contact as a sanction, the University must determine, based on a preponderance of the evidence, that further conduct prohibited under this Policy would result if the restriction is not issued. The University must document in writing the reasons for and evidence supporting the issuance of any mutual restriction on contact.

5. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within fifteen (15) business days of the completion of the hearing.

6. Finality

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

G. Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the University’s own 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 an appeal stays any sanctions for the pendency of an appeal. Supportive measures 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 five (5) pages (including attachments). Appeals should be submitted electronically to the Title IX Coordinator and must specify on what basis it is being made and specific evidence that supports it. 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.

Appeals will be decided by the Vice Chancellor for Anti-Racism, Diversity, Equity, and Inclusion who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision maker in the same matter.

The outcome of an appeal will be provided in writing simultaneously to both parties and include rationale for the decision.

The decision maker on the appeal will release a written decision within twenty-one (21) business days from the date of the appeal to:

- Affirm the hearing officer's/panel's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- Affirm the hearing officer's/panel's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the hearing stage for the hearing officer/panel to remedy any procedural irregularity or consider any new evidence; or
- Reverse the hearing officer's/panel's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable.

H. Complaint Process Documentation

The University EOA Office will retain all of the documentation included in the Grievance Process (outlined in Section 6 of this Policy) for seven years, in accordance with state and federal records laws and University policy. All documentation of records is private and confidential to the extent possible under law.

I. Retaliation

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 Sexual Harassment 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 report or Formal Complaint of sexual harassment.

Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in a Sexual Harassment Complaint Grievance Process believes they have been subject to Retaliation (as defined in this Policy), they should immediately report the alleged retaliatory conduct to the Title IX Coordinator.

XII. Dissemination of Policy and Educational Programs.

A. Ongoing Sexual Misconduct Training.

The University's commitment to raising awareness of the dangers of Sexual Misconduct includes providing ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about primary prevention, and risk reduction.

B. Training of Title IX Coordinator(s), Investigators, Hearing Officers and Appellate Authorities.

All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over University Grievance Processes, and appeals shall receive training each academic year about applicable prohibited conduct, Grievance Processes, due process, and University policies related to Sexual Misconduct. All training materials used to train Title IX-related personnel (e.g. Title IX Coordinators, deputies, investigators, hearing officers, and appellate officers (among others)) will be made available through the University's website: EOA

C. Notice

The University's Title IX Sexual Harassment Policy will be publicized and made available to all students, faculty, staff and members of the public on the University's website at siue.edu/ea, as well as in various student and employee focused communications on an annual basis.

XIII. False Information and False Complaints.

Any person who, in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of Title IX Sexual Harassment does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

XIV. Interference with the Title IX Discrimination Complaint Process.

Any person who interferes with the complaint process is subject to disciplinary action up to and including dismissal or separation from the University. Interference with a complaint process may include, but is not limited to:

1. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
2. Removing, destroying, or altering documentation relevant to the complaint process; or
3. Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

XV. Failure to Report - Responsible Employees.

If a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, up to and including termination, pursuant to applicable University procedures and collective bargaining agreements.

XVI. Title IX Protections for Pregnant, Recently Pregnant, and Post-Partum Students

Discrimination against students based on pregnancy or related conditions including childbirth,

miscarriage, and termination of pregnancy is prohibited under Title IX.

A. Notification to Students of Pregnancy and Pregnancy- Related Rights Under Title IX

When a student notifies a University employee of a pregnancy or pregnancy-related condition, the employee is expected to inform the student that they may be entitled to protections under Title IX and provide them with EOA's contact information. The employee should also promptly notify EOA with the student's information.

For additional information regarding the rights of pregnant and parenting students see Policies & Procedures - Student Rights and Conduct - Pregnancy and Newly Parenting Policy - 3C15.

Approved by Chancellor effective 5/1/25

This policy was issued on May 5, 2025, replacing the April 21, 2015 version.

Document References: 2C9 & 3C8

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