

Title IX – Appeals Panel Training

December 7 & 8, 2023



**Mount
Sinai**

Scope

Training for those who may serve as members of an appeals panel on a Title IX matter involving allegations of Sexual Misconduct, as defined by the ISMMS policy in effect in June 2023 (last revised October 11, 2021)

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- v. Consent may be initially given but can be withdrawn at any time;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 When consent is withdrawn or can no longer be given, sexual activity must stop.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

“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.

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 Arbiter made the determination
 - c. Conflict of interest on the part of the Title IX Coordinator, investigator(s) or Designated Arbiter(s) that affected the outcome of the matter

Policy: Appeals

1. The Panel will deliberate on the findings without the presence of either the Complainant or the Respondent. Upon concluding its deliberations, the Panel will vote and make its determination as to whether the grounds for appeal have been met and any necessary remedial action that may result based on a majority vote.
2. The Panel will provide the parties with a written decision on the appeal, including the rationale for the decision and any further steps or remedial actions deemed necessary (the “Panel Report”).

Policy: Appeals

The Panel will strive to complete the Panel Report in as timely a manner as possible.

Policy: Appeals

The Panel Report will be forwarded to the Dean of the Medical School (or his designee). The Panel's findings and determination regarding liability (whether or not the School's policy was violated) must be accepted by/cannot be rejected by the Dean (or his designee). However, the Dean (or his designee) may accept or reject the Panel's recommendations regarding sanctions/remedial action to be imposed in making his or her determination as to what sanctions/remedial action will be imposed for the violation (a list of the sanctions/remedies that can be imposed following determinations that this Sexual Misconduct Policy has been violated are set forth in Appendix 3).

Policy: Appeals

Copies of written statements from the Panel and/or the Dean of the Medical School (or his designee) detailing the factual findings supporting any determinations of violations of the Policy and the rationale for any sanctions imposed will be provided to both the Complainant(s) and the Respondent(s) upon conclusion of the appellate processes.

Policy: Sanctions

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: Additional Students' Rights

Students have the right to exclude from consideration by any decision makers, including but not limited to the appropriate “designated arbiter” or an appellate hearing panel:

1. Their own prior sexual history with persons other than the other party in the process (except in the limited circumstances discussed in the Policy).
2. Their own mental health diagnosis and/or treatment.
3. Past findings of domestic violence, dating violence, stalking, or sexual assault, except that such past findings can be considered in connection with determinations of discipline and sanctions after decisions regarding responsibility have already been reached.

Policy: Additional Students' Rights

Right to simultaneous (among the parties) notification (via e-mail) of the outcome of the processes, including the sanction or sanctions imposed on the Respondent (if any) based upon the outcome of the processes, and the rationale for the actual sanction imposed.

Standard of Proof

Preponderance of the evidence standard

More likely than not

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. Before you serve as a member of the appeals panel, you must ensure that you do not have a Conflict of Interest
4. 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. As an impartial decision-maker, a member of the appeals panel must approach their role impartially and without prejudgment
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

Questions?



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