

NSU TITLE IX/SEXUAL MISCONDUCT POLICY

Introduction

Nova Southeastern University (“NSU”), in compliance with the spirit of various federal and state laws (e.g., Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) and the Violence Against Women Act of 1994 (“VAWA”)), is committed to fostering a safe, healthy, and effective educational environment free from discrimination and harassment. The following policy and accompanying procedures are designed to ensure NSU is compliant with Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106) which prohibit sex discrimination and sexual harassment in all NSU education programs and activities, including admission and employment. Title IX states:

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 educational program or activity receiving Federal financial assistance.

Any questions about Title IX or its application to NSU may be directed to the Title IX Coordinator, the Assistant Secretary of Education of the United States of America, or both. NSU has designated a full-time professional in the Office of Human Resources to lead NSU’s response to sexual misconduct and compliance with Title IX. NSU may also designate Deputy Title IX Coordinators to provide the investigation and response to reports of Title IX Sexual Harassment. Any questions or concerns may be directed to the Title IX Coordinator:

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This policy describes sexual harassment prohibited by Title IX as well as other forms of sexual misconduct prohibited by NSU. If a report of sexual misconduct (including committed or attempted acts, as well as facilitation of others’ engagement in misconduct) appears subject to Title IX (both in the nature of the allegation and the context in which it occurred), it is subject to the *Title IX Resolution Procedures*. For any report of sexual misconduct that falls outside of the federally mandated definitions of sexual harassment under Title IX, NSU reserves the right to consider the matter as another form of sexual or other misconduct subject to policies and procedures such as those outlined in the NSU Student Code of Conduct, NSU Employee and Faculty Policy Manuals, NSU University School Student/Parent Handbook and any other applicable policies and procedures within academic colleges and departments. When engaging with NSU, visitors, applicants for admission or employment, volunteers, preceptors, families of students, and others are expected to align their behavior with the standards outlined in this policy, although the response to reports involving these individuals will vary depending on the relationship between the individual and NSU.

The version of this policy contained on the Title IX website (<http://nova.edu/title-ix>) supersedes any other published versions of this policy. Any misconduct reported to have occurred prior to August 14, 2020, will be subject to the policy and procedures in effect at the time of incident.

Sexual Harassment Prohibited by Title IX

The following types of sexual misconduct (referred to as “Title IX Sexual Harassment”) are prohibited under Title IX and this policy:

1. **Quid Pro Quo Harassment by an Employee:** An employee of NSU conditions the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (e.g. “If you do this sexual activity for me, I will give you a good grade”).
2. **Denial of Access:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the NSU education program or activity.
3. **Title IX Sex Offense:** A sexual offense that meets one or more of the following:
 - a. **Non-consensual sexual penetration:** 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 consent of the victim.
 - b. **Non-consensual sexual contact:** the touching of clothed or unclothed private body parts (i.e. breast, buttocks, genital area, groin, and inner thigh) of another person through human contact or with an object for the purpose of sexual gratification. This may occur through force or against someone’s will or it may occur without force when a person cannot consent because of age or incapacitation.
 - c. **Non-forcible sexual offenses:**
 - i. *Statutory rape:* sexual intercourse with a person under the age of consent, which is 18 in the state of Florida and 16 in Puerto Rico.
 - ii. *Incest:* sexual intercourse between persons who are directly related (i.e. blood relatives).
 - d. **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. The existence of the relationship is determined by the reporting party’s statement with consideration of the length of relationship, type of relationship, and frequency of interaction between the persons in the relationship.
 - e. **Domestic violence:** felony or misdemeanor level crime of sex-based violence or the threat of violence committed—
 - i. By a current or former spouse or intimate partner of the victim;
 - ii. By a person with whom the victim shares a child in common;
 - iii. By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or
 - iv. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
 - f. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress.
 - i. “Course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means; follow, monitors, observes, surveils, threats, or communicates to or about a person, or interferes with a person’s property.
 - ii. “Reasonable person” means a reasonable person under similar circumstances and with similar identities to the individual the stalking is directed towards.
 - iii. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

4. **Retaliation:** No person nor NSU may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, provided information, assisted, participated or refused to participate in any manner in a Title IX investigation or proceeding.

Jurisdiction: When & Where Title IX Applies

When all of the following circumstances are met, the *Title IX Resolution Procedures* will be applied:

1. A formal complaint has been filed by an affected individual/student (or parent on behalf of a student under 18) indicating they have experienced one or more forms of Title IX Sexual Harassment and requesting that NSU investigate the incident. The Title IX Coordinator may also file a formal complaint if warranted.
2. At the time of filing the formal complaint, the complainant must have been participating in or attempting to participate in an NSU education program or activity¹.
3. NSU must have had substantial control over the alleged perpetrator (i.e. respondent) and the context where the sexual harassment occurred.
4. The sexual harassment must have occurred towards a person in the United States.

Other Prohibited Sexual Misconduct

In addition to the above forms of sexual harassment designated under Title IX, there are additional behaviors that are prohibited at NSU in order to promote a safe, healthy, and effective learning environment for all students. These forms of sexual misconduct are *outside* the scope of Title IX (including any Title IX jurisdictional requirements) and thus may be referred for response through the procedures in the Student Code of Conduct, NSU Employee and Faculty Policy Manuals, NSU University School Student/Parent Handbook or other such applicable NSU procedure(s):

1. **Non-Title IX Sex Offense** Conduct reported to constitute a *type* of Title IX Sexual Harassment but does not meet the jurisdictional requirements (i.e. *where* and *when*) under Title IX. Examples include but are not limited to:
 - A sexual assault by one student of another while on an NSU sponsored study abroad trip,
 - Dating violence or stalking by one student of another occurring a few blocks from NSU and affecting a student's ability to feel safe on campus, or
 - Sexual harassment by a faculty member reported by student who has already graduated.
2. **Sexual Harassment**, defined as unwelcome conduct of a sexual nature². Conduct is considered "unwelcome" if the person did not request or invite it and considered the conduct to be undesirable or offensive. Sexual harassment can be verbal, non-verbal and/or physical. Examples include but are not limited to:
 - Verbal communications such as jokes or innuendo about sexual topics; repeated phone calls or propositions after a person has expressed disinterest; or vulgar sex-based or related language;
 - Obscene and/or physically intimidating gestures; whistling, leering, ogling, making suggestive or insulting sounds, obscene gestures; display of pornographic and/or obscene materials, sex-based graffiti.

¹ For the purposes of the *Title IX Resolution Procedures*, "education program or activity" includes locations, events, or circumstances over which NSU exercised substantial control over both the respondent and the context in which the sexual harassment was reported to occur. This includes any building owned or controlled by a student organization officially recognized by NSU.

² While sexual harassment is generally defined as "unwelcome conduct of a sexual nature," the application of formal disciplinary action will be determined on a case-by-case basis.

- “Quid pro quo” from a person in a position of authority requesting sexual activities in exchange for a grade or positive recommendation,
 - Physical conduct such as non-consensual touching, patting, pinching, stroking, or making sexual comments while touching someone on a non-private body part.
3. **Gender-based harassment**, defined as unwelcome conduct of a nonsexual nature based on a person’s actual or perceived gender, sexual orientation, gender identity, gender expression, or nonconformity with gender stereotypes. Examples include but are not limited to:
 - Verbal or electronic communications designed to bully someone because of how they appear or don’t appear to fit a stereotype of a traditional masculine or feminine person,
 - Aggressive or intimidating acts towards person(s) because of their gender-related identity,
 - Telling jokes designed to make fun of lesbian, gay, bisexual, or transgender persons.
 4. **Sexual exploitation** occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to:
 - Recording images (e.g., video, photograph) or audio of an individual while in the restroom or locker room,
 - Sharing sexual images with another person without their consent in an attempt to cause sexual feelings,
 - Knowingly transmitting a disease or infection to someone by means of sexual contact without their knowledge or consent,
 - Coercing a student sending intimate photos of him/her/themselves outside of school hours/off-campus, resulting in the student not feeling able to participate in class.
 - Watching another person in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of feeling sexually aroused.
 5. A **hostile environment** created by unwelcome sexual conduct that is sufficiently serious to deny or limit a person’s ability to participate in or benefit from an NSU education program or activity. While Title IX prohibits unwelcome sexual conduct that *effectively denies* a student access to an education program or activity, NSU may also respond to those behaviors of a sexual nature which limit, adversely affect, otherwise disrupt a person’s ability to participate in an educational activity or program, regardless of location where the conduct occurs.

Standards of Analysis

In determining whether behaviors were consensual, welcome or unwelcome, denied access to an NSU program or otherwise created a hostile environment, NSU evaluates the behaviors (both in *Title IX Resolution Procedures* and in the other applicable NSU procedures) in accordance with the following definitions and standards:

Consent: Consent is informed, voluntary, and mutual agreement to engage in a sexual activity. Giving consent means that a person understands a specific behavior that someone wants to do with them and they voluntarily give that person permission to engage in that behavior. In addition:

- Consent must be sought by the initiator of each act
- Consent can be withdrawn at any time.
- There is no consent when force, whether expressed or implied, is used.
- There is no consent when coercion, intimidation, threats, and/or duress is applied.
- Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

- Silence or absence of resistance does not imply consent.
- If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. This includes impairment due to alcohol or drug consumption that reaches the level of incapacitation, being asleep or unconscious, or being under the legal age to give consent.

Hostile Environment: In assessing whether a hostile environment has been created, and/or the extent to which a person was denied access to an educational program or activity, due to sex-based discrimination, the following factors are considered:

- Subjective and objective consideration of the conduct in question – not just that the conduct was unwelcome to the receiver but that a reasonable person in the receiver’s position would have perceived the conduct as undesirable or offensive,
- Severity, type, frequency, and duration of the conduct,
- Identity, number, and relationships of persons involved,
- Location of the conduct and the context in which it occurred, and
- Degree to which the conduct affected one or more student’s education.

Unwelcome Conduct: Conduct is considered unwelcome if the person did not request or invite it and considered the conduct to be undesirable or offensive. In addition, unwelcome conduct:

- May occur through a variety of forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating.
- Does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May involve persons of the same or different sexes or gender identities.
- May have occurred even if an individual participated in the conduct (such as following coercion) or failed to report/complain about the conduct.
- May have occurred, even if a person welcomed similar conduct previously or welcomed a portion of the conduct but not all of it.