Understanding the University’s Discrimination & Harassment Policy and Resolution Options

Office of Equal Opportunity & Title IX

February 4, 2022
Federal and State Civil Rights Laws

**Title VI of the Civil Rights Act of 1964** – prohibits discrimination based on race, color, or national origin in programs and activities that receive federal financial assistance

**Title IX of the Education Amendments of 1972** – prohibits discrimination based on sex in programs and activities that receive federal financial assistance

**Section 504 of the Rehabilitation Act of 1973** – prohibits discrimination based on disability in programs and activities that receive federal financial assistance

**Age Discrimination Act of 1975** – prohibits discrimination based on age in programs and activities that receive federal financial assistance

**Title VII of the Civil Rights Act of 1964** – prohibits discrimination based on race, color, religion, sex, and national origin in employment

**The Pregnancy Discrimination Act** – prohibits discrimination based on pregnancy/childbirth

**The Age Discrimination in Employment Act of 1967** – prohibits discrimination based on age (over 40) in employment

**Title I of the Americans with Disabilities Act of 1990** – prohibits discrimination based on age in employment

**The Equal Pay Act of 1963 and the Colorado Equal Pay for Equal Work Act**
Dept. of Education Office for Civil Rights
Open Investigations Involving Postsecondary Ed.

See https://www2.ed.gov/about/offices/list/ocr/docs/investigations/open-investigations/index.html (last visited 2.2.2022)
University’s Discrimination & Harassment Policy-Prohibited Conduct

- Quid Pro Quo Harassment
- Sexual Harassment
- Sexual Assault
- Stalking
- Dating Violence
- Domestic Violence
- Non-consensual sexual contact
- Non-consensual sexual intercourse
- Sexual Exploitation
- Intimate Partner Violence

- Discrimination on a Protected Status
  - Protected Status = race, color, national origin, ancestry, age, religion, creed, disability, sex, sexual orientation, gender identity, gender expression, genetic information, marital status, pregnancy, veterans status, military enlistment

- Harassment on a Protected Status
- Physical Misconduct based on a Protected Status
- Failure to inform supervisor of consensual sexual relationship with student/supervisee
- Retaliation
- Obstruction
Title IX Sexual Harassment Procedures
Quid Pro Quo Harassment, Sexual Harassment, Stalking, Dating/Domestic Violence, Sexual Assault* + University Education Program or Activity + In the United States

Dismissal
If the conduct alleged does not meet the definition of Title IX Prohibited Conduct, even if proved; (Mandatory)
The conduct did not occur within the education program or activity** of the university; (Mandatory)
The conduct did not occur within the United States; (Mandatory)
If the Complainant notifies the university in writing it wishes to withdraw the formal complaint or any allegations therein, (Optional)
The respondent is not enrolled or employed by the university; (Optional); or
Circumstances prevent the university from gathering evidence. (Optional)

Formal Complaint

Informal resolution

Investigation

Live Hearing With Cross Examination
Results in Finding

Investigation/Results in Finding

Appeal

Comprehensive Discrimination & Harassment Procedures
Non-consensual Sexual Contact, Non-consensual Sexual Intercourse, Intimate Partner Violence, and Stalking when not in a University Education Program or Activity,** Discrimination or Harassment on the basis of Protected Status, Sexual Exploitation, Physical Misconduct based on a Protected Status, Failure to inform Supervisor of Consensual Sexual Relationship with Student/Supervisee, Retaliation, Obstruction

Dismissal
If the conduct alleged does not meet the definition of prohibited conduct, even if proved;
or
The respondent is not enrolled or employed by the University;
or
Circumstances prevent the University from gathering evidence.

* Sexual Assault includes rape, sodomy, incest, fondling, and statutory rape.

**University Education Program or Activity includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
Intake and Initial Assessment

• EOIX conducts initial outreach to Complainant – offers resources, supportive measures, resolution options, and opportunity to meet.
• EOIX conducts initial review to determine if alleged conduct falls within Discrimination and Harassment Policy.
  • If it does not, EOIX informs Complainant and refers to another office (SRR, SOS, DSP, HR, etc).
  • If it does, EOIX seeks to understand preferences with regard to resolution.
• EOIX *may* conduct some initial fact gathering to understand allegations and determine appropriate resolution.
Resolution Options

• Inquiry
  • Not available for Title IX Prohibited Conduct
  • At discretion of EOIX
  • To determine whether report can be resolved informally or whether a formal investigation is appropriate
  • Administrative Review

• Informal Resolution
  • Voluntary – all parties must agree to participate
  • Not available for Title IX Prohibited Conduct where employee is respondent
  • Examples: facilitated conversation, educational/coaching session, interventions, facilitated agreement

• Formal Investigation
Factors Considered When Determining Resolution

- Nature, scope, and severity of alleged Prohibited Conduct
- Whether incident involved a minor
- Respective roles of Complainant and Respondent
- Risk posed to individual or University community by not proceeding
- Degree of harm or ramifications of Prohibited Conduct on Complainant or University community
- Whether there have been other reports of Prohibited Conduct involving Respondent
- Complainant’s preferred resolution
- Complainant’s willingness to participation in investigation or other resolution
- If Complainant is unwilling to participate, whether the University has other means to obtain relevant evidence
- University’s ability to identify a Respondent
- The facts that are reasonably in dispute
- The affiliation that Complainant, Respondent, and other involved person(s) have with the University
- University’s obligation to promote a safe and non-discriminatory environment.
- The University’s obligation to satisfy any other legal or regulatory requirements.
Examples of When Equal Opportunity & Title IX Opens an Investigation

• Alleged conduct, if true, could constitute Prohibited Conduct and:
  • Complainant requests a formal investigation; OR
  • Report(s) indicate(s) a potential pattern of Prohibited Conduct; OR
  • Report indicates a health and safety risk to the Complainant or University community.
Formal Investigation

- EOIX determines who the Respondent is for purposes of investigation.
- EOIX provides written notice of allegations to both parties.
- EOIX offers an informational meeting to both parties.
- Respondent is **presumed Not Responsible**; must be overcome by preponderance of the evidence.
- EOIX provides access to all information/evidence gathered to both parties with opportunity to review/respond.
- Either party may appeal the determination.
Office of Equal Opportunity & Title IX
Contact Information

Office of Equal Opportunity & Title IX
Driscoll Commons
2050 E. Evans Ave., Suite 30
Denver, CO 80208

http://www.du.edu/equalopportunity

titleix@du.edu
equalopportunity@du.edu

Emily Babb
AVC for Equal Opportunity & Title IX/Title IX Coordinator

Stuart Evans
Deputy Equal Opportunity Coordinator/Senior Investigator

Molly Hooker
Deputy Title IX Coordinator

Mackenzie Kintz
Equal Opportunity & Title IX Investigator