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Policies Policies & Procedures

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Title IX Policy - 2C9 & 3C8

I. General Policy Statement

- A. Southern Illinois University Edwardsville (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; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; 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 will promptly discipline any individuals or organizations within its control who violate this Policy. The University encourages you to promptly report incidents that could constitute violations of this Policy to the Title IX Coordinator (as outlined in Section 4 of this Policy).
- C. SIUE student-athletes with inquiries concerning the application of Title IX to programs and activities may contact the Assistant Title IX Coordinator: Ms. Katie Zingg, Assistant Director, Intercollegiate Athletics, Vadalabene Center, Room 1331B, Campus Box 1129, SIUE Campus, Edwardsville, IL 62026-1129, Telephone: (618) 650-5475, Email: kzingg@siue.edu.

II. Applicability

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. It applies to conduct that occurs on University owned or controlled premises, in an education program or activity including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects a person's education or employment with the University or potentially poses a risk of harm to members of the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

III. Effective Date

This policy and procedure will be applicable to incidents which occur on or after August 14th, 2020. For incidents which occurred before August 14th, 2020, the University's [Sexual Assault, Sexual Misconduct and Relationship Violence Policy & Procedures](#) will be applicable.

IV. Reporting Incidents

- A. This policy distinguishes between **reporting** sexual misconduct incidents on the one hand and **filing Formal Complaints** on the other. Reporting Sexual Misconduct incidents informs the University of the incident, which allows the institution to provide Supportive Measures (as outlined in Section 6A of this Policy) to the Complainant and does not necessarily result in the initiation of the Grievance Process (as outlined in Section 7 of this Policy). All Complainants who *report* incidents of Sexual Misconduct will be offered individualized Supportive Measures. If Complainants wish to initiate the Grievance Process, they should file a Formal Complaint. The Grievance Process may involve an investigation into the incident and a hearing to determine the responsibility of the Respondent.
- B. Any person may report Sexual Misconduct, Retaliation, or other conduct prohibited under this Policy to the Title IX Coordinator. Any person may report an incident, whether or not the person reporting is the person alleged to be the victim of the incident, and it can be a verbal or written report to the Title IX Coordinator:

Jamie Ball
 Director for Equal Opportunity, Access & Title IX Coordination
 618-650-2333
jball@siue.edu
 Rendleman Hall 3310
 Campus Mail Box 1025

1. **Filing a Formal Complaint.** The Complainant may file a Formal Complaint with the Title IX Coordinator, as outlined in Section 7B of this Policy.
2. **Anonymity.** You may make an anonymous report by telephone, in writing or electronically on the forms found at <https://www.siue.edu/eoa/reporting-options-resources/report-an-incident.shtml> . It's important to understand that your decision to remain anonymous may limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.
3. **Confidentiality.** You can discuss an incident in strict confidence by using the confidential resources outlined in Section 4E of this Policy.
4. **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.

- C. **Reporting to Law Enforcement.** You may also file a police report with Southern Illinois University Edwardsville Police Department at 618-650-3324 (non-emergency) or 911 (emergency) or to the City of Edwardsville Police Department 618-656-2131 (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Office can 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 to the University Police Department.
- D. **Reporting to Outside Entities.** You may also contact the following external agencies:

[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

Office for Civil Rights
 U.S. Department of Health and Human Services
 233 N. Michigan Ave., Suite 240
 Chicago, IL 60601
 Customer Response Center: (800) 368-1019
 Fax: (202) 619-3818
 TDD: (800) 537-7697
 Email: ocrmail@hhs.gov

For employees:

U.S. Equal Employment Opportunity Commission
 St. Louis District Office
 1222 Spruce Street
 Room 8.100
 St. Louis, MO 63103
 Phone: 1-800-669-4000

Illinois Department of Human Rights

Chicago Office
 100 West Randolph Street
 10th Floor
 Intake Unit
 Chicago, IL 60601
 (312) 814-6200
 (866) 740-3953 (TTY)
 (312) 814-1436 (FAX)

Springfield Office
 535 West Jefferson
 1st Floor
 Intake Unit
 Springfield, IL 62702
 (217) 785-5100
 (866) 740-3953 (TTY)
 (217) 785-5106 (FAX)

E. Confidential Support and Resources. Students may discuss an incident with Confidential Employees or an off-campus resource (e.g. rape crisis center, doctor, psychologist, clergyman, 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 clergyman 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 student survivors of sexual violence and relationship violence. The advisor will provide confidential services and have privileged and confidential communications with survivors. The advisor will inform the survivor of possible next steps regarding reporting options and possible outcomes, will notify the survivor of resources and services on-campus and in the community, will inform the survivor of their rights and the University's responsibilities to enforce orders of protection and no contact orders; and if requested by the survivor, the advocate 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 survivor with making contact and/or reporting an assault.

The Confidential Advisor is:
 Call For Help, Inc.
 618-397-0975
 RM 0220, Student Success Center

Counseling Services provides individual counseling and legal and medical advocacy 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 licensed 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. 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, and requesting a callback from a counselor.

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.

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

V. Parties' Rights Regarding Confidentiality, Requests to Not Investigate, and Requests to Dismiss Formal Complaints.

The University has great respect for the privacy of the parties identified in a report or Formal Complaint. Under state law, however, Responsible Employees who receive information of alleged Sexual Misconduct must share that information with the Title IX Coordinator. As such, the University may need to act to maintain campus safety and must determine whether to investigate further, regardless of the Complainant's request for confidentiality or request to not investigate a report received by the Title IX Coordinator.

In making determinations regarding requests for confidentiality, Complainants' requests to not investigate, Complainants' requests to dismiss Formal Complaints, and/or requests to not disclose identifying information to Respondents, the Title IX Coordinator must deliberately weigh the rights, interests, and safety of the Complainant, the Respondent, and the campus community. Factors the University must consider when determining whether to investigate an alleged incident of Sexual Misconduct include, but are not limited to:

- The seriousness of the alleged incident;
- Whether the University has received other reports of alleged Sexual Misconduct by the alleged Respondent;
- Whether the alleged incident poses a risk of harm to others; and
- Any other factors the University determines relevant.

If the University dismisses a Formal Complaint (as outlined in Section 7B(3) of this Policy), the University must provide the Complainant and Respondent a written notice of the dismissal and the reason(s) for the dismissal.

In the course of the Grievance Process, the University may share information only as necessary with people who need to know in compliance with the law, which may include but is not limited to the investigators, witnesses, Complainant, Respondent, parties' advisors, hearing officer, and the appellate officer—if applicable. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation or in any other part of the Grievance Process.

VI. Resources and Assistance.

Immediate Assistance

Sexual Assault

- Call for Help Sexual Assault Victims Care Unit: 618-397-0975; <http://callforhelpinc.org/what-we-do/sexual-assault-victims-care-unit.html>
- 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 www.icasa.org
- National Sexual Assault Hotline: 800-656-HOPE(4673); <https://www.rainn.org/het-help/national-sexual-assault-hotline>

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 <http://wellspringresources.co/> for more information
- National Domestic Violence Help Line: 877-TO END DV (877-863-6338); http://www.cityofchicago.org/dam/city/depts/fs/supp_info/DV/MODVsafetycardEnglish.pdf
- AARDVARC – An Abuse, Rape and Domestic Violence Aid and Resource Collection at www.aardvarc.org
- The Illinois Coalition Against Domestic Violence: 217-789-2830; <https://www.ilcadv.org/>
- Madison County State's Attorney Domestic Violence Special Prosecution Unit: 618-692-6290; http://www.co.madison.il.us/departments/state_s_attorney/domestic_abuse.php
- Illinois Department of Children and Family Services: 800-25-ABUSE (800-252-2873); <http://www.state.il.us/dcf/index.shtml>

A. Supportive Measures

The University will offer reasonably available individualized services, without any fee or charge, to the parties involved in a reported incident of Sexual Misconduct with or without the filing of a Formal Complaint, when applicable.

Supportive Measures may include but are not limited to housing reassignment, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, mutual restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus, or other similar measures tailored to the individualized needs of the parties.

Supportive Measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other party. Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an emergency removal (as outlined in Section 8A) is appropriate.

The University will maintain the confidentiality of Supportive Measures provided to the parties, to the extent that maintaining such confidentiality does not impair the ability of the University to provide the Supportive Measures.

VII. The Grievance Process.

A. Key Officials in the Grievance Process.

1. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy. The Title IX Coordinator is available to discuss the Grievance Process, coordinate Supportive Measures, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the University community may contact the Title IX Coordinator with questions.

2. Investigator(s). The University will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint. The investigators are neutral and impartial fact-finders, and gather evidence during the investigation. The investigators are

responsible for completing an investigation report at the conclusion of the investigation. The Title IX Coordinators may supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary to ensure compliance with Title IX.

3. Hearing Officer/Panel. The hearing officer/panel is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner.

B. Formal Complaints Against Students and Employees.

1. Applicability of the Grievance Process. The Grievance Process in this Policy applies to the following situations:

- a. The Respondent is an employee at the University at the time of the alleged conduct;
- b. The conduct alleged is Sexual Harassment under this Policy;
- c. The alleged conduct occurred against a person in the United States; and
- d. Where the Complainant was participating or attempting to participate in an education program or activity at the University. This element is met if the conduct occurred in any of the following: on any University property; during any University activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

2. To begin the Grievance Process, the Complainant must sign a Formal Complaint (requesting an investigation) and submit it to the Title IX Coordinator. The Complainant must submit a written statement setting out the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:

- Complainant's name and contact information;
- Respondent's name;
- Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
- Date(s) and location(s) of the alleged occurrence(s); and
- Names of any witnesses to the alleged occurrence(s); the resolution sought.

The Complainant may also submit any documents or information that is relevant to the Formal Complaint.

The Title IX Coordinator may also sign a Formal Complaint against a Respondent (requesting an investigation) and in doing so will initiate the Grievance Process.

3. Mandatory and Discretionary Formal Complaint Dismissals.

- a. Under Title IX regulations, universities are required to distinguish between prohibited conduct that is "under Title IX" and prohibited conduct that is a violation of university policy. Under Title IX, the University must dismiss a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where:

- Sexual Harassment is alleged and where:
 1. The conduct alleged does not meet the definition of Sexual Harassment;
 2. The alleged conduct did not occur in the University's education program or activity; or
 3. The alleged conduct did not occur against a person in the United States.

A dismissal under this provision only applies to allegations of Sexual Harassment under Title IX (See Sec. 10, below) In such an instance, the University may still investigate a Formal Complaint for allegations of Sexual Harassment under the University Sexual Harassment Complaint Procedure, as the definition of sexual harassment under that policy is broader than the definition required under Title IX. The University may also investigate allegations of prohibited conduct but it will not technically be "under Title IX."

- b. The University may dismiss a Formal Complaint, at its discretion, under this Policy's Grievance Process for any of the following circumstances:

- If the Complainant requests in writing to dismiss a Formal Complaint (e.g. withdraws the Formal Complaint or any allegations therein), as outlined in Section 5 of this Policy;
- If the Respondent is an employee and no longer employed by the University at the time the Formal Complaint is filed;
- Any specific circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
- The conduct alleged does not meet the definition of any prohibited conduct under this Policy.

- c. If the University dismisses a Formal Complaint, the University must provide both parties a written notice of the dismissal and the reason(s) for the dismissal.

4. Concurrent Criminal or Civil Proceedings. The University will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint in a University Grievance Process. The University has an independent duty to respond to Formal Complaints of Sexual Misconduct. At the University's discretion, the University may delay the investigation or Grievance Process for a brief period due to concurrent criminal or civil proceedings on a case-by-case basis.

C. Written Notice of the Formal Complaint, and Notification of University Offices Offering Assistance.

After receiving a Formal Complaint, the Title IX Office will provide a written notice to the parties of the Formal Complaint and available University resources and assistance. The written notice of the Formal Complaint will include the following:

- A notice of the Grievance Process, as outlined in this Policy;
- A notice of the allegations that potentially constitute prohibited conduct under this Policy, including sufficient details about the alleged conduct, including the identity of the parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by the University at the time of the Formal Complaint;
- A statement of the potential policy violations being investigated;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the Grievance Process;
- Both parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
- A statement that the parties may review evidence gathered as part of any investigation;
- Provision of this Policy that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action; and

- Any other relevant information for the written notice.

D. Informal Resolution Option.

After the parties have been provided a copy of the written notice of a Formal Complaint, both parties may, in writing, voluntarily agree to use this Informal Resolution option, if applicable, at any point prior to reaching a determination regarding responsibility, but the parties are not required to do so. The Informal Resolution entails the parties forgoing the Grievance Process (including the investigation and hearing, depending on when the parties agree to engage in an Informal Resolution). The Informal Resolution may include a mediation process, for example.

At any point prior to agreeing to an Informal Resolution, each party has a right to withdraw from the Informal Resolution process and resume the Grievance Process with respect to the Formal Complaint.

Alternate Resolution is an informal process [including mediation or restorative practices, etc.] by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

E. Investigation of the Formal Complaint – Gathering of Evidence.

1. After the University provides written notice of a Formal Complaint to the parties, the Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator.
2. The University will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Grievance Process.
3. Evidence. The parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint, and may have an advisor of their choice attend any related interview, meeting, or proceeding in the Grievance Process. Advisors are not permitted to actively participate in meetings or proceedings in the Grievance Process, unless explicitly outlined in Section 7.G(10) of this Policy. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.
4. Witness Interviews. The investigators will interview relevant and available witnesses. Neither the Complainant nor the Respondent will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.
5. Investigation Timeframe. The investigation of a Formal Complaint will be concluded within 90 days of the filing of a Formal Complaint. The parties should be provided updates on the progress of the investigation, as needed.
6. Access to Evidence. Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained (whether relevant or not) as part of the investigation to both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice). Both parties will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.
7. Completed Investigation Report. The completed investigation report will outline each of the allegations that potentially constitutes prohibited conduct under this Policy, provide the timeline (e.g. procedural steps) of the investigation, and fairly summarize relevant evidence, participant statements, and responses to questions. The investigator will provide a completed investigation report concurrently to both parties and each party's advisor, if any, upon a party's signed information release for their advisor of choice at least 10 days prior to the date of the scheduled hearing to review and provide a written response at the hearing. A copy of the completed investigation report will be issued to the Title IX Coordinator, and to the hearing officer assigned for the hearing.

F. Standard of Evidence & Presumption of Not Responsible.

All Grievance Processes will use the preponderance of the evidence standard, as defined in this Policy. By law, it is presumed that the Respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the Grievance Process.

G. Live Hearing – Determination of Responsibility.

1. Absent a Formal Complaint dismissal or the parties' decision to reach an Informal Resolution agreement (if applicable), the University will provide a live hearing for all Formal Complaints subject to the Grievance Process as outlined in this Policy.
2. Written Notice of the Hearing. The University will provide at least 10 days written notice to participants of the hearing (and the participant's advisor, if any, upon a participant's signed information release for their advisor of choice), including the date, time, location, names of all participants of the hearing (including the hearing officer, and all parties and participants in the investigation report), purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered.
3. Challenges to the Hearing Officer(s). Either party may challenge the fairness, impartiality or objectivity of a hearing officer. The challenge must be submitted in writing to the hearing officer through the office coordinating the hearing within 4 days after notice of the identity of the hearing officer, and must state the reasons for the challenge. The hearing officer will be the sole judge of whether he or she can serve with fairness, impartiality, and objectivity. In the event that the hearing officer recuses themselves, an alternative hearing officer will be assigned in accordance with the institution's procedures.
4. Hearing Officer Duties at the Hearing. The hearing officer will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question participants who testify at the hearing, and is entitled to have the advice and assistance of legal counsel from the Office of General Counsel of the Southern Illinois University System.
5. Access to Evidence. Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report, as outlined in Section 7.E(6) in this Policy.

6. Separate Rooms and Virtual Participation. At the request of either party, the University will provide the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually, and are not required to be physically present at the same physical location of the hearing.
7. Each party may make opening and closing statements.
8. Privileged Information Excluded. No person will be required to disclose information protected under a legally recognized privilege. The hearing officer must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
9. Advisor of Choice. Each party may have an advisor of their choice at the hearing. If a party does not have an advisor, the University will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.
 - Questioning of the participants in the hearing: The hearing officer may, at the hearing officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The advisors may ask questions under the following procedure:

The advisor will ask a question of the applicable participant.

- Before the participant answers a question, the hearing officer will rule as to whether the advisor's question is relevant to the alleged conduct charges.
 - If the hearing officer rules the advisor's question as not relevant, then the hearing officer must explain any decision to exclude a question as not relevant. If the hearing officer allows the question as relevant, the participant will answer it.
10. Prior Sexual History: A Complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.

Not submitting to cross-examination: If a party or witness refuses to submit to any cross-examination questions during the hearing, the hearing officer will not rely on any statement of that party or witness, when reaching a responsibility determination. The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

11. Hearing Officer Determination. The hearing officer will issue a written determination, which must include the following:
 - The allegations that potentially constitutes prohibited conduct under this Policy;
 - A description of all of the procedural steps of the Grievance Process under this Policy (from receipt of a Formal Complaint to the determination regarding responsibility of the Respondent, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
 - The findings of fact supporting the hearing officer's determination;
 - The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
 - The disciplinary sanctions, if applicable;
 - The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
 - The institution's procedures and permissible bases for the parties to appeal, if applicable.

The hearing officer will send a copy of the written determination concurrently to the parties, in addition to the Dean (for student Respondents) or appropriate administrator (for employee Respondents), and the Title IX Coordinator.

12. The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the University. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

H. Sanctions and Remedies.

1. 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
 - Other sanction(s) or remedies as deemed appropriate under the circumstances.
2. 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
 - Other sanction(s) or remedies as deemed appropriate under the circumstances

I. Appeals and Additional Processes Provided to Students and Employees.

Appeals. Either party may appeal in writing to a hearing officer's determination regarding a Respondent's responsibility under the Grievance Process or from the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint) within 10 days of notification of such a determination, on the following bases:

- A procedural irregularity that affected the outcome of the matter;

- There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the parties (generally, or specifically in this matter) that affected the outcome of the matter.

The appellate officer must not be the same person as the Title IX Coordinator, investigator(s), or hearing officer in the Grievance Process. Both parties will be notified in writing when an appeal is filed and the appeal procedures will apply equally for both parties.

Any non-appealing party (or the University) will have 7 days from the notification of an appeal to submit a written statement in support of the outcome. The decision-maker on the appeal will release a written decision within 21 days from the date of the appeal.

The appellate officer will release a written decision within 21 days from the date of the appeal to:

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

J. Grievance Process Documentation.

The University (through the appropriate 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 are private and confidential to the extent possible under law. Student records of the Grievance Process are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Illinois Freedom of Information Act, and included in the employee's official employment record.

K. Grievance Process Timeframe.

The entire Grievance Process (outlined in Section 6 of this Policy, including any appeal) will be completed in no more than 150 days from the filing of the Formal Complaint. However, the circumstances may require a temporary delay in this timeframe and the University may extend this timeframe for good cause. In such an instance, the University will provide written notice to the parties of the delay or extension and the reason(s) for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The time period in this section does not include the period the parties attempted but failed to reach an agreement in the Informal Resolution Process, if applicable, and in such a case, the Grievance Process timeframe will be extended by the period the parties attempted to reach an Informal Resolution (outlined in Section 7D of this Policy).

VIII. Emergency Removal and Employee Administrative Leave.

A. Emergency Removal.

A Respondent may be removed from the University's education program or activity on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal is justified because the Respondent poses an immediate threat to the physical health or safety of an individual arising from the allegations of Sexual Misconduct. Under these circumstances, the Respondent will be notified in writing of the emergency removal from the University's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.

B. Employee Administrative Leave.

An employee Respondent may be placed on administrative leave, in accordance with the University's policy and procedures on employee administrative leave, during the pendency of a Grievance Process, as outlined in this Policy.

IX. Dissemination of Policy and Educational Programs.

A. Dissemination.

This Policy will be made available to all University administrators, faculty, staff, and students online at <https://www.siu.edu/policies/2c9.shtml> and in University student catalog(s) and any employee handbook of operating procedures. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Misconduct Policy, including but not limited to at the beginning of each fall and spring semester. The notice will include information about Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy, including the Formal Complaint procedure, the University Grievance Process, and available resources, such as support services, health, and mental health services. The notice will specify the right to file a Formal Complaint under this Policy, right to file a police report to law enforcement, the Title IX Coordinator's contact information, and will refer individuals to designated offices or officials for additional information.

B. 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, risk reduction, and bystander intervention: siue.edu/ea

C. 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 on the University's website: siue.edu/ea

D. Annual Reporting and Notice.

The University's Title IX General Policy Statement will be made available to all students, faculty, and employees online siue.edu/ea in required publications and in specified departments.

X. Additional Conduct Violations under this Policy.

A. Retaliation.

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 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.

B. 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 Sexual Misconduct 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.

C. Interference with the Grievance Process.

Any person who interferes with the Grievance Process (outlined in Section 7 of this Policy) is subject to disciplinary action up to and including dismissal or separation from the University. Interference with a Grievance Process may include, but is not limited to:

- a. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- b. Removing, destroying, or altering documentation relevant to the Grievance Process; or
- c. Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

D. Failure to Report for 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, including termination.

XI. Definitions and Examples

A. Sexual Harassment is defined by Title IX regulations to be conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo:
 - a. an employee of the recipient,
 - b. conditions the provision of an aid, benefit, or service of the recipient,
 - c. on an individual's participation in unwelcome sexual conduct; and/or
2. Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the University's education program or activity.^[1]

B. "Sexual Assault" is any type of sexual contact or sexual intercourse with another that occurs without that person's knowing and voluntary consent.

C. "Sexual Contact" includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

D. "Sexual Intercourse" includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand, etc.) or object, or oral penetration involving mouth to genital contact.

E. "Sexual Exploitation" is taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, personal benefit, or any other non-legitimate purpose. Examples of sexual exploitation include:

- non-consensual video or audio-taping of sexual activity;
- going beyond the boundaries of consent (such as letting others hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STD or HIV to another person;
- exposing one's genitals in non-consensual circumstances;
- inducing another to expose their genitals;

F. "Stalking" is when any person purposely and repeatedly (two or more times) engages in an unwanted course of conduct that would cause a reasonable person to fear for his, her, or others' safety, or to suffer substantial emotional distress. Stalking can be a form of Sexual Harassment. Such harassment can be either physical stalking or cyber stalking. Stalking may present a safety concern or be an indicator of a potential safety concern.

G. "Dating Violence" refers to violence by a person who has been in a romantic or intimate relationship with the Complainant. Whether a relationship exists will depend on the length, type, and frequency of interaction.

H. "Domestic Violence" refers to violence committed by a current or former spouse or relationship partner, current or former cohabitant, a person with whom a Complainant shares a child in common, a person similarly situated to a spouse under domestic or family violence law, or anyone else protected under domestic or family violence law.

I. "Aiding or Facilitating" refers to when any individual or group of individuals aids, facilitates, promotes, or encourages another to commit a violation under this Policy. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so.

J. "Retaliation" refers to any acts, threats, or attempts to discourage a person from reporting prohibited conduct or participating in the investigation or hearing process. Retaliation also refers to any acts, threats, or attempts to seek retribution against a Complainant, Reporting Party, the Accused Party, or any individual or group of individuals involved in the investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals, not just a Reporting Party or Accused Party.

^[1] Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

XII. Understanding Consent and Related Definitions

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.

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 anytime. 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. It is a violation of the Sexual Harassment Policy if faculty members, coaches, advisors, or other staff members become involved in amorous or sexual relationships with students who are enrolled in their classes or subject to their supervision, even when both parties appear to have consented to the relationship. Likewise, it is a violation for a supervisor and a directly reporting employee to have a consensual amorous or sexual relationship with each other.

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.

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 implicate mandatory child abuse reporting. For additional information regarding child abuse and mandatory reporting see [Human Resources](#).

Incapacitation, Alcohol, Coercion, and Related Concepts:

A person violates the Title IX Policy if he or she has sexual contact with someone he or she knows, 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 he or she 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.

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 he/she is 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.

Approved by Chancellor effective 8/14/2020

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Document References: 2C9 & 3C8

Origin: OC 2/16/07; OC 11/18/11; OC 4/20/15; OC 8/14/20



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