

## **Article 20: Sexual Harassment (Title IX)**

### **Pittsburg State University prohibits all forms of sexual harassment including domestic violence, dating violence, sexual assault and stalking.**

Title IX of the Education Amendments Act of 1972 is a federal law that states: "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."

The University may investigate incidents of sexual harassment committed by or against a student, which is reported to have occurred within an educational program or activity that the University has substantial control over. The investigation may be pursued through the University discipline (grievance) process. In addition, a student may decide to pursue action through the criminal justice system. Internal and University discipline processes are independent of criminal or external processes. Should the criminal or external process be dismissed, or reduced, the University may continue to pursue disciplinary action.

University personnel will assist in the report process if requested by the complainant. University Title IX Officials may guide the complainant through the available options. As a complainant, the individual has the option to decline to notify law enforcement or campus authorities or to participate in an investigation. However, circumstances may dictate that the University pursue an internal investigation and response even without the complainant's assistance.

For Pittsburg State University disciplinary proceedings, the "preponderance of evidence" standard of evidence will be utilized. A preponderance of evidence standard evaluates whether it is more likely than not, based on the evidence available, that a violation occurred.

*Note: The following sections contain terminology defined in both federal and state laws. Definitions of such terminology may be found in the "Definitions" section of this document.*

#### **I. Reporting Incidents of Sexual Harassment**

In accordance with federal law students who wish to report sexual harassment must file a formal complaint with University Title IX Officials. When the University receives a formal complaint of sexual harassment, Title IX Officials must promptly contact the complainant to discuss the availability of supportive measures and explain to the complainant the Title IX process. A complainant's wishes with respect to whether the University investigates should be respected unless Title IX Officials determine that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegation(s) in a formal complaint do not meet the definition of sexual harassment, did not occur in the United States or within an educational program or activity that the University has substantial control over, the University must dismiss such allegation(s) for purposes of Title IX but may still address the allegation(s) in any manner the University deems appropriate under Article 34 of the University's Code of Student Rights and Responsibilities.

## **II. Supportive Measures**

In an effort to protect those directly involved in an alleged incident of sexual harassment, supportive measures may be implemented where reasonably available. These measures may include, but are not limited to:

- A. Mutual no-contact order,
- B. Change in on-campus housing or on-campus work locations,
- C. Modifications of work or course schedules,
- D. Altering deadlines or other course-related adjustments,
- E. Campus escorts, and/or
- F. Leaves of absence.

## **III. Emergency Removal**

If it is determined that continued participation in University sponsored activities, events, or programs poses an immediate threat to the physical health or safety of any student or other individual, the respondent may be removed, on an emergency basis, provided the University undertakes an individualized safety and risk analysis (performed by members of the University's Threat Assessment and Behavior Intervention Team). A determination of an immediate threat to the physical health or safety of any student or other individual arising from the allegation(s) of sexual harassment justifies removal.

The University will provide the respondent with notice, via official University email, and an opportunity to challenge the decision. Challenges must be presented to the Title IX Coordinator within 5 days from the notice being sent. The Title IX Coordinator will then forward the challenge to the Vice President for Student Life for review. Upon completion of the review, the Vice President for Student Life will respond, via official University email, to the challenge within 5 days from the date the challenge is received. The decision delivered by the Vice President for Student Life will be considered final in regard to Emergency Removal.

## **IV. Voluntary Informal Resolution**

At any time prior to reaching a determination of responsibility, the University may, at the request of either the complainant or respondent, facilitate a voluntary informal resolution process, such as mediation, that does not involve a full

investigation and adjudication. The University will not offer an informal resolution process unless a formal complaint is filed, and the University must obtain the parties' voluntary, written consent to the informal resolution process. Written consent, to initiate the voluntary informal resolution process must be sent to the Title IX Coordinator via official University email.

The University will not require as a condition of enrollment (or continuing enrollment or enjoyment of any other right) waiver of the right to an investigation and adjudication of formal complaints. Additionally, the University will not require the parties to participate in an informal resolution process.

To proceed with informal resolution, the University must provide the parties with written notice which discloses:

- A. The allegation(s),
- B. The requirements of the informal resolution process,
- C. Prior to agreeing to 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
- D. Any consequences resulting from participating in the informal resolution process, including the records which will be maintained or could be shared.

## **V. Investigating Alleged Sexual Harassment**

The University's formal obligation to investigate a report of sexual harassment under the Title IX process is triggered by the filing of a "formal complaint." A formal complaint is a physical or electronic document signed by an alleged victim of sexual harassment or Title IX Officials specifically requesting an investigation. However, at the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the University's education program or activity. A parent, friend or other third-party may not file a formal complaint on behalf of a complainant to initiate an investigation. Title IX Officials may file a formal complaint based on a report made by a parent, friend or third-party only after consulting with the complainant.

In the event a complainant decides to withdraw their formal complaint, Title IX Officials have the option to sign a formal complaint to initiate the Title IX process. For example, where a Title IX Coordinator has received multiple reports of sexual harassment against the same respondent.

### **A. Notice of Investigation**

Upon receipt of a formal complaint, the University will provide written notice to the parties of an investigation. The Notice of Investigation will be delivered via the University issued student email account. This notice will include:

- 1) A description of the process to be utilized,
- 2) Sufficient details regarding the complaint including, if known, the identities of the parties, the alleged conduct, including the date and location of the alleged incident,
- 3) A statement that the respondent is presumed not responsible and that a determination will not be made until the conclusion of the hearing process,
- 4) Information to advise the parties of their right to an advisor of their choice, who may be an attorney,
- 5) Prohibitions on making false statements and submitting false information, and
- 6) A statement regarding the participating parties will have an opportunity to review and inspect evidence directly related to the allegation(s).

The University must dismiss the Title IX complaint if at any point it is determined the conduct alleged:

- 1) Does not constitute sexual harassment,
- 2) Did not occur in the University's education program or activity, or
- 3) Did not occur against a person in the United States.

Apart from the above mandatory dismissal provisions, the University may dismiss a formal complaint at any time if:

- 1) The complainant would like to withdraw the complaint,
- 2) The respondent is no longer enrolled at the University, or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination.

## B. Evidence Gathering and Pre-Hearing Guidelines

Once the investigation begins:

- 1) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the participating parties.
- 2) Any records maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional may only be obtained by the University with the party's voluntary written consent.
- 3) Parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 4) The University will not restrict the ability of either party to discuss the allegation(s) under investigation or to gather and present relevant evidence.

Prior to the hearing the University will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility.

Prior to completion of the investigative report, the University will send to each party and the party's advisor, evidence directly related to the allegation(s) for inspection and review in electronic format. The parties have at least 10 days to submit a written response, to the Title IX Coordinator via official University email which the investigator will consider prior to completion of the investigative report. A copy of the final investigative report will be sent electronically to both parties at least 10 days prior to a hearing.

## **VI. Live Hearing**

Upon completion of the Title IX investigation, with all minimum standards having been met, the University will provide for a live hearing. The live hearing will be conducted by a panel of trained decision-makers with one person serving as the facilitator. The facilitator has the responsibility to determine the relevancy of questions and explain in real-time any decision not to permit a question.

- A. Live hearings must be conducted with all parties physically present in the same geographic location. At either party's request, the University must provide the parties with separate rooms and use technology so the decision-makers and parties may simultaneously see and hear the questions,
- B. Live hearings will be recorded.
- C. Each party's advisor will be permitted to ask the other party and any witness(es) all relevant questions and follow-up questions, including questions which challenge credibility. If either party does not have an advisor, the University will provide one.
- D. Cross-examination at the live hearing must be conducted directly, orally, and in real-time by the party's advisor of choice and never by a party personally.
- E. 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.
- F. If a party or witness does not submit to cross-examination at the live hearing, the decision-makers must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-makers cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- G. If a party or witness refuses to submit to cross-examination, then the institution is required to ignore that person's statement and reach a decision based on the remaining body of relevant evidence. The University is not, however, permitted to draw an adverse inference based on the mere fact that an individual refused to submit to cross-examination.

H. The standard of evidence used to determine responsibility at any Title IX Hearing is the preponderance of the evidence.

## **VII. Hearing Outcome**

After the hearing, the decision-makers must issue a written determination of responsibility applying the preponderance of the evidence standard within 5 days of the conclusion of the hearing. Written determinations will be simultaneously delivered electronically via each party's University issued email account. The written determination must contain the following elements:

- A. Identification of the allegation(s) at issue,
- B. Description of the procedural steps taken throughout the case,
- C. Findings of fact supporting the determination,
- D. Conclusion(s) regarding application of the University's Title IX Policy,
- E. A statement and rationale as to the determination for each allegation,
- F. A statement of any disciplinary sanctions imposed upon the respondent and remedies provided to the complainant, and
- G. A description of the procedures and permissible grounds for appeal.

## **VIII. Appeals**

Upon receipt of the hearing outcome, either party is allowed to appeal the determination or any dismissal of the complaint on the following grounds:

- A. Procedural irregularity that affected the outcome,
- B. New evidence that was not available at the time the hearing decision was made, or
- C. Conflict of interest or bias by the institutional participants that affected the outcome.

Appeals must be in writing (stating the grounds for the appeal) and submitted electronically to the Vice President for Student Life within 5 days from the date of the hearing outcome letter. When an appeal is filed, the non-appealing party must be notified of the appeal and allowed to submit a written statement in response. The written response from the non-appealing party must be submitted electronically to the Vice President for Student Life and received within 5 days of the notification of appeal.

Both parties will simultaneously receive an official University email, within 10 days from the date of the hearing outcome letter, a written decision describing the result of the appeal and the rationale for the result which shall be final.

## **IX. Retaliation**

The University, nor any other person, may engage in acts which intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

## **X. Recordkeeping**

The University must maintain the following records of all Title IX complaints and resolutions for 7 years:

- A. Each sexual harassment investigation including any determination regarding responsibility.
- B. Any audio or audiovisual recording or transcript.
- C. Any disciplinary sanctions imposed on the respondent.
- D. Any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity.
- E. Any appeal and the result.
- F. Any informal resolution and the result therefrom.
- G. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website.

## **XI. Conduct Sanctions**

The purposes of imposing sanctions are twofold: to protect the University community from behaviors that are detrimental to the educational process of the community; and to assist students and student organizations in identifying acceptable parameters of their activities and consequences of future behaviors. The severity of the sanctions imposed is intended to correspond with the severity or frequency of violation, as well as the willingness of the accused to recommit to good citizenship through behaviors that fall within the conduct regulations of the University. The following disciplinary sanctions may be imposed upon students, or student organizations, found responsible of a violation either singly and/or in combination:

- A. Expulsion
- B. Suspension
- C. Residence Hall Eviction
- D. Disciplinary Probation
- E. Disciplinary Warning
- F. Restitution
- G. Suspension of the Privileges of a Registered Student Organization
- H. Termination of the Registration of a Registered Student Organization
- I. Specifically Defined Sanction

## **XII. Definitions**

- A. Advisor - Both the complainant and the respondent have equal right to select an individual to serve as their advisor. The person may, but does not have to be, an attorney. The advisor may accompany the participant at any or all meetings and interviews related to the formal Title IX complaint. The University retains the ability to limit the role of the advisor in interviews and meetings as long as it does so equally for both parties.
- B. Complainant - An individual who is alleged to be the victim of conduct that could constitute sexual harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- C. 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.
  - 1) The existence of such a relationship 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.
  - 2) For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - 3) Dating violence does not include acts covered under the definition of domestic violence.
  - 4) Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.
- D. Days - Are defined as University business days (Monday-Friday) that the University is open.
- E. Decision-maker – Those who have decision-making and sanctioning authority within the University's grievance process.
- F. Determination – A conclusion by the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.
- G. Domestic Violence - A felony or misdemeanor crime of violence committed:
  - 1) By a current or former spouse or intimate partner of the complainant.
  - 2) By a person with whom the complainant shares a child in common.
  - 3) By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner.
  - 4) By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
  - 5) 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 jurisdiction in which the crime of violence occurred.
- H. Education program or activity – Means locations, events, or circumstance where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and

also includes any building owned or controlled by a student organization that is officially recognized by the University.

- I. Finding – A conclusion by the standard of proof that the conduct did or did not occur as alleged.
- J. Formal Complaint - A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation(s) of sexual harassment. In order to file a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The complaint must include either a physical, electronic, or digital signature.
- K. Investigator – The person or persons charged by the University with gathering facts about an alleged violation of the Title IX policy, assessing relevance, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- L. Notice – Formal communication between the University and parties involved in the Title IX process.
- M. Parties – The Complainant(s), Respondent(s), Witness(es), collectively.
- N. Remedies – Post finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.
- O. Respondent - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- P. Result - Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the University. The result must include any sanctions imposed by the University.
- Q. Retaliation - Actions or behaviors designed to intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. The exercise of rights under the First Amendment (free speech) is not retaliation.
- R. Sanction – A consequence imposed by the University on a Respondent who is found to have violated the University’s Title IX policy
- S. Sexual Assault - An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting system.
  - 1) 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 complainant.
  - 2) Fondling – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the complainant, including instances where the complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

- 3) Incest – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4) Statutory Rape – Sexual intercourse with a person who is under the statutory age of consent.
- T. Sexual Harassment – Is defined as: 1) the use of one’s authority or power to coerce another into unwanted sexual relations or to punish another for his/her refusal (*quid pro quo*), or 2) the creation of an intimidating, hostile, or offensive environment through unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, and pervasive and objectively offensive that it effectively denies a person equal access to the University’s education program or activity. Sexual harassment consists of *quid pro quo* harassment, hostile environment harassment, sexual assault, dating violence, domestic violence and stalking.
- U. Stalking - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - 1) Fear for the person’s safety or the safety of others, or
  - 2) Suffer substantial emotional distress.

For the purposes of this definition:

  - a. *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.
  - b. *Reasonable person* means a person under similar circumstances and with similar identity to the complainant.
  - c. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
  - d. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting
- V. Supportive Measures – Individualized services reasonably available that are nonpunitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
- W. Title IX Coordinator – The University official designated to ensure compliance of Title IX and the University’s Title IX program.
- X. Title IX Officials – Any official designated by the University to assist with the compliance of Title IX and the University’s Title IX program.

Revised August 10, 2020