

Sexual Misconduct Terminology and Grievance Procedures

FALL 2022 TITLE IX PERSONNEL TRAINING

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

Defined as:

- Freely given
- Lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent,
- Manner of dress does not constitute consent,
- Consent to past sexual activity does not constitute consent to future sexual activity,
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another,
- Can be withdrawn at any time, and
- Cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following:
 - the person is incapacitated due to the use or influence of alcohol or drugs;
 - the person is asleep or unconscious;
 - the person is under age (IL is 17); or
 - the person is incapacitated due to a mental disability.

Discussion Items:

- Dual incapacitation/"drunk sex"
- Use of drugs
- University v. criminal definition
- Words and/or actions
- Respondent know or should have known

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.

Complaint Resolution Procedures

Complainant: individual subjected to sexual misconduct

- Victim/survivor

Respondent: individual accused of engaging in sexual misconduct

- Offender

Reports: places the Title IX Coordinator on notice of actual or suspected sexual harassment

- Made by Responsible Employees, third-parties, and Complainants
- Triggers information on the Complainant's rights and options

Complaints: document filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting an investigation

- Triggers the university's formal grievance procedures

What happens after a report is made?

The identified Complainant will be promptly contacted about rights and options.

Information included:

- How to file a formal complaint with the university
- How to file a police report
- Contact information of support services
- Availability of supportive measures with or without filing a complaint
- Brief summary of complaint resolution procedures

Accused individual/Respondent is not contacted.



Supportive Measures

Non-disciplinary and non-punitive individualized services offered without fee or charge

- Before or after filing a formal complaint or where no formal complaint has been filed.
- Cannot unreasonably burden the other party

Designed to restore or preserve equal access to the university's program, or activity or protect the safety of all parties or the education environment, or deter sexual harassment

May include:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absences
- Increased security and monitoring of certain areas of the campus

Emergency Removals

May remove a student on an emergency basis after an individualized safety and risk analysis

- Determination that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal

Provides respondent with notice and an opportunity to challenge the decision

Administrative Leave

May place a non-student employee on administrative leave pending investigation



What happens after a complaint is made?

Triggers university's formal grievance process

Notice of the complaint sent to Complainant and Respondent

- Identities of parties involved
- Conduct allegedly constituting policy violation
- Date and location of incident
- Presumption of not responsible
- Determination regarding responsibility made at conclusion of hearing
- Ability to have advisor of choice
- May inspect and review evidence
- Prohibition on knowingly making false statement or submitting false information

Dismissal or Referral

Circumstances warranting dismissal or referral:

- If the conduct alleged in the formal complaint does not constitute a violation of policy,
- Evidence gathered during the investigation does not establish a violation of policy,
- Respondent is no longer enrolled or employed by the university, or
- “Specific circumstances prevent the university from gathering evidence sufficient to reach a determination of responsibility.”

Title IX Coordinator may dismiss the formal complaint or refer the matter to a different university process.

Parties notified in writing along with the reason why

Appeal rights



Informal Resolution

Circumstances allowing informal resolution:

- Facts not contested,
- Respondent admitted or wishes to admit responsibility, or
- Both parties want to resolve the case without a completed investigation or hearing.

Ultimate decision on whether informal resolution is available and appropriate, including the terms, rests with the Title IX Coordinator.

Only offered after a formal complaint is filed.

If desired, request should be made prior to reaching a determination regarding responsibility.

No appeal rights.

Investigation Process

The university is responsible for gathering evidence

- Separate interviews with the complainant, the respondent, and witnesses
- Collection of nontestimonial evidence

Interviewee able to give their version of events, list the names of any potential witnesses (including fact and expert witnesses), and provide both inculpatory and exculpatory evidence.

The complainant and respondent may also suggest questions to be asked of the other party.

At end of investigation, complainant and respondent provided copy of all evidence

- Evidentiary Report
- Able to provide additional information or responses

Investigative Report: Evidentiary Report + Responses + Outlined Facts

- Disputed and undisputed information
- Facts related to credibility
- Serves as basis of hearing



Hearing Notice

Hearing Facilitator sends out after the Investigative Report

Includes:

- Information on identity of hearing officer
 - Ability to object
- Requirement of pre-hearing meeting
- Information on role of advisors
- Hearing date

Pre-Hearing Meeting

Both parties and their advisors separately meet with the Hearing Facilitator

- Hearing process explained
- Rules discussed
- Other questions and answers provided
- Party's advisor must attend this meeting
 - Failure to attend may result in their disqualification from participating in the hearing



Hearing Process

Conducted in real time: in-person or through electronic means

- Parties must be able to simultaneously see and hear the party or the witness answering questions.
- Complainant and respondent are not permitted to directly ask questions of each other.

Advisors: must attend with complainant or respondent

- Conduct cross-examination of the parties and any witnesses.
- Still present if party does not appear.

Only relevant questions allowed to be asked: hearing officer determines relevancy

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

- Exception: to prove that someone other than the respondent committed the conduct alleged, or concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent.



Hearing Decision

Conclusion of the hearing, written determination regarding responsibility issued

- Standard of proof: preponderance of evidence

Determination provided separately and simultaneously to complainant and respondent and includes:

- Allegations contained within the notice
- Description of procedural steps taken
- Finding of fact supporting the determination
- Conclusion regarding the application of policy to the facts
- Statement and rationale for the determination of responsibility
- Any sanctions imposed on the respondent
- Remedies provided to the complainant.

Determination final on the date that the appeal response is provided or the date on which appeal would no longer be considered timely.

Sanctions will be in effect after the determination is final.



Appeals

Complainant and Respondent both have a right to appeal the decision

Grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;
- The outcome was significantly contrary, unsupported, and unreasonable to the weight of the evidence presented; and
- The sanction is disproportionate to the violation.

What's Next?

Check Blackboard.

- ATIXA 20 Minutes Videos
- Safe Passage Video
- SPARC Trainings

