



POLICY TITLE: Interim Sexual Harassment and Sexual Violence (Title IX)

POLICY PURPOSE: To define what conduct constitutes Sexual Harassment and Sexual Violence and outline the procedures for handling sexual harassment and sexual violence 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:

- Sexual Harassment – Any unwelcome conduct on the basis of sex that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access.
- Quid pro quo harassment – Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual or sex-based nature that are made by an employee of the University as a condition of an individual's employment or education, used as a basis for employment or academic decision-making, or create an intimidating, hostile, or offensive work or learning environment.
- 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 based upon the reporting party's statement and not the length or type of the relationship.
- Domestic violence – A crime of violence committed by a current or former spouse of the victim, a person with whom the victim shares a child, a person whom the victim has cohabitated with as a romantic partner, or a family member of the victim.
- 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 consent of the victim, included instances where the victim is incapable of giving consent. These acts included:

- 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 consent of the victim.
- Fondling – the touching of the private body parts of another person for the purpose of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by 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 restore or preserve equal access to the University’s program or activity, 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 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 determination
- Title IX personnel had a conflict of interest or bias 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.

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 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

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 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 Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment

Education Program or Activity—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 also 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. The University's policies prohibiting sexual harassment and discrimination and procedure shall apply to any allegation of Sexual Harassment occurring in the United States against any member of the University community. Any action taken against an individual for reporting possible Sexual Harassment shall be considered Retaliation and 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
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.
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. If a Formal Complaint is filed in writing by either the Complainant or the Compliance Officer, all parties will be notified of the complaint, the extent of the allegations within it, the grievance process and the parties' rights therein, any informal resolution process, and the presumption of non-responsibility of the Respondent.

7. 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.

8. After the parties have been notified the investigation shall proceed.
 - a. All parties have an equal opportunity to present witnesses and evidence during the investigation.
 - b. The investigators 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.
 - c. Investigators shall create an investigative report that fairly summarizes relevant evidence and distribute it to the parties at least 10 days prior to the hearing.
 - d. The Complainant and Respondent, along with their advisor of choice, have the opportunity to review the written report prior to the hearing.
 - e. The Complainant and Respondent, along with their advisor of choice, have the opportunity to review the evidence.

9. 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 shall 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 provide a written decision after the hearing that includes the determination of responsibility and rationale for the decision.
 - g. The University will provide the written determination to the parties simultaneously.

10. The standard of evidence used for all decisions shall be the “preponderance of the evidence”.

11. 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

12. The non-appealing party will be notified when an appeal has been filed and both parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome of the appeal.

13. The decisionmaker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

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 8/2020

CHANGE HISTORY: Approved by President 3/25/2022
Approved by Cabinet 3/25/2022
