

# **Title IX/Sexual Misconduct Policy and Complaint Procedures for Employees and Students**



NORTHERN ILLINOIS UNIVERSITY

**Affirmative Action  
and Equity Compliance**

# Title IX Policy and Compliant Procedures for Employees and Students

Last Revision Date: September 27, 2017

---

<b>Table of Contents</b>		<b>Page</b>
<b>I.</b>	<b>PURPOSE</b>	3
<b>II.</b>	<b>POLICY</b>	4
	Notice of Non-Discrimination	4
	Retaliation Prohibited	4
	Application of this Policy	5
	Pregnancy	5
	Athletics	5
	Responsible Employees	5
	Reporting Obligations	6
	Training and Education	6
	Child Abuse and Neglect	7
<b>III.</b>	<b>TITLE IX COORDINATOR(S)</b>	7
<b>IV.</b>	<b>REPORTING OPTIONS</b>	8
	Addressing Sexual Misconduct	8
	File a Title IX Complaint	8
	File a Criminal Complaint	9
	File an Anonymous/Confidential Complaint	10
	Amnesty Provision	11
	Right to Privacy	11
<b>V.</b>	<b>CONFIDENTIAL RESOURCES</b>	12
<b>VI.</b>	<b>TITLE IX INVESTIGATION PROCESS AND PROCEDURES</b>	13
	Investigative Procedure and Timeline	13
	Interim Protective Measures	
	Voluntary Informal Resolution Mechanisms	15
	Investigation Rules	15
	Sanctions	17
	Sanction by Agreement (for Student Respondents only)	17
	Sanction by Hearing (for Student Respondents only)	18
	Sanction by Decision (for Employees and Third-Party Respondents)	19
	Possible Sanctions	19
	Remedies	20
	Appeals	21
	Student Respondent Appeal	21
	Employee and Third-Party Respondent Appeal	22
<b>VII.</b>	<b>EXTERNAL AGENCIES</b>	22
<b>VIII.</b>	<b>DEFINITIONS</b>	23

## I. PURPOSE

The mission of Northern Illinois University (NIU) is to promote excellence and engagement in teaching and learning, research and scholarship, creativity and artistry, and outreach and service. The university is a community of those whose varied functions, responsibilities and contributions are supportive of the instructional, research and service mission of the institution. Civil and professional interactions among all faculty, staff and students are essential to support that mission in an effective, efficient and ethical manner.

Pursuant to this mission of excellence, it is therefore crucial for the university to ensure that all members of its community, including guests and visitors, have the right to learn and work in the safest possible community and environment, and to be free from all forms of sex discrimination. *Title IX of the Education Amendments of 1972*, 20 U.S.C. § 1681 *et seq.* provides in part, that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Sex discrimination also includes sexual misconduct in the form of sexual harassment, hostile work environment, sexual violence (rape, sexual assault and sexual abuse), domestic violence, dating violence, stalking and gender/sex-based harassment or discrimination; all of which represent conduct/behavior that is prohibited by this policy in accordance with Title IX. This policy also prohibits discrimination on the basis of pregnancy or related medical conditions.

All members of the university community, visitors and guests are expected to conduct themselves in a manner that does not infringe on the rights of others. In order to provide recourse for allegations of inappropriate treatment involving sexual misconduct by faculty, staff or students, the procedures contained within this policy will be used. This is intended to be consistent with the preamble to the Northern Illinois University Constitution, which declares, "Respect for the intrinsic dignity of each member of the university community, both by the university itself and by each member of that community, is the basic cornerstone governing all community activities." The purpose of this policy is to comply with Title IX as advised by the Department of Education's Office of Civil Rights by providing clear guidance regarding the university's internal formal system of reporting, processing and adjudicating complaints of sexual misconduct.

Throughout these procedures, all persons involved should exercise discretion in receiving and transmitting information. All complaints and/or allegations filed in accordance with this policy will be examined in a fair and equitable manner, and in accordance with applicable federal and state laws. As warranted by the facts of the situation and in coordination with the organizational areas involved, suitable corrective action will be implemented whenever sex discrimination in the form of sexual misconduct and/or retaliation for opposing conduct/behavior that is believed to be unlawful and/or a form of sex discrimination occurs. Any employee or student who engages in conduct prohibited by this policy will be required to participate in appropriate corrective measures. All disciplinary actions will be performed in accordance with applicable procedural and substantive due process principles and personnel procedures as stated by this or other applicable university policies.

An investigation of sexual misconduct may also result in a criminal investigation by the university, which is separate and apart from the standard university due process procedures contained within the complaint

filing process and procedures. Employment-related matters and/or resolutions resulting from any employment discrimination and/or Title IX complaint will be conducted independent of any applicable criminal investigation. Student Conduct may conduct an independent review of any matter to determine if a separate student conduct violation occurred. Such a review would be conducted pursuant to the Student Code of Conduct to address violations outside of any alleged sexual misconduct.

## II. POLICY

*Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.* provides in part:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.*

Northern Illinois University has jurisdiction over all Title IX/sexual misconduct complaints occurring at NIU.

### **Notice of Nondiscrimination**

Academic and employment decisions based upon sex or gender and/or acts of sexual misconduct are forms of illegal sex discrimination under Title IX and additional federal and state laws. Such decisions are prohibited under this and other policies of Northern Illinois University. The university does not discriminate on the basis of sex, gender or gender identity in any phase of its educational or employment programs; the university is required by Title IX and other applicable laws to not so discriminate.

The university will not tolerate sex discrimination in the form of sexual misconduct. If the university knows or reasonably should know of possible sexual misconduct, a thorough, impartial and confidential investigation will be conducted in as prompt a manner as possible to determine if there has been a violation of this policy. If, as a result of that investigation, it is determined that any act of sexual misconduct has occurred, appropriate discipline will be imposed, and the university will take the necessary steps to address and stop the sexual misconduct, prevent its recurrence and remedy its effects.

### **Retaliation Prohibited**

Retaliation against any individual who opposes what they believe to be discrimination on the basis of sex, gender, gender identity or in the form of sexual misconduct is prohibited by this policy. Any person who is found to have retaliated against another for making a complaint of sexual misconduct under Title IX, being a witness for purposes of any such investigation, or being otherwise involved in the complaint and/or investigative process (including the respondent), will be subject to discipline, up to and including termination or expulsion, depending on the circumstances, even if no responsibility is found for the alleged sexual misconduct. Retaliation should be reported immediately to **Karen L. Baker, Associate Vice President and Title IX Coordinator**, Affirmative Action and Equity Compliance, Human Resource Services, 1515 W. Lincoln, DeKalb, IL 60115, 815-753-6017, [titleixcoordinator@niu.edu](mailto:titleixcoordinator@niu.edu).

## Application of this Policy

This policy applies to all students, employees and third parties, regardless of race, color, national origin, ancestry, sex, religion, age, physical and mental disability, marital status, veteran status, sexual orientation, gender identity, gender expression, political affiliation or any other factor unrelated to professional or educational qualifications, and is in coordination with the *Nondiscrimination/Harassment Policy and Complaint Procedures for Employees and Students*, which prohibits discrimination at the university. However, this policy serves primarily as the governing document for Affirmative Action and Equity Compliance (AAEC) to conduct investigations of sexual misconduct involving employees and students.

This policy also applies to *all* conduct in any academic, educational, extracurricular, athletic or other university program and activity, whether those programs and activities occur in university facilities on or off campus. Even if the sexual harassment and/or misconduct did not occur in the context of an education program or activity, NIU will consider the effects of the off-campus sexual harassment when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. Accordingly, the university will investigate all complaints, regardless of where the alleged conduct occurs. Should the university become aware that any contractor, vendor, partner or other affiliate engages in sexual misconduct, it will take appropriate action, up to and including termination of the business relationship or partnership.

## Pregnancy

The university prohibits discrimination against students, faculty and staff based on pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery from any of these conditions. For more information about pregnancy related accommodations contact Affirmative Action and Equity Compliance, Human Resource Services, 1515 W. Lincoln Highway, DeKalb, IL 60115, 815-753-1118, [titleix@niu.edu](mailto:titleix@niu.edu).

## Athletics

Northern Illinois University faculty, staff and students with questions concerning the application of Title IX to the university's intercollegiate athletic programs and activities may contact **Debra Boughton, Intercollegiate Athletics, Deputy Title IX Coordinator for Athletics**, 1525 W. Lincoln Highway, DeKalb, IL 60115, 815-753-9541, [dboughton1@niu.edu](mailto:dboughton1@niu.edu).

## Responsible Employees

The university is obligated to address acts of sexual misconduct of which a responsible employee knew or should have known occurred. A “responsible employee” is any employee who:

- 1) Has the authority to take action to address sexual misconduct.
- 2) Has been given the duty of reporting incidents of sexual misconduct or any other misconduct by students.
- 3) A student could reasonably believe has this authority or duty.

At Northern Illinois University, “responsible employees” include faculty members, administrators (Deans, Department Chairs, Directors, Vice Presidents, etc.), Community Advisors (CAs), Residence Life Administration, Complex Coordinators, Hall Directors, athletic coaches, faculty advisors, police officers, building service workers, dining hall employees and administrative professionals in a supervisory capacity or who have regular interactions with students.

## Reporting Obligations

A responsible employee *must* report to the Title IX Coordinator all relevant details about alleged sexual misconduct that the student or other person has shared and that the university will need to determine what occurred and resolve the situation. This includes the names of the alleged respondent (if known); the student or other person who experienced the alleged sexual misconduct; others involved in the alleged sexual misconduct; as well as relevant facts, including the date, time and location of the incident. Additional definitions of terms can be found in a list at the end of this policy. Reports can be made online at [go.niu.edu/FileTitleIX](http://go.niu.edu/FileTitleIX).

**Before** a person reveals information that they may wish to keep confidential, a responsible employee should make every effort to ensure that the person understands:

- 1) The employee's obligation to report the names of the alleged respondent and person involved in the alleged sexual misconduct, as well as relevant facts regarding the alleged incident (including date, time and location of the incident) to the Title IX Coordinator.
- 2) The person's option to request that the university maintain confidentiality, which an appropriate committee composed of Title IX Coordinator(s), Title IX investigator(s), a Confidential Advisor from Counseling and Consultation Services, and a representative from the NIU Department Police and Public Safety when appropriate may consider.
- 3) The person's ability to share the information confidentially with the confidential resources identified herein.

A responsible employee should provide the following information to a claimant:

- 1) The reporting obligations (discussed above) of the responsible employee.
- 2) Claimant's option to request confidentiality and available confidential resources as provided herein.
- 3) Claimant's right to file a Title IX complaint with the university.
- 4) Claimant's right to report a crime to campus or local law enforcement.

## Training and Education

In compliance with the *Illinois Preventing Sexual Violence in Higher Education Act* (110 ILCS 155), all employees must complete annual Title IX/Sexual Misconduct training. Such training should include, but is not limited to, the Title IX Policy, effects of trauma on a survivor, consent, retaliation, reporting options, available support services, and strategies for bystander intervention and risk reductions.

Additional training is provided to those involved in the receipt and resolution of Title IX complaints, including, but not limited to, coordinators, investigators, resolution officers, hearing officers, appeal agents, confidential resources/advisors and law enforcement.

## Child Abuse and Neglect

All staff and faculty must report suspected or known child abuse to the **Illinois Department of Children and Family Services (DCFS)**. 325 ILCS 5/4. Accordingly, all employees of NIU must report suspected sexual misconduct perpetrated against those under the age of 18 to DCFS. The DCFS hotline is 800- 252-2873. For additional information visit [niu.edu/publicsafety/resources/DCFS](http://niu.edu/publicsafety/resources/DCFS).

### **III. TITLE IX COORDINATOR(S)**

The role of the Title IX Coordinator is to manage, implement and administer this policy, including the enforcement of Title IX complaint procedures contained within, Title IX training programs and ensuring the prompt and appropriate resolution of Title IX complaints. Questions or concerns regarding Title IX, this policy, or other aspects of the university's equal opportunity or affirmative action programs may be directed to:

**Karen L. Baker, Associate Vice President and Title IX Coordinator**

Affirmative Action and Equity Compliance  
Human Resource Services  
1515 W. Lincoln Highway  
DeKalb, IL 60115  
815-753-6017  
titleixcoordinator@niu.edu

Inquiries/questions regarding this policy and/or Title IX may also be referred to:

**Office for Civil Rights**

U.S. Department of Education  
Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, IL 60661-4544  
312-730-1560  
OCR.Chicago@ed.gov

Questions and/or concerns may also be referred to the Deputy Title IX Coordinators listed below:

**Sarah Adamski**

**Director of Investigations**  
**Deputy Title IX Coordinator**  
Affirmative Action and Equity Compliance  
1515 W. Lincoln Highway  
DeKalb, IL 60115  
815-753-5560  
sadamski1@niu.edu

**Anne Birberick**

**Vice Provost for Undergraduate Academic Affairs**  
**Deputy Title IX Coordinator for Academic Affairs**  
Executive Vice President and Provost  
Altgeld Hall 215  
DeKalb, IL 60115  
815-753-0494  
annie@niu.edu

**Debra Boughton**

**Athletic Associate Director, Business Affairs**  
**Deputy Title IX Coordinator for Athletics**  
Intercollegiate Athletics,  
Convocation Center 200D  
DeKalb, IL 60115  
815-753-9541  
dboughton1@niu.edu

**Jeanne Meyer**

**Director, Student Conduct**  
**Deputy Title IX Coordinator for Student Conduct**  
Student Conduct  
Campus Life Building 280  
DeKalb, IL 60115  
815-753-9286  
jeanne@niu.edu

## IV. REPORTING OPTIONS

### **Addressing Sexual Misconduct**

Any student or employee (other than responsible employees) who witnesses and/or experiences what that person believes is a form of sexual misconduct as defined by this policy is strongly encouraged to, 1) File a Title IX complaint, 2) File a criminal complaint, or 3) File anonymous/confidential complaint as described in this policy.

This policy also recognizes the ultimate decision of the victim/survivor not to pursue any formal method of reporting sexual misconduct and/or to seek confidential counseling and assistance in lieu of these formal methods.

### **File a Title IX Complaint**

#### ***Who May File a Title IX Complaint***

Any university student, employee, third party or bystander on any NIU campus, or those acting on another's behalf (for example, departments, parents or guardians) may file a Title IX/sexual misconduct complaint to report acts of sexual misconduct in the treatment of students, employees or third parties. A Title IX/sexual misconduct complaint may also concern retaliation for filing a complaint or participating in an investigation relating to acts of sexual misconduct. The university expects that all Title IX/sexual misconduct complaints will be filed in good faith. All incidents of sexual misconduct will be taken seriously by the university when formally reported, and such incidents will be investigated and properly resolved in accordance with the procedures contained herein.

#### ***How to File a Title IX Complaint***

A formal Title IX complaint can be filed utilizing one of the following options:

- **Contact a Title IX Coordinator:** Any Title IX Coordinator may be contacted for an appointment to discuss the nature of the complaint, during which the employee/student should be prepared to discuss all factual circumstances and information upon which the Title IX complaint is based. This includes the names of the alleged respondent (if known), the student or other person(s) who experienced the alleged sexual misconduct, others involved in or witnesses to the alleged sexual misconduct, as well as relevant facts, including the date, time and location. The Title IX Coordinator will determine whether a Title IX investigation, further inquiry, follow-up and/or other resolution methods are warranted.
- **File an Electronic Report:** The employee/student may file a Title IX complaint by completing the online incident report, located at [go.niu.edu/FileTitleIX](https://go.niu.edu/FileTitleIX). Within 12 hours after receiving an electronic report, the reporting party and victim will receive information about available rights and options to address the alleged sexual misconduct. This information will be sent via email to both individuals.

Additional documents may be submitted with the Title IX complaint (*e.g.*, police report, emails), but is not required.

### ***What to Expect if a Title IX Complaint is Filed***

If a formal Title IX complaint is filed, a preliminary review of the complaint will be conducted by the Title IX Coordinator to determine if there are enough facts, evidence and/or information to warrant a Title IX investigation, further follow-up, inquiry and/or resolution. The Title IX Coordinator or designee will review the facts of the alleged incident with the claimant and develop a list of witnesses who can provide information regarding the alleged incident. If necessary, the Title IX Coordinator or designee will conduct a meeting with the claimant in a confidential setting and provide the claimant with information regarding all available options.

The issue of confidentiality and retaliation will also be discussed with the claimant and information from Counseling and Consultation Services and/or services that are available within the community will be provided. The claimant will have an opportunity to discuss the investigation process and ask questions regarding the possible outcomes and next steps within the process. The claimant will also be provided with information on how to file a police report and information related to confidential counseling and advocacy services. An assessment of whether further involvement by the university Police is warranted will also be performed by the Title IX Coordinator and/or designee.

### **File a Criminal Complaint**

#### ***Who May File a Criminal Complaint***

Any student, employee, third party or bystander may file a criminal complaint (police report) by contacting the NIU Department of Police and Public Safety or the DeKalb Police Department. The NIU Department of Police and Public Safety will forward the report to the Title IX Coordinator or designee, and the procedure outlined below in the *Investigation* section will be followed.

Note: A criminal complaint with campus police or the DeKalb Police Department can be filed at any time and is encouraged to occur in cases of sexual violence, including but not limited to incidents of rape, sexual assault, violent sexual stalking and/or sexual abuse.

#### ***How to File a Criminal Complaint***

A police report may be filed utilizing the contact information listed below, **FOR AN EMERGENCY: Dial 911**

#### **For incidents that occur on campus:**

##### **NIU Department of Police and Public Safety**

395 Wirtz Drive

DeKalb, IL 60115

Nonemergency: 815-753-1212

niupd@niu.edu

niu.edu/publicsafety

#### **For incidents that occur off campus:**

##### **DeKalb Police Department**

700 West Lincoln Highway

DeKalb, IL 60115

Nonemergency: 815-748-8400

dekalb.police@cityofdekalb.com

cityofdekalb.com/184/Police-Department

### ***What to Expect if a Police Report is Filed***

If you go to the NIU Department of Police and Public Safety, you can expect to meet with a full-time sworn officer to discuss the incident, and an official police report will be generated. The police report is **not** a complaint to the university and does not obligate you to take any further action.

The police officer will make you aware of services available to you, both on campus and off, and will put you in contact with the Confidential Advisor or advocate from Counseling and Consultation Services. The police officer may also accompany you to the hospital for evidence gathering, if you wish. Finally, the police officer will notify the Title IX Coordinator that an instance of sexual misconduct has occurred.

If it is a criminal matter, the police will then undertake an initial inquiry into the incident. When enough information is gathered, you may be asked to sign a criminal complaint, also known as filing charges. You do not have to sign a complaint or file charges.

If you do sign the complaint, it will be filed with the circuit clerk, and the DeKalb County State's Attorney will become involved in the matter. A warrant for the respondent's arrest may be issued. Once the DeKalb County State's Attorney is involved, your continued cooperation in the matter will be between you and the State's Attorney's Office.

You may obtain assistance making any report or complaint with any **Title IX Coordinator, Confidential Advisor at Counseling and Consultation Services**, 815-753-1206, or **Safe Passage designee**, 815-756- 5228. See *Confidential Resources* section for more information.

### **File an Anonymous/Confidential Complaint**

#### ***Who Can Seek Confidential Counseling and Assistance***

Any student, employee, third party or bystander may request that the matter involving sexual misconduct remain confidential and/or anonymous as defined by this policy. Additionally, any student and/or employee may obtain assistance with filing a Title IX complaint, police report and/or information regarding available counseling resources on campus and in the surrounding community.

#### ***What to Expect When Confidentiality is Requested***

If a claimant chooses to remain completely anonymous and utilizes Confidential Resources, no complaint will be filed. If a claimant chooses to report an incident to any reporting entity on campus, but requests to remain confidential, the Title IX Coordinator will determine if confidentiality should be maintained. Where there is a likelihood of further harm to the claimant and/or the campus community, the request for confidentiality may be not be honored.

When confidentiality of the claimant is maintained or the claimant's identity is unknown, the university's ability to respond and take appropriate disciplinary action may be impeded. Nevertheless, the university will attempt to provide resources as provided herein and to take steps addressed to remedy the effects of the alleged sexual misconduct and to prevent its recurrence.

Nothing in this provision prohibits the Title IX Coordinator from determining whether to maintain the request for confidentiality and/or from consulting with appropriate university officials if warranted by the facts of the case.

### **Amnesty Provision**

Amnesty aims to remove the barriers that may prevent an individual from reporting an incident of sexual misconduct. If an individual reports an incident of sexual misconduct, in good faith, the reporting party will not receive disciplinary action for a separate university policy violation, such as underage drinking, that is revealed in the course of the report. However, if the separate violation was egregious, including, but not limited to an action that places the health or safety of any other person at risk, amnesty may be not afforded.

### **Right to Privacy**

NIU will not disclose the identity of the victim or alleged offender, except as necessary, to resolve the complaint or to implement interim protective measures or when provided by state or federal law.

## **V. CONFIDENTIAL RESOURCES**

The university and DeKalb community provide confidential resources if you have suffered or been impacted by sexual misconduct. Services include confidential counseling and medical services, if needed. If you desire the act of sexual misconduct be kept completely confidential, but need assistance, you can speak with any of the following persons or offices. **These resources will not provide notice to the university of the alleged sexual misconduct, an investigation into the matter will not result, and the matter will remain confidential to the extent permissible at law. Conversations with confidential resources are not disclosed to others, including police or university officials.** A report or complaint is not necessary to utilize these resources:

### **Campus Resources**

**NIU Confidential Advisor** (*for students*)  
**Counseling and Consultation Services**  
Campus Life Building 200  
815-753-1206  
niu.edu/counseling/advocacy

**NIU Health Services**  
375 Wirtz Drive 815-753-1311  
niu.edu/healthservices

**NIU Office of the Ombudsperson**  
Holmes Student Center 601  
815-753-1414  
niu.edu/ombuds

**Employee Assistance Program** (*for employees*)  
Holmes Student Center, 7<sup>th</sup> Floor  
815-753-9191

### **Community Resources**

**Northwestern Medicine Kishwaukee Hospital\***  
1 Kishwaukee Hospital Drive  
DeKalb, IL 60115  
815-756-1521  
kishhealth.org

\*The hospital can provide evidence collection in cases of sexual violence at no cost, pursuant to the Sexual Assault Survivors Emergency Treatment Act. Physical evidence may be necessary to prosecute the offender and be helpful in obtaining an order of protection. If at all possible, do not bathe, wash your hands, use the restroom, drink, smoke, change clothing or brush your teeth following an assault.

**Safe Passage, Community-Based Sexual Assault and Domestic Violence Crisis Center**  
815-758-7922  
safepassagedv.org

**Northwestern Behavioral Health Services**

go.niu.edu/eap

**NIU Psychological Services Center**

Psychology/Math Building 86

815-753-0591

niu.edu/PSYC/psc

**NIU Couple and Family Therapy Clinic**

Wirtz Hall 146

815-753-1684

chhs.niu.edu/familytherapyclinic

12 Health Services Drive

Sycamore, IL 60178

815-756-4875

Crisis Line: 866-242-0111

kishhealth.org/services/behavioral-health

**Illinois Coalition Against Sexual Assault (ICASA)**

**State Sexual Assault Crisis Center**

217-753-4117

icasa.org

**National Resources**

**Depression Crisis Hotline**

630- 482-9696

**Rape, Abuse, and Incest National Network (RAINN)**

800-656-HOPE (4673)

rainn.org

**Suicide Prevention Lifeline**

800-273-TALK (8255)

**VI. TITLE IX INVESTIGATION PROCESS AND PROCEDURES**

The procedures outlined in this document may proceed independent of any other university grievance or disciplinary procedure provided for elsewhere by the university including, but not limited to, faculty/staff university grievance process, affirmative action complaint process, grade appeal process, student conduct process, student complaint process, and collective bargaining grievance processes. The procedures herein will also proceed independent of any police investigation.

If the university knows (through the filing of a Title IX complaint) or reasonably should know of possible sexual misconduct, a fair and equitable investigation will be conducted in as prompt and timely of a manner as possible to determine if there has been a violation of this policy.

Where an act in violation of this policy is undertaken for independently unlawful reasons (for example, because of the claimant's race or religion), both bases for violation of university policy will be investigated and disciplined accordingly.

In all cases, the final decision on whether, how, and to what extent the university will conduct an investigation, and whether other measures will be taken in connection with any allegation of sexual misconduct, rests primarily within the discretion of the Title IX Coordinator or designee.

**Investigative Procedure and Timeline**

The Title IX complaint or report of sexual misconduct will be investigated by the Title IX Investigator(s), generally, in accordance with the following timeline:

- Day 1:** Title IX complaint or report of sexual misconduct is received by the Title IX Coordinator or designee.
- Day 2-5:** Title IX Coordinator or designee determines extent of Title IX investigation (may be with assistance of a Title IX committee). A preliminary investigation may be necessary, and interim measures may be implemented.
- Day 6-15:** The Title IX Investigator(s) will, 1) Provide notice to the respondent of the complaint/report; 2) Meet with the claimant (if participating), the respondent, and any identified witnesses. This policy and the procedure will be explained to claimant and respondent and each will have the opportunity to share their version of events and suggest other witnesses during the meeting with the Title IX Investigator(s).
- Day 16-22:** The Title IX Investigator(s) will write a *preliminary report* containing a summary of the information obtained to date and will deliver this *report* to the claimant and respondent. Email is an acceptable method of delivery.
- Day 23-28:** Claimant and respondent may provide a rebuttal to information in the *preliminary report* or suggest additional witnesses within five calendar days.
- Day 29-35:** The Title IX Investigator(s) will consider additional information provided by claimant and respondent, conduct any necessary additional interviews or investigation and write a *final report* which contains: 1) conclusions of fact and, 2) a finding or findings.
- Day 36-38:** The Title IX Coordinator or designee reviews and approves the *final report*.
- Day 39-40:** The Title IX Investigator sends notice of the finding(s) to claimant and respondent. Email is an acceptable method of delivery. The claimant and the respondent will have five business days to appeal the finding(s) contained within the final report to the Executive Vice President and Provost and/or designee for review.
- Day 41-56:** Absent an appeal of the findings by either party, a Resolution Officer will be appointed by the Office of Student Conduct, and will receive a copy of the *final report* from the Title IX Investigator.

If an appeal of the findings is submitted, the Executive Vice President and Provost or designee will render a decision with next steps communicated and implemented accordingly.

The Resolution Officer attempts to resolve the sanction by agreement.

If no agreement on sanction(s) is reached, the Resolution Officer will impose a sanction by decision on an employee. For students, a hearing shall occur and a hearing officer will impose a sanction by hearing. Notice will be sent to claimant and respondent as provided herein. Email is an acceptable method of delivery.

- Day 56-61:** Five day period to appeal the finding(s) and/or any sanction imposed by decision/hearing.

## Interim Protective Measures

The university reserves the right to take whatever interim measures deemed necessary to protect the rights and personal safety of the claimant, respondent, and/or community members. Such measures include, but are not limited to, changes to academic, living, dining, transportation and working situations; obtaining and enforcing campus no contact orders; honoring an order of protection or no contact order entered by state civil or criminal court; providing a police escort between classes; and interim suspension/administrative paid leave from campus pending an investigation. The remedies provided in the *Remedies* section herein are also available as interim measures. The individual receiving an interim measure may appeal the interim measure to Student Conduct or the Title IX Coordinator.

## Voluntary Informal Resolution Mechanisms

If the investigator(s) believe the matter may be resolved by informal means, the investigator(s) may undertake to obtain such a result with the assistance of a third party (mediator or counselor) for as long as both claimant and respondent consent to such methods. The claimant or respondent may end informal resolution mechanisms and initiate a formal investigation at any point. The university reserves the right to ensure that any resolution is designed to stop problematic behavior.

**\*NOTE\* *Informal means of resolution are not available in cases of alleged sexual violence.***

## Investigation Rules

The following rules apply to all Title IX investigations, resulting from the filing of a Title IX complaint or report as a result of an allegation of sexual misconduct:

- Any investigation will proceed independent of any criminal or other legal proceedings. Further, the university reserves the right to forward any Title IX complaint to the appropriate law enforcement agency for criminal investigation and/or charges.
- Fairness to all individuals involved with a Title IX complaint is a priority. Both the claimant and respondent to a Title IX complaint will be given a copy of these procedures and will have the opportunity to respond to all allegations.
- Any proceeding, meeting or hearing held to resolve complaint(s) of alleged violations(s) of this policy shall protect the privacy of the participating parties and witnesses.
- The claimant and respondent may each have another person present at any meeting to provide support. Support persons may act in an ***advisory capacity only*** and may not speak on behalf of the party in any proceeding. The involvement of a support person cannot result in an undue delay of the proceeding. Additionally, the support person must comply with rules in this *policy* and failure to comply and/or engagement in behavior that harasses, intimidates or abuses any party may result in their prohibition in future involvement in the process.
- Every Title IX complaint will be investigated to the maximum extent possible.
- The investigation and the imposition of any sanction will be completed within 45 to 60 calendar days unless circumstances require a longer time period for completion of the investigation process (to be determined by the Title IX Coordinator or designee).

- Any and all of the procedures outlined in this policy will proceed regardless of whether the claimant or respondent has withdrawn from and/or has otherwise been separated from the university, including the imposition of sanctions related to suspensions (for proven conduct).
- The claimant, regardless of their level of involvement in the resolution of the complaint, and respondent shall each have access to a meeting with the Title IX Investigator(s) during which, 1) The proceedings under this policy will be explained; 2) Any questions of either party will be answered; and 3) Each party will be given the opportunity to provide their version of events and witnesses on their behalf. The claimant and respondent may also suggest questions to the Title IX investigator(s) and response to the other party at the discretion of the investigator(s).
- The claimant and respondent will receive periodic information and updates on the status of the investigation. Email is an acceptable form of delivery.
- Claimant and respondent shall receive notice of the identity of any investigator(s). A sufficient number of individuals are trained to investigate and/or resolve Title IX complaints to allow for substitution in the case of conflict/recusal and with no prior involvement in the initial determination or finding to hear any appeal brought by a party. If an investigator poses a conflict of interest, the claimant and/or respondent has the opportunity to request for substitution and such request must be made with the Title IX Coordinator within two calendar days of such notice.
- The use of alcohol or drugs by claimant at the time of the incident will be considered for purposes of determining consent or memory *only* and will not form the basis for independent proceedings or discipline.
- The sexual history or sexual character of claimant shall not be presented in any investigation or hearing and may be considered as to respondent *only* if it establishes a pattern of complaints or behavior.
- At the conclusion of the investigation, the investigator(s) will weigh all evidence received throughout the course of the investigation and will issue findings on the basis of a preponderance of the evidence (*i.e.*, it is more likely than not that an act in violation of this policy has or has not occurred).
- If it is determined that a student has engaged in a violation of this policy, appropriate sanctions will be imposed by Student Conduct as outlined herein.
- Respondents found to have violated this policy will be given the opportunity to agree to an appropriate sanction (“sanction by agreement.”) or to request a hearing by a resolution officer.
- Claimant and respondent will concurrently be notified in writing about the outcome of both the complaint and any appeal. Email is an acceptable form of delivery.
- Claimant will also receive notice of individual remedies available to the claimant, any sanctions imposed that directly relate to the claimant, and other steps the university has or will take to eliminate the hostile environment. In sexual violence cases, the claimant will receive notice of any disciplinary sanction imposed on the responsible respondent, and whether those sanctions directly relate to the claimant.

- The respondent will not be notified of the individual remedies offered or provided to the claimant.
- Claimant and respondent have the right to appeal the sanctions as provided herein (see *Appeals*).
- At the conclusion of an investigation, regardless of the outcome, a Title IX Coordinator or designee shall review all evidence to determine whether claimant is entitled to any remedy under Title IX that may not have been provided for under the university's procedures.

## **Sanctions**

Upon completion of the investigation in cases involving a student respondent, if there is a finding of sexual misconduct, a Final Report of Findings will be forwarded to Student Conduct to determine the appropriate sanction(s). The Title IX Coordinator reserves the right to schedule individualized training and/or similar educational opportunities, including but not limited to, acts of community service for either party when there is no finding of sexual misconduct. Both the claimant and respondent will receive a Final Report of Findings simultaneously in writing and within seven days of a decision or sooner if required by state or federal law.

Upon completion of the investigation in cases involving an NIU employee or third party respondent, a Final Report of Findings and Recommendations will be forwarded to the Division Head or designee for review and implementation upon their discretion.

### **Sanction by Agreement** *(for student respondents only)*

The resolution officer within Student Conduct will consult with the participating claimant, respondent, Title IX Coordinator (or designee) and other affected parties as appropriate to gather input on potential sanctions. Email is an acceptable method of communication. Depending on the circumstances, the resolution officer may ask to meet with each party separately or invite them to submit statements for consideration. If a claimant or a respondent meets with the resolution officer, they may be accompanied by a support person.

If the respondent chooses not to participate in the Sanction by Agreement, the process will continue and sanctions may be implemented absent their input and/or participation.

The resolution officer will then prepare a proposed resolution agreement between the university and the respondent, informed by input from the respondent, the participating claimant, and the Title IX Coordinator (or designee). The proposed agreement will be shared with the respondent and the participating claimant in a manner that honors due process and privacy considerations.

If the respondent accepts or fails to participate in the proposed agreement and the claimant does not object to it, the agreement will become binding, the respondent will be required to fulfill the sanctions included therein and neither the claimant nor the respondent will be permitted to appeal the sanction.

### **Sanction by Hearing** *(for student respondents only)*

If the respondent is a student, participates in the Sanction by Agreement is unwilling to enter into an agreement or if the claimant objects to the proposed agreement, the sanctions will be decided by a hearing officer in accordance with the hearing procedures of Student Conduct. The hearing officer will determine appropriate sanctions after a hearing. The hearing officer cannot modify the findings of the investigative

report and will address only what sanctions are appropriate at the hearing. The hearing officer's review will consist solely of, 1) Reviewing the investigative report, the proposed resolution agreement and any written objections to the proposed resolution agreement submitted by the claimant or respondent; 2) Consulting with appropriate university officials, including the Title IX Coordinator or designee; and 3) Any witnesses or documents presented by respondent or a participating claimant. Witnesses and documents may be presented to the hearing officer as it relates to sanctions *only*.

The following rules will be followed during any hearing:

- Respondent and a participating claimant shall receive notice of the identity of the resolution officer, and shall have the opportunity to challenge for cause if such challenge is delivered within two business days of such notice.
- Respondent and a participating claimant may each have another person present at any hearing to provide support. Support persons may act in an *advisory capacity* only and may not speak on behalf of the party during the hearing. The involvement of a support person cannot result in an undue delay of the meeting. Additionally, the support person must comply with rules in this policy and failure to comply and/or engagement in behavior that harasses, intimidates or abuses any party may result in their prohibition in future involvement in the process.
- A hearing may be held regardless of whether respondent or claimant has withdrawn from the university.
- Claimant and respondent are not required to attend any hearing.
- Claimant and respondent may not directly cross examine one another, but may, at the discretion and direction of the resolution officer, suggest questions to be posed by the hearing officer and respond to the other party.
- Respondent and claimant will each receive three business days' notice prior to the hearing of the other's evidence, including witnesses and documents to be used at said hearing. Failure to provide a witness list and copies of documentary evidence three business days prior to the hearing may result in the inability to present said witness or evidence.
- All questions directed to the claimant or respondent will only be asked by the hearing officer.
- Claimant and respondent may not be compelled to testify in the presence of the other party. If a party invokes this right, the party shall be allowed to testify or answer questions outside the direct physical presence of the other (*e.g.*, via telephone or behind a screen, etc.).
- All hearings conducted under this policy shall be closed to the public.

**Sanction by Decision** (*for employees and third-party respondents*)

The division head must review the Final Report of Findings and Recommendations to determine the appropriate level of corrective action. The Title IX Coordinator also reserves the right to consult with appropriate university officials regarding imposition of corrective action. To ensure fairness and consistency as well as compliance with the university's Title IX obligations, the division head and/or appropriate university

official, should consult with the Title IX Coordinator (or designee) regarding the facts of the case, proposed resolution and recommendations, and any written objections to the report of findings and recommendations. The division head or university Official will then either adopt the proposed resolution agreement or modify the recommendations as needed.

Once a decision has been reached, reviewed and approved by the Title IX Coordinator or designee, the division head will issue a letter to the respondent and claimant sharing, in a manner appropriate to honor due process and privacy considerations, the corrective action that will be implemented. Any imposition of corrective action may be appealed in accordance with the Appeals section herein.

### **Possible Sanctions**

Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the university reserves the right to impose different sanctions depending on the severity of the offense and/or offender history.

Any **student** found responsible for violating this policy may receive sanctions including, but not limited to, the following:

- Anger intervention assessment.
- Abuse intervention program.
- Banishment from all NIU property, functions, etc.
- Community service to NIU or the DeKalb community.
- Discretionary sanction-required work assignments, written assignments, service to NIU or other related discretionary assignments.
- Educational sanctions including but not limited to the completion of an educational assignment (e.g., research paper, program presentation, etc.).
- Fines.
- Formal written warning.
- Loss of privileges (e.g., inability to have visitors/guests, etc.).
- No contact (direct or indirect) with the victim.
- Parental notification.
- Probation.
- Residence hall expulsion.
- Residence hall suspension.
- Restitution.
- Revocation of admission and/or degree.
- Substance use intervention and education program.
- Training on Title IX and sexual misconduct.
- University expulsion.
- University suspension.
- Withholding degree.

Any **employee** found responsible for violating this policy may receive corrective action including, but not limited to, the following:

- Letter of warning.
- Official reprimand.
- Referral to a required counseling program.
- Suspension from employment with pay.
- Suspension from employment without pay.
- Termination of employment.
- Training on Title IX and sexual misconduct.
- Community service.
- Any other sanction deemed appropriate by the Title IX Coordinator.

Any **third-party** (visitor, guest, contractor, subcontractor, vendor, partner or business affiliate) found responsible for violating this policy will receive a sanction ranging from a written warning to being banned from any university property, activities and/or programs, including the termination of any business contract with the university.

### **Remedies**

In addition to the interim protective measures described in this document, the following remedies may be available at the conclusion of an investigation whether or not a respondent is found to be responsible:

- Providing an effective escort to ensure that the claimant can move safely between classes and activities.
- Ensuring the claimant and respondent do not share classes, extracurricular activities or work space.
- Moving the respondent or claimant (if the claimant requests to be moved) to a different residence hall.
- Providing comprehensive, holistic individualized services including medical, counseling and academic support services such as tutoring.
- Arranging for the claimant to have extra time to complete or retake a class or withdraw from a class without an academic or financial penalty.
- Reviewing any disciplinary actions taken against the claimant to see if there is a causal connection between the sexual misconduct and the disciplinary action that claimant may have received.
- Training or retraining university employees on responsibilities to address allegations of sexual misconduct.
- Developing and distributing materials on sexual misconduct.
- Conducting bystander intervention and sexual violence prevention programs with students and employees.
- Issuing policy statements or taking other steps that clearly communicate that the university does not tolerate sexual misconduct and will respond to any incidents and to any student/employee who reports such incidents.

- Conducting, in conjunction with student leaders, a campus climate survey to assess the effectiveness of efforts to ensure that the university is free from sexual misconduct and using that information to inform future proactive steps that the school will take.
- Targeted training for a group of students if the sexual misconduct created a hostile environment in a specific area.
- Any other remedy that the Title IX Coordinator may consider appropriate.

## Appeals

Sanction(s) will be implemented and remain in effect during the appeal process.

Appeals may be made *only* on the following grounds and *only* within five business days of receipt of the decision regarding sanction(s):

- A material deviation from these procedures affected the outcome of the case.
- New and relevant information is available that was not available, with reasonable diligence and effort, at the time of the investigation that could reasonably affect the investigation finding(s).
- The sanction(s) is/are inappropriate or disproportionate to the determined finding(s).

Both the claimant and the respondent shall receive the appeal decision in writing within seven days after the conclusion of the review of findings or sanctions.

### Student Respondent Appeal

The claimant and the respondent will have five business days to appeal the finding(s) contained within the final report to the Executive Vice President and Provost and/or designee for review. The appeal decision will be rendered in writing within seven business days after the review of findings.

The sanction(s) may be appealed by either the claimant or respondent on the grounds listed above to the Associate Vice President for Student Affairs and Dean of Students or designee. The appealing party should submit a copy of the sanction to the Student Affairs Central Office within five business days of receipt of the decision regarding sanction(s).

### Employee and Third-Party Respondent Appeal

In cases where the respondent is an employee or third party, the finding(s) of the investigators and/or any sanction(s)/corrective action may be appealed by either the claimant or respondent on the grounds listed above by submitting a copy of the investigator's decision and/or any sanction/corrective action to the executive vice president and provost or designee within five business days of receipt of the decision regarding sanction(s).

If no appeal is received within the five day period, the sanction(s) or corrective action(s) will be final. If the appeal is received within the five day period, the executive vice president and/or applicable vice president or designee will review the sanction(s) imposed by decision/hearing and obtain any additional information deemed necessary for resolution of the appeal. Within 21 calendar days of the date of the filing of the appeal,

the claimant and respondent will receive notice of the executive vice president and/or vice president's decision in writing. Email is an acceptable method of delivery.

If appropriate, copies of the final decision may be delivered to department or division heads in an identifiable line of supervisory or administrative responsibility in relation to the parties and subjects involved in the complaint. Other persons and witnesses will receive no specific notification or information regarding the complaint or investigation absent a request made by subpoena or court order.

## VII. EXTERNAL AGENCIES

At any time during the pendency of the above-described investigation, hearing and/or appeal, students and employees with questions about Title IX or those who believe they have been subjected to sexual misconduct or retaliation may file a complaint with the **Office for Civil Rights (OCR)**:

<b>Office for Civil Rights (Chicago Office)</b>	312-730-1560
U.S. Department of Education	FAX 312-730-1576
Citigroup Center	TDD 800-877-8339
500 W. Madison Street, Suite 1475	OCR.Chicago@ed.gov
Chicago, IL 60661-4544	ed.gov/ocr

At any time during the pendency of the above-described investigation and/or appeal, employees who believe they have been subjected to sexual misconduct or retaliation based thereon in violation of *Title VII of the Civil Rights Act*, 42 U.S.C. § 2000e *et seq.*, may file a complaint with the **Illinois Department of Human Rights (IDHR)** or the **Equal Employment Opportunity Commission (EEOC)**:

<b>Illinois Department of Human Rights</b>	<b>Equal Employment Opportunity Commission</b>
100 West Randolph Street	Chicago District Office
10 <sup>th</sup> Floor – Intake Unit	500 West Madison Street, Suite 2000
Chicago, Illinois 60601	Chicago, Illinois 60661
312- 814-6200	800-669-4000
TTY: 866-740 3953	TTY: 312-869-8001
illinois.gov/dhr	eeoc.gov

## VIII. DEFINITIONS

- **Active:** consent must take the form of clearly understandable words or actions that reveal one's expectations and agreement to engage in specific sexual activity. This means that silence, passivity, submission or the lack of verbal or physical resistance (including the lack of a “no”) should not—in and of themselves—be understood as consent. Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.

- **Anonymous Complaint:** is one where the identity of the claimant is not known.
- **Claimant:** refers to the alleged victim; a person who alleges to have been subjected to any of the conduct prohibited by this policy and/or person who files a formal complaint.
- **Confidential Complaint:** is one where the name of the claimant is known, but does not want to file a complaint, pursue an investigation or to have their identity known.
- **Consent:** a clear, unambiguous, informed, **voluntary** and freely given agreement between all participants to **knowingly** engage in sexual activity. Consent must be mutually understandable by words or actions (i.e., a reasonable person would consider the words or actions to indicate mutual agreement to engage in the sexual activity). Consent is **active** and cannot be based on the absence of an affirmative statement or act of denial. Silence or lack of resistance does not constitute consent.

Seeking and receiving consent is the responsibility of the person(s) initiating the sexual act or acts regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

Consent to any sexual act or prior consensual sexual activity between or with any party does not in and of itself constitute consent to any other sexual act. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.

Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is **incapacitated** (including but not limited to a person or someone with a **physical or mental disability** and/or level of intoxication that causes impairment resulting in incapacitation), asleep or unconscious, or under age. Consent cannot be given when it is the result of coercion, intimidation, **force** or threat of harm. The university prohibits any sexual activity that does not involve the consent of each individual.

Consent must be given to engage in the act of sexual activity, and consent should also be given to any person who records or photographs any aspect of the sexual encounter as well as third parties who wish to view the sexual activity either in person or via any electronic equipment, methods or devices. Any of these acts will be deemed to be sexual exploitation. Sexual exploitation includes but is not limited to the following acts:

- Sexual voyeurism or allowing others to witness or observe the sexual or intimate activity of another person without that person's full knowledge and consent.
- Indecent or lewd exposure or inducing another person to expose themselves when consent is not present.
- Recording any person engaged in sexual or intimate activity in a private space without that person's full knowledge and consent, even if the person recording the sexual or intimate activity is also engaged in the consented sexual activity.
- Distributing sexual or intimate information, images or recordings about another person without that person's full knowledge and consent.

- Recruiting, harboring, transporting, providing or obtaining another person for the purpose of sexual exploitation.
- Inducing incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs.

The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

- **Dating Violence:** 1) Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. For the purposes of this definition, dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting (42 U.S. Code Section 13925 (a)(9) and (10)); or 2) Threatening to use physical, mental or emotional abuse to control another person who is in a dating relationship with the person (See 105 ILCS 110/3.10).

The existence of a dating relationship in items 1 or 2 above shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

- **Domestic Violence:** 1) A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred (42 U.S. Code Section 13925 (a)(8)); or 2) Physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation of a family or household member, which includes spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, and persons who share or allegedly share a blood relationship through a child (725 ILCS 5/112A-3; 750 ILCS 60/103).
- **Force:** the use of physical violence and/or otherwise physically imposing on another person to gain sexual access. Also includes threats, intimidation, implied threats and coercion that overcome resistance or produce consent.
- **Gender-based Harassment or Discrimination:** acts of a verbal or nonverbal nature or physical aggression, intimidation or hostility based upon sex/gender or sex/gender-stereotyping (even if those acts do not involve conduct of a sexual nature) that is sufficiently serious to limit or deny the ability to participate in or benefit from the university's programs and activities or the terms and conditions of employment. *Example: the repeated sabotaging of female graduate students' laboratory experiments by male students in the class.*

- **Incapacitation:** physical or mental impairment due to drugs or alcohol (whether such use is voluntary or involuntary); the lack of consciousness or being asleep; being involuntarily restrained; if any of the parties are under the age of 17; or if an individual otherwise cannot consent. Generally, an incapacitated individual is incapable of recognizing what is occurring and is not able to recognize the nature of sexual activity or the extent of a sexual situation.
- **Intoxication:** when alcohol is involved, a person can be incapacitated due to intoxication. Some ways in which a person can be incapacitated as a result of alcohol use may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings or the inability to communicate for any reason. The individual may experience a blackout state in which they appear to be giving consent but does not actually have conscious awareness or the ability to consent. Therefore, individuals who engage in sexual activity of any kind must be aware of the other person's level of intoxication.
- **Knowingly:** Consent must demonstrate that all individuals understand, are aware of, and agree to the "who" (same partners), "what" (same acts), "where" (same location), "when" (same time), and "how" (the same way and under the same conditions) of the sexual activity.
- **Physical and Mental Disability:** "a physical or mental impairment that substantially limits one or more life activities of an individual such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. This also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions." (Americans with Disabilities Act).
- **Proceeding:** all activities related to a noncriminal resolution of an institutional disciplinary complaint, including, but not limited to, fact finding investigations, formal or informal meetings and hearings. Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.
- **Rape:** the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration of a sex organ of another person without the consent of the victim.
- **Resolution Officer:** a representative from Student Conduct or Human Resource Services who will be appointed to administer sanctions.
- **Respondent:** the alleged offender/accused; a person alleged to have engaged in any of the conduct prohibited by this policy.
- **Responsible Employee:** is any employee who:
  - Has the authority to take action to redress sexual violence.

- Has been given the duty of reporting incidents of sexual violence or any other misconduct by students.
  - Anyone a student could reasonably believe has this authority or duty.
- **Result:** any initial, interim and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution.
- **Retaliation:** taking any adverse or hostile act, engaging in harassment and/or making an adverse employment/academic decision because an employee/student/third party has opposed violations of this policy or other unlawful employment/academic practices by filing a complaint, testifying, assisting, or participating in an investigation, proceeding, or hearing. Respondents are also protected from retaliation.
- **Sanction by Agreement:** a proposed resolution agreement between the university and the respondent, informed by input from the respondent, the claimant (if participating), and the university. There shall be no appeal of a Sanction by Agreement.
- **Sanction by Decision** (for employees and third parties only): the resolution officer will either adopt the proposed resolution agreement and impose the sanctions therein or modify the sanctions as needed.
- **Sanction by Hearing** (for students only): a hearing officer shall, at the conclusion of a hearing as to sanctions only, impose appropriate sanction(s) as provided herein.
- **Sexual Assault:** 1) Any nonconsensual sexual act proscribed by federal or Illinois law, including when the victim lacks capacity to consent. An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's UCR program. (42 U.S. Code Section 13925 (a)(29); or 2) An act of sexual penetration by the use of force or threat of force; or 3) An act of sexual penetration and the respondent knew that the claimant was unable to understand the nature of the act or was unable to give knowing consent; or 4) An act of sexual penetration with a claimant who was under 18 years of age when the act was committed and the respondent was a family member; or 5) An act of sexual penetration with a claimant who was at least 13 years of age but less than 18 years of age when the act was committed and the respondent was 17 years of age or over and held a position of trust, authority or supervision in relation to the claimant.
- **Sex Discrimination:** treating a person differently because of their sex in the terms and conditions of educational programs, activities and/or employment. *Example: A professor requires all male students in a class to do an extra assignment that is not required of female students.*
- **Sexual Exploitation:** taking nonconsensual or abusive sexual advantage of another for your own benefit.
- **Sexual Harassment:** unwelcome, verbal or physical conduct of a sexual nature (such as sexual advances or requests for sexual favors) sufficiently serious that it unreasonably interferes with or

limits a person's ability to participate in or benefit from the university's educational programs, activities and/or employment. Sexual harassment may be based on a power differential, the creation of a hostile environment (reasonably severe conduct that is sufficiently pervasive to have the purpose or effect of unreasonably interfering with work or educational performance, or creating an intimidating, hostile or offensive working or educational environment) or retaliation.

The two types of sexual harassment are known as Quid Pro Quo and Hostile Environment. Quid Pro Quo is the Latin term for "this for that" and occurs when there is a demand for a sexual favor in exchange for some employment/academic benefit. Sexual harassment in the form of a hostile work and/or academic environment occurs when the harassing behavior unreasonably interferes with the employee/student work/academic performance and/or creates a hostile, intimidating or offensive work/academic environment.

In order for the conduct to be considered sexual harassment, the behavior must be:

- Unwanted and/or unwelcome.
- Sexual in nature and/or related to the sex or gender of the employee/student.
- Sufficiently severe or pervasive enough to alter the conditions of the employee/student employment or academic environment (when describing sexual harassment resulting from a hostile work/academic environment).

Examples of sexual harassment include, but are not limited to, the following:

- A professor insists that a student have sex with them in exchange for a good grade.
- A student repeatedly sends sexually oriented jokes in an email list they created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- A professor demands that students discuss their past sexual experiences, yet the conversation is not in any way germane to the class.
- A staff member repeatedly touches and makes sexually suggestive remarks to a student while the two are waiting at a stop for the school's shuttle bus, causing the student to walk long distances instead of taking the shuttle bus.
- One instance of rape and/or other acts of sexual violence;

Sexual harassment also includes harassment of a sexual nature directed at gay or lesbian persons that is sufficiently serious to limit or deny the ability to participate in or benefit from the university's educational and employment programs. Likewise, sexual harassment can occur where claimant and respondent are members of the same sex. *Example: a male student or a group of male students target a gay student for physical sexual advances.*

For purposes of this policy, stalking may also be a form of sexual harassment. For more information regarding sexual harassment, please consult the Nondiscrimination Policy and Complaint Procedures for Employees and Students.

- **Sexual Misconduct:** one or more acts of sex discrimination, sexual harassment, sexual violence, dating violence, domestic violence, stalking or gender-based harassment or discrimination. Sexual

misconduct can occur among, between or to heterosexual, lesbian, gay, bisexual and transgender individuals.

- **Sexual Penetration:** any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person. Includes, but not limited to, cunnilingus, fellatio or anal penetration.
- **Sexual Violence:** nonconsensual sexual acts: physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the claimant's age, use of drugs or alcohol, or a disability that prevents the claimant from having the capacity to give consent). Conduct will be deemed sexual violence whether obtained by force or threat of force and whether completed or attempted. Sexual exploitation (taking nonconsensual or abusive sexual advantage of another for your own benefit) may also be considered a form of sexual violence, depending on the circumstances. *Examples: rape, sexual assault, sexual abuse.*
- **Stalking:** 1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to, A) fear for the person's safety or the safety of others, or B) suffer substantial emotional distress. For the purposes of this definition: i) Course of conduct means two or more acts including but not limited to acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with a person's property; ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; iii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; iv) Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting (42 U.S. Code Section 13925 (a)(30), or, 2), A) Knowingly and without lawful justification, on at least two separate occasions, following another person or placing the person under surveillance or any combination thereof and, i) At any time transmitting a threat of immediate or future bodily harm, sexual assault, confinement or restraint and the threat is directed toward that person or a family member of that person, or; (ii) Places that person in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint to or of that person or a family member of that person; or, B) When, having been previously convicted of stalking another person, knowingly and without lawful justification on one occasion, i) Follows that same person or places that same person under surveillance; and, ii) Transmits a threat of immediate or future bodily harm, sexual assault, confinement or restraint to that person or a family member of that person. (720 ILCS 5/12-7.3).

Stalking may be accomplished by physical act or electronic means, such as computer or cell phone.

- **Title IX Coordinator:** The role of the Title IX Coordinator is to manage, implement and administer NIU's procedures which prohibit discrimination, including enforcement of Title IX complaint procedures, Title IX training programs and ensuring the prompt and appropriate resolution of Title IX complaints. NIU Title IX Coordinator is Karen L. Baker, Affirmative Action and Equity Compliance, Human Resource Services, 1515 W. Lincoln, DeKalb, IL 60115, 815-753-6017, [titleixcoordinator@niu.edu](mailto:titleixcoordinator@niu.edu).

- **Voluntary:** Consent must be freely given and cannot be the result of force (violence, physical restraint or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), intimidation (extortion, menacing behavior, bullying), coercion (undue pressure) or fraud (misrepresentation or material omission about oneself or the situation in order to gain permission for sexual or intimate activity).
- **Voyeurism:** the condition of one who derives sexual satisfaction from observing the sexual organs or acts of others, generally from a secret vantage point.

Portions of this document have been provided by *Revised Sexual Harassment Guidance*, U.S. Dept. of Educ., Office for Civil Rights (January, 2001); *Dear Colleague Letter*, U.S. Dept. of Educ., Office for Civil Rights (April 4, 2011); *Illinois Preventing Sexual Violence in Higher Education Act* (110 ILCS 155); the *ATIXA Gender-Based and Sexual Misconduct Model Policy*, Sokolow, Lewis and Schuster, NCHERM & ATIXA, 2011; *Navigating Sexual Violence Issues Under OCR's 2011 Dear Colleague Letter*, Margolis Healy, 2011; *Questions and Answers on Title IX and Sexual Violence*, U.S. Dept. of Educ., Office for Civil Rights (2014); *Questions and Answers on Campus Sexual Misconduct*, U.S. Dept. of Educ., Office for Civil Rights (2017); and *The University of Michigan Student Sexual Misconduct Policy* (August, 2013).

*The Family Educational Rights and Privacy Act* (FERPA) (20 U.S.C. § 1232g) is a Federal law that protects the privacy of student education records.