

What is Sexual Misconduct?

TERMS YOU SHOULD KNOW

Agenda

Purpose of training series

Defining sexual misconduct

Explaining jurisdiction of policy

Intersection between Clery and Title IX

Purpose of Training Series

A recipient must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the following:

- The definition of sexual harassment
- Scope of the recipient's education program or activity,
- How to conduct an investigation and grievance process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Any materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Sexual Misconduct

Umbrella term for nonconsensual sexual acts

Sexual Misconduct Policy includes the followings as forms of sexual misconduct:

- Sexual harassment
- Sexual assault
- Dating and domestic violence
- Stalking
- Gender harassment

Consent

- Clear, unambiguous, informed, voluntary and freely given agreement to knowingly engage in sexual activity.
- Mutually understandable by words or actions
- Active and cannot be based on the absence of an affirmative statement or act of denial.
- Cannot be given when a person is incapacitated, asleep, or unconscious; and the respondent knew or should have known that the person was incapacitated, asleep, or unconscious.
- Cannot be the result of force, threats, intimidation, coercion, or fraud.
- Seeking and receiving consent is the responsibility of the person(s) initiating the sexual act(s) regardless of whether the person initiating the act(s) is under the influence of drugs and/or alcohol.
- Consent to any sexual act or prior consensual sexual act does not constitute consent to any other sexual act.
- May be initially given but withdrawn at any time.

Sexual harassment

Three forms of sexual harassment:

1. Quid pro quo

An employee conditions the provision of university aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

2. Denial of equal access

Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.

3. Sexual assault, dating and domestic violence, and stalking (VAWA crimes)

Sexual assault

Any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent. Sexual assault also includes the following:

- Rape
- Sodomy
- Sexual assault with an object
- Fondling
- Incest
- Statutory rape

Dating violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, type of relationship, and frequency of interaction between the persons involved in the relationship. 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.

Domestic violence

A felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the complainant;
- By a person with whom the complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the complainant as a former or current spouse or intimate partner;
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the State of Illinois;
- By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the State of Illinois.

Stalking

Engaging in a course of conduct directed at a specific person on the basis of their sex that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

- Course of conduct: two or more acts in which a person directly, indirectly or through third parties follows, monitors, observes, surveils, threatens, communicates to or about a person, or interferes with another's personal property.
- Substantial emotional distress: significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Gender harassment

Unwelcome conduct on the basis of gender determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.

Jurisdiction

An act of sexual misconduct + affiliation with the university

- Education program or activity
 - Locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the harassment occurs
 - Any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- NIU policy broadens scope
 - All sexual misconduct, whether it occurs in any academic, educational, extracurricular, athletic or other university program or activity, on- or off- campus, even if the sexual misconduct did not occur in the context of a university or education program or activity
- Involving student or employee of NIU
 - Student: person admitted to the university and/or enrolled in any course (for credit or not for credit), or who is on campus for the purpose of enrolling in any course at the time of the alleged incident.
 - Employee: person that receives compensation from the university for services performed. This includes civil service staff, supportive professional staff, faculty, instructors, graduate/teaching/research assistants, extra help, and student employees.

Clery and Title IX Intersection

Purpose

- Clery: notifying students about safety of campus
- Title IX: responding to sexual misconduct

Violations

- Clery: primary offenses, sex offenses, drug and alcohol violations, hate crimes
- Title IX: only sex offenses + sexual and gender harassment

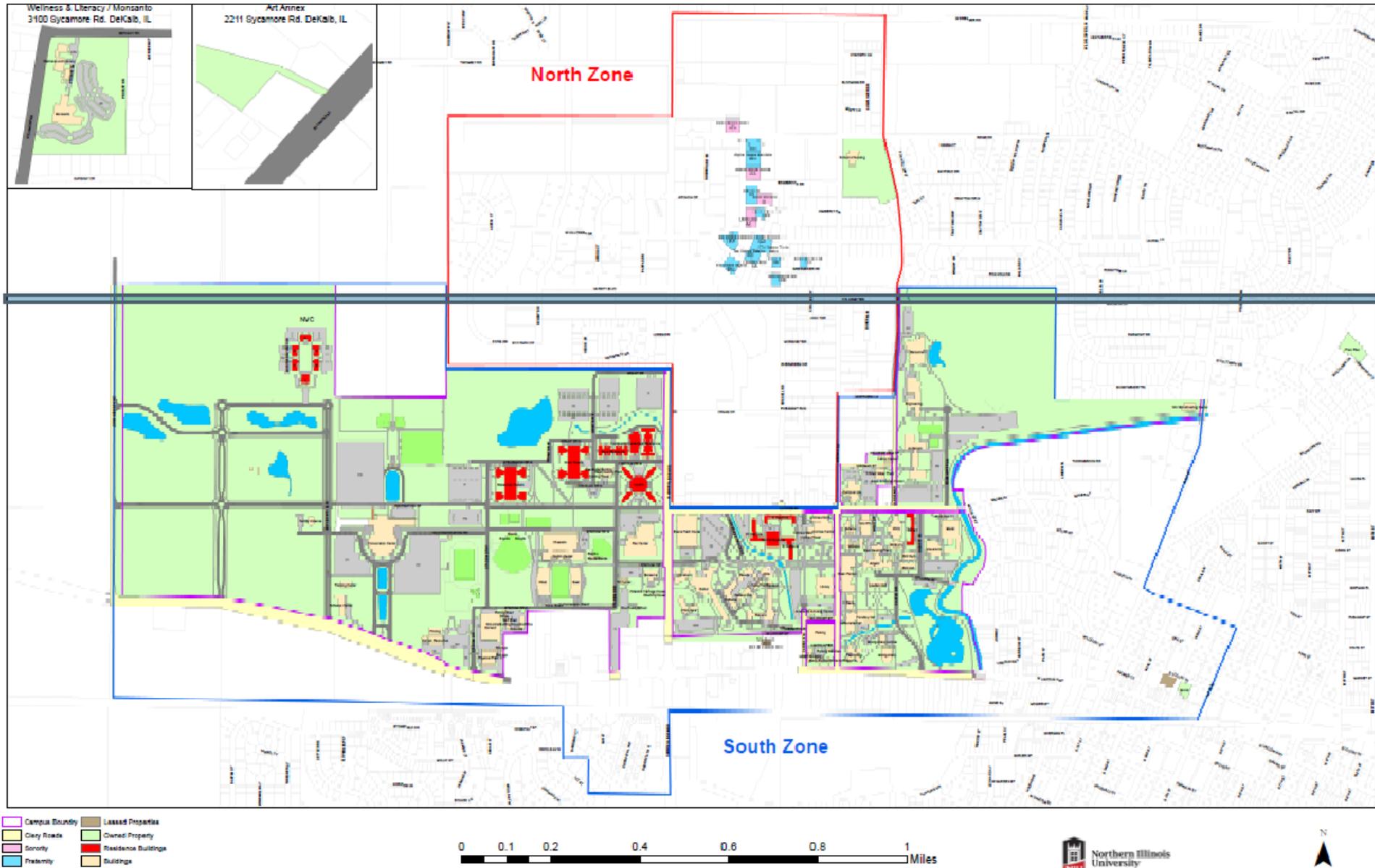
Geography

- Clery: on campus, on public property within or immediately adjacent to the campus, in or on non-campus buildings or property that NIU owns or controls
- Title IX: everywhere (by policy)

Reporting

- Clery: Campus Security Authorities – select group of employees
- Title IX: Responsible Employees – all employees, unless confidential

Northern Illinois University Clery Map - DeKalb





Upcoming Training

Session 3: NIU's Complaint Resolution Process: Intake to Appeal

Teams Meeting in August