

USC-Upstate Sexual Misconduct & Sexual Harassment Resolution Procedures



Provided by the USC-Columbia/State System Policy #1.05
and by the USC-Columbia Equal Opportunity Programs Policy #1.02
and by the USC-Upstate Office of Institutional Equity, Inclusion, and Engagement
Amended by regulations originating at the United States Department of Education, Office
of Civil Rights, May 2020

<https://www.uscupstate.edu/diversity/office-of-institutional-equity-inclusion-and-engagement/>

PURPOSE

The University of South Carolina-Upstate strictly prohibits stalking, intimate partner violence, sexual harassment, or any other kind of sexual misconduct. This policy addresses what the university does to provide training, prevent such misconduct, offer support to complainants, and adjudicate allegations of misconduct.

DEFINITIONS

Clery Act: The Clery Act is a federal law requiring colleges and universities participating in federal financial aid programs to maintain and disclose campus crime statistics and security information.

Coercion: A tactic used by a respondent to intimidate, trick or force someone to have sex with him or her without physical force.

Examples of coercion: 1. Verbal-Making statements that unduly pressure someone into having sex. 2. Authoritative/ Power- Using one's position over another person (faculty/student, supervisor/employee). 3. Plying someone with alcohol or drugs so that he/she cannot resist. 4. Use of threats and/or intimidation which can cause one to believe that death or injury would occur if they resisted.

Complainant: A person who files a written complaint with the Office of Institutional Equity, Inclusion, and Engagement or other responsible employee or confidential resource alleging he or she has been subjected to sexual misconduct as defined in this policy.

Consent: Clear, conscious, willing and affirmative agreement to engage in sexual activity. Consent must have the following elements: 1. Both are clear about their intent to engage in sexual activities and their desire to do so is willing. 2. Both individuals are fully conscious. 3. Consent can be withdrawn at any time. 4. Someone who is incapacitated cannot consent. 5. Neither individual is impaired by drugs and/or alcohol to the extent they do not know the who, what, when, where, why, or how of the situation. 6. Silence or an absence of resistance does not in and of itself constitute consent. 7. Coercion, force, or threat of either cancels consent. 8. Past consent of sexual activities does not imply future consent. 9. Consent to engage in sexual activity with one person does not give consent to engage in sexual activity with someone else.

(Sexual) Harassment: forms of sex or gender discrimination, which is a violation of federal and state law and University of South Carolina-Upstate policy. Sexual harassment is unwelcome conduct of a sexual nature, *so sufficiently severe, pervasive and objectively offensive* that it adversely affects a person's or group's ability to participate in or benefit from academic or employment, programs, services or activities of the university. Sexual harassment may arise between employment supervisors and subordinates, between instructors and students, between peers, or between any of the foregoing persons and individuals conducting business with the university.

1. For sexual harassment to occur, it must be reported to the Title IX Coordinator or reported to any university official with authority to institute corrective measures.
2. USC-Upstate is not obligated to resolve sexual harassment complaints that occur outside the United States (ex: study abroad).
3. Informal, even multiple, complaints registered against the behaviors of an individual do not require a formal complaint process.
4. Examples of conduct that may constitute sexual harassment include, but are not limited to, the **following types of unwelcome behavior:**

Physical Conduct

1. Offensive Touching:

- a. Touching an unwilling or non-consensual person's intimate parts (such as genitalia, groin, breast, buttocks, mouth, and/or clothing covering them);
- b. Touching an unwilling or non-consensual person with one's own intimate parts; or forcing an unwilling or non-consensual person to touch another's intimate parts.

2. Sexual Assault: Any form of sexual contact that occurs without consent and/or through the use of force, threat of force, intimidation, incapacitation or coercion.

Non-Verbal Conduct

1. Suggestive or insulting gestures or sounds;
2. Displaying or presenting images of a sexual nature.

Verbal Conduct

1. Explicit or implicit propositions of a sexual nature;

2. Sexual innuendos and other sexually suggestive behavior;
3. Repeated, unwanted requests for dates;
4. Repeated inappropriate personal comments of a sexual nature;
5. Unwelcome and inappropriate letters, telephone calls, electronic mail;
6. Other repeated, unwanted communication or gifts.

Off Campus

1. The University must respond to reports of off-campus sexual harassment if the location is used by an officially recognized student organization or institutional organization (ex: fraternity, sorority, or athletic housing).

Incapacitation: 1. Mentally incapacitated – being incapable of appraising, understanding or controlling one’s conduct, whether this condition is produced by illness, defect, influence of a substance or from some other cause; or 2. Physically helpless – being unconscious, asleep, or for any other reason physically unable to communicate unwillingness or lack of consent to an act.

Intimate partner violence: Also referred to as dating violence, domestic violence, and relationship violence, includes any act of violence or threatened act of violence against a person (or against others important to the person) who is, or has been, involved in, a sexual, dating, domestic, or other intimate relationship with the alleged offender. It may also include damage to, or threats to damage, the property of the person (or the property of others important to the person) who is, or has been, involved in the relationship. The existence of such a relationship shall be determined based upon the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. Intimate partner violence may involve a single act or an ongoing pattern of behavior. Intimate partner violence may encompass a broad range of behavior, including, but not limited to, physical violence, sexual violence and emotional violence.

Prohibited conduct: Any form of stalking, sexual misconduct or intimate partner violence as defined in this policy. The use of alcohol and other drugs in conjunction with an incident of sexual assault and/or acts of interpersonal violence does not mitigate accountability for the commission of these acts or diminish the seriousness of the offense.

Respondent: Any person who is accused of subjecting another person or group of persons to prohibited conduct as defined above. A respondent is sometimes referred to herein as the alleged offender.

Retaliation: Any act or attempt to retaliate against or seek retribution from any individual or group of individuals involved in the investigation and/or resolution of a sexual misconduct, intimate partner violence or stalking allegation. Retaliation can take many forms, including continued abuse or violence, threats, and intimidation. Intimidation includes any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group that reasonably leads the person(s) in the group to fear for the complainant’s physical

well-being. Any individual or group of individuals, not just a complainant or respondent, can engage in retaliation or be the victim of retaliation.

Sexual Misconduct includes any of the following behaviors:

1. **Offensive Touching:** The touching of an unwilling or non-consensual person's intimate parts (such as genitalia, groin, breast, buttocks, mouth, and/or clothing covering them); touching an unwilling person with one's own intimate parts; or forcing an unwilling person to touch another's intimate parts.
2. **Sexual Assault:** Any form of sexual contact that occurs without consent and/or through the use of force, threat of force, intimidation, incapacitation or coercion.
3. **Sexual Exploitation:** An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include: a. observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; b. non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved; c. prostituting another individual; d. exposing one's genitals in non-consensual circumstances; e. knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and f. inducing incapacitation for the purpose of making another person vulnerable to nonconsensual sexual activity.

Please note that statutory definitions of the above-described behaviors may differ from the definitions set forth herein.

Stalking: A pattern of conduct in the form of words or acts (including, but not limited to, harassment via electronic or other means, such as email, text messages, social media, blogs, telephone call or faxes) in which the relationship between the respondent and the target of the conduct may be as current or former partners or spouses, a dating relationship, social acquaintances, or strangers, that is intended to cause, or does cause, a reasonable person to fear:

1. death or death of others important to that person;
2. assault or assault of others important to that person;
3. bodily injury or bodily injury of others important to that person;
4. sexual assault or sexual assault of others important to that person;
5. involuntary restraint or involuntary restraint of others important to that person;
6. damage to property of the person or to property of others important to that person.

Title IX: a federal law that mandates that colleges and universities create an environment free from sexual discrimination and harassment for all community members. Under Title IX, discrimination on the basis of sex can include sexual harassment, gender-based harassment,

sexual violence, sexual assault, other forms of sexual misconduct, stalking, and intimate partner violence. Title IX provides that “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.” At USC-Upstate, the Title IX Coordinator is located in the Office of Institutional Equity, Inclusion, and Engagement.

POLICY STATEMENT

The University of South Carolina-Upstate strictly prohibits stalking, intimate partner violence or any other kind of sexual misconduct. Acts of sexual misconduct and interpersonal violence interfere with the educational mission by endangering the physical and emotional safety of community members, damaging trust in the community, offending the dignity and violating the autonomy of community members, disrupting the academic progress of complainants and those supporting complainants. This policy applies to all members of the university community, including students, employees, volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the university, regardless of gender, gender identity, gender expression or sexual orientation.

A. Application of Policy

1. The University of South Carolina-Upstate as an institution recognizes that sexual misconduct, intimate partner and other interpersonal violence and stalking are serious issues and as an institution we are committed to providing advocacy, intervention, and prevention education to the campus community. All reported instances will be investigated and appropriate disciplinary, criminal, and/or other action will be taken. Appropriate support services will be made available to students, faculty, and staff. The university will also provide outreach in the form of prevention programming, bystander accountability training, and awareness activities for the university community. For additional information on services for complainants of interpersonal violence at USC-Upstate and on this policy, visit www.sc.edu/stopsexualassault or <https://www.uscupstate.edu/campus-life/health-and-safety/counseling-services/crisis-services/>.

2. This policy applies to all forms of prohibited conduct, as defined herein, and provides the following information:

- a. Resources both on and off-campus to assist complainants, whether they choose to report the incident to university officials;
- b. Reporting options for complainants that include reporting the incident to law enforcement and/or university officials or reporting to sources on campus that are able to protect the complainant’s identity;
- c. Information on reporting categories for incidents of prohibited conduct, and what may happen when those reports occur; and
- d. Information on awareness events and prevention education, including USC-Upstate’s bystander accountability program.

3. Prohibited conduct as defined in this policy for which the alleged offender is a student is a violation of the university’s **Code of Student Conduct** and may result in sanctions ranging from probation to expulsion. Disciplinary action on the part of the university does not preclude the

possibility of criminal charges against the individual. For additional information refer to USC STAF

6.24 Student Non-Discrimination and Non-Harassment Policy, and EOP 1.02 Sexual Harassment Policy.

B. Scope of Policy

1. All members of the university community are expected to comply with and abide by university's policies and guidelines and Title IX, in addition to other federal, state, and local laws, whether engaged in activity off campus or on-campus. Note that USC-Upstate is not obligated to address complaints of sexual harassment that occur outside the United States. The Student Right-to-Know and Campus Security Act (the Clery Act) of 1990 mandates the annual disclosure of statistics of sexual assaults and violent acts, to include dating violence, known to have occurred within the university's jurisdiction. A complainant's identity is not disclosed in any such statistical reporting.
2. The university strongly encourages all members of the campus community to provide a written or verbal report to the university police regarding any incident of sexual assault or interpersonal violence. There are different levels for reporting, which will be covered in more detail in section V. In brief, confidential resources are not required to report the complainant's identity when reporting the incident to campus and/or local authorities. Responsible employees are mandated to report to the Title IX Coordinator any incidents of sexual misconduct, intimate partner violence, or stalking reported to them by a student. Reporting sexual misconduct is necessary to ensure that the complainant gets the help they need, the alleged offender is held accountable and the community is made safer. Whether criminal or disciplinary action is desired, a report may be filed via a reporting form on USC-Upstate's Title IX/Sexual Assault website, <https://www.uscupstate.edu/diversity/office-of-institutional-equity-inclusion-and-engagement/>. If the complainant wishes his or her name to not be disclosed, the Office of Equity, Inclusion, and Engagement (EIE) will explain that such a confidentiality request may limit the ability of the university to respond, but that the E.I.E. Office will take all reasonable steps to investigate consistent with the complainant's request, as long as doing so does not prevent the EIE Office from responding effectively to the complaint and does not prevent the EIE Office from stopping potential discrimination or harassment of others. In all situations, the EIE Office will make every effort, to the extent allowed by law, to protect the privacy of the persons involved. The number of persons with knowledge of the complaint shall be kept to a minimum and only those persons with a need to know will be notified of the complaint.
3. Any responsible employee who fails to report a Title IX incident, as required by university policy, is subject to appropriate disciplinary action pursuant to policy HR 1.39 Disciplinary Action and Termination for Cause and the Faculty Manual.

C. Reporting Categories for Employees:

In support of a complainant's request for confidentiality and the university's interest in learning about incidents of prohibited conduct, the university designates the roles and responsibilities of several categories of employees with respect to confidentiality and reporting requirements.

1. Privileged employee:

These employees will not report disclosures of sexual misconduct or interpersonal violence to the Title IX Coordinator. However, they still must comply with mandatory reporting under South Carolina state law. Following is the contact information for these employees:

Student Health Services- University Health Services Building
Student Health Services Satellite Office – Rampey Center
<https://www.uscupstate.edu/campus-life/health-and-safety/health-services/>
Phone: 864-503-5191

Counseling Services – Rampey Center
<https://www.uscupstate.edu/campus-life/health-and-safety/counseling-services/>
Phone: 864-503-5195
After-hours crisis line: 864-503-5195

2. Confidential Resources:

a. Services, including the on-campus Counseling Services crisis line, <https://www.uscupstate.edu/campus-life/health-and-safety/counseling-services/crisis-services/>, University Health Services, <https://www.uscupstate.edu/campus-life/health-and-safety/health-services/>, Anonymous Reporting Form, <https://cm.maxient.com/reportingform.php?UnivofSCUpstate>, and/or Office of Institutional Equity, Inclusion and Engagement, phone: 864-503-5959, <https://www.uscupstate.edu/diversity/office-of-institutional-equity-inclusion-and-engagement/> .

The personnel in these offices, including staff and student workers, can talk to a complainant without revealing any personally identifying information about an incident to the university. A complainant can seek assistance and support from these individuals without triggering a university investigation that could reveal the complainant's identity or that the complainant has disclosed the incident. These services report the nature, date, time, and general location of an incident to the Title IX Coordinator. These limited reports – which include no information that would directly or indirectly identify the complainant – help keep the Title IX Coordinator informed of the general extent and nature of sexual and interpersonal violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, the aforementioned resources will consult with the complainant to ensure that no personally identifying details are shared.

b. A complainant who speaks to a confidential resource must understand that, if the complainant wants to maintain confidentiality, the university may be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged offender. Additionally, a complainant must understand that Title IX includes protection against retaliation and that if the complainant pursues disciplinary action against the alleged offender, USC-Upstate will take steps to prevent retaliation and take strong responsive action if any retaliation does occur. Nevertheless, if the complainant wants to maintain confidentiality, these confidential resources will still assist the complainant in receiving other necessary protection and support, such as survivor advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules. A complainant who at first requests

confidentiality may later decide to file a complaint with the school or report the incident to local law enforcement, and thus have the incident fully investigated. These confidential resources will provide the complainant with assistance if the complainant wishes to do so.

3. Responsible Employee: University employees described below who are not designated as privileged employees or confidential resources under this policy are mandated to share a report of prohibited conduct with the Title IX Coordinator, or Deputy Title IX Coordinator by completing the form located at <https://www.uscupstate.edu/faculty-staff/policies/interpersonal-violence-report-form/> . When a complainant tells a responsible employee about an incident of prohibited conduct, the complainant has the right to expect the university will take immediate and appropriate steps to investigate what happened, and to resolve the matter promptly and equitably. A responsible employee must report to the Title IX coordinator all relevant details about the alleged prohibited conduct incident shared by the complainant, in order for the university to determine what happened. These details can include the names of the complainant and alleged offender, any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the university's response to the report. A responsible employee should not share information with law enforcement without the complainant's consent, unless the complainant has also reported the incident to law enforcement, unless the responsible employee also has an obligation to report the incident to law enforcement, or unless the responsible employee also has an obligation to report the incident to law enforcement under the Clery Act.

a. The university designates two categories of responsible employees:

1. Those who have the authority to address the alleged incident.

The following employees fall into this category:

President

Executive Vice President for Academic Affairs and Provost

Associate/Vice Provosts

Athletics Director

Deans

Associate/Assistant Deans

Department Chairs/School Directors

Director of Equal Opportunity Programs

Deputy Title IX Coordinators

Chief of Police and/or Associate Vice President for Law Enforcement and Safety

2. Those who have a duty to report incidents of prohibited conduct reported by students to those who can address these incidents. The following groups of university employees are included in this category:

All Student Services and Academic Support Staff

Peer Leaders

Athletic coaches and directors

Student organization advisors

Greek Life officials
Instructional faculty

b. If a complainant requests confidentiality:

Before a complainant reveals any information to a responsible employee, the employee should ensure that the complainant understands the employee's reporting obligations – and, if the complainant wants to maintain confidentiality, direct the complainant to confidential resources.

If the complainant wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the complainant that the university will consider the request but cannot guarantee that the university will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the complainant's request for confidentiality. Responsible employees will not pressure a complainant to request confidentiality, but will honor and support the complainant's wishes, including for the university to fully investigate an incident. Similarly, responsible employees will not pressure a complainant to make a full report if the complainant is not ready to do so.

D. Non-University Resources:

Off-campus counselors, advocates and healthcare providers will also generally maintain confidentiality and not share information with the university unless the complainant requests the disclosure and signs a consent or waiver form. Following is contact information for these offcampus resources:

- [Safe Homes/Rape Crisis Center](#) (800-273-5066)
The center, located at 235 Union St., is the local rape crisis and domestic violence center. Trained volunteers provide crisis intervention for victims of rape and relationship violence on their 24-hour hotline. They operate a shelter for women who are currently in abusive relationships and need safe housing temporarily.
- [Safe Harbor](#) (800-291-2139)
The center provides safe shelter, counseling, advocacy, and other services for victims of domestic violence and their children, and domestic violence prevention and education for the entire Upstate community. They operate a domestic violence crisis line and two secure safe homes, serving Greenville, Pickens, Oconee and Anderson counties.
- [Spartanburg Regional Hospital Emergency Department](#) (864-560-6000 or 911)
Located on 101 E. Wood St., the Emergency Department can provide immediate care for severe crises such as drug or alcohol overdoses or serious suicidal thoughts. Students may call 864-503-7777 for ambulance service to the hospital. (There is a fee.)

E. Anonymous Reporting:

Although the university encourages complainants to talk to someone, the university also provides a universal reporting form which can be found at <https://www.uscupstate.edu/diversity/office-of-institutional-equity-inclusion-and-engagement/>. The person completing the form can choose for

it to be routed to a confidential reporting source (e.g., Title IX Coordinator) or to an investigative resource (e.g., USC-Upstate Police Department, Dean of Students Office)

F. Disclosure of an incident in an assignment or as part of a class:

If a survivor discloses having experienced sexual and/or interpersonal violence in an assignment or in class discussion, that is considered a disclosure and not a report and therefore responsible employees are exempt from making a report to the Office of Institutional Equity, Inclusion, and Engagement (EIE).

G. Events:

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which survivors disclose incidents of sexual and/or interpersonal violence are not considered notice to the university of sexual violence for purposes of triggering its obligation to investigate any incident(s). Such events may, however, inform the need for campus-wide education and prevention efforts, and the university will provide information about USC-Upstate community members’ Title IX rights at these events.

H. Help for Complainants Following an Incident of Prohibited Conduct:

The university provided two broad areas of support for complainants of prohibited conduct. Emergency support services are accessible immediately after an incident, while ongoing assistance is available to address longer-term impacts of the incident. Some campus units provide both types of support and are therefore listed for both areas.

1. Emergency Support Services:

USC-Upstate Counseling Services Crisis Line – 24-hour phone line: (864)-503-5195

The crisis line provides support, crisis intervention, accompaniment referral for medical procedures and student conduct processes, identifying additional resources for complainants, help complainants understand options, can facilitate appropriate referrals at any time and can assist in coordinating other services listed throughout this policy which eliminates the need for complainants to make multiple phone calls. They can also be contacted by faculty/staff/students with questions about this policy, referrals, or other specific information/concerns.

University Police Department – phone: (864) – 503-7777 or dial 911 from any campus emergency phone box

USC-Upstate police can help connect a complainant with an advocate, take a report, call transport for a complainant to the hospital and assist them with obtaining a court-issued restraining order/order of protection

Spartanburg, SC Police Department – phone: 911

The Spartanburg Police Victim’s Assistance and Advocacy Office – (864) – 503 – 4625

University Health Services – 8:30 am -5:00 pm, phone: (864) – 503-5191

The Health Services staff provides confidential medical services; or a complainant may choose to visit another healthcare provider. Forensic exams are not performed by the Student Health Services; complainants must present to an area emergency room for that service.

On Campus:

University Counseling Services, phone: 864-503-5195

Interpersonal violence is a traumatic experience and professional counseling can help complainants process the experience and take steps toward healing.

Dean of Students Office, phone: 864-503-5107

Handles the resolution of Student Code of Conduct, Sexual Misconduct, and Sexual Harassment allegations, including the issue of sanctions when responsibility is proven. The Dean can assist students understand policies, investigatory processes, and provide referrals to support services.

Office of Equity, Inclusion, and Engagement (EIE), phone: 864-503-5959

Ensures that USC-Upstate students are protected against discrimination on the basis of age, race, color, sex, gender, sexual orientation, religion, national origin, genetics, veteran status, gender identity/express, and disability status. Home to the Title IX Coordinator, the EIE Office can assist the complainant with filing a Title IX complaint and investigating the allegations.

The Title IX Coordinator monitors USC compliance with Title IX, a federal law that prohibits discrimination because of sex/gender. Acts of sexual and interpersonal violence constitute sex discrimination prohibited by Title IX.

Off Campus:

South Carolina Bar Association, Lawyer Referral Service, phone: (800)-868-2284

Assists complainants in finding an attorney to represent them in civil and criminal proceedings.

See Non-University Resources and Emergency Support Services

I. Complainant's Options for Reporting Sexual Assaults and Relationship Violence

1. Criminal complaint: In order to file a report with law enforcement a complainant may contact the USC-Upstate Police Department if the assault occurred on campus, or the law enforcement agency in the locality in which the assault occurred. If the complainant is unsure of whom to contact, the complainant may contact the Dean of Students Office or the Office of Institutional Equity, Inclusion, and Engagement which will assist the complainant in reporting the assault to the correct agency. USC Upstate Police can help connect a complainant with an advocate, take a report, contact transport for a complainant to the hospital and assist him or her with obtaining a court-issued restraining order/order of protection. **Reporting an assault is not the same as prosecuting it.** The decision to pursue legal action can be made later.

Complainants should consider preserving evidence by avoiding showering or cleaning themselves or their clothing. Complainants who desire to file criminal charges should consider providing clothing containing evidence of the assault to the appropriate law enforcement agency conducting the criminal investigation for preservation, in the event of prosecution of the alleged offender. To the extent permitted by the victim, consistent with the university's obligation under the Clery Act, and to the extent permitted by the Family Educational Rights and Privacy Act and any other applicable state or federal laws, the university will share all relevant information with law enforcement agencies conducting criminal investigations.

2. Institutional complaint:

Office of Equity, Inclusion, and Engagement (EIE): A complainant may file a complaint with the Title IX Coordinator in the EIE office. Once a complainant files this complaint, the EIE Office investigates the allegations

Dean of Students Office: Once a complainant files a complaint with EIE, the university's Dean of Students Office, in coordination with EIE, can facilitate interim measures, including no-contact orders and residence hall and class schedule changes. University conduct proceedings and university Office of EIE Programs procedures will provide a prompt, fair and impartial investigation and resolution. They will be conducted by officials who receive annual training on issues related to intimate partner violence, sexual assault and stalking, and conducting investigations and hearings that protect the safety of complainants, protect the fairness for complainants and respondents, and promote accountability, while protecting the rights of all parties involved. During the pendency of the investigation, the Dean of Students Office and the Office of EIE will take appropriate interim measures to protect the complainant as necessary. These interim measures may include options to avoid contact with the respondent, as well as options to allow the complainant to change academic and extracurricular activities or living, transportation, dining, and working situation as appropriate. Additionally, the complainant and respondent will be provided information about Title IX rights and any available resources such as complainant and respondent advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and the right to report a crime to campus or local law enforcement.

3. Reports to external agencies: A complaint may also be filed with the Office for Civil Rights of the United States Department of Education, or with the Civil Rights Division of the United States Department of Justice.

J. Institutional Reporting and Statements

1. Warnings to the community: When a crime covered by the Clery Act occurs, campus officials are required to evaluate if there is a serious or ongoing threat to the campus community to determine if a timely warning should be issued to all staff and students. The University of South Carolina- Upstate makes timely warnings to the university community regarding crimes considered to be a serious or continuing threat to students, faculty, staff, and visitors when reported to the University Police Department.

2. Reporting: In compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990, our Annual Security and Fire Safety Report includes information and crime statistics for the three previous calendar years. This information is provided to help increase awareness of current policies, practices and programs that exist for the safety of university faculty, staff and students.

K. Retaliation statement: Title IX prohibits retaliation against individuals who, in good faith, assert their rights under Title IX or other applicable federal and state laws prohibiting illegal discrimination. It shall be deemed a violation of the University of South Carolina Upstate's policies and procedures for any person to retaliate, intimidate or take reprisals against a person who has filed a complaint, testified, assisted or participated in any manner in the investigation/resolution of a complaint of sexual misconduct and/or interpersonal violence filed with the Office of Equity, Inclusion, or Engagement or Office of the Dean of Students. Appropriate sanctions/disciplinary actions shall be taken against any person who is found to have violated this policy.

L. Amnesty statement: As a caring community, the university wants to foster an environment in which students take responsibility to call for help when another student is in need. Consistent with the sentiment behind Chapter 53, Title 44, Article 19 of the Code of Laws for South Carolina (Drug or Alcohol-Related Overdose Medical Treatment), any student who files a complaint or who acts as a third-party witness in an investigation under this policy will not be subject to disciplinary action by the Dean of Students Office for using and/or consuming alcohol or drugs at or near the time of the alleged incident, provided that any such alcohol or drug use did not, and do not, place the health or safety of any other student at risk.

M. Education and Training:

1. Prevention Programming and Education

- a. Not AnyMore Modules, the USC-Upstate's new student orientation online module for preventing sexual misconduct, alcohol abuse, and drug use is currently required of all new students. Through Not AnyMore,
- b. University 101 classes are required of all first-year students. All class sections include a sexual misconduct prevention and response unit.
- c. Sexual Misconduct, Prevention & Education Programs are conducted by professional prevention staff in various divisions throughout the academic year. These presentations are based on emerging evidence about effective interpersonal violence prevention for college students with a special focus on inclusiveness. Programs include a focus on effective response to trauma by men based on the belief that interpersonal violence is not just a woman's issue, and that men can be accountable bystanders when it comes to issues of interpersonal violence.
- c. Awareness Month Activities, USC-Upstate hosts interpersonal violence education/prevention events for students, faculty and staff during the academic year.

2. Faculty/Staff Training

- a. Faculty and Staff: Employees receive training on an annual basis which includes an overview of issues related to sexual assault, and sexual harassment and their duty to report it.

b. The training must include a presumption that the respondent is not responsible until determination is made at the end of the hearing/disciplinary process.

c. The Title IX Coordinator, staff in the Office of the Dean of Students, the USC Police Department, Title IX Hearing Boards, and advocates receive training relevant to their respective positions on an annual basis to assist them in the daily functions of their jobs, to enable them to provide complainants with the highest standard of care and ensure the complainant's and the respondent's rights are protected during the investigative and student conduct process.

d. The training must include a presumption that the respondent is not responsible until determination is made at the end of the hearing/disciplinary process.

PROCEDURES

A. Investigation Procedures and Protocols

1. The following are possible investigations which may occur simultaneously. All investigations at USC-Upstate, unless specifically announced, originate with the Office of Institutional Equity, Inclusion, and Engagement (EIE).

a. Title IX Investigations:

i. The Title IX Coordinator's office receives and processes, in a timely manner, inquiries from students, faculty, staff and administrators regarding rights and responsibilities concerning harassing behavior, other discriminatory behavior, and/or sexual misconduct in violation of Title IX;

ii. Notifies complainants of receipt of the complaint;

iii. Notifies respondents that complaint has been made;

iv. If applicable, notifies supervisor of respondent that complaint has been made;

v. Investigates alleged discrimination and/or harassment and/or misconduct, which may include but is not limited to interviewing of complainants, respondents and material witnesses; obtaining and reviewing documents and other relevant materials from complainant, respondent and witnesses;

vi. Issues findings of fact, using the preponderance of evidence standard, and recommendations for disposition of complaints and notifies all parties regarding disposition;

vii. Notifies complainants of his or her right to pursue remedies outside of the university grievance process; follows up with parties regarding implementation of recommendations contained in disposition; seeks assistance from parties' supervisors or advisors, if necessary to implement recommendations;

viii. Monitors compliance of all requirements and timelines specified in the complaint/grievance procedures;

ix. The EIE Office will endeavor to complete the investigation within a "reasonably prompt" (U.S. Department of Education and branch Office of Civil Rights) receipt of an incident report. If the circumstances of the case require, the time period for completion of the investigation by the EIE Office may be extended.

x. Within ten (10) university work days of receipt of the EIE investigator's report, either party may request a review pursuant to applicable university policy.

b. Cases in which the Office of EIE determine reasonable cause exists to conclude a violation of university policy has occurred are referred to the Dean of Students Office. In accordance with the University of South Carolina System, when the Title IX investigator does not conclude a violation has occurred, the complaint cannot proceed into a formal hearing.

c. USC-Upstate Police Department Investigation: The USC-Upstate Police Department can investigate alleged criminal acts including, but not limited to, prohibited conduct, as defined herein. University Police can also help connect complainants with University advocates, take reports about the incident(s), provide transport for complainants to the hospital and assist with a court-issued restraining order/order of protection.

2. Survivor's Bill of Rights These rights include, but are not limited to, the following:

a. All members of the university community have the right to an environment free from physical assault, emotional abuse, sexual intimidation, or any unreasonable behaviors that interfere with students attaining their educational goals.

b. In keeping with the spirit of the State of South Carolina's Act 141: Victim and Witness Services, of sexual and/or relationship violence who report their experience to university officials can anticipate that university personnel will treat all incidents of interpersonal violence seriously.

c. Complainants will be treated with dignity and respect.

d. Complainants will be treated in a non-judgmental manner.

e. Campus organizations and services that can assist complainants will be identified.

f. When a crime is reported to university officials, those officials will offer assistance in notifying proper authorities.

g. In a student Title IX/sexual misconduct hearing, the university brings allegations against the alleged offender, and the complainant assumes the role of a witness to the allegations.

h. When a complainant reports an incident of sexual and/or relationship violence and action is pursued against the alleged offender, the incident will be investigated and adjudicated by appropriate criminal and/or university authorities.

i. Complainants have the choice to have an advocate or advisor accompany them through university disciplinary proceedings.

j. A complainant will be notified of the progress of the case, including initial contact with the alleged offender and outcomes related to university discipline proceedings. Concerning these outcomes, the complainant and alleged offender must respect the privacy rights of all involved; however, the complaint, respondent, and involved parties are specifically allowed to talk about the allegations.

k. Complainants will be informed of counseling services available.

l. Student complainants can request immediate on-campus housing relocation, transfer of classes, or other steps to prevent unnecessary or unwanted contact or proximity to an alleged offender. When possible, requests will be accommodated.

3. Rights of Alleged Student Respondent

Students accused of violating the Student Code of Conduct are afforded the following rights:

a. The right to be notified of campus organizations and services that can assist students accused of violations of the Student Code of Conduct.

b. The right to be notified in writing of their rights in the conduct process

- c. The right to be notified in writing of the charges against them with sufficient time to prepare for a hearing. In the event that additional charges are brought, a further written notice must be forwarded to the student(s) or student organization(s). The charged student(s) or student organization(s) may waive the right to separate written notice of additional charges in order to expedite the hearing process.
- d. The right to be notified of the date, time and place of formal hearings at least ten (10) university business days prior to the hearing
- e. The right to know with a minimum of ten (10) days in advance of the hearing, the nature and source of the information used in a hearing process. This includes the right to review all documents and exhibits to be introduced at a hearing as well as a list of witnesses asked to testify at the hearing, upon the student's request.
- f. The right to present information on one's own behalf
- g. The right to elect not to appear at the hearing, in which case the hearing shall be conducted in the absence of the charged party(ies)
- h. The right to refuse to answer any questions or make a statement. However, the hearing authority may draw inferences from this refusal.
- i. The right to present questions for the witnesses to answer. The hearing officer or council may rule on relevance of these questions.
- j. Respondent will be notified of the availability of counseling services.
- k. The right to be accompanied by an adviser throughout the hearing process. The adviser, with written permission of the accused student(s) or student organization(s), may:
 - i. advise the accused regarding preparation for the hearing
 - ii. accompany the accused to all conduct proceedings
 - iii. have access to information to be introduced at the hearing through the student

4. When the university does not pursue a formal investigation because of a complainant's insistence of confidentiality, the university will pursue other steps to limit the effects of the alleged sexual misconduct and attempt to prevent its recurrence.

B. Student Adjudication Procedures

1. Student Conduct Process: Upon receiving a letter of determination following the finding of cause in an EIE investigation, the Dean of Students Office will contact the student involved to explain the right to a formal conduct hearing with the Title IX/Sexual Misconduct Hearing Board. Should the student wish to participate in the Title IX/Sexual Misconduct hearing, the Dean of Students Office will:
 - a. Meet separately with both parties at least twice to explain the hearing process and their rights in the hearing. The Dean of Students Office has detailed materials to assist both parties prepare for the hearing.
 - b. Inform both parties that they have the right to be accompanied by an advisor of their choosing, and the advisor may cross-examine the complainant, respondent, and any witnesses. Cross-examinations may not be conducted by the complainant nor the respondent.
 - c. If a student does not have an advisor, the University must appoint an advisor of the University's choice to conduct cross-examination.

c. An external and non-voting Chairperson for the Hearing Board will be provided by the University for purposes of maintaining decorum, protecting fairness, and guiding efficiencies at all possible times.

d. The complainant and the respondent may be present for the entire hearing.

2. After receiving the evidence at the hearing, the Title IX/Sexual Misconduct Hearing Board will make a finding of responsibility based on the majority vote of the designated quorum, using the preponderance of evidence standard. The complainant, the respondent, the complainant/respondents' advisors, and all witnesses may not be present during the deliberation of finding portion of the hearing.

a. Notification of Outcomes: Both students are notified simultaneously and in writing of the outcome of the proceeding within three (3) university business days.

b. Sanctions: University students who are determined to have violated applicable university polices regarding Title IX/sexual misconduct/sexual harassment, and/or interpersonal violence may be subjected to sanctions ranging from a written warning or reprimand, to suspension, residence hall suspension, or expulsion, depending on the facts and circumstances of the particular case. Other sanctions may include the following:

1. Issuance of no contact order
 - i. Campus restriction
 - ii. Conduct probation
 - iii. Assessment with a counseling agency

c. Appeals: An appeal may be made for the following reasons:

- i. A procedural error was committed that has significantly prejudiced the findings of the hearing council.
- ii. New evidence that could not have been available at the time of the hearing and would have a significant effect on the outcome of the case is now available.

The complainant and the respondent shall have five (5) university business days from the date the decision letter is received to submit a written request for an appeal to the Title IX/Sexual Misconduct Appeals Panel. If there is no appeal within this time limit, the decision of the Title IX/Sexual Misconduct Hearing Board is final, barring extraordinary circumstances, as determined by the Dean of Students. To appeal the findings of the Hearing Board, the student must do so via e-mailed letter to the Dean of Students. The Dean of Students Office will forward a response memorandum and the appeal to the Title IX/Sexual Misconduct Appeals Panel. The Title IX/Sexual Misconduct Appeals Panel will review the appeal documents and make a decision by majority vote of the established quorum, using the preponderance of evidence standard to:

- i Affirm the decision of the hearing authority, in which case the decision is final, or
- ii Remand the case to the original hearing authority for further proceedings with directives to address procedural errors or new evidence.

When an appeal is submitted, the other student involved in the incident will be notified, given a copy of the appeal, and permitted to submit a document or response to the appeal within five university business days. Both appeal documents will be considered simultaneously.

d. Additional Provisions Related to Title IX/Sexual Misconduct Disciplinary Proceedings

- i. Notice of the time, date and location of a hearing shall be provided to each party in writing by the Office of Student Conduct no later than ten (10) university business days before the date of the hearing.
- ii. Each party shall have the right to attend and offer testimony and/or other evidence as the university's policies and procedures permit. Each party shall be entitled to be accompanied by an advisor who is allowed to be present and is allowed to cross-examine the complainant, the respondent, and all witnesses.
- iii. Questioning of the complainant or respondent about prior sexual activity or conduct with persons other than the other party shall not be allowed.
- iv. The parties will not be prevented by the university from disclosing information related to the outcome of student disciplinary proceedings.
- v. University officials with a need to know may be informed of the outcome of a disciplinary proceeding to facilitate any appropriate university protective or safety measures.

Adopted by USC-Upstate Dean of Students Office, August 14, 2020



