



POLICY TITLE: Sexual Harassment (Title IX) Policy

POLICY PURPOSE: To define what conduct constitutes Sexual Harassment and Sexual Violence and outline the procedures for handling sexual harassment at Fort Hays State University.

BACKGROUND: Fort Hays State University is committed to an environment in which students, faculty, and staff are free from all forms of Sexual Harassment and Sexual Violence.

APPLIES TO: Faculty, Staff, and Students.

DEFINITIONS: Sexual Harassment – Misconduct on the basis of sex or of a sexual nature that satisfies one or more of the following:

- Hostile Environment Sexual Harassment – Any unwelcome conduct on the basis of sex that a reasonable person would find so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.
- Quid Pro Quo Sexual harassment – An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- Dating violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- Domestic violence – A crime of violence committed by a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child, a person with whom the victim has cohabitated as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Kansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Kansas.
- Stalking – A course of conduct directed toward the victim that would cause a reasonable person to fear for their own safety or the safety of others or cause them to suffer substantial emotional distress.
- Sexual Assault – Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or

because of the victim's temporary or permanent mental or physical incapacity. These acts included:

- Rape – carnal knowledge of a person. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- Sodomy – oral or anal sexual intercourse with another person.
- Sexual Assault with an Object -- using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person. An “object” or “instrument” is anything used by the offender other than the offender's genitalia.
- Fondling – the touching of the private body parts of another person for the purpose of sexual gratification.
- Incest – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: sexual intercourse with a person who is under the statutory age of consent as defined by Kansas law.

Hearing Officer – Conducts Title IX hearings and makes determinations about the outcome of the hearing.

Compliance Officer – Receives all Title IX reports and follows up with the Complainant. Confidential Resource for faculty, staff, and students. Acts as the Title IX Coordinator and Lead Investigator for the University.

Investigator – Individuals who are given the task of carrying out the investigation process once a formal complaint has been filed. They are neutral and have no decision-making responsibilities. The Compliance Officer acts as Lead Investigator for the University.

Investigation – The process used to carefully examine a formal complaint of an alleged Title IX violation.

Reporting – The process by which a Complainant or other person notifies the University Compliance Officer of a concern.

Supportive Measures – Individualized services that are designed to restore or preserve equal access to the University's Education Programs or Activities without unreasonably burdening another party, to protect the safety of all parties or the University's educational or work environment, or deter Sexual Harassment. They are non-punitive and non-disciplinary in nature.

Hearing – A live process by which all parties involved, Complainant, Respondent, and their advisors and witnesses, appear before a decisionmaker to determine the outcome of the formal complaint.

Appeal – Both the Complainant and the Respondent may request the dismissal or decision on the formal complaint to be reviewed based upon the following:

- A procedural irregularity that affected the outcome
- New evidence that was not reasonably available at the time of the dismissal or determination
- Title IX personnel had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

Informal Resolution – A voluntary process that either the Complainant or the Respondent may request and both parties must agree to. They will meet with a third-party facilitator that will allow them to come to agreement on resolution of the formal complaint. Either party may discontinue Informal Resolution at any time before an agreement has been made. Informal Resolution is not available to resolve allegations that an employee sexually harassed a student.

Coercion - Direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other's freedom of will and ability to choose whether to engage in sexual activity.

Consent – A voluntary agreement by a person in the possession and exercise of sufficient mental capacity to do something proposed by another. It must be voluntary and never assumed or implied. Consent may not be achieved through unreasonable manipulation or coercion — or any kind of physical force or weapon. Consent can be withdrawn at any time.

Incapacitation – mental or physical state in which individuals are unable to make rational, reasonable decisions because they lack the ability to understand the consequences of their actions and/or are physically or mentally helpless. An individual is considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of

alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling, vomiting, and unconsciousness.

Retaliation – Any intimidation, threat, coercion, or discrimination against an 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. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX constitutes retaliation.

Standard of evidence – The level of certainty and the degree of evidence necessary to establish proof. Fort Hays State University uses the “preponderance of the evidence” standard (that is, “more likely than not”) in all formal complaints.

Complainant – the person who is alleged to be the victim of conduct that could constitute Sexual Harassment.

Respondent – the person who is alleged to be the perpetrator of conduct that could constitute Sexual Harassment.

Formal complaint – means a document filed by a Complainant or signed by the Compliance Officer alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's Education Programs or Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the complaint.

Education Program or Activity— all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the

University exercises substantial control over both the respondent and the context in which the Sexual Harassment occurs, and includes any building owned or controlled by a student organization that is officially recognized by the University.

CONTENTS:

POLICY STATEMENT:

Title IX of the Education Amendments of 1972, 20 U.S.C. Sec. 1681, et. seq., ("Title IX") prohibits discrimination on the basis of sex in any federally funded education program or activity. Any instance of Sexual Harassment, as defined previously, shall be considered a violation of University Policy as it may jeopardize a person's equal access to education that Title IX is designed to protect. This policy applies to Sexual Harassment that occurs within the University's Education Programs or Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the University community.

The University will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the University's Education Programs or Activities.

Administrators, faculty member, staff, students, contractors, guests, and other members of the University community who commit Sexual Harassment are subject to the full range of University discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from University property; cancellation of contracts; and any combination of the same.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the University's Education Programs or Activities; such sexual misconduct may be prohibited by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University's Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee.

It is a violation of this policy to engage in Retaliation. Reports of Retaliation should be made to the Compliance Coordinator. Any act of Retaliation shall be considered a separate and distinct violation of University Policy.

Reporting and Case Handling Procedure for Sexual Harassment and Sexual Violence

1. A report is provided to the Compliance Officer from one of the following:
 - a. Complainant
 - b. Responsible employee
 - c. A faculty or staff member
 - d. A coach
 - e. A community member
 - f. University Police
 - g. Any other party

In addition to reporting to the Compliance Officer, any person may report Sexual Harassment to any University employee with managerial authority over other employees, including cabinet members, deans, department heads, unit supervisors, and other managers (collectively, "Reporting Officials") who must promptly forward such report of Sexual Harassment to the Compliance Officer. University employees who are not Reporting Officials are encouraged, but are not required to, forward reports of Sexual Harassment to the Compliance Officer.

Current contact information for the Compliance Officer is as follows:

Amy L. Schaffer
University Compliance Officer
Sheridan Hall, Room 314
(785) 628-4175
alschaffer@fhsu.edu

2. The Compliance Officer reaches out to the Complainant.
3. The Complainant and the Compliance Officer have an informational meeting to discuss the rights of the Complainant, the availability of supportive services with or without the filing of a formal complaint, the Complainant's interest in such services, the process for filing a Formal Complaint, the investigation process, and what possible next steps may be. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.
4. The Complainant then decides whether they wish to file a Formal Complaint. If the Complainant does not wish to file a Formal Complaint, the Compliance Officer may file a Formal Complaint in the following circumstances:
 - a. The allegations are so severe they have concern for the safety of other members of the University Community
 - b. There is a "pattern or practice" of Sexual Harassment from the Respondent

- c. Other instances that the Compliance Officer deems it necessary to proceed with a Formal Complaint for the good of the University Community.
5. If a formal complaint is not filed, the Complainant may still receive supportive services in order to be successful at FHSU.
6. Upon receipt of a Formal Complaint, the Compliance Officer will provide written notice to all parties that includes: a physical copy or hyperlink to this policy; sufficient details regarding the complaint, including the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known); the grievance process and the parties' rights therein; the University's prohibitions on retaliation and false statements; the availability of any informal resolution process; the presumption of non-responsibility of the Respondent; and Information about resources that are available on campus and in the community.
7. The Compliance Officer will conduct an assessment to determine whether the conduct, as reported, falls or could fall within the scope of this policy, and whether the conduct, as reported, constitutes or could constitute Sexual Harassment. If the Compliance Officer determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Compliance Officer will dismiss the matter and notify the parties of the dismissal, the reasons therefore, and the process to appeal the dismissal. The Compliance Officer may refer the report to other University offices, as appropriate.
8. The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Compliance Officer determines that any one or more of the following is true:
 - a. The Complainant provides the Compliance Officer written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
 - b. The Respondent is no longer enrolled or employed by the University; or
 - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Compliance Officer dismisses a Formal Complaint pursuant, the Compliance Officer will provide written notice of dismissal to the parties and advise them of their right to appeal. The Compliance Officer may refer the subject matter of the Formal Complaint to other University offices, as appropriate.

9. The parties may choose to proceed with Informal Resolution in the following instances:

- a. All parties agree to informal resolution
- b. The complaint does not involve a student accusing an employee of Sexual Harassment.
- c. If there is no agreement reached within Informal Resolution, then the formal investigation may proceed.

10. If the parties choose to proceed with Informal Resolution, the Compliance Officer will transmit a written notice to the parties that:
 - a. Describes the parameters and requirements of the informal resolution process to be utilized;
 - b. Identifies the individual responsible for facilitating the informal resolution;
 - c. Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
 - d. Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.
11. After the parties have been notified the investigation shall proceed.
 - a. The investigator will gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties.
 - b. The investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.
 - c. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within approximately sixty (60) to ninety (90) days of the transmittal of the written notice of Formal Complaint.
 - d. All parties have an equal opportunity to present witnesses, including fact and expert witnesses, and evidence during the investigation.
 - e. All parties have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney. Except for the questioning of witnesses during the hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University

about the matter without the party being included in the communication. In the event a party's advisor of choice engages in disruptive or otherwise disallowed behavior, the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

- f. The Investigator shall provide detailed written notices to all parties whose participation is invited or expected, including witnesses, of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- g. The Investigator shall provide both parties and their advisors an opportunity to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations contained in the Formal Complaint. Both parties shall be provided at least 10 days to submit a written response which the Investigator shall consider prior to completion of the investigative report. The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public
- h. After the period for the parties to provide any written response has expired, the Investigator shall create an investigative report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. The report shall be distributed to the parties and their advisors at least 10 days prior to the hearing.
- i. The Complainant and Respondent, along with their advisor of choice, have the opportunity to review the written report prior to the hearing.

12. At any time after receiving a report of Sexual Harassment, the Compliance Officer may remove a student Respondent from one or more of the University's Education Programs or Activities on a temporary basis if an individualized safety and risk analysis determines 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. In the event the Compliance Officer imposes an interim removal, the Compliance Officer must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the University may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process.

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

13. Once the Investigation is complete, formal complaint shall go to a formal hearing that is overseen by the Hearing Officer.
 - a. Each party shall have their advisor of choice present at the hearing.
 - b. If a party does not have an advisor, they will be provided one prior to the hearing by the University with no cost to the party.
 - c. All witnesses and evidence shall be at the hearing.
 - d. Any testimony of persons who refuse to be cross-examined at the hearing may be excluded.
 - e. Advisors shall ask questions of all parties including witnesses in real time. The questions shall be presented to the Hearing Officer prior to being asked.
 - f. The Hearing Officer will determine whether questions are relevant and explain any decision to exclude a question as non-relevant.
 - g. The Hearing Officer will provide a written decision after the hearing that includes the following:
 - i. Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
 - ii. A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
 - iii. Findings of fact, made under a preponderance of the evidence standard, that support the determination;
 - iv. A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
 - v. The discipline determined by the appropriate University official;
 - vi. Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Compliance Officer; and
 - vii. A description of the University's process and grounds for appeal.
 - h. The University will provide the written determination to the parties simultaneously.
14. The standard of evidence used for all decisions shall be the "preponderance of the evidence" (that is, "more likely than not").

15. After the decision has been distributed to the Complainant and Respondent along with their advisors, they both may determine whether they wish to appeal. An appeal may be brought on the following bases:
 - a. A procedural irregularity that affected the outcome
 - b. New evidence that was not reasonably available at the time of the determination
 - c. Title IX personnel had a conflict of interest or bias that affected the outcome
16. Any appeal must be filed within seven (7) days of distribution of the decision by the Hearing Officer, and shall be filed with the Vice President for Student Affairs or its designee ("appeal officer"). The appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Compliance Officer any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal, and will attempt to issue a written decision within fourteen (14) days of the deadline for any written opposition to the appeal.
17. The appeal officer will issue a final, written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.
18. During the investigation and adjudication processes, questioning regarding a 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, 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. From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.
20. The Compliance Officer, investigator, hearing officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate.
21. The University will construe and apply this policy consistent with the First Amendment to the U.S. Constitution and the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment

based on expressive conduct that is protected by the First Amendment and/or the principles of academic freedom specified in the Faculty Handbook.

22. It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during an investigation, adjudication, or appeal under this policy. Violations of this section will be addressed under the Code of Student Conduct in the case of students and other University policies and standards, as applicable, for other persons.
23. The University will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The University will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the University may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the University's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the University's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.
24. This policy applies only to Sexual Harassment. Complaints of other forms of sex discrimination are governed by the University's Non-Discrimination Policy.

This policy is intended to be construed in accordance with Title IX and related rules and regulations, which are incorporated by reference herein. This policy, and any associated procedures or guidelines, may be supplemented or modified accordingly.

**EXCLUSIONS OR
SPECIAL
CIRCUMSTANCES:**

**RELATED
DOCUMENTS:**

Title IX Procedures/Guidelines

KEYWORDS: Sexual harassment, Title IX, retaliation, discrimination, sexual violence, Title IX Coordinator, Hearing Officer

RESPONSIBLE OFFICE: University Compliance Office

RESPONSIBLE UNIVERSITY OFFICIAL: Compliance Officer

ORIGINATION DATE: Effective 8/14/2020

CHANGE HISTORY: Approved by President 8/3/2022
Adopted by President's Cabinet 8/3/2022
