

Approved: October 28, 2020  
Updated: November 17, 2020

*The Duke Frequently Asked Questions About the new Federal Title IX Regulations and Their Application in Duke Policies and Procedures applies to both Duke University and Duke Health and is maintained and revised by Duke's Office for Institutional Equity.*

## **Frequently Asked Questions About the New Federal Title IX Regulations and Their Application in Duke Policies and Procedures**

### **What is Title IX?**

Title IX is a federal civil rights law that prohibits discrimination based on sex, including sexual harassment in educational programs and activities. In November 2018 the Department of Education (DOE) published a notice of Proposed Rulemaking outlining substantial changes to the regulations implementing Title IX. After receiving over 100,00 comments and holding numerous stakeholder meetings, the DOE published its final rule on May 6, 2020, with an effective date of August 14, 2020. The new rules outline major changes to the scope, application and previous federal guidance on Title IX. At Duke we convened a Working Group, including representatives from Student Affairs, the Office for Institutional Equity, the Provost's Office, Human Resources and Counsel's Office, during the summer to perform a holistic review of all our policies, including the implementation of the new regulations. During that time, we met with multiple stakeholder groups for feedback and posted the Policy and Procedures for a short period for public comment. We will post the Policy and Procedures for public comment again after the first of the year.

### **Do the new Title IX rules apply to the entire Duke community?**

Yes, the new rules apply to faculty, staff, and student misconduct as it relates to incidents that occur after the August 14, 2020 effective date.

### **Does Duke have to comply with the federal regulations?**

Yes, as a recipient of federal funding, Duke is required to comply with the federal regulations.

### **What conduct is prohibited by the new Title IX federal regulations?**

The regulations prohibit many forms of sexual harassment, including sexual assault, domestic violence, dating violence and stalking on the basis of sex. They also apply to quid pro quo sexual harassment by employees and unwelcome sexual conduct that is so severe, pervasive and objectionably offensive that it effectively denies a person equal access to the University. This is a narrower definition of sexual harassment than was contained in earlier guidance from the federal government.

In addition, in order to be prohibited by the regulations, the conduct must have occurred in the United States, in a Duke program or activity, including in a building owned or controlled by Duke or a recognized student organization. The complainant (impacted person) must be attempting to participate in a Duke program or activity. This includes, for example, current students, employees, faculty members, and admitted applicants.

### **Will Duke continue to address sexual misconduct that does not meet one of the specific definitions in the new federal regulations?**

Yes. Duke remains committed to addressing all forms of sexual misconduct, even where it does not meet the strict definitions under Title IX. (Duke will continue to address any misconduct that would have been addressed prior to these new regulations.) Sexual misconduct that does not meet the Title IX definition will be handled under either the Complaint Handling Procedures for Discrimination and Harassment Matters Involving a Student as a Respondent or Complaint Handling Procedures Involving a University Faculty and Non-Faculty Staff as a Respondent. The definitions and process for addressing non-Title IX sexual misconduct are similar to practices under the old policies with certain improvements as described below.

### **If I attended a large party and was sexually assaulted, will I be charged with violating COVID policies if I report the sexual assault?**

No. Students who report sexual misconduct should do so without fear that they may face disciplinary action. Reporting incidents of sexual misconduct is vital to maintaining a campus climate free of harassment and sexual violence. Therefore, if the university first learns of a violation(s) of the Duke Compact or the Undergraduate Student COVID Policy Plan as part of a student reporting sexual misconduct, the complainant and witnesses will not be charged with violating these policies.

### **What are the most significant changes, in addition to the definitions, to Duke's policies and procedures as a result of these new regulations?**

- In Title IX cases, Duke is now required to hold a live hearing that will be presided over by an independent Hearing Officer. Title IX matters involving faculty and staff are also subject to the live hearing requirement. The parties must be able to see and hear each other, but they can be located in separate rooms and the hearing can be performed virtually.
- At the hearing, the complainant (impacted person) and the respondent (accused) must each have an Advisor present without exception. The Advisor must conduct "cross examination," that is, must ask questions of the other party; the parties may not question one another directly. Students may use their own advisors. Duke will appoint an Advisor for the hearing from a list of approved attorneys for any party who would like one assigned to them or who do not otherwise select their own Advisor.
- Both parties are entitled to appeal the decision of the Hearing Officer to an Appellate Officer if they meet one of the three grounds for appeal. Generally speaking, these grounds for appeal include new information not available at the time of the hearing, bias/conflict of interest, and procedural errors that affected the outcome of the hearing.

## **How do all of these changes fit into Duke’s policy structure?**

There is an umbrella policy that encompasses all misconduct related to discrimination, harassment, sexual misconduct and Title IX called the *Policy on Prohibited Discrimination Harassment and Related Misconduct*. There are three corresponding procedures that accompany the umbrella policy:

- Title IX Sexual Harassment Grievance Procedures – these procedures apply when the allegations concern conduct that rises to the definition of sexual harassment under the Title IX regulations.
- Complaint Handling Procedures for Discrimination and Harassment Matters Involving a Student as a Respondent – these procedures apply to all other allegations of protected class discrimination made against a student.
- Complaint Handling Procedures Involving a University Faculty and Non-Faculty Staff as a Respondent – these procedures apply to all other allegations of protected class discrimination and harassment made against a faculty or staff member.

## **How will I know which process is supposed to be applied in my case?**

You do not have to figure out which one of these procedures applies to your situation. OIE will assess which procedures apply, whether or not an investigation is initiated, or if an informal/alternative resolution would be appropriate. You can also talk to a confidential, trained Gender Violence Prevention clinician through the Women’s Center or connect confidentially with Staff in CAPS who can help you with academic and personal supports separate from any kind of report.

## **Are alternative resolutions available in Title IX complaints?**

Yes. Once a formal complaint is filed, if appropriate to a specific case, an alternative resolution process may be pursued. Both parties must agree to the process. (See [Title IX Sexual Harassment Grievance Procedures, § VIII. Alternative Resolution](#))

## **Why does the Policy on Prohibited Discrimination, Harassment, and Related Misconduct (“PPDHRM”) include criminal sounding terms like “rape” and “fondling”?**

Because of the new regulations Duke’s policy must use the definitions of sexual assault, dating violence, domestic violence and stalking that are found in the *Violence Against Women Act (VAWA)* amendments to the *Clery Act*. These definitions include legalistic terms that are grounded in the criminal law.

## **Why is Duke allowing cross-examination in hearings during a formal Title IX process?**

The new Title IX regulations require a live hearing with cross-examination conducted directly, orally, and in real time by the Advisors and never by a party personally.

## **In the absence of these new regulations would Duke require a live hearing with cross examination?**

No. Prior to these new rules Duke conducted a full investigation and used hearing panels in sexual misconduct cases according to preexisting definitions of sexual harassment, sexual assault, stalking and relationship violence. In the absence of these new rules Duke would have continued its existing practices.

## **Who can advise me through a formal Title IX process?**

Each party is permitted to have an advisor of their own choosing to provide support and guidance, including accompanying them to any meeting in resolution of the complaint. (An Advisor could be a lawyer, social worker or any other person, preferably, who is not a fact witness.) Prior to the hearing, an advisor acts in a non-speaking role. At the hearing, the Advisor asks all questions of other parties and witnesses and can continue to provide support to their advisee. If you don't have an advisor for the hearing, Duke will appoint one. (See [Title IX Sexual Harassment Grievance Procedures, § VII. Advisors](#))

The Title IX Coordinator or the Deputy Title IX Coordinator for Students is available to anyone with procedural questions.

## **Do I have to use the same Advisor who supports me through the investigation process also act as my Advisor for the hearing?**

No, you can have a different Advisor for the hearing than the Advisor who supported you in the process prior to the hearing.

## **Will Duke address behavior that occurs abroad?**

Yes, Duke will continue to address **all** complaints of sexual misconduct even those that occur abroad when the misconduct significantly interferes with an individual or group's ability to participate in or benefit from Duke programs or activities or the terms and conditions of employment. In all cases the parties will be offered supportive measures.

## **If sexual misconduct happens off campus will the University still investigate?**

The new federal regulations apply to conduct that happens within the University's education programs and activities, including:

- locations, events, or circumstances over which the University exercised substantial control over both the respondent and the place where the conduct occurred, and
- any building owned or controlled by a recognized student organization, even if off campus.
- Off-campus programs or activities that are Duke programs.

If these criteria are not met Duke will evaluate the matter under the [non-Title IX procedures](#) (e.g., including Greek/Non-Greek/Athletic or other group organizational events that occur off-campus).

For additional information regarding reporting misconduct that occurs off-campus, please contact [Victoria Krebs](#), Associate Dean, Office of Student Conduct at [919-684-6938](tel:919-684-6938).

### **How do I know which police department to report to if an incident occurred off campus and I want to notify police?**

The [Duke University Police Department](#) will assist any affected individual with notifying local police if the incident occurred off campus. DUPD suggests calling 9-1-1 in any emergency or [919-684-2444](tel:919-684-2444) for non-emergencies. The police are not a confidential resource.

### **What if I need a disability accommodation during the complaint process?**

You can contact the Title IX Coordinator or the Deputy Title IX Coordinator for Students as soon as possible at [titleix@duke.edu](mailto:titleix@duke.edu), who will coordinate with the [Disability Management System](#) to evaluate the request.

### **What if I need a supportive measure after the complaint process begins?**

You should contact the Title IX Coordinator or the Deputy Title IX Coordinator for Students at [titleix@duke.edu](mailto:titleix@duke.edu) when the need arises, or if you have any questions. OIE will consider potential supportive measures in all cases.

### **Is there a time limit on when I can report sexual misconduct?**

No. Recognizing that there will be range of reactions and responses to sexual misconduct, individuals are encouraged to report sexual misconduct to OIE or OSC as soon as possible. The University may be limited in its ability to gather information depending on how much time has passed, the availability of witnesses, and whether the university has jurisdiction over the respondent (for example, a student who has graduated, or an employee who has left their position).

### **Where can I report sexual misconduct and what happens?**

You can make a report through OSC's [Incident Report Form](#), or through OIE's [Report an Incident Form](#). After you make a report you will receive an outreach email to schedule a meeting to discuss, among other things:

- Safety concerns,
- The availability of supportive measures designed to restore or preserve access to education programs and activities and protect the safety of all parties (e.g., changes to housing or classes or advisors, no contact directives, counseling, negotiation of extracurricular participation), and
- Paths of resolution.

During this meeting, you do not have to decide upon any course of action. You are not required to respond or to participate in the process. In some cases, the University might be required to take some action without your involvement. For example, if there is a potential threat to safety on the

campus or where there are multiple victims of a single accused person. OIE will continue to provide support and information throughout the process.

### **How do I quickly find information and resources that are available to me?**

See Duke's comprehensive [Sexual Misconduct Prevention & Response Webpage](#) with support information, supporting others, prevention initiatives and filing a report. See also [DUPD's Victim Assistance page](#) for complete information on resources available in instances of sexual violence, domestic or dating violence and stalking, including preserving evidence.

### **How do I know which resources are confidential and which are non-confidential?**

You can find list of confidential and nonconfidential resources for students, staff and faculty within [OIE's Sexual Misconduct Reporting Resources](#) page. Confidential sources are not required to share information with any other office at Duke, including OIE.

### **What is a "Responsible Employee"? What happens if I tell a Responsible Employee about an incident of sexual misconduct?**

All faculty, employees with teaching or supervisory authority and graduate students with teaching or supervisory authority are Responsible Employees, among others. Responsible Employees are expected to be discreet but are **required by the university to promptly consult with OIE**, sharing known details about any incident that could be sexual misconduct. Responsible employees are not confidential sources. Once a Responsible Employee brings the information to OIE, we will send you an outreach email inviting you to meet with someone in the office. You are not required to attend the meeting, but as indicated above the University might be required to take some action without your involvement.

If you have any question about whether you are a Responsible Employee or questions concerning your Responsible Employee duties, please contact OIE for clarification.

### **What if I only want "supportive measures"? Does being provided supportive measures mean I cannot file a formal complaint?**

OIE and OSC will work with you to determine appropriate supportive measures even if you do not file a formal complaint. You can consider a formal complaint at a later date. Respondents and other participants in the disciplinary process may also request supportive measures. The University works closely with the individual requesting the supportive measure to implement reasonable measures that preserve or restore access to the education or work environment, promote safety, and deter prohibited conduct, while not unduly burdening any other individual. Supportive measures are documented and tracked by the university. (See [PPDHRM § VI. Supportive Measures](#))

### **If I am accused of sexual misconduct how will I be informed?**

If a Title IX formal complaint has been filed and accepted, you will receive an email Notice of Allegations from OIE with specific information about the allegations, the procedure, your rights

(including right to an advisor who may be an attorney), supportive measures, and other information (see [Title IX Sexual Harassment Grievance Procedures, § VI. Actions Related to the Filing of a Formal Complaint](#)). If a formal complaint that has been filed does not meet all of the requirements of a Title IX complaint, you will receive notification that OIE is dismissing the formal complaint for Title IX purposes and 1. Address the matter under another set of procedures, 2. Refer the matter to OSC, HR Staff and Labor Relations or other appropriate office, or 3. Take no further action.

You can contact the Title IX Coordinator or the Deputy Title IX Coordinator for Students at [titleix@duke.edu](mailto:titleix@duke.edu) with any questions or concerns.