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[University Policies](#)

Sexual Misconduct (Title IX) Policy

[Home](#) › [University Policies](#) › [Policies and Procedures by Alphabetical Order](#) ›

[Sexual Misconduct \(Title IX\) Policy](#)

Purpose of Policy

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

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

- Defines the meaning of “sexual harassment” (including forms of sex-based violence) that are reflected in the definitions of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking

POLICY HISTORY

Policy Number:
ESU-2020-01

Policy Number History:
N/A

Effective:
August 14, 2020

Adopted:
August 14, 2020

Last Reviewed:
July 13, 2023

Amended:
July 13, 2023

included as Regulatory Prohibited Conduct under this Policy

- Addresses how the University must respond to reports of misconduct falling within the definitions of Regulatory Prohibited Conduct under this Policy, and
- Mandates a grievance (or resolution) process the University must follow before issuing disciplinary sanctions against a person accused of Regulatory Prohibited Conduct under this Policy.

Throughout this Policy, violations are generally termed as “Regulatory” consistent with the Department of Education’s Final Rule under Title IX of the Education Amendments of 1972, when the behavior occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the Formal Complaint. For quid pro quo sexual harassment allegations, the designation of “Regulatory” is dependent on the employment of the Respondent. For hostile environment sexual harassment allegations, the designation of “Regulatory” is dependent on the impact of the unwelcome conduct on the individual targeted.

In addition to federal legislative requirements, Act 16 of 2019 of the General Assembly of Pennsylvania requires all postsecondary institutions in the Commonwealth of Pennsylvania to adopt a clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under federal and state law, including the crime victims bill of rights.

Related Policies:
[Protection of Minors Policy, Discrimination & Harassment Policy](#)

GENERAL CONTACT INFORMATION

- University Police - [\(570\) 422-3064](tel:(570)422-3064) or 911
- Title IX Office - [\(570\) 422-2277](tel:(570)422-2277)

✉ titleixreport@esu.edu

✉ cbean1@esu.edu

If the situation you wish to report is an emergency or imminent threat to your safety, please call the police at [\(570\) 422-3064](tel:(570)422-3064) or 911.

Prohibited Behavior

Title IX, VAWA and Nondiscrimination

Statement on Privacy and Confidentiality

Disability Accommodations

Free Expression and Academic Freedom

Scope of Policy

This Policy applies to all on campus and off-campus conduct that is likely to have a substantial adverse effect on any member of the University community. There is no time limit for reporting allegations of sexual misconduct, however, the University strongly encourages the prompt reporting of sexual misconduct to allow the University to respond promptly and effectively. If the reported Respondent is not a member of the University community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, the University may be unable to investigate or take disciplinary action and may be required to dismiss the Formal Complaint for a lack of jurisdiction. See the Jurisdiction and Dismissals section. Please see the Reporting Sexual Misconduct section below for more information on how and where to report misconduct, discrimination and/or harassment, or to file a Formal Complaint.

Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of the University to satisfy the burden of proof. The Respondent does not have the burden to prove that a violation did not occur. Respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility. Additionally, Decision-Maker(s) shall not make an adverse inference against a Respondent for the Respondent's refusal to participate in an investigation or hearing, nor will Respondent's refusal to participate result in increased sanctions if the Respondent is found responsible for the violation(s).

Standard of Proof

Consistent with requirements set forth in the Pennsylvania Code pertaining to student disciplinary due process requirements, the University will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under this Policy. This means that the individual(s) charged with making a finding must determine whether it is more likely than not that a violation of the Policy occurred.

Effective Date

Based on the Final Rule, this Policy will be effective August 1, 2022.

Impact on other Policies or Processes

As used in this Policy, sexual misconduct may also encompass criminal conduct under Pennsylvania and/or federal law. Additionally, sexual misconduct under this Policy may result in civil and/or administrative or legal consequences.

Revocation by Operation of Law

Applicability of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), is subject to future legislative or court actions. Should any portion of the Title IX Final Rule be set aside, stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require any of the elements of this Policy, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication.

Sexual Misconduct Definitions

Dating Violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act)

Domestic Violence (as defined in the VAWA amendments to the Clery Act)

Retaliation

Sexual Assault

Sexual Exploitation

Regulatory Prohibited Conduct

Regulatory Quid Pro Quo Sexual Harassment

Non-Regulatory Quid Pro Quo Sexual Harassment

Regulatory Hostile Environment Sexual Harassment

Unwelcome conduct, on the basis of sex, 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.

Non-Regulatory Hostile Environment Sexual Harassment

Stalking (as defined in the VAWA amendments to the Clery Act)

Other Definitions

Advisor

Appeals Officer

Complainant

Consent

Day(s)

Decision Maker(s)

Disciplinary Sanction

Education Program or Activity

Employee

Final Rule

Formal Complaint

Hearing Officer

Investigator

Notice of Allegations

Notice of Hearing

Official

Parties or Party

Respondent

Student

Supportive Measures

Title IX Coordinator

Volunteer

Witness

Reporting Sexual Misconduct

Any individual, including a third party, may make a report concerning sexual misconduct. Complainants and third-parties are encouraged to report sexual misconduct as soon as possible to allow the University to respond promptly and effectively.

The Title IX Coordinator (or designee), and any other University employees with authority to institute corrective measures, have authority to institute corrective measures for reports of alleged violations of this Policy. Mandated reports to the Title IX Coordinator by Officials, Volunteers and Employees shall not automatically result in corrective measures being instituted. Individuals are encouraged to report sexual misconduct directly to the Title IX Coordinator, through the University's electronic and anonymous reporting systems or by filing a Formal Complaint.

Reports to the Title IX Coordinator

Electronic and Anonymous Reporting

Filing a Formal Complaint

Criminal Reporting Options

CONTACT INFORMATION FOR TITLE IX COORDINATOR

- Christopher Bean,
Equal Opportunity
and Title IX
Coordinator

External Reporting Options

Truthfulness

Multiple Party Complaints

- Student Conduct and Community Standards, Ground Floor, Sycamore Suites
- ✉ titleixreport@esu.edu
or
- ✉ cbean1@esu.edu
- [\(570\) 422-2277](tel:(570)422-2277)

University Reporting Obligations

Mandated Reporting Obligations of University Officials, Volunteers and Employees

All University Officials, Volunteers and Employees (including student employees) are obligated to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator/designee, unless: 1) they serve in a role that makes such reports privileged or are recognized as providing a confidential resource (see Statement on Privacy and Confidentiality); or 2) they are a faculty member and learn of the report from a student during a classroom discussion, in a writing assignment for a class, or as part of a University-approved research project.

Please note: These reporting exceptions do not apply to reports of sexual misconduct involving an individual who was, or is, a child (a person under 18 years of age) when the abuse allegedly occurred. When a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all the University Employees, Officials and Volunteers are required to notify the University police and the ChildLine run by the Pennsylvania Department of Human Services (1-800-932-0313). All other members of the University community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine.

University Employees designated as Campus Security Authorities (CSAs) under the Clery Act are required to report certain crimes for federal statistical reporting purposes.

University Obligations Regarding Timely Warnings

Jurisdiction and Dismissals

In certain circumstances where violations defined under the Final Rule as Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking) do not meet jurisdictional requirements, the University must dismiss those allegations contained in the Formal Complaint.

In certain circumstances the Title IX Coordinator may dismiss a Formal Complaint, or any specific allegations raised in the Formal Complaint at any time during the investigation or hearing.

Any Party may appeal a dismissal determination. See the Determining Jurisdiction and Mandatory Dismissal for Certain Allegations under the Sexual Misconduct Resolution Process Section for more information.

Emergency Removal for Students

1. The University retains the authority to remove a Respondent from its Education Programs or Activities on an emergency basis. This action is also referred to as an emergency removal.
2. Before imposing an emergency removal on a student Respondent, the University will:
 - A. Undertake an individualized safety and risk analysis; and
 - B. Determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct justifies a removal.
3. If the University imposes an emergency removal on a student Respondent, the University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
 - A. The University will provide written notice of the emergency removal and applicable charges.
 - B. The University will provide an opportunity for the Respondent to appeal that decision to an appropriate Hearing Officer or designee within 10 days of the imposition of the emergency removal.
 - C. The designated University Hearing Officer will hear the evidence and determine whether there is sufficient evidence to support the conclusion that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct and that, based on that threat, removal is the appropriate course of action.
4. If the University learns of evidence that demonstrates that the emergency action is no longer justified after the emergency removal is imposed against a student Respondent, the University will take prompt action to rescind the emergency removal.
5. All emergency removals will also comply with requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel

Administrative Leave for Employees

The University retains the authority to place Employees on administrative leave consistent with applicable requirements of relevant University policies and collective bargaining agreements.

Informal Resolution Process

Informal means of resolution, such as mediation, may be used as an alternative to the formal investigation and hearing procedures. Informal resolution is a voluntary process and may be used only where a Formal Complaint has been filed. Upon written agreement of all parties, informal resolution may be initiated at any time prior to finding of responsibility in a hearing and may be terminated at any time prior to final resolution. If the informal process is terminated, the Sexual Misconduct Resolution Process, which includes an investigation and hearing, will proceed. Once a final resolution has been reached and documented and signed by all parties, the resolution cannot be appealed.

Informal resolution may not be utilized when a Student files a Formal Complaint against a University Employee, Volunteer or Official under this Policy.

Sexual Misconduct Resolution Process

Formal Complaint

The Sexual Misconduct Resolution Process is initiated by a Complainant providing the Title IX Coordinator a written, signed Formal Complaint describing the facts alleged. See the section titled Filing a Formal Complaint above.

Notice of Allegations

Determining Jurisdiction and Mandatory Dismissal for Certain Allegations

Discretionary Dismissals for All Allegations

Allegations Potentially Falling Under Two Policies

Notice of Dismissal

Investigation

General Rules of Hearing

Decisions

Disciplinary Sanctions Against Students

Disciplinary Sanctions Against, Officials and Volunteers

Appeals by Where the Respondent is a Student

Appeals Where the Respondent is an Employee

Rights / Responsibilities

- A. Reports and Formal Complaints have different meanings. An individual has a right to make a report of sexual misconduct to the University, which may be accompanied by a request for Supportive Measures. An individual also has a right to make a Formal Complaint of sexual misconduct, which is a request to initiate the University's informal resolution process or a formal disciplinary process, which includes an investigation and may proceed to a hearing.
- B. Prior to the conclusion of a sexual misconduct investigation, the Complainant may request to withdraw the Formal Complaint by contacting the Title IX Coordinator/designee in writing. The Title IX Coordinator/designee will determine whether to close the case or conclude the investigation without the Complainant's continued participation.
- C. An individual also has the right to report sexual misconduct to law enforcement, separate and apart from any report or Formal Complaint made to the University.
- D. Victims and witnesses of sexual misconduct have the right to be assisted by the University in notifying law enforcement authorities of sexual misconduct or they can decline to notify such authorities.
- E. Witnesses and Parties cannot be compelled to participate in the hearing and have the right not to participate in the hearing free from retaliation.
- F. Each Party who is charged with a violation of this Policy where jurisdiction is appropriate has a right to a hearing and for an Advisor to cross-examine Parties and Witnesses.
- G. At the time a report is made, the reporting party does not have to decide whether to file a Formal Complaint or make a report of sexual misconduct to law enforcement.
- H. An affected party has the right to request Supportive Measures from the University, which may include interim contact restrictions.

- I. The reporting party has the right to seek medical treatment to address physical and mental health and to preserve evidence.
- J. Parties may also have options to file civil actions in court or with administrative agencies.
- K. To file a Formal Complaint, please contact the Title IX Coordinator/designee

EXPLORE MORE



University Policies

List of Policies

Policy User Resources

Policy Owner Resources

The Office of the President should be contacted with questions concerning this website or the policies listed on it.

CONTACT INFORMATION

Reibman
Administration
Building
[☎ \(570\) 422-3545](tel:(570)422-3545)
[\(570\) 422-3478 \(Fax\)](tel:(570)422-3478)

Policy Development Specialist

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