

University Policy: Title IX Sexual Harassment Policy

Policy Category: Community

Subject: Sexual Harassment, Dating and Domestic Violence, Sexual Assault, and Stalking Related to Title IX

Responsible Executive: Vice President of People and External Affairs

Offices Responsible for Review of the Policy: Office of Equity and Title IX

Supplemental Documents: Related Local and Federal Laws:

Title IX of the Education Amendments of 1972 prohibits sex discrimination by educational institutions ("Title IX").

Violence Against Women Act 2013 requires colleges and universities to address and prevent campus sexual violence.

Related University Policies: Student Conduct Code, WCL Honor Code, Faculty Manual, WCL Faculty Manual, Staff Personnel Policies Manual

I. SCOPE

Members of the University community covered by this Policy include, but are not limited to, faculty, staff, and students of American University, and related third-parties (such as applicants for admission and employment, vendors, guests, contractors, and program participants) (collectively "AU Community"). This Policy applies to all University education programs and activities in the United States, whether on or off campus. The University will address complaints related to an AU Community member's participation in those programs and activities.

This Policy addresses the procedures for reporting and responding to incidents of sexual harassment as defined in this Policy that occurs in the University's education programs and activities and occurs in the United States. This Policy is intended to be consistent with the University's

set forth and referenced in this Policy, the University will take steps to eliminate Title IX Sexual Harassment, prevent its recurrence, and remedy any discriminatory effects for members of the AU Community.

It is the responsibility of every member of the AU Community to foster an environment free

D. Consent. Consent is defined as words or conduct indicating a freely given agreement to have sexual intercourse or to participate in sexual activities. Silence or lack of resistance does not imply consent. Consent for one sexual act does not imply consent for any subsequent sexual act, and consent must be on-going. Sexual contact will be considered “without consent” if no clear consent, verbal or non-verbal, is given; if inflicted through force, threat of force, or coercion; or if inflicted upon a person who is unconscious or who otherwise reasonably appears to be without the mental or physical capacity to consent.

(1) **Age of Consent.** The age of consent in the District of Columbia is sixteen (16) years of age. Individuals younger than 16 years of age are legally incapable of giving consent to sexual activity with an individual who is four or more years older.

(2) **Coerce.** Coerce is to force one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, expressed or implied threats, intimidation, or the threat or use of physical force. Coercion also includes forcing a person to act by impairing the faculties of that person through the administration of a substance.

(3) **Incapacitation.** Incapacitation is defined as a temporary or permanent state in which an individual is unable to give consent to sexual contact due to mental, developmental, or physical impairment, to include incapacitation, voluntarily or involuntarily, from alcohol or drug use. States of incapacitation include, but are not limited to: sleep, unconsciousness, intermittent consciousness, or any other state in which an individual is unaware that sexual contact is occurring. Where alcohol or drug use is involved, incapacitation is a state beyond mere intoxication, or impairment of judgment.

E. Education Program or Activity. Education program or activity means every program or activity under the operations of the University, whether on or off campus. Education program or activity includes locations, events, or circumstances in which the University exercised substantial control over both the Respondent and the context in which the Title IX Sexual Harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

F. Formal Complaint. Formal Complaint means a document filed by a Complainant, or signed by the Title IX Coordinator, alleging Title IX Sexual Harassment against a

- G. Preponderance of the Evidence.** Preponderance of the Evidence means a measure of proof that would lead a reasonable person to accept as “more likely than not” that a fact is true or that an incident occurred.
- H. Respondent.** Respondent means an AU Community member, within the United States, who has been reported to have been the perpetrator of conduct that could constitute Title IX Sexual Harassment.
- I. Supportive Measures.** Supportive Measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve access to the University’s education programs and activities, and to protect the safety of all parties and the University’s educational environment while not being punitive in nature or unreasonably burdensome to any party. The Title IX Coordinator is responsible for ensuring the implementation of Supportive Measures and coordinating the University’s response with the appropriate offices on campus. The Title IX Coordinator or designee has the discretion to impose and/or modify any Supportive Measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of Supportive Measures. The University will maintain the privacy of any Supportive Measures provided under this Policy to the extent that maintaining such confidentiality will not impair the University’s ability to provide the Supportive Measures, and the University will promptly address any violation of a Supportive Measure.
- J. Title IX Sexual Harassment.** Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:
- (1) A University employee conditioning the provision of a University aid, benefit, or service on an individual’s participation in unwelcome sexual conduct;
 - (2) Unwelcome conduct 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. As defined in 20 U.S.C. § 1092(f)(6)(A)(v), Sexual Assault constitutes any sexual act directed against another person, without consent of the person, including instances in which the person is incapable of giving consent. Sexual Assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI). The following are types of Sexual Assault under the FBI’s National

- (a) Rape. As defined in NIBRS, Rape is the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (b) Sodomy. As defined in NIBRS, Sodomy is the oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- (c) Sexual Assault with an Object. As defined in NIBRS, Sexual Assault with an object is the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent

- d. **Ordained Clergy** – Kay Spiritual Life Center; (202) 885-3320; kslc@american.edu; www.american.edu/ocl/kay

Faculty/Staff Confidential Resources

- a) **Professional Counselors – Faculty and Staff Assistance Program (FSAP)**; (202) 885-2593; fsap@american.edu; <https://www.american.edu/hr/worklife/fsap.cfm>

- 4. Reports to Title IX Coordinator.** The duty to report as described in Sections IV(A)(1) and (2) of this Policy may not trigger an institutional response to a report of Title IX Sexual Harassment. The University will only respond to reports of Title IX Sexual Harassment once the University has actual knowledge of the Title IX Sexual Harassment in the University's education program or activity against an AU Community member in the United States. **Therefore, AU Community members who feel that they have been subjected to Title IX Sexual Harassment and are seeking an institutional response to Title IX Sexual Harassment should directly contact the Title IX Coordinator.** The following is the Title IX Coordinator's contact information where reports and Formal Complaints of Title IX Sexual Harassment may be filed:

<p style="text-align: center;">UNIVERSITY TITLE IX COORDINATOR</p> <p>Assistant Vice President for Equity and Title IX Officer Office of Equity and Title IX 4400 Massachusetts Avenue, NW Washington, DC 20016 Phone: 202-885-8080 Email: TitleIX@american.edu</p>
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- 5. Timeframes for Reporting.** In order to maintain and support a community that is respectful and free from Title IX Sexual Harassment and related misconduct and to maximize the University's ability to respond promptly and effectively, individuals are urged to come forward with reports of Title IX Sexual Harassment as soon as possible. Complainants and other reporting individuals are encouraged to seek assistance and to utilize available resources if they feel that they have been subjected to Title IX Sexual Harassment. The sooner a report is made, the more effectively it can be investigated, e.g. while witnesses are still available, memories are fresh, and documentation may still be available. There is, however, no time limitation for reporting Title IX Sexual Harassment under this Policy. In some cases, e.g., where the individual accused of Title IX Sexual Harassment is no longer affiliated with the University, the University may not be able to take disciplinary action. However, the University will strive to provide other fair and reasonable measures to support the Complainant and minimize any future misconduct.
- 6. Initial Response to a Report.** Once the University has actual knowledge of a report of Title IX Sexual Harassment, the Title IX Coordinator or designee will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without filing a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

7. Option to File a Criminal Report.

- c. A Respondent who is removed from the University's education programs and activities will be provided notice and an opportunity to challenge the decision immediately following the removal. The Respondent must submit the challenge in writing, and include any documentation that is supportive of the challenge to the appropriate University official. If the Respondent is a student, then the Dean of Students or designee will render a final decision regarding the challenge to the emergency removal. If the Respondent is a faculty member, then the Deputy Provost or designee will render a final decision on the challenge to the emergency removal. If the Respondent is a staff or related third party, then the Assistant Vice President of Human Resources or designee will render the final decision on the challenge to the emergency removal.

5. **Administrative Leave of an Employee/Faculty Respondent.** The Title IX Coordinator or designee, in consultation with other University administrators as necessary, may place a non-student employee Respondent or a faculty Respondent on administrative leave during the pendency of the grievance process. An employee alleged to have committed Title IX Sexual

- 3. Response to Formal Complaint.** In response to receiving the Formal Complaint, the University will follow the grievance process as specified in this Policy. The grievance process presumes that the Respondent is not responsible for the alleged Title IX Sexual Harassment until all of the relevant evidence has been examined and a determination regarding responsibility is made at the conclusion of the grievance process. The grievance process outlined in this Policy will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent, and by following a grievance process that complies with this Policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

- 4. Estimated Timeline for Resolution for Title IX Complaints.** At the initial meeting with the Complainant, the Title IX Coordinator or designee will explain the grievance process that is identified below. The University strives to complete resolution of Formal Complaints within 94 calendar days from when the University has notice of the Formal Complaint. To ensure timely resolution, the grievance process will take place during all times that the University is open, including summer and winter breaks. However, reasonable adjustments to the timeline of the grievance process may be made for good cause, such as to ensure participation of the parties and/or witnesses, hearing and sanctioning panels cannot be convened, the case is complex, or other comparable situations. Where the estimated timeline cannot be adhered to, the Title IX Coordinator or designee will notify the parties in writing explaining the reason for the delay and providing an anticipated completion date. The 94 calendar day time frame does not include the time needed for the University to process appeals.

D. INFORMAL RESOLUTION

- 1. Informal Resolutions Permitted Generally.**

- 3. Informal Resolution Requirements.** At any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution provided that:
- a.** Written notice is given to the parties that discloses the allegations within the Formal Complaint; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint; and any consequences resulting from participating in the informal resolution process; and
 - b.** Obtains the parties' voluntary, written consent to the informal resolution process.
- 4. Informal Resolution Voluntary.** The University will not compel a Complainant or Respondent to engage in any form of informal resolution. Either party can request to end informal resolution and resume the formal grievance process with respect to the Formal

conduct alleged in the Formal Complaint may be in violation of another University policy, then the Title IX Coordinator or designee will refer the conduct alleged in the Formal Complaint to the appropriate University office for resolution under the applicable University process/procedure.

- 3. Permissible Dismissal of Formal Complaint.** The Title IX Coordinator or designee may dismiss a Formal Complaint or any of the allegations within a Formal Complaint, if, at any time during the grievance process: a Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint or any allegations in the Formal Complaint; the Respondent is not enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations in the Formal Complaint.
- 4. Notice and Appeal of Dismissal.** Upon dismissing a Formal Complaint, or a portion of a Formal Complaint, the Title IX Coordinator or designee will promptly notify both parties, simultaneously and in writing, of the dismissal and explain the reasons of the dismissal. The decision to dismiss a Formal Complaint may be appealed pursuant to Section IV(K) of this Policy.

F. GRIEVANCE PROCESS: CONSOLIDATION OF FORMAL

- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
 - d. Information that each party may have an advisor of their choice, who may be an attorney as described in Section IV(H)(5) of this Policy;
 - e. Information that the parties will be given equal opportunities to inspect and review evidence as described in Section V(H)(10) of this Policy;
 - f. Information of any applicable University policies that prohibit knowingly making false statements or knowingly submitting false information during the grievance process; and
 - g. The University's prohibition against retaliation.
2. **Supplemental Notice of Allegations.** If, during the course of the investigation, there are additional allegations of Title IX Sexual Harassment not included in the original notice of allegations, each party will receive an updated written notice with the additional allegations.

H. GRIEVANCE PROCESS: INVESTIGATION

1. **Equitable Opportunities.** During the formal resolution proceedings, both the Complainant and the Respondent are provided equitable opportunities, including the opportunity to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting and proceeding; and to timely notice of meetings at which their presence will be requested or required.
2. **Request for Disability Accommodations.** A party may contact the Title IX Coordinator to request an accommodation for a disability to participate in the grievance process. A request for an accommodation will be reviewed by the appropriate University office that handles accommodation requests and evaluated pursuant to the applicable office's reasonable accommodation procedures. Generally, a party should make a request promptly and in advance of when the accommodation is needed to allow a reasonable amount of time to review the request. However, a response to an immediate need for accommodation will be considered to the fullest extent possible.
3. **Investigator.** A University Investigator will conduct a prompt, thorough, fair and impartial investigation. The Investigator will receive annual training on: (1) issues of relevance; (2) the definitions in the Policy of Title IX Sexual Harassment; (3) the scope of the University's education program or activity; (4) how to conduct an investigation; and (5) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The Investigator will be impartial and free from conflict of interest or actual bias for or against the Complainant or the Respondent or Complainants or Respondents generally.

4. Conflict of Interest Challenge. The Complainant and the Respondent may challenge the

- b. Legally Recognized Privileged Records.** The Investigator cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived that privilege, in writing, for the grievance process.
- 8. Equal Opportunity to Present Evidence.** During the investigation, the parties will be given equal opportunities to be heard, to present relevant inculpatory and exculpatory evidence, and to identify relevant fact and expert witnesses. The Complainant and the Respondent will not be restricted from discussing the allegations under investigation or to gather and present relevant evidence. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution, and are encouraged to preserve relevant evidence. In the event that a party declines to voluntarily provide material information, the University's ability to conduct a prompt, thorough and equitable investigation may be impacted.
- 9. Notice of Participation.** The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and any third-party witnesses, and will gather relevant evidence and information. Prior to meeting with the Respondent and/or the Complainant, the Investigator will provide each party with written notice of the date, time, location, participants, and purpose of any meeting or investigative interview, with sufficient time for the party to prepare to participate.
- 10. Review of Preliminary Investigative Report and Evidence.** Prior to the completion the final investigative report, the Complainant and the Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. Specifically, the Investigator will send to each party and the party's advisor, if any, the evidence in either an electronic format or a hard copy as determined by the Investigator, and the parties will have ten (10) calendar days to submit a written response, which the investigator will consider prior to the completion of the investigative report. Specifically, each party will have ten (10) calendar days to: (1) provide written comment or feedback; (2) submit additional information; (3) identify additional witnesses; and/or (4) request the collection of other information by the Investigator. The Investigator will determine the appropriateness of additional investigative steps and the relevance of additional information. If either party provides a written response to the Investigator, or makes a request for additional investigation, that written response and any additional information gathered by the Investigator will be shared with the other party, and incorporated as appropriate into the final investigative report. Any information gathered through additional investigation steps will be shared with both parties, and, as appropriate, each party will have the opportunity for further response. Each party will have three (3) calendar days to review any additional substantive information. The Investigator will make all evidence subject to the

4. **Access to Evidence.** The Complainant and the Respondent will be given equal opportunities to reasonably access the final investigative report and the evidence prior to and during the hearing.
5. **Participation of the Parties and Witnesses.** A party or witness who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a

specific grounds of the alleged conflict of interest or bias to the Title IX Coordinator or

- 16. General Relevancy.** Only relevant cross-examination and other questions may be asked of a party or witness. Before the Complainant, the Respondent, or any witness answers a cross-examination or other question, the Hearing Panel Chair must determine whether the question is relevant, and explain any decision to exclude a question as not relevant.
- 17. Optional Submission of Questions.** The parties have the option of providing the Hearing Panel Chair a proposed list of questions to be asked of the other party and witnesses. Providing an advance list of questions allows the Hearing Panel Chair to evaluate relevancy before the hearing which in turn will facilitate a smooth functioning of the hearing.
- 18. Questions Related to Sexual Predisposition or Prior Sexual Behavior.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- 19. Advisor Cross-Examination.** During the hearing, the Hearing Panel must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those questions challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. The advisor at the live hearing does not represent a party, rather the advisor relays the party's cross-examination questions that the party wishes to have asked. Each party will prepare their questions, including any follow-up questions, for

e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

f.

be comprised of will be comprised of three (3) members of the Student Conduct Council (one (1) student and two (2) faculty/staff members). If the Respondent is a faculty member, then the Sanctioning Panel will be comprised of three (3) members of the Faculty Hearing Committee. If the Respondent is a staff member or related third party, then the Sanctioning Panel will be comprised of three (3) members of the Staff Personnel Review Board. The Sanctioning Panel must be impartial and free from bias or conflict of interest. If a member of the Sanctioning Panel has a concern that they cannot conduct a fair or unbiased review, they may report those concerns directly to the Title IX Coordinator or designee and a different Sanctioning Panelist will be assigned.

3. Notice of Sanctioning Panel's Deliberation Date. The Title IX Coordinator or designee will

the Respondent is a staff or related third party, then the Assistant Vice President of Human Resources or designee will render the final decision on sanctions. The recommendation of sanction(s) to the appropriate University administrator will be made by majority vote of the Sanctioning Panel.

In determining the appropriate sanction(s) and/or remedies, the following factors may be considered:

- i the nature of the conduct at issue;
- i the impact of the conduct on the Complainant;
- i the impact or implications of the conduct on the University community;
- i prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, and any criminal convictions, if such information is available and known;
- i any expression of remorse or acceptance of responsibility by a Respondent;
- i maintenance of a safe and respectful environment conducive to learning;
- i protection of the university community;
- i the necessity of any specific action in order to eliminate the Title IX Sexual Harassment, prevent its recurrence and remedy its effects on the Complainant or other University community members; and,
- i any mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Sanctioning Panel may also consider restorative outcomes that, taking into account the safety of the AU Community as a whole, allow a Respondent to develop insight into the causes of the prohibited conduct, learn about the impact of the behavior on the Complainant and the community, and identify how to prevent or change the behavior. Sanctions may be issued individually, or a combination of sanctions may be imposed.

9. Sanction Outcome Letter. The appropriate University administrator or designee will normally provide both parties, simultaneously and in writing, a sanction outcome letter within five (5) calendar days after the conclusion of the Sanctioning Panel's deliberation. The sanction outcome letter will include:

- a.** A copy of the written determination letter; and
- b.** Disciplinary sanctions imposed on the Respondent, and
- c.** Whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- d.** Information on the University appeal process.

10. Range of Sanctions. If the Respondent is a student, then the range of sanctions may include, but is not limited to, sanctions contained in Section XIX of the Student Conduct Code. Student

5. **Appeal Review.** Appeals will be reviewed by the appropriate university administrator. If the Respondent is a student, then the Vice President of Campus Life or designee will review the appeal. If the Respondent is a faculty member, then the Provost or designee will review the appeal. If the Respondent is a sta

- 1. Training in General.** The Title IX Coordinator, Investigators, Hearing Panel members, Sanctioning Panels members, university administrators rendering decisions on sanctions and appeal, and any person who facilitates an informal resolution process will receive training on Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 2. Training on Technology.** Hearing Panel members will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's se

The University encourages good faith reporting of violations of this Policy. This Policy shall not be used to bring false or frivolous charges against students, faculty, or staff. Those bringing such charges may be subject to disciplinary action. Failure to prove a complaint, does not itself constitute a false or frivolous complaint.

O. CONFIDENTIALITY & THE UNIVERSITY'S OBLIGATION TO RESPOND TO REPORTS

1. Confidentiality. The University will maintain the confidentiality of information shared throughout the grievance process. However, disclosures may be required for the purpose of fact-finding or efforts to resolve the Formal Complaint. In the limited instances where disclosures must be made by the University, disclosures will be limited to those persons necessary to proceed in the fact-finding process or to otherwise address the grievance. All persons involved in the grievance will be advised of the importance of confidentiality throughout the process. While the University is committed to respecting the confidentiality of all parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include:

- i When the University is required by law to disclose information (such as in response to a subpoena or court order).
- i When disclosure of information is determined by the Title IX Coordinator or designee to be necessary for conducting an effective investigation of the report of Title IX Sexual Harassment.
- i When confidentiality concerns are outweighed by the University's interest in protecting the safety or rights of others.
- i When a Formal Complaint is filed.

2. Confidentiality and University's Limitations in Responding. In some cases, Complainants may request that their names be kept confidential and that the University take no action on their report of Title IX Sexual Harassment ("confidential reporting"). The Title IX Coordinator or designee will evaluate each request and advise the Complainant that "confidential reporting" will limit the University's ability to respond fully to the matter, including pursuing disciplinary action against the Respondent. Nevertheless, in most instances, the University will honor such confidentiality requests unless to do so would impede its ability to provide a safe and nondiscriminatory environment for the AU Community.

V. EFFECTIVE DATE AND REVISIONS

This Policy October 25, 2021.