

Title

Title IX Procedure

Office for Institutional Equity (OIE)
August 31, 2020

IX

Duke | *Office for*
Institutional Equity

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**Duke's Policy Prohibiting
Discrimination, Harassment, and
Related Misconduct
("PPDHRM")**

Adopted August 14, 2020

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PPDHRM – Title IX Prohibited Conduct

- **Title IX Sexual Harassment:** conduct on the basis of sex that satisfies one or more of the following —
 - A University employee (including a faculty member) conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (quid pro quo).
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's program or activity.
- **Sexual Assault:** any sexual act directed against another person, without the consent of the Complainant. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape.
- **Domestic Violence**
- **Dating Violence**
- **Stalking** (gender based)

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The PPDHRM, as the umbrella policy, defines Title IX prohibited conduct, according to the Title IX regulations (sexual harassment) Clery Statute (sexual assault), and VAWA (dating/domestic violence and stalking)

Other Conduct

- **Violation of Supportive or Remedial Measures:** violation of directives associated with supportive or remedial measures provided to an individual in connection with this Policy.
- **Retaliation:** an adverse action or other form of negative treatment, including intimidation, threats, coercion, discrimination or harassment, carried out in response to: a good-faith reporting of or opposition to discrimination, harassment, or related misconduct; participation, including testifying or assisting in Duke's complaint process or response to a complaint; refusal to participate in Duke's complaint process or response to a complaint; or other form of good faith opposition to what an individual reasonably believes to be discrimination, harassment, or related misconduct under this Policy.

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These violations may, but are unlikely to, come up in an investigated Title IX report.

Related Defined Terms

- Coercion
- Consent
- Education Program or Activity
- Formal Complaint
- Incapacitation
- Student

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Section IV of the PPDHRM also defines these related terms

Title IX Sexual Harassment Grievance Procedures

Hearing (Hearing Officers)

- When a case is ready to go to hearing, OIE will reach out to you as to your availability, and will handle scheduling the hearing with the parties/advisors.
- Hearings will be handled remotely (via Zoom) for the foreseeable future.
- Timeline from final investigative report through the Hearing Officer's written notification of outcome is 45 business days.
- Complainants/Respondents and witnesses may not have electronic devices while participating in a hearing.
- OIE will record the hearing.

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Concerning Hearing Officers...here are some guidelines for your engagement with our office: (SLIDE CONTENT)

OIE has authority to extend 45 day deadline in extenuating circumstances.

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Hearing (Hearing Officers) - *continued*

- The Hearing Officer will communicate with the parties prior to the hearing with respect to issues such as scheduling, hearing procedures, witness and advisor participation and identification, structure, advance determination of relevance of certain topics, other matters, and establish reasonable, equitable deadlines for party participation/input.
- Hearing outline in Procedures (from introductions to closing comments)
- The Hearing Officer makes final determination whether the question is relevant, explaining any decision to exclude a question or information.

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Hearing (Hearing Officers) - *continued*

- Preponderance of the evidence standard is used.
- If the Hearing Officer finds the Respondent responsible for a violation of the University's policies, appropriate remedies and sanctions will be determined by the appropriate University official, depending on the status of the Respondent.
- The Hearing Officer creates a written notification regarding outcome and any sanctions/remedies.

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The facilitators (Jayne or Cynthia) will coordinate with the “appropriate university official” as to any sanctions imposed.

The elements of the written notification are in Section X, Hearing of the Procedures

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Hearing (Advisors)

- An Advisor's role is otherwise limited to quietly conferring with the Complainant or Respondent through written correspondence or whisper and may not speak except to conduct cross-examination.
- If a party does not appear for the hearing, their advisor may ask questions of the other party and witnesses.
- If a non-participating party's advisor also does not appear for the hearing, the University will appoint an Advisor.

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Cross examination is explained more fully in Section X.

Unlikely to ask an Advisor to participate on short notice; would more likely reschedule the hearing.

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Appeal (Appellate Officers)

- If appeal is received and accepted, OIE will reach out to you as to your availability.
- The Appellate Officer may convene a meeting with the parties/advisors; OIE will handle any scheduling.
- Timeline for appeal is 20 days business days from the filing of an appeal statement (and response, if any) through a decision from the Appellate Officer.

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Section XI Appeals of the Title IX SH Grievance Procedures

OIE can extend timeline in extenuating circumstances.

The appellate officer has full discretion to set the terms and length of the meeting. If a meeting is convened, the appellate officer will invite both the Appellant and Appellee, who may bring an advisor of their choice to the meeting who will quietly confer with their advisee.

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Appeal (Appellate Officers) - *continued*

- Appellate meetings will be remote (Zoom) for the foreseeable future.
- The Appellate Officer's role is limited to reviewing the record of the investigation/hearing, the appellant's written appeal statement, any response to that statement by the other party, and information presented at a meeting, if convened.
- Written notification will be provided to the parties simultaneously (OIE will forward) typically within 20 days of the appeal statement.

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QUESTIONS?



Kimberly Hewitt

Vice President for Institutional Equity

kimberly.hewitt@duke.edu

Cynthia Clinton – *for employee respondents*

Assistant Vice President Harassment and
Discrimination Prevention and Compliance

cynthia.clinton@duke.edu

Jayne Grandes – *for student respondents*

Assistant Vice President Title IX Compliance

jayne.grandes@duke.edu