TITLE IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Legal Citation: Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R. Part 106 (Title IX).

Introduction

Title IX is a federal law that prohibits discrimination on the basis of sex in federally funded educational programs. Title IX applies to all members of the University community. The University does not discriminate on the basis of sex in its admissions, employment, or educational programs and activities.

Members of the university communities, guests and visitors have the right to be free from all forms of sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University takes all reports of sex discrimination and sexual misconduct seriously and will respond promptly, equitably, and consistently with applicable law and University policy.

Title IX Team Members

Visit the website for SAU Title IX contact information (https://sau.edu/title-ix-compliance/)

Visit the Mount Mercy website for Title IX contact information (https://www.mtmercy.edu/undergraduate/campus-life/public-safety/title-ix)

- Title IX Coordinator
- Deputy Title IX Coordinators
- Investigators
- Decision-makers
- Informal resolution facilitators
- Appellate Officer
- Person responsible for supportive measures

Sex Discrimination

Sex discrimination is adverse treatment of a person the basis of sex. If this sex discrimination limits or excludes the person from participating in the institution's education program or activity or denies or limits the benefits thereof.

Under Title IX, sex discrimination can happen in one of three ways:

1. Programmatic Discrimination
   a. When discrimination occurs in a systematic way due to an institutional policy or practice
   b. Affects persons as a group or by category, rather than by individualized decision
   c. Typically not attributed to an individual perpetrator
2. Individualized Discrimination
   a. When a particular decision is made, or action taken, that results in adverse treatment of a particular person that limits or excludes that person from participation or denies or limits benefits
   b. Typically has identifiable respondent
3. Sexual Harassment
   a. Conduct on the basis of sex and that also constitutes:
      i. Quid pro quo harassment
      ii. Hostile environment harassment
      iii. Sexual assault
      iv. Domestic violence
      v. Dating violence
      vi. Stalking

The general Title IX Sex Discrimination Grievance Process is used to address incidents of 1) Programmatic Discrimination and 2) Individualized Discrimination. The Title IX Sexual Harassment Grievance Process is used for cases of 3) Sexual Harassment.

General Title IX Sex Discrimination Grievance Process

For incidents of non-sexual harassment Title IX complaints, the general Title IX Sex Discrimination Grievance Process will be followed. The University takes all allegations of discrimination seriously and strive to reach a prompt and equitable resolution. Programmatic and individualized are examples of complaints of sex discrimination outside the federal sexual harassment process and will be handled under the University's applicable nondiscrimination general grievance process.

Complaints about general sex-discrimination should be brought to the Title IX Coordinator.

Title IX Sexual Harassment Grievance Process

Title IX Sexual Harassement

Sexual harassment refers to sex-based conduct that satisfies one or more of the following:

(1) *quid pro quo* harassment by an employee of an educational institution;

(2) unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity; or

(3) sexual assault (as defined in the Clery Act (https://www.govinfo.gov/content/pkg/USCODE-2015-title20/pdf/USCODE-2015-title20-chap28-subchapIV-partF-sec1092.pdf)), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act (https://us.pagefreezer.com/en-US/replay/w/id-210fd3794b04/:2289b12e795161c2b0ed7831e8d48a69-44/20240624175102mp_ https:/www.govinfo.gov/content/pkg/USCODE-2017-title34/pdf/USCODE-2017-title34-subtitleI-chap121-subchapIII.pdf)).

Sexual Harassment Offenses include

1. Quid Pro Quo Harassment
2. Hostile Environment Harassment
3. Sexual Assault
4. Domestic Violence
5. Dating Violence
6. Stalking

Quid Pro Quo Harassment. Quid pro quo harassment occurs when an employee of the institution conditions the provision of some aid, benefit, or service on another person's participation in unwelcome sexual

conduct. This situation often arises in the employment context or where an employee holds a position of authority over a student.

Hostile Environment Harassment. Hostile environment harassment 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 recipient's education program or activity.

Sexual Assault. Sexual assault is an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Includes: rape, statutory rape, fondling, and incest

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 or another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

Statutory Rape is the non-forcible sexual intercourse with a person who is under the statutory age of consent.

Fondling includes the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim, for the purpose of sexual degradation, sexual gratification, or sexual humiliation. Fondling includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

In the state of Iowa, **incest** is defined as a person, except a child, who performs a sex act with another whom the person knows to be related to the person, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of the whole or half blood, aunt, uncle, niece, or nephew, commits incest. Incest is a class D felony.

Domestic Violence. Felony or misdemeanor crimes of violence under any of the following circumstances:

The assault is between family or household members who resided together at the time of the assault.

The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.

The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.

The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.

(1) The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether persons are or have been in an intimate relationship, the court may consider the following nonexclusive list of factors:

The duration of the relationship.

The frequency of interaction.

Whether the relationship has been terminated.

The nature of the relationship, characterized by either party's expectation of sexual or romantic involvement.

(2) A person may be involved in an intimate relationship with more than one person at a time.

Dating Violence. Violence committed by a person: who is or has been in a social relationship of a romantic or intimate nature with the victim, and, where the existence of such a relationship will be determined based on consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: fear for their safety or the safety of others, or suffer substantial emotional distress.

Examples include, but are not limited to:

Non-consensual repeated communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, gifts, ordering goods or services for, or any other communications that are undesirable

Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a recipient of unwelcome conduct

Monitoring online activities, surveillance an other types of observation whether by physical proximity or electronic means, attempts to gather information about the recipient of unwelcome conduct

Vandalism, including attacks on data and equipment

Direct physical and/or verbal threats against a recipient of unwelcome conduct or loved ones of a recipient of unwelcome conduct, including animal abuse

Defamation or slander against the recipient of unwelcome conduct; posting false information about the recipient of unwelcome conduct; posing as the complainant in order to post to web sites, news groups, blogs, or other sites that allow public contributions; generating AI images and posting them on social media or distributing widely, and/or encouraging others to harass the recipient of unwelcome conduct;

Posing as someone other than oneself to initiate transactions, financial credit, loans, or other contractual agreements;

Arranging to meet the recipient of unwelcome conduct under false pretenses.

University Response

After the University has actual knowledge of alleged sexual harassment, the Title IX Coordinator must contact the complainant to provide supportive measures, explain the grievance process, explain how to file a formal complaint, and discuss the complainant's wishes. All parties are presumed not responsible until a determination regarding responsibility is made at the conclusion of the grievance process.

Scope & Federal Title IX Jurisdiction

This policy applies to all persons participating in the programs or activities of St. Ambrose University, including students and employees of the University, in particular those who are

- Victims of any form of sexual harassment as defined in this policy, by any other person (student, employee, or others outside the University community)
- Accused of engaging in behavior prohibited by this policy.

For purposes of the federal Title IX grievance process, 'education program or activity' is interpreted consistent with applicable federal regulations. The University's separate D.18. Sexual Harassment policies (18.i.—18.vi.) may address conduct outside the federal Title IX jurisdiction when permitted by University policy and applicable law.

Reporting

Any person may report an incident of sexual discrimination or sexual harassment to the Title IX Coordinator. This may be done without revealing the name of the complainant. The University will protect the privacy of information to the extent permitted by law and consistent with its obligation to respond to reports and conduct the grievance process. At the time a report is made, a complainant does not have to decide whether or not to file a formal complaint.

Anyone can REPORT a suspected Title IX violation. Only the complainant or Title IX Coordinator can FILE A FORMAL COMPLAINT.

Confidentiality, Privacy and Reporting Policy

To report confidentially

You can seek advice from certain resources who are not ***required*** to tell anyone else your private, personally identifiable information unless there is cause for fear for your safety, or the safety of others. These are individuals who the University has specifically designated as “confidential resources” for purposes of providing support to students. Confidential resources include mental health counselors, health service providers, chaplains and members of the clergy, or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help you free of charge.

Reporting to those who cannot maintain the privacy of what you share

It is University policy that all faculty, non-counselor staff members, and administrators are **mandatory reporters**, and are ***required*** to report what you have told them to the Title IX Coordinator as part of the Title IX process. If you are unsure of someone’s duties and their ability to maintain your privacy, ask them before you talk to them. They will be able to tell you and help you make decisions about who can help you best.

No Retaliation Policy

Retaliation is defined as 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, testified, assisted, or participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution’s policy. The University has a firm no-retaliation policy.

Filing a Formal Title IX Complaint

A formal complaint must be submitted in writing (email, hard copy, online) to the University Title IX Coordinator. A formal complaint must be signed by hand or digital signature and is a document that alleges sexual misconduct against a respondent and a desire to initiate the grievance process. The Title IX Coordinator may sign a formal complaint when permitted by applicable federal law. The Coordinator’s decision to sign a formal complaint does not make the Coordinator a complainant or party to the proceeding and does not remove the Coordinator's obligation to remain impartial.

Receipt of a formal complaint initiates the Title IX grievance process, subject to the jurisdictional and dismissal provisions of this Policy.

At the time of filing, the complainant must be participating in or attempting to participate in the University's education program or activity, consistent with 34 C.F.R. §106.30.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act, as Amended by the Stop Campus Hazing Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the complainant and may be done anonymously.

Clery reporting obligations are separate from the University's Title IX grievance process. A Clery report does not itself constitute a formal complaint and does not automatically initiate a Title IX investigation.

Federal Timely Warning Obligations

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

Supportive Measures

Supportive measures are offered to both complainant and respondent. Supportive measures are those that are non-disciplinary, non-punitive accommodations designed to preserve the party’s equal access to the University’s education program or activity. Supportive measures must be reasonably available without fee or charge, and without unreasonably burdening the other party. Supportive measures are generally confidential and information is only shared with institutional employees who have a job-related reason to know.

Supportive measures include, but are not limited to:

- Counseling services
- Academic accommodations

- Housing accommodations
- Security escorts
- Leave of absence
- Increased security or monitoring
- Modified work schedules
- Spiritual and religious guidance
- Mutual no contact orders (when implicated by facts)

Emergency Removals

Students may be removed on an emergency basis if:

- Individualized safety and risk analysis determines an immediate threat to physical health or safety of any student or other individual arising from the alleged sexual harassment, justifying removal
- The removal decision is not a determination of responsibility
- Student is given immediate notice and opportunity to contest the removal

Sexual Harassment Grievance Process

The standard of evidence used for the Title IX cases is a **preponderance of the evidence**.

1. To meet the definition of sexual harassment under this policy the alleged behavior must
   - Include quid pro quo harassment, hostile environment harassment, sexual assault, domestic violence, dating violence, and/or stalking as described in this policy.
   - Occur in St. Ambrose University's education program or activity
   - Occur within the United States
2. Investigation and Advisors

1. Both parties will receive written notification of the investigation that contains: allegations, identities when known, dates/locations when known, applicable policy provisions, presumption of non-responsibility, advisor rights, evidence-review rights, applicable standard of evidence, grievance procedures, and available informal-resolution process.
2. Investigators will collect relevant inculpatory and exculpatory evidence by interviewing the complainant, respondent, and any relevant third-party witnesses
3. Both parties will be notified that they can choose (or be assigned) an advisor
4. If a party does not have an advisor, the University will provide them one at no cost
5. At least 10 days before the investigation report is finalized, both parties and their advisors are given access to all inculpatory and exculpatory evidence directly relate to the allegations (regardless of whether the institution intends to rely on it)
   a. Evidence will be made available in electronic format or hard copy
6. Through the 10th day, parties are permitted to submit a written response to the evidence
7. The investigators consider the responses and concludes with a written report that fairly summarizes the inculpatory and exculpatory evidence.
   a. The report must be made available to both parties at least 10 days before the live hearing or determination so that there is time for both parties to respond to the report

1. University Decision Makers
   - Decision-makers must not have a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent.
   - The decision-maker shall not be the Title IX Coordinator or investigator in the same matter
   - The Decision Makers will determine the relevance of evidence
   - Privileged and Treatment records made and maintained by physicians, psychiatrists, psychologists or similar professionals in connections with treatment shall not be considered as evidence unless the applicable voluntary written consent is obtained. The University will not seek or use such records without the required voluntary written consent and that legally privileged information is not accessed/used absent applicable waiver.
     - Rape shield provision: the federal rape shield law creates a bar against the use of evidence of "other sexual behavior" of a complainant in a rape case, permitting such evidence only within strictly defined circumstances.
2. Live Hearing
   a. The Decision makers will preside over the live hearing
   b. The University will create a(n): audio recording; audiovisual recording; or a transcript of the live hearing and will make it available to both parties at the request of either party, the University will provide a live hearing with the parties in separate rooms using technology that permits the decision-maker and parties to simultaneously see and hear the person answering
   c. The complainant, respondent, and witnesses will undergo direct and cross examination from each advisor
   d. Each party's advisor will ask the other party and witnesses relevant questions and follow-up questions directly, orally, and in real time
   e. Before the question is answered, the decision-maker will determine whether the question is relevant and will explain any decision to exclude the question
   f. The Decision Makers must explain any decision to exclude a question as irrelevant

1. Written determination
   a. Decision-maker determines responsibility and determines/identifies sanctions in the written determination in accordance with the University's policy
      - The draft must include: allegations; procedural steps; findings of fact; application of the policy; result and rationale for each allegation; sanctions; remedies; appeal procedures and permissible grounds; simultaneous delivery to both parties.
   b. The Title IX Coordinator then coordinates implementation of remedies

Case Dismissal

Title IX investigations into cases of alleged sexual harassment can be dismissed (for the purpose of federal Title IX processes) if:

Mandatory case dismissal grounds

- the alleged conduct, even if proven, would not constitute sexual harassment;
- the conduct did not occur in the University's education program/activity; or
- the conduct did not occur against a person in the United States;

Permissive case dismissal grounds

- the complainant withdraws the allegations in writing;
- the respondent is no longer a student or employed by the Institution; or
- specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

In such cases, both parties will be notified of the dismissal simultaneously in writing. Case dismissal is subject to appeal.

Informal Resolution

An informal resolution is a voluntary process that resolves a formal complaint without the matter proceeding to a decision after hearing. This may or may not involve the investigation phase of the grievance process. Informal resolution is not permitted where employee is accused of sexually harassing a student. The informal resolution mediator will be free of conflict and bias.

Forms of informal resolution include, but are not limited to:

- Mediation
- Facilitated exchange by the Title Coordinator
- Restorative Justice
- Negotiation with Lawyers

In order for an informal resolution to be valid:

- A formal complaint must first have been filed and written notice given to the parties
- The parties must be apprised in writing of how the informal resolution process will work and the consequences of participating in it
- The parties must voluntarily agree to participate in writing
- The parties must be allowed to withdraw from informal resolution up until the point it is final
- Upon withdrawal from the informal resolution process, the formal grievance process will resume where it currently was before the informal resolution process began

Sanctions and Appeals

Sanctions imposed during the conduct process post-investigation can be appealed by any party according to the grounds below. Post-hearing, any party may appeal the: 1) findings and/or sanctions, and 2) dismissal of formal complaint or allegation, under the grounds below. Appeals will be presided over by an appeal decision maker who is not to be: the original decision maker; investigator; or Title IX Coordinator and is free from conflict or bias.

- Procedural irregularity
  - A procedural irregularity that affected the outcome of the matter
- New evidence
  - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- Conflict of interest of bias
  - The Title IX Coordinator, Deputy Coordinator, investigator, or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the out come of the matter

Both parties receive equal opportunity to appeal and to respond to an appeal. The University reserves the right to stay or modify sanctions when appropriate during the appeal process. A request may be made to the Title IX Appeal Officer for special consideration in exigent circumstances, but the presumptive stance of the institution is that the sanctions will stand. Graduation, study abroad, internships/externships, etc. **do NOT** in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The decision may be appealed by petitioning the Appeal Officer. Respondent or complainants must petition within 5–10 business days (extensions will be granted in the event of holidays or University breaks) of receiving the written decision for a review of the decision or the sanctions imposed. Any party who files an appeal must do so in writing to the Title IX Appeal Officer who will share the appeal with the other party (e.g., if the respondent student appeals, the appeal is shared with the complainant, who may also wish to file a response). Both parties have equal opportunity to submit a written statement in support of or challenging the outcome within 5–10 business days.

All appeals and responses are then forwarded to the appeals officer for initial review to determine if the appeal meets the stated appeal grounds and independently assess whether those grounds are established. The original finding and sanction will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration.

The Procedures Governing the Hearing of Appeals Include the Following:

- All parties should be simultaneously informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- This is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions;
- The appeals committee or officer will render a written decision on the appeal to all parties within ten (10) business days from hearing of the appeal. The committee's decision to deny appeal requests is final.

Investigative Timeline

The University strives to complete the entire grievance process within a prompt timeframe. University breaks and holidays may require an extension and both parties will receive written notification if the timeline is expected to extend the targets listed below. The timeline represents reasonable targets and are not guaranteed deadlines.

- **Stage of the investigation;**
  - *Target timeline*
- **Intake/jurisdiction;**
  - *3 business days*
- **Notice;**
  - *Prompt after formal complaint*
- **Investigation;**
  - *30–45 business days*

- **Evidence review;**
  - *10 days*
- **Investigative report;**
  - *10 days before hearing*
- **Hearing;**
  - *Within defined window*
- **Determination;**
  - *5–10 business days*
- **Appeal;**
  - *5–10 business days to file*
- **Appeal decision;**
  - *10 business days*

Bad Faith Title IX Complaints

A person who knowingly makes a materially false statement in bad faith during a Title IX proceeding may be subject to disciplinary action. A determination that a complaint was not substantiated, standing alone, does not constitute a false report.