



# Northern Illinois University

Affirmative Action & Equity Compliance

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

*Last Revision Date: September 29, 2015*

# Title IX Policy and Procedures

Last Revision Date: September 29, 2015

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## I. PURPOSE

The mission of Northern Illinois University (NIU) is the mission of the University 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 (i.e., 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.

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. The University Office of 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 complaints of sexual misconduct occurring at NIU.

### **Notice of Non-Discrimination**

Academic and employment decisions based upon sex or gender and/or acts of sexual misconduct are forms of illegal sex discrimination under Title IX, additional federal and state laws, and 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**, Lowden Hall 101, DeKalb, IL 60115 (815) 753-6017, klbaker@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 *Non-Discrimination/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, extra-curricular, 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.

### **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, (815) 753-9541.

### **Responsible Employee**

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; or
- (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, 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 at: <http://niu.edu/conduct/Incidentreporting/index.shtml>

**Before** a person reveals information that he or she 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), an Advocacy Coordinator from Counseling and Consultation Services and a representative from the NIU Department Police and Public Safety when appropriate may consider; and (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; and (4) Claimant's right to report a crime to campus or local law enforcement.

## **Training and Education**

All persons involved in implementing a school's grievance procedures (i.e., Title IX coordinators, others who receive complaints, investigators, and adjudicators) must have training or experience in handling sexual misconduct complaints, and in the operation of the school's grievance procedures. Such training, should include, but is not limited to, working with and interviewing persons subjected to sexual misconduct, the proper standard of review for sexual misconduct complaints, information on consent, and the ability to consent with the role of drugs and alcohol.

## **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: <http://www.hr.niu.edu/resources/files/other/DCFS%20Flowchart.pdf>

### III. TITLE IX COORDINATOR(S)

Questions or concerns regarding Title IX, this Policy, or other aspects of the University's equal opportunity or affirmative action programs can be directed to **Karen L. Baker, Associate Vice President and Title IX Coordinator**, Lowden Hall 101, DeKalb, IL, (815) 753-6017, klbaker@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:

**Anne Birberick, Vice Provost, Deputy Title IX Coordinator for Academic Affairs**

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, Room 200D, DeKalb, IL 60115, (815) 753-9541, dboughton1@niu.edu.

**Jeanne Meyer, Director, Office of Student Conduct, Deputy Title IX Coordinator for Student Conduct**

Office of Student Conduct, Campus Life Building, Room 280, DeKalb, IL 60115, (815) 753-9286, jeanne@niu.edu.

### IV. PROCEDURE

#### **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, or third party 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/Sexual Misconduct Complaint***

A formal Title IX/Sexual Misconduct 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/Sexual Misconduct 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 a Maxient Report.* The employee/student may file a Title IX Complaint by completing the online incident report utilizing the Maxient Reporting system, located through the Office of Student Conduct at: <http://niu.edu/conduct/Incidentreporting/index.shtml>
- *Complete the AAEC Title IX/Sexual Misconduct Complaint form.* The Title IX/Sexual Misconduct complaint that is filed as an incident report and/or formal AAEC complaint, will be forwarded to the Title IX Coordinator, or designee, for review and follow-up.

Additional documents may be submitted with the Title IX/Sexual Misconduct Complaint (*e.g.*, police report, e-mails), but is not required.

### ***What to Expect if a Title IX/Sexual Misconduct Complaint is filed***

If a formal Title IX/Sexual Misconduct 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 Complainant 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 Complainant and information from Counseling and Consultation Services and/or services that are available within the community will be provided. The Complainant will have an opportunity to discuss the investigation process and ask questions regarding the possible outcomes and next steps within the process. The Complainant 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 or not further involvement by the University Police is warranted will also be performed by the Coordinator and/or designee.



## **File a Criminal Complaint**

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

Any student/employee may file a 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:

**NIU Department of Police and Public Safety** – for incidents that occur on campus.

375 Wirtz Drive  
DeKalb, IL 60115  
Emergency: 911  
Non-Emergency: 815-753-1212  
Email: niupd@niu.edu  
www.niu.edu/publicsafety

**DeKalb Police Department** – for incidents that occur off campus.

700 West Lincoln Highway  
DeKalb, IL 60115  
Emergency: 911  
Non-Emergency: (815) 748-8400  
Email: dekalb.police@cityofdekalb.com  
www.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 an Advocacy Coordinator 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, Advocacy Coordinator 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 employee or student 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/Sexual Misconduct Complaint, Police Report, and/or information regarding available counseling resources on campus and in the surrounding community.

#### ***What Confidential Resources are Available***

The University and DeKalb community provide confidential resources if you have suffered 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.**

A report or complaint is not necessary to utilize these resources.

**NIU Advocacy Coordinator  
Counseling & Consultation Services**  
200 Campus Life Building  
(815) 753-1206  
[www.niu.edu/counseling/advocacy](http://www.niu.edu/counseling/advocacy)

**NIU Health Services**  
Wirtz Drive & Lucinda Avenue  
(815) 753-1311  
[www.niu.edu/healthservices](http://www.niu.edu/healthservices)

**NIU Office of the Ombudsperson**  
601 Holmes Student Center  
(815) 753-1414  
[www.niu.edu/ombuds](http://www.niu.edu/ombuds)

**Employee Assistance Program**

700 Holmes Student Center  
[www.hr.niu.edu/ServiceAreas/EmployeeAssistance](http://www.hr.niu.edu/ServiceAreas/EmployeeAssistance)

**NIU Psychological Services Center**

Psychology/Math Building 86  
(815) 753-0591  
[www.niu.edu/PSYC/psc](http://www.niu.edu/PSYC/psc)

**NIU Couple & Family Therapy Clinic**

Wirtz Hall 146  
(815) 753-1684  
[www.chhs.niu.edu/familytherapyclinic](http://www.chhs.niu.edu/familytherapyclinic)

**Kishwaukee Community Hospital\*\***

One Kishwaukee Hospital Drive  
DeKalb, IL 60115  
(815) 756-1521  
[www.kishhealth.org](http://www.kishhealth.org)

\*\*The Hospital can provide evidence collection in cases of sexual violence, which is an important step towards pursuing a complaint or criminal charges.

**Safe Passage, DeKalb**

(815) 758-7922  
[safepassagedv.org](http://safepassagedv.org)

**Ben Gordon Counseling Center**

12 Health Services Drive  
Sycamore, IL 60178  
(815) 756-4875  
Crisis Line: (866)-242-0111  
[bengordoncenter.org](http://bengordoncenter.org)

**Depression Crisis Hotline**

(630) 482-9696

**Suicide Hotline**

(800) 784-2433

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

If a Claimant chooses to remain completely anonymous and utilizes resources listed above, 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, confidentiality may be revoked.

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 or not to maintain the request for confidentiality and/or from consulting with appropriate university officials if warranted by the facts of the case.

### **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/Sexual Misconduct Complaint) or reasonably should know of possible sexual misconduct, a fair and equitable investigation will be conducted in as prompt 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/Sexual Misconduct 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;
- Day 23-28:** Claimant and Respondent may provide a rebuttal to information in the *preliminary report* or suggest additional witnesses;
- 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 38-40:** The Title IX Investigator sends notice of the finding(s) to Claimant and Respondent. Email is deemed an acceptable form of delivery. The Claimant and the Respondent will have five (5) days to appeal the finding(s) contained within the final report to the Executive Vice President and Provost (if the Respondent is an employee) or the Vice President for Student Affairs and Enrollment Management (if the Respondent is a student) and/or designee for review;
- Day 41-45:** 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;
- Day 46-55:** 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;

- Day 41-45:** The Resolution Officer attempts to resolve the sanction by agreement;
- Day 45-55:** 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 (5) day period to Appeal the finding(s) and/or any sanction imposed by decision/hearing;
- Day 62-82:** Appeal, if any, is processed.

### **Interim 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, providing a police escort between classes and/or related to the workplace, no-contact orders, modification of class schedules and/or locations, employment and/or living arrangements, 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 the Office of 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 Sexual Misconduct Investigations, resulting from the filing of a Sexual Misconduct Complaint as a result of sexual misconduct:

- Any investigation will proceed independent of any criminal or other legal proceedings. Further, the University reserves the right to forward any Sexual Misconduct Complaint to the appropriate law enforcement agency for criminal investigation and/or charges.
- Fairness to all individuals involved with a Sexual Misconduct Complaint is a priority. Both the Claimant and Respondent to a Sexual Misconduct Complaint will be given a copy of these procedures and will have the opportunity to respond to all allegations.

- 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.
- Every Title IX Complaint of sexual misconduct will be investigated to the maximum extent practicable.
- The investigation and the imposition of any sanction will be completed within 45-60 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 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.
- The Claimant will receive periodic information on the status of the investigation, including when the Respondent receives notice of the Title IX/Sexual Misconduct Complaint. Email is an acceptable form of delivery.
- Claimant and Respondent shall receive notice of the identity of any investigator(s) or Resolution Officer and shall have the opportunity to challenge each for cause if such challenge is delivered within two (2) business 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 violation of this Policy has occurred, appropriate sanctions will be imposed by the Office of 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 or not 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 finding of the investigator(s) and/or Resolution Officer regarding sanctions as provided herein. (See *Appeals*, below).
- 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 student Respondents, if there is a finding of sexual misconduct, a Final Report of Findings will be forwarded to the Office of 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. Witness(es) will receive a Final Closure Memorandum.

In matters involving an NIU employee or third parties, 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 (*students*)**

The Director of Student Conduct, or designee, will consult with the participating Claimant, Respondent, Title IX Coordinator (or designee), and other affected parties, as appropriate, to gather input on potential sanctions. Depending on the circumstances, the Director 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 Director, they may be accompanied by a Support Person.



The Director will then prepare a proposed resolution agreement between the University and the Respondent, informed by input from the Respondent, the Claimant (if participating), and the University. 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 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 finding(s) or sanction.

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

If the Respondent is a student and unwilling to enter into an agreement and/or fails to appear for the preliminary conference required by the Sanction by Agreement process, or if the Claimant objects to the proposed agreement, the sanctions will be decided by a Resolution Officer in accordance with the hearing procedures of the Office of Student Conduct. The Resolution Officer will determine appropriate sanctions after a hearing. The Resolution Officer will not modify the findings of the investigative report and will address only what sanctions are appropriate at the hearing. The Resolution 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 (2) academic 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;
- A hearing may be held regardless of whether Respondent or Claimant has withdrawn from the University;
- Claimant is not required to attend any hearing;
- Respondent and Claimant will each receive three (3) academic 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 (3) academic 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 be allowed to testify or answer questions outside the direct physical presence of the other (*e.g.* via telephone or behind a screen, etc.); and
- 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-includes, but is 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 Abuse Assessment;
- Training on 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 from employment;
- Training on 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 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 victim services including medical, counseling, and academic support services, such as tutoring;
- Arranging for the Claimant to have extra time to complete or re-take 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 and how to conduct Title IX Investigations;
- 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, for example, the sexual misconduct created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and
- Any other remedy that the Title IX Coordinator may consider appropriate.

## **Appeals**

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

Appeals may be made *only* on the following grounds and *only* within five (5) 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); or
- A review of all available and relevant information indicates that the evidence does not clearly support the finding(s) and provides clear and definite support for modifying the original finding(s).

***If the Respondent is an NIU Student***

In cases where the Respondent is a student, the finding(s) and/or sanction(s) may be appealed by either the Claimant or Respondent on the grounds listed above to the Vice President of Student Affairs & Enrollment Management, or designee. The appealing party should submit a copy of the investigator's decision and/or any sanction to the Vice President within five (5) business days of receipt of the decision regarding sanction(s).

***If the Respondent is an Employee of NIU or a Third Party***

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 (5) business days of receipt of the decision regarding sanction(s).

If no appeal is received within the five (5) day period, the investigator's finding(s) and/or any sanction(s) or corrective action(s) will be final. If the appeal is received within the five (5) day period, the Executive Vice President and/or applicable Vice President, or designee, will review the investigator's finding(s) and/or any sanction(s) imposed by decision/hearing and obtain any additional information deemed necessary for resolution of the appeal. Within twenty one (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.

## **V. 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)**:

**Office for Civil Rights (Chicago Office)**

U.S. Department of Education

Citigroup Center

500 W. Madison Street, Suite 1475

Chicago, IL 60661-4544

Telephone: 312-730-1560

FAX: 312-730-1576; TDD: 877-521-2172

Email: OCR.Chicago@ed.gov

[www.ed.gov/](http://www.ed.gov/)

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)**:

**Illinois Department of Human Rights**

James R. Thompson Center  
100 W. Randolph Street, Suite 10-100  
Chicago, Illinois 60601  
(312) 814-6200  
TDD: (12) 263-1579  
[www.state.il.us/dhr](http://www.state.il.us/dhr)

**Equal Employment Opportunity Commission**

Chicago District Office  
500 West Madison Street, Suite 2000  
Chicago, Illinois 60661  
(312) 353-2713  
TTY: (312) 353-2421  
[www.eeoc.gov](http://www.eeoc.gov)

## **VI. 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 and voluntary 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 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. 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 to 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). (3) The existence of a dating relationship in 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 non-criminal 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 by a sex organ of another person, without the consent of the victim.
- **Resolution Officer:** a representative from the Office of 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; or
  - 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 & 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 non-consensual 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 him/her 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 Non-Discrimination 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 non-consensual 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, or 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 2 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 towards 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). (3) Stalking may be accomplished by physical act or electronic means, such as computer or cell phone.

- **Title IX Coordinator:** Karen L. Baker, Lowden Hall 101, DeKalb, IL 60115, (815) 753-6017, klbaker@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.

<sup>1</sup>Portions of this Policy and Procedures 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); 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); and the University of Michigan *Student Sexual Misconduct Policy* (August, 2013).

<sup>2</sup>*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.

<sup>3</sup>This does not prevent the presentation and consideration of evidence regarding whether conduct was welcome or unwelcome.