

DEPAUL UNIVERSITY



Formal Title IX Sexual Harassment Policy and Procedures

Category: Presidential

Responsible Department: Student Affairs

Responsible Officer: Vice President for Student Affairs

Effective Date: 08/14/20

Summary

Consistent with DePaul University's [Non-Discrimination Notice](#) and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (*see* 34 C.F.R. § 106 *et seq.*), DePaul prohibits Sexual Harassment that occurs within its education programs or activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty members, staff, students, contractors, guests, and other members of the DePaul 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.

DePaul 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.

Scope

This policy applies to Sexual Harassment, as defined in this policy, that occurs within DePaul University's education programs or activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the DePaul community.

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 Sexual & Relationship Violence Prevention and Response policy, the Anti-

Discrimination and Anti-Harassment Policy and Procedures, the Code of Student Responsibility, and/or other university policies and standards.

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 DePaul’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 Sexual & Relationship Violence Prevention and Response policy, the Anti-Discrimination and Anti-Harassment Policy and Procedures, the Code of Student Responsibility and/or other university policies and standards.

To the extent that receipt of notice of Title IX prohibited conduct also triggers DePaul’s responsibilities under the Illinois Preventing Sexual Violence in Higher Education Act, this policy is also designed to meet DePaul’s concurrent obligations under those laws. This policy is also designed to comply with the Violence Against Women Act (“VAWA”) (42 U.S.C. 13925) and its implementing regulations (24 C.F.R. 5.2001) if reauthorized.

Definitions

The types of sexual harassment covered by this policy (collectively “Title IX Prohibited Conduct”) include conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate university policy, such as conduct that violates the Sexual & Relationship Violence Prevention and Response policy or the Anti-Discrimination and Anti-Harassment Policy and Procedures, and should be reported to the Title IX Office.

A. Prohibited Conduct

Sexual Harassment. Conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

Quid Pro Quo Sexual Harassment. An employee of the university conditioning the provision of an aid, benefit, or service of the university on an individual’s participation in unwelcome sexual contact.

Hostile Environment Sexual Harassment. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the university’s education programs or activities.

Sexual Assault. Sexual Assault includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.

1. **“Rape”** is 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 victim. Attempted Rape is included.
2. **“Sodomy”** is oral or anal sexual intercourse with another person, without the 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 or physical incapacity.

3. **“Sexual Assault with an Object”** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the 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 or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
4. **“Fondling”** is the touching of the private body parts of another person for the purpose of sexual gratification, without the 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 or physical incapacity.
5. **“Incest”** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law.
6. **“Statutory Rape”** is sexual intercourse with a person who is under the statutory age of consent as defined by Illinois law.

Domestic Violence. Domestic Violence means violence committed by a family or household member. A family or household member includes parents, children, current or former spouses, a person with whom the reporting/affected individual shares a child in common, a person who is cohabitating with or has cohabitated with the reporting/affected individual, and others as defined by Illinois law. Domestic violence can be a single event or a pattern of behavior.

Dating Violence. Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the reporting/affected individual (i.e., a relationship which is characterized by the expectation of affection or sexual involvement between the parties); and where the existence of such a relationship shall be determined based on a consideration of factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence can be a single event or a pattern of behavior.

Domestic and dating violence can encompass a broad range of behavior, including but not limited to:

- Physical violence or assault;
- Sexual violence;
- Emotional violence;
- Economic abuse;
- Threats;
- Property damage; and
- Violence or threat of violence to one’s self, one’s sexual or romantic partner, and/or to the family members or friends of the sexual or romantic partner.

Stalking. Stalking means a course of conduct (i.e., two or more acts) directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or to suffer substantial emotional distress.

B. Additional Definitions

Consent. At DePaul, consent is defined as unambiguous and freely-given agreement to move forward with a specific sexual request, act, or experience. Consent cannot be obtained from individuals who are unable to understand the nature of the activity or give consent due to being asleep, unconscious, underage, or due to having a temporary or permanent mental or physical incapacity, including as a result of drug or alcohol use. Consent is an affirmative act, not a lack of action. Lack of verbal or physical resistance or submission as the result of force, coercion, duress, or threat thereof does not constitute consent. The absence of “no” or “stop” should never be interpreted as implicit consent, if consent is otherwise unclear. An individual’s manner of dress does not constitute consent. Consent to past sexual activity or a past sexual relationship does not constitute consent. Consent to engage in sexual activity with one individual does not constitute consent to engage in sexual activity with another individual. Resistance is not required to demonstrate lack of consent. Consent can be withdrawn at any time.

Retaliation. Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Complainant. An individual who has allegedly experienced the conduct that could constitute Sexual Harassment. DePaul uses this term to provide consistency with the Title IX regulations. Use of this term does not necessarily indicate that this person either reported the conduct or requested that the university pursue the matter.

Respondent. An individual who has allegedly engaged in the conduct that could constitute Sexual Harassment. A respondent may also be denoted as the “referred party.”

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 of Sexual Harassment in accordance with this policy. 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.

Supportive Measures. Non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the university’s education programs or activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the university’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or

housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

Education Programs or Activities. 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 the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the university.

Reporting Sexual Harassment

Individuals who have experienced Sexual Harassment are strongly encouraged to report the incident. A report serves as a means of documenting the incident and allows for immediate response by the university. DePaul is committed to offering a secure and supportive environment for individuals who report incidents of Sexual Harassment to receive resources and consider all available options.

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

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Unless otherwise designated as a confidential reporting resource, all DePaul faculty, staff, and student employees are required to promptly report to the Title IX Coordinator all incidents of alleged Sexual Harassment that are reported to them.

For more information about (i) an individual's additional options for reporting, including for making confidential reports, and (ii) the ways in which DePaul addresses privacy issues and confidentiality requests with respect to reports made to individuals other than confidential reporting resources, please refer to DePaul's [Sexual & Relationship Violence Prevention and Response](#) policy or the [Anti-Discrimination and Anti-Harassment Policy and Procedures](#).

Preliminary Assessment

After receiving a report of Sexual Harassment, the Title IX Coordinator will conduct a preliminary assessment to determine (i) whether the conduct, as reported, falls or could fall within the scope of this policy (see “Scope”); and (ii) whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of Title IX, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party. The Title IX Coordinator may refer the report to other university offices, as appropriate, or may investigate the matter under the procedures set forth in the Sexual & Relationship Violence Prevention and Response and/or the Anti-Discrimination and Anti-Harassment Policy and Procedures.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of Title IX, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”)

A. Contacting the Complainant

If a report is not closed as a result of the preliminary assessment and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see “Supportive Measures”); to discuss and consider the Complainant’s wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. 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.

B. Supportive Measures

If a report is not closed as a result of the preliminary assessment, DePaul will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and DePaul will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. DePaul will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

DePaul will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the university’s ability to provide the Supportive Measures in question.

C. Interim Removal

At any time after receiving a report of Sexual Harassment, DePaul 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 that DePaul imposes an interim removal, the university will provide Respondent with notice of and an opportunity to challenge the interim removal. For students, please see the [Student Conduct Process](#).

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, DePaul 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 (see “Investigation” and “Adjudication”).

For all other Respondents, including independent contractors and guests, DePaul 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.

D. Formal Complaint

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the university investigate and adjudicate a report of Sexual Harassment in accordance with the provisions “Investigation” and “Adjudication,” provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the university’s education programs or activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, through the University’s [online reporting system](#), or by electronic mail using the contact information specified in “Reporting Sexual Harassment.” Formal Complaints submitted on behalf of a potential Complainant, by someone other than the Complainant, will not be considered Formal Complaints

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of DePaul University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the party alleged to have engaged in the conduct may pose a continuing threat to the DePaul community.

In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party’s level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

DePaul may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in these procedures to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

E. Dismissal of a Formal Complaint Prior to Investigation

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines (i) the conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or (ii) the conduct alleged in the Formal Complaint falls outside the scope of Title IX as specified in “Scope” (that is, because the alleged conduct did not occur in the university’s education programs or activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The dismissal is a final determination unless modified or overturned on appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other university offices, as appropriate, or may investigate the matter under the procedures set forth in the Sexual & Relationship Violence Prevention and Response policy and/or Anti-Discrimination and Anti-Harassment Policy and Procedures.

F. Notice of Formal Complaint

Upon receipt of a Formal Complaint that is not dismissed, the Title IX Coordinator will provide a written Notice of Investigation to the Complainant and Respondent that includes:

- A copy or hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include 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);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notice to the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”
- Notice to the Complainant and Respondent of DePaul’s prohibitions on retaliation and knowingly false statements.
- Information about resources that are available on campus and in the community.

Should DePaul elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the university will provide a supplemental written notice describing the additional allegations to be investigated.

Investigations

Any allegations in a Formal Complaint not subject to dismissal under this policy will proceed to an investigation. The formal investigation phase is the period during which an investigator gathers information about the allegations.

A. Start of Investigation and Timing

After the written Notice of Investigation is provided to the parties, an investigator or investigators selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the

alleged misconduct. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the university and not with the parties. The investigation will culminate in a written investigation report that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, DePaul strives to complete each investigation within 120 days of the written notice of Formal Complaint.

B. Equal Opportunity

During the investigation, the investigator(s) will provide an equal opportunity for the parties to be interviewed, to suggest witnesses, and to provide other evidence. Notwithstanding the foregoing, the investigator(s) retains discretion to limit the number of witness interviews the investigator(s) conducts if the investigator(s) 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 exclusively concerning the sexual history of the Complainant, as specified in “Sexual History.” The investigator(s) will not restrict the ability of the parties to gather and provide relevant evidence on their own.

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Notice of Investigation. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

C. Documentation of Investigation

The investigator(s) will take reasonable steps to ensure that the investigation is documented. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator(s) in the investigator’s sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

D. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will provide to each party and their advisor access to a preliminary investigation report, which will reflect all evidence obtained as part of the investigation that is directly related to the allegations raised in the Notice of Investigation, including evidence the university may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report and may include in the investigation 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.

E. Investigation Report

After the period for the parties to provide any written response as specified in “Access to Evidence” has expired, the investigator(s) will complete a written investigation 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. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. At least ten (10) days prior to a hearing as specified in “Hearing Process,” DePaul will provide each party and their advisor with access to the final investigation report.

F. Selection of Adjudication Process

After the final investigation report has been made available to the parties, DePaul will transmit to each party a notice advising the party of the two different adjudication processes specified in “Adjudication.” The notice will explain that the hearing process specified in “Hearing Process” is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in “Administrative Adjudication (Optional)” as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review these procedures (including the entirety of “Adjudication”), consult with their advisor, and consult with other persons as they deem appropriate prior to consenting to administrative adjudication.

Each party will have three (3) days from transmittal of the notice specified in this section to return the signed written consent form to the Title IX Coordinator. If either party does not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

Adjudications

A. Hearing Process

The default process for adjudicating Formal Complaints is the hearing process specified in this section. The hearing process will be used to adjudicate all Formal Complaints unless both parties timely consent to administrative adjudication.

1. Hearing Officers

After selection of the hearing process as the form of adjudication, DePaul will designate the hearing officer(s) who will oversee the hearing process and render a determination of responsibility for the allegations in the Notice of Investigation at the conclusion of the hearing process. The hearing officer(s) may be a panel of three members or a single decision-maker. The hearing officer(s) will be provided with a copy of the investigation report and a copy of all evidence transmitted to the parties as specified in “Access to Evidence.”

2. Hearing Notice

DePaul will notify the parties of the pre-hearing process, including appointment of the hearing officer(s); any pre-hearing meetings and the requirements thereof; and the date and time for the

hearing. The hearing may not be held any earlier than ten (10) days from the date that the parties are provided with access to the final investigative report.

3. Pre-Hearing Process

Prior to the hearing, DePaul will provide information to the parties regarding the hearing procedures. DePaul may also request pre-hearing meetings to address matters raised by the parties; to discuss whether there are any agreed-upon facts that may expedite the hearing; to discuss the witnesses that the parties have requested; and to address any other matters that should be resolved before the hearing.

At DePaul's discretion, the university may request that the parties provide certain information in advance of the hearing, such as:

- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in "Sexual History," or for any other reason;
- A list of any witnesses that the party intends to ask to submit to questioning at the hearing;
- Any request that the parties be separated physically during the hearing, if applicable;
- Any other accommodations that the party seeks with respect to the hearing;
- The name and contact information of the advisor who will accompany the party at the hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the university provide an advisor for purposes of conducting questioning as specified in "Hearing."
- Statement regarding whether any of the allegations in the Notice of Investigation are supported by a preponderance of the evidence; and
- Statement regarding whether any of the allegations in the Notice of Investigation constitute Sexual Harassment.

4. Hearing Schedule

Unless an extension is granted based on a showing of good cause, the parties are obligated to follow the hearing schedule. The availability of an advisor to attend any meeting or hearing shall not unreasonably interfere with or delay the hearing process.

DePaul will notify any university employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the witness of the specified date and time of the hearing and advise the witness to contact the sender immediately if there is a material and unavoidable conflict, or if they do not agree to appear.

5. Hearing

The hearing officer(s) will convene and conduct a hearing pursuant to the university's procedures. The hearing will be recorded. An audio recording will be made available to the parties for inspection and review on reasonable notice.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer(s), the parties, the advisors, witnesses, and other necessary university personnel together in the same physical location. However, at the university's discretion or upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

Each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer(s) directly and to respond to questions posed by the hearing officer(s);
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise objections to the evidence and to have such objections ruled on by the hearing officer(s) and a reason for the ruling provided.

Except as otherwise permitted by the hearing officer(s), the hearing will be closed to all persons except the parties, their advisors, the investigator(s), the hearing officer(s), the Title IX Coordinator, and other necessary university personnel. Witnesses will be separated from one another until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer(s).

Subject to the minimum requirements specified in this section, the hearing officer(s) will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer(s) may independently and contemporaneously screen questions for relevance in addition to resolving any objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer(s) will have discretion to modify the hearing procedures, when good cause exists to do so and provided the minimal requirements specified in this section are met.

6. Requirement to Submit to Questioning

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' advisors, the statements of that party or witness, as the case may be,

whether given during the investigation or during the hearing, will not be considered by the hearing officer(s) in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer(s) may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this section, the hearing officer(s) will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

7. Deliberation and Determination

After the hearing is complete, the hearing officer(s) will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer(s) will resolve disputed facts using a preponderance of the evidence (that is, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Notice of Investigation.

8. Discipline and Remedies

In the event the hearing officer(s) determines that the Respondent has violated this policy, the hearing officer(s) may, prior to issuing a written decision, consult with an appropriate university official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer(s) will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

9. Written Decision

After reaching a determination and consulting with the appropriate university official and Title IX Coordinator as required by "Discipline and Remedies," the hearing officer(s) will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Notice of Investigation;
- 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, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;

- 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;
- To the extent possible and in accordance with other university policies, the discipline determined by the appropriate university official as referenced in “Discipline and Remedies”;
- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the university’s process and grounds for appeal, as specified in “Appeal.”

The written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in “Appeal.”

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, DePaul University strives to issue the written determination within fourteen (14) days of the conclusion of the hearing.

B. Administrative Adjudication (Optional)

In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties. At any time prior to the issuance of the administrative officer’s determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in “Hearing Process.”

If administrative adjudication is selected, an administrative officer will be appointed. The administrative officer will be provided with a copy of the investigation report and a copy of all of the evidence transmitted to the parties as specified in “Access to Evidence.”

The administrative officer will promptly send written notice to the parties notifying them of the administrative officer’s appointment and setting a date and time for each party to meet with the administrative officer separately. The administrative officer’s meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

After receipt of the investigation report and in DePaul’s discretion, the administrative officer may request that the parties provide certain information, such as:

- Any argument that evidence should be categorically excluded from consideration based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;
- Statement regarding whether any of the allegations in the Notice of Investigation are supported by a preponderance of the evidence; and
- Statement regarding whether any of the allegations in the Notice of Investigation constitute Sexual Harassment.

The administrative officer will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the administrative officer to ask questions, including, but not limited to, questions concerning the party's arguments, the investigative report and/or the evidence collected during the investigation. The administrative officer may follow-up with the investigator(s) to address any questions raised by the parties or by the administrative officer's own review of the investigative report.

After meeting with each party, the administrative officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The administrative officer will resolve disputed facts using a preponderance of the evidence (that is, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Notice of Investigation.

Thereafter, the administrative officer will prepare and transmit a written decision, which shall serve as a resolution for purposes of informal resolution.

Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal as specified in "Appeal."

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, DePaul University strives to issue the administrative officer's written determination within thirty (30) days of the transmittal of the initiating written notice specified in this section.

Other language in this section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

For more information about administrative adjudication for students, please refer to the "Administrative Hearing Process" within the [Student Conduct Process](#).

C. Dismissal During Investigation or Adjudication

DePaul shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of Title IX specified in "Scope" (that is, because the alleged conduct did not occur in the university's education programs or activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

DePaul may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator 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);
- The Respondent is no longer enrolled or employed by the university, as the case may be; or
- 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 Title IX Coordinator dismisses a Formal Complaint pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the allegations in the Formal Complaint to other university offices, as appropriate. The dismissal is a final determination unless modified or overturned on appeal.

Appeals

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer(s), or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that materially affected the outcome.

Except as provided for in the [Student Conduct Process](#), no other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from. The appeal must be submitted in writing to the appellate officer, who will be designated in the written determination. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it sets forth at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and does set forth at least one permitted ground for appeal, 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 reply to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any reply or after the time period for submission of a reply has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, DePaul University strives to issue the appeal officer's written decision within fourteen (14) days of an appeal being filed.

Additional Information

A. Advisor of Choice

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will 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 parties and witnesses during a 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 material violation of the parameters specified in these procedures, DePaul may preclude the advisor from further participation, in which case the party may select a new advisor of their choice or have one appointed for them.

In the event a party is not able to secure an advisor to attend the hearing and requests that the university provide an advisor, DePaul will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. DePaul will have sole discretion to select the advisor it provides. The advisor may be, but is not required to be, an attorney.

DePaul is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing or the party requests that the university provide an advisor for the hearing.

B. Treatment Records and Other Privileged Information

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or

- paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;

unless the university has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication processes.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this section if the party holding the privilege affirmatively discloses the records or information to support their position in the case.

C. Sexual History

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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this section.

D. Resources

Any individual affected by or accused of Sexual Harassment will have equal access to support and, where applicable, counseling services offered through the university. DePaul encourages any individual who has questions or concerns to seek support of university-identified resources. The Title IX Coordinator is available to provide information about DePaul's policy and procedure and to provide assistance. A list of university-identified resources is located at the following link: [Sexual and Relationship Violence Information Sheet](#).

E. Conflicts of Interest, Bias, and Procedural Complaints

The Title IX Coordinator, investigator(s), hearing officer(s), administrative officers, appeals officers, and informal resolution facilitators 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 within forty-eight hours of being notified of the official's intended involvement so that DePaul may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in "Appeal," or otherwise.

F. Relationship with Criminal Process

This policy sets forth DePaul's processes for responding to reports and Formal Complaints of Sexual Harassment. The university's processes are separate, distinct, and independent of any criminal processes. While the university may temporarily delay its processes under this policy to avoid

interfering with law enforcement efforts if requested by law enforcement, the university will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

G. Recordings

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the university and is considered property of the university, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only DePaul is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy violates Illinois law and is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the moderator.

H. Vendors, Contractors, and Third Parties

DePaul does business with various vendors, contractors, and other third parties who are not students or employees of the university. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the university retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. Further, DePaul retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

I. Bad Faith Complaints and Knowingly False Statements and Information

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 are not subject to the investigation and adjudication processes in this policy; instead, they may be addressed under the Code of Student Responsibility, in the case of students, and other university policies and standards, as applicable, for other persons.

J. Retaliation

DePaul prohibits retaliation and the threat of retaliation against any person, including complainants, respondents and witnesses, exercising their rights and/or responsibilities in good faith pursuant to this policy, or otherwise participating in any process related to a potential violation of this policy. Claims of retaliation will be investigated and, if substantiated, may constitute a separate policy violation subject to additional discipline or sanctions. More information about DePaul's prohibition against retaliation in the context of discrimination and harassment can be found in the [Anti-Discrimination and Anti-Harassment Policy and Procedures](#). More information about DePaul's prohibition against retaliation generally can be found in the [Non-Retaliation Policy](#).

K. Confidentiality

To the fullest extent possible, DePaul 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. DePaul 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, DePaul 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.

While DePaul will maintain confidentiality specified in this section, DePaul will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the university must disclose crime statistics in its annual security report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

L. Signatures and Form of Consent

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where these procedures provide that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature will suffice.

M. Deadlines, Time, Notices, and Method of Transmittal

Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by DePaul where, in the university's sole discretion, good cause exists. Good cause may include, but is not limited to, the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the university's legal counsel; unforeseen weather events; and the like.

Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be electronic mail using university email addresses.

A party is deemed to have received notice upon transmittal of an email to their university email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the university, considering all of the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant university officials; approaching holidays or closures; and the number and length of extensions already granted.

N. Training

DePaul will ensure that university officials acting under this policy, including, but not limited to, the Title IX Coordinator, investigators, hearing officers, administrative officers, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

O. Recordkeeping

DePaul will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years, after which point in time they may be destroyed, or continue to be retained, in the university’s sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

P. Discretion in Application

DePaul retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the university’s interpretation or application differs from the interpretation of the parties.

Despite DePaul’s reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the university retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the hearing procedures referenced in “Hearing” are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly,

DePaul retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. DePaul may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

Divisional Collaborations

Student Affairs
Academic Affairs
Human Resources
Office of the General Counsel

Contact Information

Title IX Coordinator
312-362-8970
titleixcoordinator@depaul.edu

Appendices

None.

History/Revisions

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