



Creating a Safe and Caring Environment



University of Dubuque



Title IX – Hearing Board



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- Grievance Process
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Title IX Relevant Laws & Policy

Title IX (1972) - Federal Civil Rights law that prohibits sex discrimination in all areas of education

Jeanne Clery Act (1990/1998) - Requires colleges and universities in the United States to disclose information regarding Clery crime on Clery geography

Dear Colleague Letter (2001) - Office of Civil Rights document provides guidance regarding concerns that arise in sexual violence cases

VAWA (2013) - The Violence Against Women Act is aimed at improving how colleges address sexual violence; imposes obligations to revise policies and practices

SaVE Act (2014) - Part of the VAWA amendments, made changes to the Jeanne Clery Act; requires colleges to report additional sexually violent crimes

Who is protected by Title IX?

Everyone that comes on campus!

- University students
- University employees
- Recipients of University services (e.g. conference attendees) and visitors to campus

What does Title IX prohibit?

- No Person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance
- Sexual Harassment: unwelcome conduct of a sexual nature
- Sexual Misconduct: sexual assault, dating violence, domestic violence, stalking

Title IX and Responsible Employees

- Per our policy, we direct disclosures to be reported to:
 - ✓ Title IX Coordinator, Julie MacTaggart;
 - ✓ Vice President for Student Life/Intercollegiate Athletics, Nelson Edmonds
 - ✓ Residence Life
 - ✓ Campus Safety and Security
 - ✓ Other (online, Anonymous Hotline, 3rd party disclosures, etc.)
- Investigative reports are shared with decision makers.
- Decision makers will make final determinations as to policy violations and impose sanctions as appropriate pursuant to existing procedures.
- Reference Employee Handbook/Student Handbook.



University Response & Obligations

Once a 'responsible employee' has actual knowledge of sexual harassment/sexual misconduct, it must be reported to the University, the University must:

- Take immediate and appropriate steps to investigate what occurred;
- Take prompt and effective action to:
Stop the harassment,
Prevent the recurrence and
Remedy the effects.

University Response & Obligations

- The University must take steps to protect the parties as necessary, including interim steps and accommodations taken prior to the final outcome of the investigation (For example: housing or classroom changes, escorts, counseling, etc.)
- The University must provide grievance procedures for students to file complaints of sex discrimination, including complaints of sexual violence.
- All processes must contain an equal opportunity for both parties to present witnesses and other evidence for a fair process.
- Grievance procedures use the preponderance of evidence standard to resolve complaints. This means the deciding parties must determine if it is “more likely than not” an incident occurred and what if any sanctions should be applied.
- Unlike most other incidents, Title IX requires that the University notify both parties of the outcome of the complaint and appeal rights. In this process, the Complainant and Respondent have equal rights to notification and appeal.

Title IX Definitions

- Sex Discrimination
 - Sexual Harassment
 - Sexual Misconduct
- Retaliation

Sex Discrimination

- A broad term that includes many situations. For example, treating someone differently on the basis of sex:
 - ✓ Includes inequity in sports programs or in employment;
 - ✓ Sexual harassment and sexual misconduct (sexual assault, dating/domestic violence, and stalking) are forms of sex discrimination;

Sexual Harassment

- Unwelcome conduct of a sexual nature
 - ✓ Unwelcome means uninvited
 - ✓ Failure to object does not necessarily = welcome
- It can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- It does not include educationally appropriate non-sexual touching, e.g. demonstrating a sports maneuver.

Sexual Harassment - Hostile Environment

Unwelcome conduct of a sexual nature that is severe, pervasive, and objectively offensive that it denies or limit's participation in the program:

- Student-on-student conduct can create a hostile environment.
- The harasser does not have to target a particular individual (e.g. sexual explicit graffiti unaddressed by the University might create a hostile environment).
- Can include words (e.g. jokes), photos or signs (sexually explicit). However, First Amendment protections apply.

Sexual Harassment

- “this for that”
- Someone in position of power conditions a provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual contact.

Sexual Misconduct

- 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.
- Dating/Domestic violence - A pattern of violence or abuse, power and control between those in an intimate relationship with each other.
- Stalking - Stalking is a course of conduct, directed at a specific person that is unwelcome, AND would cause a reasonable person to feel fear

All are forms of sex discrimination

What is Consent?

- Informed, freely, and actively given communication that is mutually understood between all persons involved in a sexual encounter
- Consent is active, not passive
- Silence, in and of itself, cannot be interpreted as consent
- Cannot be obtained by the use of force, threats, intimidation or coercion
- Effective consent cannot be given by a person under legal age, mentally disabled, incapacitated as a result of drugs, alcohol, someone that is unconscious or in a state of blackout

<https://www.youtube.com/watch?v=laMtr-rUEmY>

Retaliation

- A person who reports sexual harassment is protected against retaliation by state and federal laws as well as University Policy.
- Reports of retaliation will be investigated and disciplinary action taken if appropriate.
- Investigation is separate from any underlying investigation into allegations of sex discrimination or sexual harassment.

Grievance Process

- The University receives a report of sexual misconduct, and a Title IX investigation begins.
- The investigator meets with Complainant(s), provides medical attention if appropriate, provides general review of regulations, identifies forms of support, discusses accommodation if appropriate, and seeks to determine Complainant's wishes for process.
- Based on the Complainant's request, the process can move forward through the Universities conduct system, through the legal system, or through both systems.

Hearing Board

- The formal hearing board process will be initiated should the incident meet the elements of the Title IX policy as written.
- Within the Questions and Answers on Title IX Regulations on Sexual Harassment July 2021 (updated June 2022), rules of decorum may be established for hearing boards, and will be shared with participants at the time of the hearing.
- The Title IX Coordinator will be present at the live hearing.
- Hearing board participants include may include:
 - Three person board i.e. Decision makers
 - Complainant and their chosen advisor
 - Respondent and their chosen advisor
 - Witnesses are optional

What Happens before Hearing

- Institution receives notice of the Title IX allegation.
- Notice of Investigation to both parties.
- Meet with both parties.
- Interview witnesses.
- When investigation is complete, send Notice of Hearing to both parties.
- Send investigative report and evidence to both parties for 10 day review.
- Send investigative report and evidence to Hearing Board for review.
- Schedule the hearing date and communicate with the parties.
- After the 10 day review, update the report and evidence as appropriate.

What Happens During Hearing

- The formal hearing board process will be initiated should the incident meet the elements of the Title IX policy as written.
- Within the Questions and Answers on Title IX Regulations on Sexual Harassment July 2021 (updated June 2022), rules of decorum may be established for hearing boards, and will be shared with participants at the time of the hearing.
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What Happens During Hearing

- Hearing board with Title IX Coordinator and the investigators will be in one room.
- The Complainant and their advisor will be in a separate room from the Respondent and their advisor on campus.
- Witnesses will need to attend the hearing and remain in a virtual waiting room until called upon.
- Hearing board outline (has to audio/visual recorded):
 - Introductions and call to order
 - Ground rules, Advisor role, and Decorum
 - Location/Access to Live Hearing
 - Impact Statements
 - Hearing Procedures

What Happens After Hearing

- After hearing:
 - Determination of Responsibility
 - Notice of Outcome sent to both parties.
 - Appeal statement to both parties.
 - Case closed.
- If a Responsibility Finding:
 - If the Respondent is found responsible, the hearing board members will determine sanctioning.
 - Sanctioning is meant to be educational and to offer the Respondent the opportunity to reflect, restore and repair their role within the UD community.

Additional Notes

- The decision-maker in a hearing cannot be the same person as the Title IX Coordinator or the investigator.
- The Hearing Board should establish hearing rules of decorum.
- You may grant breaks in live hearings.
- If a party or witness does not submit to cross examination, the individual's statements can be relied on by the decision maker in determining whether the respondent engaged in the alleged harassment (even if the individual is unable to participate due to death or disability) (June 2022 update).
- Police reports, medical reports, and other documents and records may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross examination.

Additional Notes Continued

- The decision maker may consider certain types of statements where the statement itself is the alleged harassment, even if the party does not submit to cross examination. For example, a text, email, or audio/video recording sent by the respondent is permissible even if the respondent does not submit to cross examination. In these situations, the decision maker is evaluating whether the statement was made or sent.
- If a party or witness submits to cross examination but doesn't not answer a question posed by the decision maker, the decision maker may still rely on that party's statement.
- University may consolidate cases when allegations arise out of the same facts or circumstances.
- Live hearings may be conducted with all parties physically present at the same location or may appear at the live hearing virtually, provided all participants can simultaneously see and hear each other.

Additional Notes Continued

- If a party does not have an advisor at the live hearing, the University must provide an advisor, without charge to the party, who may be an attorney, to conduct cross examination.
- At the hearing, each party must be given the opportunity for relevant questions and cross-examination to be conducted by the party's advisor of the other party and any witnesses including challenging credibility. The cross examination must be conducted directly, orally and in real time and only by the party's advisor, never by the party.
- Only relevant questions may be asked of a party or witness in cross examination or other questions and before a question is answered the decision maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Additional Notes Continued

- The regulations focus on the investigator and decision maker considering relevant evidence. A recipient may not adopt evidentiary rules of admissibility that might serve to exclude relevant information (i.e. lie detector results, rape kits, etc.), or because it may be unduly prejudicial, relate to prior bad acts, or constitute character evidence.
- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless offered to prove 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 (Rape Shield Protections).

Know the Resources

Confidential

Campus Counseling

Ordained

Riverview

Reporting Obligations

Student Life

Intercollegiate Athletics

Title IX Coordinators

Campus Safety and Security

Residence Life

Responsible Employees
(Title IX - all employees)

Campus Security Authorities
(Clery Act – CSA's)

*Reports can be submitted online at

https://cm.maxient.com/reportingform.php?UnivofDubuque&layout_id=1

QUESTIONS?

