

Office/Contact: Office of Title IX/Equal Opportunity

Source: SDBOR Policies 1:17, 1:17:1; University Policies 3:1, 4:6, 10:8

Link: <https://www.sdbor.edu/policy/documents/1-17.pdf>; <https://www.sdbor.edu/policy/documents/1-17-1.pdf>; <https://www.sdstate.edu/sites/default/files/Student%20Conduct%20Code.pdf>; <https://www.sdstate.edu/sites/default/files/policies/upload/Human-Rights-Complaints.pdf>; https://www.sdstate.edu/sites/default/files/2017-10/exclusion_from_the_university.pdf

SOUTH DAKOTA STATE UNIVERSITY Policy and Procedure Manual

SUBJECT: Sexual Harassment

NUMBER: 4:4

1. Purpose

This policy implements SDBOR Policy 1:17 to assist students, employees, and other individuals in understanding the University's prohibition on Sexual Harassment, the process for investigating and determining when Sexual Harassment has occurred, and the appeal process available when a violation is found. In the event of a conflict or absence of a provision SDBOR Policy 1:17 controls.

2. Definitions

- a. **Advisor:** an individual selected by a party, or the University on behalf of the party, to appear at interviews, meetings, and hearings with the party and otherwise assist and advise the party during the complaint process. An Advisor may be, but is not required to be, an attorney.
- b. **Complainant:** an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- c. **Consent:** as set forth in SDBOR Policy 1:17:1(3)E
- d. **Day:** calendar days
- e. **Education Program or Activity:** any location, event, or circumstance taking place in the United States where the University exercises substantial control over both the Respondent and the context in which the alleged violation occurs—including locations that correspond to land, buildings, facilities, and other property in the possession of, or owned, used, or controlled by, the University, and adjacent streets and sidewalks. For purposes of this policy, the term also includes any building owned or controlled by a student organization that is officially recognized by the University.
- f. **Formal Complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment.
- g. **Informal Resolution:** an optional process, such as a mediation, that does not involve a full investigation and determination regarding responsibility.

- h. Respondent: an individual that has been reported to be the perpetrator of conduct that could constitute a violation of referenced policies.
- i. Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following:
 - i. An employee of the University conditioning the provision of education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
 - ii. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or
 - iii. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA), the definitions of which are set forth in SDBOR Policy 1:17.1.
- j. Supportive Measures: non-disciplinary, non-punitive individualized services offered to the Complainant and/or the Respondent. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
- k. Title IX Coordinator: the individual responsible with ensuring compliance with Title IX, or their successor or designee, with an office located in Morrill Hall, room 100, (605) 688-4128, and equal.opportunity@sdstate.edu.
- l. Working Day: Monday through Friday, except for holidays and other times when the University's administrative offices are closed.
- m. Written Notice: notice provided via email to the student and/or employee at their official institutional email account. Notice is deemed received the day after it is sent via email.

3. Policy

- a. This policy and its procedures apply to allegations of Sexual Harassment occurring in connection with any University Education Program or Activity. Allegations of discrimination or harassment in University activities not constituting Sexual Harassment will be handled pursuant to SDBOR Policies 1:18, 3:4, University Policies 3:1, 4:6, or all, as appropriate. Allegations not constituting discrimination or harassment, will be handled by the supervisor with assistance of an Employee Relations Specialist in accordance with other employment policies and procedures.
- b. The Title IX Coordinator will treat Complainants and Respondents equitably by offering Supportive Measures, with or without the filing of a Formal Complaint, and when a Formal Complaint is filed, by following the complaint procedure outlined below prior to the imposition of any disciplinary sanctions or other actions that are not Supportive Measures.
 - i. Supportive Measures shall be offered at no cost and are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party, which may include measures designed to

protect the safety of all parties or the University's educational environment or deter Sexual Harassment.

- ii. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.
 - iii. The University will keep confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measure.
 - iv. Nothing contained in this policy shall be construed to preclude the University from removing a Respondent from a University Education Program or Activity on an emergency basis. The Title IX Coordinator will undertake an individualized safety and risk analysis, confer with appropriate professionals to determine whether an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal and will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Where the Respondent is a member of the public, University Policy 10:8 applies.
 - v. It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the live hearing.
- c. The Title IX Coordinator, investigator, hearing examiner, and any other person involved in the Informal Resolution process, will not have a conflict of interest or bias for or against Complainants and Respondents generally or as an individual.
 - d. A Complainant and Respondent may bring an Advisor to any meeting, interview, or hearing under this procedure. If a Complainant or Respondent does not select an Advisor, one will be provided by the University at no cost to be used during the live hearing. The Advisor provided by the University may or may not be an attorney.
 - e. Persons who bring complaints of Sexual Harassment at the University and persons who participate in the investigation and disposition of such complaints will not be subject to harassment, interference, intimidation, or retaliation.
 - f. The burden of gathering evidence is on the University. The Title IX Coordinator will submit Formal Complaints to the TIX/EO Investigators to gather evidence. Parties may be requested to provide evidence the investigator cannot access (e.g. physician records, or records of other recognized professionals or paraprofessionals) or to provide consent facilitating the investigator to access records for purposes of investigating the Formal Complaint.
 - g. The Title IX Coordinator, successor or designee, will ensure University compliance with training, publications and notices, reporting mechanisms, records and recordings maintenance, monitoring compliance, and other responsibilities are completed in accordance with SDBOR Policy 1:17, correlated policies, and applicable laws.

4. Procedures

a. Receipt of Allegation

- i. Upon the receipt of a report of Sexual Harassment, the Title IX Coordinator will contact the Complainant to schedule a time to meet. At this meeting the Title IX Coordinator will explain the complaint process, discuss with the Complainant their wishes on how to proceed, and discuss and offer Supportive Measures.
- ii. If the Complainant or the Title IX Coordinator files a Formal Complaint the investigation process begins.
- iii. If the Complainant declines to file a Formal Complaint, or the Title IX Coordinator concludes the reported conduct, when viewed as true, does not constitute Sexual Harassment, the Title IX Coordinator will inform the Complainant of resources the University may be able to provide. The allegations of Sexual Harassment will not be investigated, unless they are referred under another applicable policy, or new and related allegations are brought forth.

b. Investigation Process

- i. Within five (5) working days of receiving or filing the Formal Complaint, the Title IX Coordinator will send each known Complainant and Respondent a Written Notice of the allegation with information required by SDBOR Policy 1:17 about the process and each parties' rights and responsibilities.
- ii. Within ten (10) working days of receiving a Formal Complaint filed by a Complainant, the Title IX Coordinator will determine whether the alleged conduct if true would be considered Sexual Harassment, occurred in a University education program or activity, and against a person in the United States, then either dismiss the Formal Complaint or send the Formal Complaint to the investigator. If dismissed on this basis, the TIX Coordinator will provide notice within five (5) working days.
- iii. If the Formal Complaint is sent for investigation, the assigned investigator is responsible for gathering evidence. Complainants and Respondents are encouraged to provide the investigator information and evidence to ensure all relevant evidence is gathered efficiently.
- iv. If the investigator identifies new allegations not in the original notice, the investigator will notify the Title IX Coordinator and a follow up notice will be sent to each party.
- v. Investigations consist of interviews with all parties and witnesses and gathering of relevant records and evidence. Parties have equal opportunities to present witnesses. Notices will be sent to parties to schedule interviews or other meetings.
- vi. Near the completion of the investigation, the investigator will issue a draft investigation report and provide it to each party and their Advisor, as applicable.

Unless an extension is granted by the Title IX Coordinator, parties will have ten (10) days to submit written responses, which the investigator will consider prior to issuing a final investigation report. Thereafter, the investigator will provide the final investigation report to each party and their Advisor, the Title IX Coordinator, and the SDBOR General Counsel or University General Counsel representative for the hearing. Any evidence gathered by the investigator may be viewed and inspected by the parties.

- vii. The Title IX Coordinator will review the final investigation report with a representative of the SDBOR General Counsel or University General Counsel and may dismiss the Complaint in accordance with Subsection 4.e herein.

c. Hearing Process

- i. Where the Complaint has not been dismissed, Parties will be provided with a hearing. The Title IX Coordinator will send a conforming notice of hearing at least 15 days prior to the hearing. Any hearing held under this procedure will be administered by an independent hearing examiner coordinated by the SDBOR Office of General Counsel (OGC). Presentations on behalf of the University will be made the SDBOR OGC or the University OGC.
- ii. Determinations regarding responsibility are made using the preponderance of evidence standard. The preponderance of the evidence indicating responsibility is shown if, in considering all the evidence, it is more likely than not that the Respondent is responsible for the alleged conduct and the alleged conduct fully satisfies the criteria for Sexual Harassment.
- iii. Hearings will be held live and in-person with each party having an Advisor of their choice. If an individual does not have an Advisor, the Title IX Coordinator will facilitate provision of an Advisor without cost. Either party may make a request to be physically separated in separate rooms using technology enabling the hearing examiner and parties to simultaneously see and hear the party or the witness answering questions. A request for separation will be considered up to the time of the hearing and during the hearing.
- iv. Following the hearing, the hearing examiner will issue a proposed determination of responsibility to the University President, or designee. The University President, or designee, will determine appropriate action. Once the University President, or designee, has signed the proposed determination of responsibility, the Office of the President will immediately send the determination of responsibility to the parties simultaneously by electronic mail with a copy to the Title IX Coordinator. Any party will have ten (10) working days from the issuance of the proposed determination of responsibility by the President to petition for administrative review under Subsection 4.f. herein. Any determination not petitioned within ten (10) working days is final.
- v. Sanctions for a determination finding responsibility may include: a warning, probation, loss of privileges, restitution, educational/personal development sanctions, suspension, expulsion, adverse employment action, withholding of degree, or revoking admission.

- vi. The Title IX Coordinator is responsible for coordinating implementation of any remedies ordered in the determination of responsibility.

d. Informal Resolution

- i. After the receipt of a Formal Complaint, and any time prior to reaching a final determination regarding responsibility, the Title IX Coordinator may offer an Informal Resolution.
- ii. An Informal Resolution will be facilitated by the Vice President, or designee, who has responsibility over the responding party.
- iii. An Informal Resolution is not required, and the Title IX Coordinator will explain the process and impacts of selecting to pursue an Informal Resolution.
- iv. An Informal Resolution may not be offered to resolve allegations that an employee sexually harassed a student.

e. Dismissal of Formal Complaint

- i. A Formal Complaint or allegations will be dismissed if the alleged conduct:
 - 1. At intake:
 - a. If taken as true, would not constitute Sexual Harassment;
 - b. Did not occur in a University Education Program or Activity;
 - c. Did not occur against a person within the United States;
 - 2. Anytime During Investigation:
 - a. Specific circumstances prevent the investigator from gathering sufficient evidence to support a determination of responsibility;
 - 3. Anytime up to and including during the Hearing:
 - a. At the request of the Complainant, however, this dismissal does not prevent the matter from being addressed under another applicable policy;
 - b. The Respondent is no longer enrolled or employed by, or affiliated with the University.

f. Petition for Administrative Review

- i. A Complainant or Respondent may petition for administrative review of the proposed determination of responsibility or the dismissal of a Formal Complaint or a particular allegation therein, in conformity with SDBOR Policy 1:17. The petition must be filed with the SDBOR Executive Director no later than ten (10) working days after the notice of the decision is received.
- ii. The SDBOR Executive Director will issue a written decision to each party, which will constitute the final decision on the matter and may be appealed to circuit court in accordance with SDCL ch. 1-26.

5. Responsible Administrator

The Title IX Coordinator, successor, or designee is responsible for the annual and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy and its procedures.

SOURCE: Approved by President on 09/19/2022.