

Overview of Changes to the Sexual Misconduct Policy

The proposed interim revised policy:

- Clarifies that the policy also applies to *program participants* and removes the outdated term *appointee*, both of which are reflected in the definition of *University Community*. (p. 1)
- Defines *education program or activity* as required by the Final Title IX Rule. (Definitions, p. 2)
- Defines *retaliation* as required by the Final Title IX Rule. Previously, the policy referred readers to the Whistleblower policy, and now the definition of retaliation and related processes are included in this policy. (Definitions, pp. 2-3)
- Adds a formal complaint process, which requires a signature by the complainant or an OIE director (includes Title IX coordinator) to initiate an investigation. This is required by the Final Title IX Rule, and the process will allow for an assessment of whether conduct constitutes Title IX or non-Title IX sexual misconduct. *Title IX formal complaints* and *OIE formal complaints* are defined. A formal complaint is separate from a report, and the reporting process remains. (Definitions, p. 2)
- Notes that nothing in this policy detracts from any legal right of a parent or guardian to act on behalf of a complainant, respondent, or other individual, subject to FERPA, including but not limited to filing a formal complaint. (Policy Details I.B.4, p. 6)
- Defines *party*, including *complainant* and *respondent*. (Definitions, p. 2)
- Aligns the definition of sexual misconduct, including sexual harassment, sexual assault, relationship violence, stalking, and sexual exploitation with the Final Title IX rule as applicable. (Definitions, pp. 2-5)
 - Most notably, there is now a definition of sexual harassment (Title IX) and of sexual harassment (non-Title IX). Key distinctions include that sexual harassment (Title IX) must be severe, pervasive, and objectively offensive that it denies a person equal access to the education program or activity. Sexual harassment (non-Title IX) must be severe or pervasive in the employment context and severe, persistent, or pervasive in the education context.
 - Non-consensual sexual contact: while *forcible fondling* was already covered by the definition, the words had to be added to the definition.
 - Non-consensual sexual penetration: while *forcible rape*, *forcible sodomy*, and *sexual assault with an object* were already covered by the definition, the words and legal definitions had to be added to the definition.
 - The terms and legal definitions for *incest* and *statutory rape* had to be added to the definitions. Note: statutory rape was already covered per our definitions of sexual assault and consent, but the term had to be added.
- Amends the definition of *student*. The definition matches that of the Code of Student Conduct. Per the Final Title IX Rule, a caveat was added that a student

organization is not a “student” for the purposes of a Title IX formal complaint. (Definitions, p. 5)

- Changes the term *interim measure* to *supportive measures*. The spirit remains the same, but a definition matching that of the Final Title IX Rule was added. (Definitions, p. 5)
- Amends the jurisdiction to adhere to the Final Title IX Rule. There is a distinction between a Title IX formal complaint and an OIE formal complaint. An OIE formal complaint maintains the jurisdiction the university has had under this policy, which includes off-campus conduct when applicable and in university programs outside of the United States (e.g. study abroad). For Title IX formal complaints, the jurisdiction is limited to the education program or activity in the United States. (Policy Details I.B, p. 6)
- Clarifies the university will maintain confidential any supportive measures provided and the identity of any individual who has made a report, except in accordance with applicable law. (Policy Details V.B-C, pp. 10-11)
- Adds an emergency removal process, as required in the Final Title IX Rule. This clarifies a process for removing a respondent from an education program or activity. The respondent must present an immediate threat to the physical health or safety of a student or other individual to justify removal. This does not preclude the university from taking action as allowable by the Code of Student Conduct or other university rule or policy. (Policy Details VII, pp. 11-12)
- Provides clarification on when informal resolution may be pursued and what steps the university will take when informal resolution is being pursued. Per the Final Title IX Rule, the policy clarifies that informal resolutions include instances where the respondent accepts responsibility. (Policy Details VIII.B, p. 12)
- Allows for other resolutions, such as educational conversations or informal coaching without an investigative resolution or informal resolution. (Policy Details VIII.C, p. 13)
- Clarifies and expands what the parties have an equitable right to during an investigative resolution. Many of the rights have been in place, but it is clearer and includes language from the Final Title IX Rule. An example is that a party has the right to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. (Policy Details VIII.D, p. 13)
- Notes that some remedies may be the same as a *supportive measure*, however, remedies can be disciplinary or punitive and need not avoid burdening the respondent. (Policy Details IX.B, p. 13)
- Makes clearer that the university may place a hold on a student’s account or place a notation on a student’s transcript while any investigation or proceeding conducted pursuant to this policy is pending. (Policy Details XV, p. 15)
- Formalizes that OIE may issue a directive when necessary to effectuate the policy. (Policy Details XVI, p. 15)
- Codifies that OIE will provide rights and options to all complaints; this has been happening in practice and was required by the Violence Against Women Act. (Procedure I.B, p. 15)
- Requires a written notice to be sent to all known parties in a formal complaint and include very specific information, such as alleged conduct; date and location, if

known; a statement that the respondent is presumed not responsible until the conclusion of a grievance process; a statement that no one should knowingly make false statements or submit false information; and notice that the parties have the right to an advisor of their choice. (Procedure II.A, pp. 15-16)

- Formalizes the process for dismissing a formal complaint, consolidating formal complaints, and investigating reports that may violate other university policies in addition to this policy. (Procedure II.B-E, pp. 16-17)
- Clarifies what the university will do throughout a formal investigative resolution process, such as providing notice of meetings and proceedings, an equal opportunity to inspect and review evidence (ten business days to submit a written response), and an investigative report summarizing the relevant evidence at least ten business days prior to a hearing. (Procedure III, pp. 17-18)
- Refers to University Faculty Rule 3335-5-04 for process and sanctioning, which has been amended to require Title IX matters follow the procedures as outlined in this policy. Non-Title IX matters will continue to follow the 04 process. Corrective action and sanctions will be determined through the 04 process for faculty. (Procedure V, p. 18)
- Requires a hearing for all OIE formal complaints involving student respondents and Title IX formal complaints. This adds a hearing for employees, which they have not had under this policy in the past. A hearing requires cross-examination. The university must provide an advisor to conduct cross-examination for Title IX matters. OIE formal complaints not involving students (i.e. employee non-TIX cases) will continue with the process similar to what they undergo now. (Procedure IV-V, p.18)
- Requires a written determination for all formal complaints. There are additional requirements for Title IX formal complaints, per the Final Title IX Rule, such as including a detailed description of the procedural steps taken and disciplinary sanctions. For OIE formal complaints, the sanctions and remedies may be issued at a subsequent time. (Procedure VI, p. 19)
- Provides an appeal for all formal complaint resolutions, including for students, faculty, and staff, so long as it meets one of the four bases for appeal (procedural irregularity, new evidence, conflict of interest, or inappropriate sanction). (Procedure, VII, pp. 19-20)
- Links to the appropriate OIE websites for support and medical resources (removed the charts to ensure the most up-to-date information is readily available). (Resources, p. 21)