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UNIVERSITY.  
— EST. 1818 —

# Annual Title IX Training 2022-2023



## Why are we here?

- Fulfill not only our obligations under Title IX law, but to ensure we are carrying out the mission of the University;
- You have an important role that directly impacts the personal dignity and safety of the University community;
- How you interact with those involved in the Title IX process will impact their experiences and understanding of the Title IX response at SLU.



## Role in the Title IX Sexual Harassment Policy

- Investigators and Panel members must be fair, impartial, and unbiased.
  - Must approach the process without pre-judgment – determinations must be based on application of policy to the specific information brought forward in the process.
- Advisors provide support to their party and ensure that the party understands their rights and options under the Policy.





## Agenda

- Status of Regulations
- Overview of Regulations from 2020
- Scope of Policy
- Important Definitions
- Grievance Process



## Status of Title IX Sexual Harassment Policy (TIX Policy)

- There are not changes to the Title IX Sexual Harassment Policy that was approved by Dr. Pestello last fall.
- The DOE released a Notice of Proposed Rulemaking on June 23<sup>rd</sup> (50<sup>th</sup> anniversary of Title IX). We are now towards the end of the Comment Period where individuals, institutions and organizations can submit any feedback on the proposed rule.
- The notice proposes significant changes that would impact the scope and enforcement of Title IX on campuses across the country. There will be no changes to SLU's policy(s) until there is a final rule that has become law.

## Reminder of Last Year's Revision to the TIX Policy

- In August 2021, the DOE released guidance that stated they would cease to enforce §106.45(b)(6)(i) of the Title IX Final Rule regarding the prohibition against statements not subject to cross-examination.
- Hearing panelists may now consider a statement that is made by a Party or witness during the investigation or hearing without that statement being subject to cross-examination at a live hearing in reaching a determination of responsibility.



## Implications of this Policy Change

- A Party or Witness may choose not attend the live hearing at all and their statement provided during the investigation may be considered by the hearing panel as part of the deliberations.
- A Party or Witness may choose to attend the live hearing and answer some or all of the questions asked of them by the hearing panel OR the advisor. If the Party or witness refuses to answer questions, the entirety of their statement during the investigation and the information they provide at the hearing may be considered by the hearing panel as part of the deliberations.



## Implications of this Policy Change

If the hearing panel has unanswered questions or concerns that are not addressed because the hearing panel is unable to question a Party or witness, this may impact the deliberations and ultimate decision of the hearing panel.





## Overview/Reminders of 2020 Regulations

- Must respond in a way that is not deliberately indifferent when school has actual knowledge of sexual harassment
- “Sexual harassment” is defined by the regulations
- Must offer supportive measures
- Requires a signed formal complaint to start the grievance process
- Formal complaints must be dismissed if they do not meet the jurisdictional requirements



## Overview/Reminders of 2020 Regulations

- Regulations include specific requirements for the grievance process used to address formal complaints
- Decision maker must be separate from investigator (no single investigator model)
- Must include a live hearing with the opportunity for parties' advisors to cross examine other parties/witnesses should those parties/witnesses decide to participate/respond.

# Scope of the TIX Policy



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## Scope of the TIX Policy

- The TIX policy applies to Prohibited Conduct that occurs:
  - On campus;
  - In the context of a university program or activity, which includes locations, events, and circumstances where the university has substantial control over the Prohibited Conduct and the person accused of having committed the Prohibited Conduct.

## Scope of the TIX Policy

- Conduct that occurs outside the United States, including on the campus of SLU-Madrid, is not covered by this policy. The Office of Student Life at SLU-Madrid is the reporting contact for all matters of Prohibited Conduct that fall under the SLU-Madrid Code of Conduct.

## Scope of the TIX Policy

- When Respondent is an enrolled student, faculty, or staff at the university, the procedures outlined in Section 2.11 of this policy apply.
- When Respondent is a third party...the university will offer and implement supportive measures to the Complainant consistent with the goals of this policy...



## Scope of the Grievance Process

- In order to initiate the grievance process, a Formal Complaint must be filed.
- A Formal Complaint may be filed by the Complainant or Title IX Coordinator.
- At the time of filing the Formal Complaint, the Complainant must be participating in or attempting to participate in an education program or activity at Saint Louis University



## Scope of the Grievance Process

- The Title IX Coordinator must dismiss a Formal Complaint if:
  - The Formal Complaint does not allege circumstances that meet the definition of “sexual harassment” if proven;
  - The conduct did not take place within an education program or activity;
  - The conduct did not occur within the United States; or
  - The Formal Complaint is not signed by someone who meets the definition of a Complainant.



## Scope of the Grievance Process

- The Title IX Coordinator has discretion to dismiss a Formal Complaint if:
  - The Complainant notifies the Title IX Coordinator that they wish to withdraw the Formal Complaint;
  - The Respondent is no longer enrolled at or employed by Saint Louis University; or
  - There are circumstances that prevent Saint Louis University from gathering the necessary information to make a determination regarding responsibility.

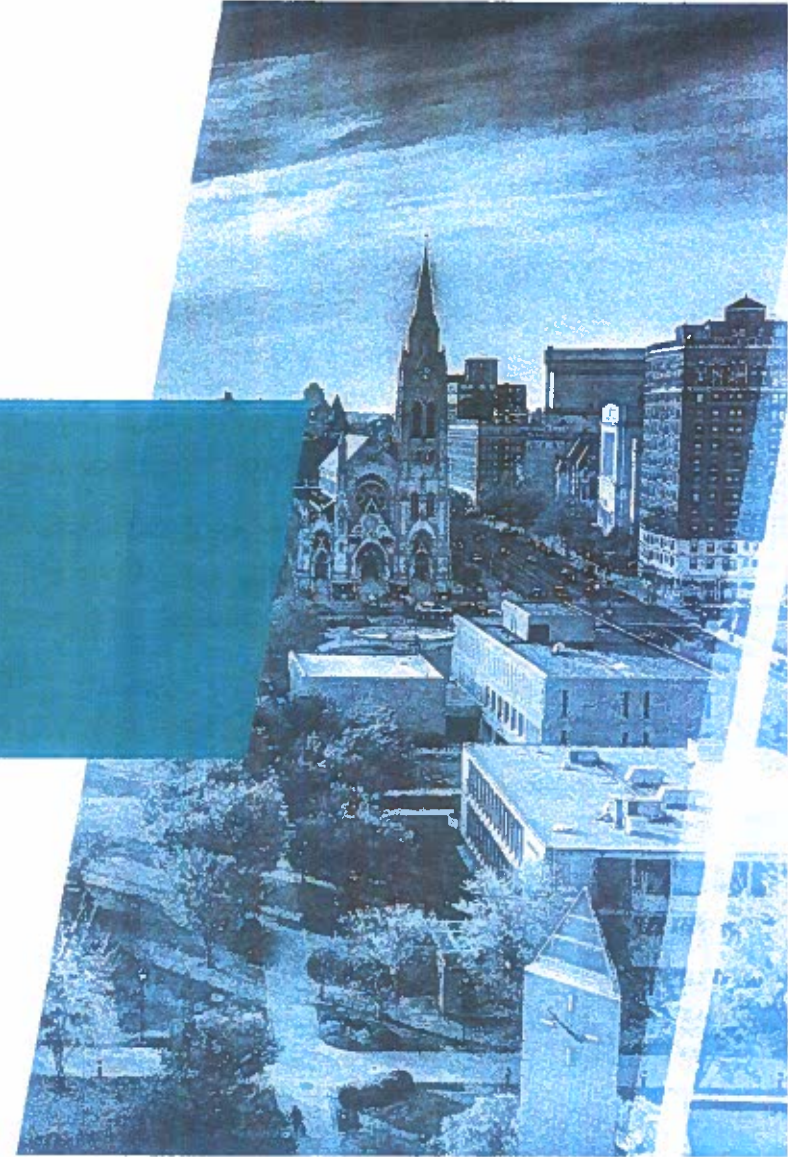


## Scope of the Grievance Process

- If a Formal Complaint is dismissed under this policy, the university may address the Prohibited Conduct as a violation of the Student Code of Conduct, the Faculty Manual, or the Staff Performance Management Policy.
- In those instances, the Complainant will be directed to the appropriate office.



# Prohibited Conduct



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## Sexual Harassment

“**Sexual Harassment**” as defined by this policy occurs when conduct satisfies one or more of the following:

- A. **Quid Pro Quo:** sexual harassment occurs when an employee of Saint Louis University provides an educational benefit or service in exchange for unwelcome sexual conduct;
- B. **Hostile Environment:** sexual harassment occurs when there is conduct on the basis of sex that is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the school’s education program or activity;
- C. **Clery Act:** sexual harassment occurs when there is an instance of **sexual assault, dating violence, domestic violence, or gender-based stalking** as defined by the Clery Act (see below for further definitions).

Sexual harassment also includes harassment based on gender, gender identity, gender expression or sexual orientation, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/ gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.



## Sexual Harassment

Conduct reported under this policy as sexual or gender-based harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the conduct at issue. Sexual harassment:

- May be committed by or against anyone, regardless of sex, gender, sexual orientation, gender expression/gender identity;
- May occur between people of the same sex or different sexes;
- Does not have to be “directed at” a specific person or persons to constitute harassment;
- May include both intentional conduct and conduct that results in negative effects, even if those negative effects were unintended;
- Often includes a power differential between the parties based on differences in age or educational, employment, or social status;
- May be committed by a stranger, an acquaintance, or someone with whom the Reporting Party has a current or previous relationship, including a romantic or sexual relationship;
- May occur in the classroom, in the workplace, in on-campus residential settings, or in any other setting related to an education program or activity; and
- May be committed in the presence of others, when the parties are alone together, or through remote communications, including email, text messages, or social media.

## Sexual Assault

- Sexual Assault refers to an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting System. These sexual offenses include instances where the Complainant is incapable of giving consent.



## Sexual Assault

- Rape refers to penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of other person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.



## Sexual Assault

- Fondling refers to the touching of the genitals (including vagina, penis or anus), the breasts, or the buttocks of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against that person's will where the Complainant is incapable of giving consent because of their youth or because of their temporary or permanent mental incapacity.





## Sexual Assault

- Incest refers to the non-forcible sexual intercourse between persons who are related to each other within the degree wherein marriage is prohibited by law.
- Statutory Rape refers to non-forcible sexual intercourse with a person who is under the statutory age of consent.





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## Stalking

**"Stalking"** occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

A course of conduct means two or more acts, including, but not limited to acts in which the stalker directly, or indirectly, or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

A reasonable person means a person under similar circumstances and with similar identities to the Complainant.

Stalking under this Policy refers to incidents in which the course of conduct alleged is in some part based on sex or gender.



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## Dating Violence

**“Dating Violence”** includes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse and does not include acts covered under the definition of domestic violence.



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## Domestic Violence

**“Domestic Violence”** includes a crime of violence, whether a felony or misdemeanor under the Missouri Revised Statutes, that is committed by: (1) a current or former spouse or intimate partner of the victim; (2) a person with whom the Complainant shares a child in common; (3) a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner; (4) a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; (5) any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



## Retaliation

**“Retaliation”** refers to any conduct that includes harassment, threats, intimidation, or coercion for the purpose of interfering with any right or privilege under this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in the Title IX Grievance Process.

A charge under the Student Handbook against an individual that does not involve a charge under this policy, but arises out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege under this policy, constitutes retaliation. Retaliation can be committed by any individual or group of individuals, not just a complainant or respondent.

*Note: Allegations of retaliation are addressed under different University policies.*

# Other Definitions



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## Complainant and Respondent

- The Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, as defined by this policy.
  - Complainant must be someone that is enrolled or attempting to enroll or employed by the University.
- The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, as defined by this policy.
  - Respondent can be anyone – affiliated with the University or not.



# Effective Consent



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## Effective Consent

- Effective Consent is an affirmative, knowing, and voluntary decision – clearly communicated through mutually understandable words (e.g. saying “yes”) and/or actions – to willingly engage in mutually acceptable sexual activity (e.g. to do the same thing, at the same time, in the same way, with another individual(s)).

## Effective Consent

- Effective Consent must be given freely, willingly, consciously and knowingly by each participant to any desired sexual contact.
- Consent may be withdrawn by any consenting party at any time during the sexual activity. Withdrawal of consent must be demonstrated by words and/or actions that indicate a desire to end sexual activity. Once an individual has communicated withdrawal of consent, all sexual activity must end.





### What is NOT Effective Consent:

- Conduct will be considered "without consent" if no clear consent, verbal or nonverbal, is given.
- Effective Consent cannot be given by someone who is incapacitated.
- Effective Consent cannot be gained through force, threat, intimidation or coercion.
- A current or previous dating or sexual relationship, by itself, does not constitute Effective Consent. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity. Effective Consent cannot be assumed based on prior sexual contact or subsequent sexual contact.
- Effective Consent cannot be inferred from silence, passivity or lack of resistance. Without outward communication or action, Effective Consent does not exist.
- Effective Consent cannot be inferred from an individual's attire or physical appearance.
- Effective Consent cannot be inferred from an individual's offer, acceptance, or participation in any form of non-physical sexual activity (e.g., social media forums, date/activity, consumption of alcohol, or invitation to a residence hall room or private area).
- A verbal "no," even if perceived to be indecisive, constitutes a lack of consent.

## Effective Consent

- Responsibility of the person initiating sexual activity to obtain the other party's Effective Consent (not the responsibility of the intended recipient of such sexual contact to affirmatively deny such contact).
- All parties must have Effective Consent throughout the duration of the sexual activity



## Effective Consent

- *Effective Consent can be given by words and/or actions. Relying solely on non-verbal communication, however, can lead to misunderstanding and as a result, a potential policy violation.*
- Effective Consent to one form of sexual activity is not, by itself, consent to other forms of sexual activity.





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— EST. 1818 —

## Incapacitation and Effective Consent

**Incapacitation:** A person violates this policy if they have sexual contact with someone they know, or should know, to be mentally incapacitated or to have reached the degree of intoxication that results in incapacitation.

An individual who is incapacitated cannot communicate Effective Consent to sexual activity. Incapacitation is the inability, temporarily or permanently, to give consent or communicate unwillingness, because an individual is mentally and/ or physically helpless, unconscious, asleep or unaware that the sexual activity is occurring.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's: decision-making ability; awareness of consequences; ability to make informed judgments; capacity to appreciate the nature and the quality of the act; or level of consciousness.

## Signs of Incapacitation

- A person is considered incapacitated, or unable to give consent, if they cannot understand the when, where, why, how, or who of a sexual encounter.
- Warning signs include:
  - Difficulty walking, stumbling, or falling down;
  - Being unable to stand or walk without assistance;
  - Slurred speech or an inability to communicate clearly;
  - Inability to focus or confusion about what is happening;
  - Urinating, defecating or vomiting; or
  - Combativeness, emotional volatility or other marked change in demeanor.





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## Incapacitation and Effective Consent

The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person in the same position would know or should have been aware of the Reporting Party's incapacitation. A Respondent cannot rebut a charge of Prohibited Conduct merely by asserting that they were drunk or otherwise impaired and, as a result did not know that the other person was incapacitated. Alcohol, drugs or other intoxicants do not negate or diminish the responsibility of an individual to obtain Effective Consent.





## Force/Coercion and Effective Consent

**Force/Coercion:** In some situations, an individual's ability to freely, willingly, and knowingly give Effective 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 or threat 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 Effective Consent.
- When an individual is intimidated, threatened – even a perceived threat – isolated, or confined. Such intimidation could involve the use or threat of a weapon.
- When an individual is coerced or unreasonably pressured to participate in 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. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity.

# Serving Impartially

Avoiding prejudgment, conflicts of interest, and bias



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## Serving Impartially

- Important that throughout process, individuals who administer process maintain an open mind – that they are neutral and unbiased.
- Only form an opinion at the conclusion of the process.



## Serving Impartially

- Be mindful of prior interactions or relationships that may give the appearance of a conflict of interest – and make the Title IX Coordinator aware if any arise.
- Decision-makers are not charged with finding a *particular* outcome and should avoid pre-conceived notions and consider *only* the information provided during the process.
- And, decision-makers must treat both parties equitably and with respect.

## Overarching Principles

- Both the Complainant and the Respondent will be treated equitably;
- There will be an objective evaluation of all evidence, both inculpatory and exculpatory, and a determination of credibility will not be made based on a person's status as a Complainant, Respondent, or witness;
- The Title IX Coordinator, Investigators, and adjudicators will be trained and free from any conflict of interest;
- The Respondent will be presumed not responsible throughout the Grievance Process unless a finding of responsibility is made at the conclusion of the Grievance Process.
- Each Party has the right to appeal a decision made by the hearing panel;



# The Grievance Process



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— EST. 1818. —

## Overarching Principles

- Each Party will be provided the range of available support measures and these measures will remain an option for the Parties throughout the Grievance Process;
- Each Party will be provided a range of possible sanctions should the end of the Grievance Process result in a finding of responsibility:
- The university will adhere to reasonably prompt timeframes for the resolution of all Formal Complaints, but will allow for delays with good cause;
- Evidence of information that is protected by a legally recognized privilege, for example, conversations between a doctor and patient or attorney and client, will not be included in the Grievance Process without written consent from the Party holding the privilege;
- The preponderance of the evidence is the standard of evidence utilized throughout the entirety of the Grievance Process.



# Formal Complaint



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## Formal Complaint

- *First step* – Filing a Formal Complaint
- A Formal Complaint is a document filed and signed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against the Respondent and requesting that the university investigate the allegation of Prohibited Conduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity at Saint Louis University. The Complainant cannot be anonymous and must sign their name on the Formal Complaint.



## Formal Complaint

- If a Complainant chooses not to file a Formal Complaint, the Title IX Coordinator will assess the available information and whether to file a Formal Complaint.
  - Requires analysis of circumstances, and notice to the Complainant.

## Formal Complaint

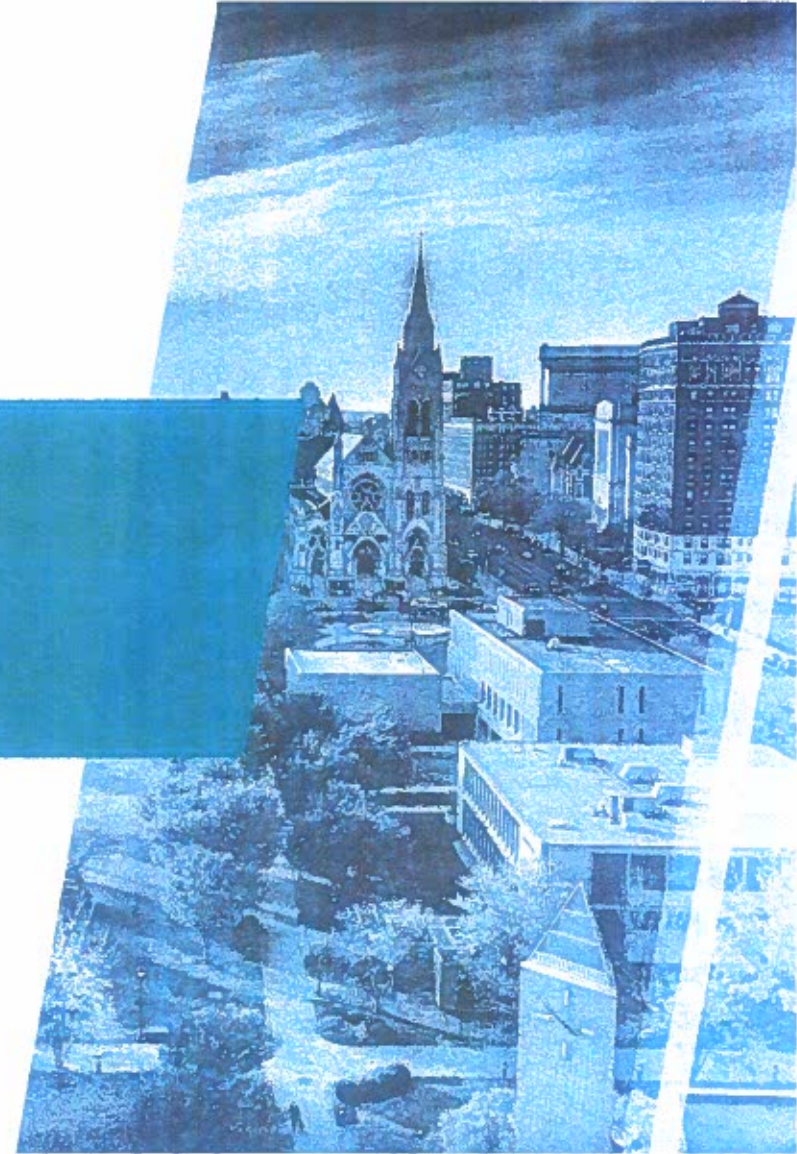
- Once a Formal Complaint is filed, the Title IX Coordinator will conduct an initial assessment to determine whether the allegations fall *within the scope of this policy*.
- Title IX Coordinator will evaluate whether the *mandatory* or *discretionary* dismissal requirements apply.
- Both Complainant and Respondent will receive notice if the Formal Complaint is dismissed.



# Notice



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— EST. 1864 —



## Notice

- If the Title IX Coordinator confirms that a Formal Complaint should proceed, Complainant and Respondent then receive notice in writing, including:
  - The allegations including the date, time, location, parties involved, and the conduct alleged to have occurred
  - The corresponding policy violations under this policy and/or other relevant university policy
  - An explanation of the Grievance Process and their rights under this policy
  - The presumption that the Respondent is not responsible for any policy violation prior to a finding of such at the conclusion of the Grievance Process



## Notice

- Notice will also include:
  - The right to an advisor;
  - The use of the preponderance of the evidence standard;
  - The right to inspect all information and evidence collected during the Grievance Process;
  - A proposed date and time to meet with the investigator
  - The available supportive measures;
  - The range of possible sanctions should the end of the Grievance Process result in a finding of responsibility.

# Advisor



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## Right to an Advisor

- Throughout the process, a Complainant or Respondent may have an advisor provided by the University or an advisor of their choice present at any meeting or proceeding related to the investigation or Grievance Process.
- Party may decide not to use an advisor, except for the hearing



## Right to an Advisor

- Advisor may be an attorney (but is not required to be)
- University provided advisors are trained on the grievance process
- The advisor may not be a fact witness or otherwise have any conflicting role in the process.



## Role of an Advisor

- Advisors may participate in university processes in an advisory capacity, but they may not take part directly in the investigation, hearing, or appeal, *with the exception of conducting cross-examination during a hearing.*
- If a Party wishes to speak privately with their advisor during the investigation or hearing, they may request a brief recess from the meeting or proceeding.
- The university has the right to determine what constitutes appropriate behavior on the part of an advisor as discussed in the *Rules of Decorum.*

## Role of an Advisor

- During the hearing, the hearing chair will enforce the Rules of Decorum – if a Party’s advisor violates the Rules of Decorum repeatedly, the hearing chair can decide to remove the advisor from the hearing
- Advisors may engage in cross examination of the other Party and witnesses, *but may only ask relevant questions*
- Reminder: Parties and witnesses may choose not to answer one or all of an Advisor’s questions.



## Timeframe

- Grievance process should be completed within 90 calendar days
- May extend the time frame for good cause, and will communicate the delay and the reason for delay to the Parties
- Good cause may include: the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, or to address other legitimate reasons.



## Right to an Advisor

- Throughout the process, a Complainant or Respondent may have an advisor provided by the university or an advisor of their choice present at any meeting or proceeding related to the investigation or Grievance Process.
- Party may decide not to use an advisor, except for the hearing



# Investigation



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## Investigation

- Title IX Coordinator will assign a trained investigator to conduct a prompt, thorough and impartial investigation to conduct a fair and reliable fact-gathering based on the allegations in the Formal Complaint.
- It is the responsibility of the university, not the Parties, to gather relevant information, to the extent reasonably possible.
- All Parties and witnesses are expected to provide truthful information.



## Investigation

- The investigator will be responsible for:
  - interviewing the Complainant and the Respondent, interviewing potential witnesses;
  - collecting relevant documentation and physical evidence, including documents, communications between the Parties, and other electronic records as appropriate;
  - creating a timeline; and
  - preparing a written report documenting the complete investigation.



## Investigation

- Both Complainant and Respondent have the equal opportunity to be heard, submit evidence/information, and identify witnesses.
- Witnesses must have observed the acts in question, have information relevant to the incident, or offer information that speaks to a Party's individual's character.
- No gag orders on the Parties.
- The investigator will send each Party and their advisor a written notice of investigative interviews, meetings, and proceedings.



## Investigation – Privileged Records

- Investigator will *not* have access to privileged records *without consent* of the Party (including medical records, psychiatric or counseling records, communications with attorneys, or communications with clergy).
- If a Party chooses to share such information, it will become a part of the investigation and be available to the other Party.



## Investigation – the Report

- Investigator will prepare a report that:
  - Summarizes the information gathered during the investigation,
  - Identifies potential policy violations, and
  - synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts



## Investigation – the Report – Chance to Review

- Parties have 10 days to review the report and evidence before it is finalized, and may submit additional comments or information to the investigator.
- The finalized report, including appropriate comments submitted by either Party, will be given to the hearing panel.

# Hearing



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## Hearing

- Title IX Coordinator will appoint a hearing panel of three trained individuals, *who are equal decision-makers*
- Minimum two of three panelists must decide that it is more likely than not that the Respondent is responsible in order for a finding of responsible to be made
- Title IX Coordinator will appoint one panelist to serve as the hearing chair



## Hearing Chair

- Hearing Chair:
  - Chooses a date for the hearing and provides written notice to the Parties
  - Inquires about Parties' advisors for the hearing
  - Creates an audio/audiovisual recording of the hearing
  - Ensures the hearing occurs in a timely fashion



## Hearing Chair

- Hearing Chair:
  - Conducts the hearing proceedings
  - Answers questions about the *Rules of Decorum*
  - Upholds the *Rules of Decorum* and decides when to remove an individual for violating the Rules





## Rules of Decorum

- Requires all participants to conduct themselves in an appropriate and respectful manner
- Advisors and panelists may not ask repetitive or argumentative questions
- Participants may not raise their voices or yell and may not interrupt others when speaking



## Hearing Chair

- Hearing Chair:
  - Provides preliminary decisions on relevancy of topics for the hearing, and *makes final relevancy determinations* for questions asked at the hearing
  - Provides *explanations* during the hearing if questions are excluded based on relevance
  - Summarizes the hearing panel's decision in a written document



## Hearing

- Hearings conducted using video-conferencing technology
- Hearing chair makes opening remarks, including the identity of the Parties and their advisors, what university policy violation(s) are alleged to have occurred, the application of the preponderance of the evidence standard, and a review of the expectations outlined in the Rules of Decorum.
- Parties have the opportunity to make opening statements (Advisors may not make opening statements, only Parties)

## Hearing – Complainant's testimony

- Complainant invited to *answer relevant questions from the hearing panel*
- After the panel's questions are completed, the Respondent's advisor may engage in cross examination of the Complainant. Up to Complainant whether they will answer.
- *The hearing chair will determine if each question from the advisor is relevant before the Complainant answers*
- If the Respondent and their advisor does not appear at the hearing, the university will provide an advisor to conduct the cross examination of the Complainant.

## Hearing – Respondent's testimony

- Respondent invited to *answer relevant questions from the hearing panel*
- After the panel's questions are completed, the Complainant's advisor may engage in cross examination of the Respondent. Up to Respondent whether they will answer.
- *The hearing chair will determine if each question from the advisor is relevant before the Respondent answers*

## Hearing

- After the Parties have been questioned, the hearing chair will call each witness requested by either Party or determined by the Hearing Panel to be necessary.
- *Each witness will be questioned by the hearing panel, and then by each Party's advisor (alternating which Party questions first). Again it is up to the witness whether they will answer the questions asked of them.*
- *Hearing chair will determine if each question from the advisors is relevant before the witness answers*



## Hearing

- If a Party or witness does not attend the hearing and submit to cross examination, *the hearing panel may rely on any statement made by that Party or witness in reaching a determination regarding responsibility.*
- The hearing panel is not permitted to draw an inference about the determination regarding responsibility *based solely* on the absence of a Party or witness from the hearing or their refusal to answer questions from the hearing panel or during cross examination. But if there are questions left unanswered, they may impact the determination.



## Hearing

- Each Party will have the opportunity to make a closing statement (Advisors may not make closing statements, only Parties)
- A closing statement may include a summary of the information shared during the hearing and the impact the Party believes it has on the decision before the hearing panel.
- It may also include how the Party has been impacted by the allegations and what their desired outcome of the hearing is.





# Relevance Determinations



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## Relevance

- Relevant questions are those that call for information that will assist the members of the hearing panel in deciding whether the allegation(s) and information in the investigation is either **more or less likely to be true**.
- A question cannot be excluded on the basis of relevance solely because it calls for prejudicial evidence or evidence of character.



## Relevance

- Questions concerning the Complainant's sexual history are not relevant unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

# Written Determination



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— EST. 1864 —



## Written Determination of Responsibility

- The written decision will include the following:
  - Identification of each allegation and the corresponding policy violation;
  - An explanation of the procedural steps taken through the entirety of the Grievance Process;
  - A determination regarding responsibility for each alleged policy violation;
  - *Findings of fact made by the hearing panel that led to their decision*, conclusions about whether the alleged conduct occurred, and a rationale for the finding for each alleged policy violation;
  - Any disciplinary sanctions imposed on the Respondent;
  - Any remedies will be provided to the Complainant;
  - An explanation of each Party's right to appeal and the appeal process.

# Sanctions



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— EST. 1818 —



## Sanctions

- Sanctions for a violation of this policy by a student may include: expulsion; suspension; disciplinary probation; mandated counseling assessment which may include anger management course(s), alcohol and/or drug education program(s), and other requirements based upon the counseling assessment; restrictions on campus privileges including restrictions on campus housing or participation in student activities; community service; and/or other educational sanctions.
- Sanctions for a violation of this policy by an employee may include: leave with pay, leave without pay, termination, change in job responsibilities or duties, relocation of assignment, mandated counseling or anger management assessment, mandated training, such as sexual harassment training.

# Appeals



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## Appeals

- Either Party may appeal the decision of the hearing panel, or of a dismissal by the Title IX Coordinator
- Appeals are due within 3 days of the decision being appealed
- Title IX Coordinator will appoint an appeal panel of three individuals



## Appeals

- The grounds for appeal may only be one or more of the following:
  - There was a material deviation from the procedures set forth in this policy or applicable provisions of the Student Handbook that would significantly impact the outcome of the case or may have resulted in a different finding;
  - New or relevant information, not available at the time of the investigation or hearing, has arisen that would significantly impact the outcome of the case;
  - The Title IX Coordinator, investigator, or member of the Hearing Panel had a conflict of interest or bias that affected the outcome of the case.
- Dissatisfaction with the outcome of the investigation, and failure of a Party or witness to attend or participate in the investigation or hearing process, are not grounds for appeal.

## Appeals

- The non-appealing Party will have the opportunity to review the appeal and will have 3 days to submit a response.
- Appeals are not intended to be a full rehearing of the report and are generally limited to a review of the written documentation and pertinent documentation for the appeal.
- Absent extraordinary circumstances, the appeal panel does not meet with either Party.
- The decision of the appeal panel is final and should generally be completed within 15 business days.

Questions?



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Thank you all for the dedication and  
compassion you have for this work  
and the service to our community!!

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