

## TITLE IX ADMINISTRATIVE PROCEDURES, PART A: DEFINITIONS

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### PART A: PROCEDURE DEFINITIONS

#### I. Purpose

The purpose of the Title IX Administrative Procedures, generally, is to set forth how Governors State University will administer and implement its Title IX Policy.

#### II. Scope and Application

The Procedure Definitions in this Part A apply for purposes of interpreting and implementing all Parts of the Title IX Procedures. To the extent a definition in this Part A differs from the definition provided for the same term in the Title IX Policy, the definition provided in this Part A shall control for purposes of interpreting and implementing the Title IX Procedures.

#### III. Authority

This Part A is promulgated pursuant under section XIV of the Title IX Policy.

#### IV. Definitions

When used in any Part of the Title IX Procedures, the term:

- (A) “Actual knowledge” means notice of conduct that reasonably may constitute sexual harassment to the Title IX Coordinator or a Responsible Official. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.
- (B) “Advisor” (a capitalized term) means an individual chosen by a party to a Formal Complaint to accompany that party to any or all meetings, interviews, or other resolution proceedings under the Grievance Procedures as described further therein. An Advisor may be, but is not required to be, an attorney retained by a party at that party’s expense.

- (C) “Bystander” means an individual (other than a Confidential Employee, complainant, or respondent) who has or comes to have information about or related to conduct that reasonably may constitute sexual harassment under Title IX, either through directly witnessing such conduct, learning of such conduct second-hand, or otherwise. Employees who learn of already-reported conduct that reasonably may constitute sexual harassment under Title IX as a result of receiving a Report or administering the Grievance Procedures shall not be considered “Bystanders.”
- (D) “Complainant” means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, whether they have filed or can file a Formal Complaint or not.
- (E) “Complaint File” (a capitalized term) means the organized, comprehensive collection of records and information related to the resolution of a specific Formal Complaint under the Grievance Procedures.
- (F) “Confidential Advisor” (a capitalized term) means a person who is contracted by the University to provide emergency and ongoing support to survivors of sexual violence as described in the Reporting Procedures.
- (G) “Confidential Employee” (a capitalized term) means:
- (1) The counselors and healthcare providers in the University’s Counseling and Wellness Center, with respect to information they receive while providing medical, mental health, and case management services;
  - (2) Any other University employee whose communications are privileged or confidential under federal or state law, but only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - (3) A University employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee’s confidential status is only with respect to information received while conducting the study.
- (H) “Consent” means a freely, voluntarily, and knowingly given agreement to engage in sexual activity; and:

- (1) Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity.
  - (2) Lack of verbal or physical resistance or submission resulting from the use of force or threat of force does not constitute consent.
  - (3) An individual's manner of dress does not constitute consent.
  - (4) An individual's consent to past sexual activity does not constitute consent to future sexual activity. An individual's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.
  - (5) An individual can and may withdraw consent at any time.
  - (6) An individual cannot consent to sexual activity if that individual is unable to understand the nature of the activity or give knowing agreement due to circumstances such as, but not limited to: (a) the individual is incapacitated due to the use or influence of alcohol or drugs, (b) the individual is asleep or unconscious, (c) the individual is underage, or (d) the individual is incapacitated due to a mental disability.
  - (7) When consent is withdrawn or can no longer be given, sexual activity must stop.
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- (I) "Decisionmaker" (a capitalized term) means the individual(s) assigned pursuant to the Grievance Procedures to make a determination whether the University's prohibition on sexual harassment was violated and sexual harassment occurred (as described in the Grievance Procedures). "Appeal Decisionmaker" (a capitalized term) means the individual(s) assigned to decide an appeal conducted under the Grievance Procedures (as described therein).
  - (J) "Disciplinary sanctions" means consequences imposed on a respondent following a determination under the Grievance Procedures that the respondent violated the University's prohibition on sexual harassment set forth in the Title IX Policy.
  - (K) "Education program or activity" means the locations, events, or circumstances over which the University exercised substantial control over both the respondent, and the context in which the sexual harassment is alleged to have occurred and includes any building owned or controlled by a student organization that is officially recognized by the University.

- (L) “Employee” means (1) all members of the University Board of Trustees appointed by the State Governor; and (2) anyone who is hired and retained to perform duties in exchange for compensation in the form of an hourly wage, annualized salary, or stipend and receives this compensation as income which is processed through the University’s payroll processing.
- (M) “Formal Complaint” (a capitalized term) means 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. As used in this definition, “document filed by a complainant” means a document or electronic submission (such as by email or online submission via a portal provided for such purpose by the University) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the individual filing the Formal Complaint.
- (N) “Grievance Procedures” (a capitalized term) means the University’s Title IX Administrative Procedures, Part D: Grievance Procedures promulgated in accordance with section XIV of the Title IX Policy.
- (O) “Investigator” (a capitalized term) means the individual(s) assigned pursuant to the Grievance Procedures to conduct the Investigation Stage of the Grievance Procedures (as described therein).
- (P) “Party” to a Report or Formal Complaint means a complainant or a respondent associated with such Report or Formal Complaint.
- (Q) “Preventing Sexual Violence in Higher Education Act” means the Illinois statute codified at 110 ILCS 155/1 *et seq.*, as it may be amended from time to time.
- (R) “Procedure Definitions” (a capitalized term) means this Title IX Administrative Procedures, Part A: Definitions promulgated in accordance with section XIV of the Title IX Policy.
- (S) “Recordkeeping Procedures” (a capitalized term) means the University’s Title IX Administrative Procedures, Part E: Recordkeeping Procedures promulgated in accordance with section XIV of the Title IX Policy.
- (T) “Remedies” means measures provided, as appropriate, to a complainant or any other individual the University identifies as having had their equal access the University’s education program or activity limited or denied by sexual harassment. These measures are provided to restore or preserve that individual’s equal access to the University’s education program or activity after a determination has been made in accordance with the Grievance Procedures that sexual harassment occurred.

- (U) “Report” (a capitalized term) means a written or oral disclosure or notice to the Title IX Coordinator or a Responsible Official of conduct that reasonably may constitute sexual harassment. Generally, “report” (not as a capitalized term) means a written or oral disclosure or notice of conduct that reasonably may constitute sexual harassment to any other recipient.
- (V) “Reporter” means an individual who wishes to make or does make (as applicable based on context) a Report of conduct that reasonably may constitute sexual harassment.
- (W) “Reporting Procedures” (a capitalized term) means the University’s Title IX Administrative Procedures, Part B: Reporting Procedures promulgated in accordance with section XIV of the Title IX Policy.
- (X) “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- (Y) “Response File” (a capitalized term) means the organized, comprehensive collection of records and information related to the University’s response to a Report of sexual harassment under the Response Procedures.
- (Z) “Response Procedures” (a capitalized term) means the University’s Title IX Administrative Procedures, Part C: Response Procedures promulgated in accordance with section XIV of the Title IX Policy.
- (AA) “Responsible Employee” (a capitalized term) means any employee who is not a Confidential Employee.
- (BB) “Responsible Official” (a capitalized term) means any of the following University officers:
- President
  - General Counsel
  - Vice President for Administration and Finance
  - Provost
  - Vice President of Human Resources
  - Vice President of Student Affairs and Enrollment Management
  - Dean of Students

The University’s Responsible Officials are its officials with “authority to institute corrective measures of behalf of the [University]” as described in 34 C.F.R. § 106.30(a), part of the regulations under Title IX.

- (CC) “Retaliation” means intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX, the Preventing Sexual Violence in Higher Education Act, or the Title IX Policy; or because the individual has reported information, made a Report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, informal resolution process, or hearing under the Grievance Procedures.
- (DD) “Sex discrimination” means unlawful different treatment with respect to an individual’s employment or participation in an education program or activity based on that individual’s actual or perceived sex. Sex discrimination includes sexual harassment.
- (EE) “Sexual harassment” is a form of sex discrimination and means conduct on the basis of sex that satisfies one or more of the following:
- (1) 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 conduct (“quid pro quo harassment”);
  - (2) Unwelcome conduct ***determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access*** to a University education program or activity (“hostile environment harassment”); or
  - (3) One or more of the following specific offenses:
    - (i) “Sexual violence” meaning physical sexual acts attempted or perpetrated against an individual without that individual’s consent or when that individual is incapable of giving consent, including without limitation rape, sexual assault, sexual battery, sexual abuse, sexual coercion, and all other offenses classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
    - (ii) “Dating violence” meaning violence committed by an individual:
      - (a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
      - (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of

relationship; and the frequency of interaction between the individuals involved in the relationship.

- (iii) “Domestic violence” meaning felony or misdemeanor crimes committed by an individual who:
  - (a) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the State of Illinois, or a person similarly situated to a spouse of the victim;
  - (b) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - (c) Shares a child in common with the victim; or
  - (d) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the State of Illinois.
- (iv) “Stalking” meaning engaging in a course of conduct directed at a specific individual that would cause a reasonable person to:
  - (a) Fear for the individual’s safety or the safety of others; or
  - (b) Suffer substantial emotional distress.
- (FF) “Student” means an individual who has gained admission to the University and has a current right to enroll or matriculate in or at an education program or activity operated by the University.
- (GG) “Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to a complainant or a respondent. Such measures are designed to restore or preserve equal access to the University’s education programs and activities without unreasonably burdening other individuals, including measures designed to protect the safety of all individuals or the University’s educational environment, or deter sexual harassment.
- (HH) “Survivor” means an employee or student who has experienced sexual violence, dating violent, domestic violence, and/or stalking.
- (II) “Title IX” means, collectively, Title IX of the Education Amendments of 1972 (Pub. L. 92-318; 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686, 1687, 1688,

1689), and all regulations promulgated thereunder, including 34 C.F.R. Part 106, as such statutes and regulations may be amended from time to time.

- (JJ) “Title IX Coordinator” means, for purposes of the Formal Complaint resolution process set forth below, an employee designated and authorized to serve as the/a University Title IX Coordinator pursuant to the Title IX Policy; or the one or more individuals to whom the University Title IX Coordinator may delegate duties from time to time pursuant to the Title IX Policy.
- (KK) “Title IX Policy” means the University’s Anti-Sex Discrimination (Title IX) Policy, also known as Policy 78.
- (LL) “Title IX Procedures” (a capitalized term) means, generally, all Parts of the University’s Title IX Administrative Procedures promulgated in accordance with section XIV of the Title IX Policy.
- (MM) “Training Materials” (a capitalized term) means, generally, copies of materials used to provide training to employees in accordance with section XII.A the Title IX Policy.
- (NN) “University” means Governors State University.

=====END OF PROCEDURE TEXT=====