

Title IX Coordinator Training

March 29, 2024



**Mount
Sinai**

Scope

Training for the ISMMS Title IX Coordinator and those who may serve as deputy Title IX Coordinator while covering for the Title IX Coordinator in matters involving allegations of Sexual Misconduct, as defined by the ISMMS policy in effect

ISMMS Policy

Icahn School of Medicine at Mount Sinai – Sexual Misconduct Policy

- Effective October 1, 2015;
- Revised October 11, 2021

Definitions: Affirmative Consent

“Affirmative Consent” is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression. The following principles are provided as guidance for the School Community regarding the concept of Affirmative Consent:

- i. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- ii. Consent is required regardless of whether the person initiating the act is under the influence of drugs or alcohol.
- iii. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, inebriation due to drugs or alcohol, an intellectual or other disability that prevents the person from having the capacity to give consent, involuntary restraint, or if an individual otherwise cannot consent.
- iv. Consent to engage in activity with one person does not imply consent to engage in sexual activity with another;
- v. Consent may be initially given but can be withdrawn at any time;
- vi. When consent is withdrawn or can no longer be given, sexual activity must stop.
- vii. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

Definitions: Sexual Assault

“Sexual Assault” means non-consensual sexual intercourse or non-consensual sexual contact as defined below:

- Non-Consensual Sexual Intercourse is having or attempting to have sexual intercourse with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual intercourse includes anal, oral or vaginal penetration, however slight, with a body part or an object.
- Non-Consensual Sexual Contact is having or attempting to have sexual contact with another individual (i) by force, threat of force, or coercive conduct; (ii) without affirmative consent; or (iii) where that individual is incapacitated. Sexual contact includes touching, fondling or other intentional contact with the breasts, buttocks, groin, or genitals (over or under an individual’s clothing) for purposes of sexual gratification or when such private body parts are otherwise touched in a sexual manner.

Definitions: Sexual Harassment

“Sexual Harassment as defined under Title IX” includes (1) an employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual’s participation in unwelcome sexual conduct; (2) 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; and (3) sexual assault, domestic violence, dating violence and stalking. (Sexual harassment is defined more broadly under other laws and under other School policies, including the The Mount Sinai Health System Human Resources Policy 13.04 regarding Harassment and Sexual Harassment, Student, Faculty and House Staff Handbooks.)

Definitions: Sexual Misconduct, Stalking

“Sexual Misconduct” includes sexual assault, stalking, domestic violence, dating violence, and sexual harassment. For Sexual Misconduct to fall under Title IX, it must occur in the School’s education program or activity within the United States. . . . Sexual harassment that occurs outside of the School’s education program or activities, or incidents that do not meet the definition of sexual harassment in this Policy, may fall under other School policies and will be addressed consistent with those policies.

“Stalking” is an intentional course of repeated conduct or behavior over a period of time, directed at a specific person, which causes a person to feel alarm, annoyance, emotional distress, and/or fear.

Who Falls Under Title IX?

1. This Policy applies to all members of the School Community, and all appropriate third parties, including visitors and other licensees and invitees to the School, unless noted to the contrary in this Policy or its appendix.
2. “ISMMS School Community” or “School Community” means all School students, postdoctoral students/fellows, faculty, staff, and other School employees, officers and directors. For purposes of this Policy and the accompanying procedures, individuals who are not employed by the School but are employed by hospitals or other components of the Mount Sinai Health System do not fall within the definition of “School Community” members. The “School” refers to Icahn School of Medicine at Mount Sinai. House Staff Officers whose actions fall under this policy and occur within the School’s education program or activities will be subject to the hearing and appeal processes set out in the relevant House Staff Manual / Collective Bargaining Agreement. To the extent there is any conflict between such policies and what is required under Title IX, the School will resolve such conflict to make the process consistent with requirements under the law.

Overview of Title IX Process:

1. Title IX Coordinator – Initial Assessment, Provides Resources
2. Investigation: Interviews, Review of Relevant Text Messages/Documents, Video
 - Report of Investigation (ROI)
 - Draft reviewed by parties (and witnesses reviewed their summaries)
 - ROI makes a finding of fact as to whether it is more likely than not that prohibited conduct occurred and a recommendation as to whether the conduct violates institutional policy
 - ROI goes to Designated Arbiters
3. Live Hearing before Designated Arbiters
4. Appeal – based on:
 - a. Procedural irregularity that affected the outcome of the matter
 - b. New evidence discovered that was not reasonably available at the time the Designated Arbiters made the determination
 - c. Conflict of interest on the part of the Title IX Coordinator, investigator(s) or Designated Arbiters that affected the outcome of the matter

Alternative route: Informal resolution process

Role of the Title IX Coordinator

Title IX Coordinator is responsible for assessing and investigating certain reports of Sexual Misconduct committed by members of the School Community, and for providing Complainants and/or victims with important information following disclosure of alleged incidents of Sexual Misconduct.

Emergency Access to Title IX Coordinator

Complainants have the right to emergency access to the Title IX Coordinator, or a designated substitute in her absence, or a representative from Mount Sinai Sexual Assault and Violence Intervention Program (“SAVI”), to: a. provide information regarding options to proceed; b. provide information on the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, in situations where there has been a sexual assault, and detailing that the criminal justice process uses different standards of proof and evidence, and that any questions about whether a specific incident violated the law should be addressed to law enforcement or to the district attorney; and c. explain whether he or she is authorized to offer the Complainant confidentiality or privacy, and inform the Complainant of other reporting options, including those described in this policy.

At the first instance of disclosure of a complaint/report of Sexual Misconduct by a Complainant to the Title IX Coordinator, or in her absence, another appropriate School representative, the Complainant must also be advised as follows: “You have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report the incident to the School; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from the School.”

IMMEDIATE AND SUPPORTIVE MEASURES

The School shall ensure that individuals are provided appropriate supportive measures, which shall not be punitive or disciplinary against any party.

- No contact orders

- Assessment for interim suspension where present and immediate threat to health or safety

Initial Assessment

1. Assess the nature and circumstances of the complaint/report.
2. Address the immediate needs and concerns of the Complainant, including physical safety and emotional well-being needs.
3. Provide copies of or direct the Complainant to the School's Sexual Misconduct Policy and accompanying procedures, and discuss the policy and procedures with the Reporting Individual.
4. Provide the Complainant with information about resources, including information about intervention, mental health counseling, medical services, and sexually transmitted infections.
5. Provide the Complainant with information regarding sexual assault forensic examinations and direct the Reporting Individual to resources that are available through the New York State Office of Victim Services (<https://ovs.ny.gov/>).
6. Discuss the Complainant's preferences (if any) regarding the manner of resolution, requests (if any) for privacy and/or no further action (see Section B below entitled "Protocols for Requests for Confidentiality and/or No Further Action").
7. Assess for pattern evidence or other similar conduct by the Respondent/ alleged perpetrator.
8. Assess the complaint/report for any Clery Act and other reporting obligations, including entry in the crime log or issuance of a timely warning.
9. Direct the Complainant to information regarding on-campus and off-campus resources and the range of appropriate and available supportive and protective measures (see options for officially reporting allegations of Sexual Misconduct above and in Appendix 1).
10. Explain the School's policy prohibiting retaliation.

Upon completion of the Initial Assessment, the Title IX Coordinator will determine whether the circumstances warrant or require any of the following actions:

1. Proceeding to an investigation under the procedures set out in this Policy (see Sections (C) and (D));

2. Referring/forwarding to a School Human Resources officials or outside of the School for further action under other policies and procedures (see Section (C));or

3. Considering the matter resolved (if, for example, the School honors a Complainant's request for confidentiality (see Section (B)) – in which case the matter will be closed with the School taking only such actions, as necessary, to protect, assist, and accommodate the Complainant.

In the first instance, the Title IX Coordinator or her designee shall investigate whether the alleged conduct falls under the definition of Sexual Misconduct under Title IX – including the requirement that the conduct occur in the School’s educational program or activities and within the United States. If the Title IX Coordinator determines that a complaint does not fall under the definition of Sexual Misconduct under Title IX – for example, if the alleged incident did not occur in the School’s education program or activity – the School will promptly send notice to both parties of dismissal of the action under Title IX. Dismissal at this stage may be reviewed on appeal.

Policy: Post-Hearing

The Complainant and Respondent may submit impact statements, describing the impact of the case on them and/or requested sanctions, to the Designated Arbiter before the Designated Arbiter decides on what sanctions, if any, are appropriate.

Policy: Post-Hearing

If, after holding a hearing and assessing the evidence, the Designated Arbiter determines that it is more likely than not that the Policy was violated, the Designated Arbiter is empowered to impose what he or she believes to be the appropriate sanctions/remedial actions to be taken. A list of the sanctions/remedies that can be imposed for violations of the Policy are set forth in Appendix 3.

Policy: Post-Hearing

If the Designated Arbiter determines that it is more likely than not that the Policy was not violated, the Designated Arbiter will dismiss the report. Thereafter, the matter will be referred back to the Title IX Coordinator, who will either: (1) close the matter; or (2) refer the matter to other appropriate designated School officials for further action as appropriate, to the extent the allegations may implicate other School policies and procedures.

Policy: Post-Hearing

The Complainant and Respondent will thereafter be notified simultaneously via email of the outcome of the process, including: (1) all procedural steps in the process (including notices provided, evidence gathered); (2) the Designated Arbiter's findings of fact; (3) the Designated Arbiter's decision as to whether a violation of the Policy did or did not take place (and the rationale for his or her decision); (4) the Designated Arbiter's decision regarding sanctions (and the rationale for his or her decision regarding sanctions, if any, including how the sanction will restore or preserve equal access to the School's education program or activity) and (5) whether remedies were offered to the Complainant. The School will also disclose other steps that the School has or will take to prevent recurrence.

Standard of Proof

Preponderance of the evidence standard

More likely than not

Policy: Sanctions – Appendix 3

Designated Arbiters are empowered to impose what they believe to be the appropriate sanctions and/or remedial actions following a determination that the ISMMS Sexual Misconduct Policy was violated. Such sanctions and remedies include, but are not limited to:

- a. Disciplining the Respondent, up to and including expulsion and discharge/termination;
- b. Providing counseling for Complainants, Respondents, and other parties as appropriate;
- c. Issuing “No Contact” orders;
- d. Providing effective escorts to ensure that the Complainant can move safely between classes and activities;
- e. Ensuring that the Complainant and the Respondent do not share classes, work spaces, or extracurricular activities;
- f. Moving the Complainant (if the Complainant requests to be moved) or Respondent to a different residence hall or housing assignment; and
- g. Placing notations on the Respondent’s transcript regarding the subject violations.

Policy: Time Frames

To the extent possible and consistent with a full and fair process, the School will seek to resolve complaints within approximately 100 calendar days of an initial report, not including the time for any appeal.

Privacy

Important to keep proceedings private

Conflict of Interest

1. Everyone involved in a Title IX hearing must support an objective evaluation of the evidence
2. Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that affects the outcome of the proceeding
3. Conflicts could include: family, personal or business relationship with parties, their advisors, or witnesses in the proceeding; financial assistance to/from a party, advisor or witness; prior knowledge about a party outside of what is learned in the proceeding that bears on your decision of responsibility

Fairness

1. A Title IX Coordinator must approach their role impartially and without prejudice
2. You must set aside impressions or biases you have from movies, TV, news, other cases in which you have been involved, and personal opinions

Stereotypes

Do not rely on sex stereotypes / prejudgments:

“Women are manipulative and they lie.”

“Real men are aggressive.”

“A lady wouldn’t put herself in that position.”

“I believe women in all situations – women have been ignored for too long in other cases, and we need to balance things out.”

Objectivity and Respect

1. Look at every decision you make as an objective evaluation of the facts and policies
2. Treat every participant and witness with respect

ISMMS Title IX Intake:

1. Date(s) of Discussion with Complainant: _____
2. Complainant's Name / Status (student, faculty, employee): _____
 - a. Best Contact Information: _____
 - b. Alternate Contact Information: _____
3. Respondent's Name: _____
 - a. Best Contact Information (if known): _____
4. Witnesses' Names: _____

5. Initially Reported To (Name/Title/Date): _____
6. Time/Date/Location of Alleged Incident: _____

7. Description of Alleged Conduct:

8. Immediate/Supportive Measures Requested / Offered: _____

9. Provide Copy of Sexual Misconduct Policy to Complainant: ____
10. Advised: "You have the right to make a report to campus security, local law enforcement, and/or state police or choose not to report; to report the incident to the School; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from the School." ____

1. As applicable, provided information on the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible – advise of resources available through NYS Office of Victim Services (in situations where there has been a sexual assault): ____
2. Advised: criminal justice process uses different standards of proof and evidence, and any questions about whether a specific incident violated the law should be addressed to law enforcement or to the district attorney: ____
3. Advised regarding advocates and counselors, medical attention (SAVI): ____
4. Discuss Title IX process – investigation, hearing, appeals, and Complainant’s preferences regarding resolution – requests for privacy and/or no further action: ____
5. Explained the School’s policy prohibiting retaliation: ____

6. Title IX Coordinator’s Determination as to whether this matter falls under Title IX: Y / N
 - a. If does not fall under Title IX, referred for follow up to: HR / Other _____

7. If does fall under Title IX, does Complainant choose to make a formal complaint (signed written document): Y / N
 - a. If Complainant requests no further action – Title IX Coordinator’s determination on whether appropriate to file a complaint with Title IX Coordinator’s Signature, based on factors in Sexual Misconduct Policy: Y / N

Additional Notes:

Education, Training & Prevention

- All new students must receive training
- Student leaders must receive training
- Train broadly – work with vendor and SAVI on this

BI-ANNUAL “CAMPUS CLIMATE ASSESSMENTS”

Clery Act – work with security / Med-Ed on this reporting

Questions?



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