

TITLE IX AND SEXUAL MISCONDUCT POLICY

TITLE IX OVERVIEW

Title IX of the Educational Amendments states 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.” Title IX, along with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Violence Against Women Act require institutions that receive federal financial aid to follow guidelines to address and help prevent acts of harassment, discrimination, and sexual misconduct.

TITLE IX POLICY STATEMENT

Salem University is committed to maintaining a safe and productive educational and work environment in which no member of the University community is, on the basis of sex, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity. Gender-based and sexual harassment, including sexual violence, domestic violence, dating violence, and stalking, are forms of sex discrimination in that they deny or limit an individual’s ability to participate in or benefit from University programs or activities. Salem University prohibits any form of discrimination, harassment, and/or sexual misconduct.

SCOPE OF TITLE IX POLICY

Salem University prohibits sex discrimination, sexual harassment, and sexual violence and will investigate all complaints filed under this policy. This policy applies to all university employees, students, contractors, and anyone that participates in an educational program or activity. This policy includes athletic events, field trips, student life events, and clinical instruction settings.

DEFINITION OF TERMS RELATED TO TILE IX

Sexual Misconduct- Sexual Misconduct is a term that refers to sex discrimination, sexual harassment, sexual assault/violence, relationship violence (domestic/dating), and stalking/cyberstalking.

Sex Discrimination- Sex Discrimination is when people are excluded from or denied participation in a university sponsored program or activity based on their gender, sex, or identity.

Sexual Harassment- Sexual Harassment is defined as any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal

educational access. , requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education status;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment. This includes any form of sexual violence or misconduct.

Sexual Assault- Sexual Offenses are defined in West Virginia Code § 61-8B-1, et. seq. as follows:

WV Code 61-8B-3 Sexual assault in the first degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

WV Code 61-8B-4 Sexual assault in the second degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

WV Code 61-8B-5 Sexual assault in the third degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

WV Code 61-8B-7 Sexual abuse in the first degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual abuse in the first degree when:

- (1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or
- (2) Such person subjects another person to sexual contact who is physically helpless; or
- (3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

WV Code 61-8B-8 Sexual abuse in the second degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.

WV Code 61-8B-9 Sexual abuse in the third degree. (West Virginia Code (2013 Edition))

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

VIOLENCE AGAINST WOMEN ACT (VAWA) DEFINITIONS

The Violence Against Women Act of 1994 is a US Federal Law under Title IV § 40001-40703 of the Violent Crime Control and Law Enforcement Act, HR 3355, signed by President Clinton on September 13, 1994.

Domestic Violence: The term “domestic violence” means

1) Felony or misdemeanor crimes 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;
- (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; or
- (v) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

2) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

Domestic Violence is defined in **West Virginia Code §48-27-202** (2013) as follows:

"Domestic violence" or "abuse" means the occurrence of one or more of the following acts between family or household members, as that term is defined in section two hundred four of this article:

- 1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;
- 2) Placing another in reasonable apprehension of physical harm;
- 3) Creating fear of physical harm by harassment, stalking, and psychological abuse or threatening acts;
- 4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and
- 5) Holding, confining, detaining or abducting another person against that person's will.

Dating Violence: The term "dating violence" means violence committed by a person

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim and
- 2) The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition-

- (i) Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (ii) Dating violence does not include acts covered under the definition of domestic violence. For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

There is not a separate statute in West Virginia for "dating violence". Any crimes committed as part of a dating relationship would be prosecuted under the general criminal code based upon the specific allegations presented.

Stalking: The term "stalking" means

- 1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - (i) Fear for the person's safety or the safety of others; or
 - (ii) Suffer substantial emotional distress.
- 2) For the purposes of this definition

- (i) Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
 - (ii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - (iii) Reasonable persons means a reasonable person under similar circumstances and with similar identities to the victim.
- 3) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

West Virginia Code §61-2-9a (2013) defines stalking as follows:

- a) Any person who repeatedly follows another knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress,
- b) (b) Any person who repeatedly harasses or repeatedly makes credible threats against another
- c) For the purposes of this section:
 - (1) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;
 - (2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;
 - (3) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;
 - (4) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and
 - (5) "Repeatedly" means on two or more occasions

Consent is defined as "voluntary, positive agreement between participants to engage in specific sexual activity"

Lack of Consent is defined in **West Virginia Code § 61-8B-2** (2013) as follows:

- (a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.
- (b) Lack of consent results from:

- (1) Forcible compulsion;
 - (2) Incapacity to consent; or
 - (3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- (c) A person is deemed incapable of consent when such person is:
- (1) Less than sixteen years old;
 - (2) Mentally defective;
 - (3) Mentally incapacitated;
 - (4) Physically helpless; or
 - (5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.

ROLES AND RESPONSIBILITIES

Salem University has designated key members of its staff to serve as **caretakers** of Title IX related issues.

Title IX Coordinator- The Title IX Coordinator is responsible for the following:

- Ensures compliance with Title IX
- Training and distribution of educational material related to Title IX
- Receive complaints regarding Title IX offenses
- Oversee the complaint procedures

Salem University has designated Mrs. Barbara McClain, Executive Assistant to the President as the Title IX Coordinator.

Contact Information for the Title IX Coordinator

Barbara McClain, Executive Assistant to the President, Title IX Coordinator

Phone: 304-326-1234

Email: BMcClain@salem.edu

Title IX Investigator- The Title IX Investigator is responsible for investigating complaints and/or referring the investigation to other entities. The investigator is also responsible for overseeing interim measures and/or protective orders and presenting the evidence collected to the Judicial

Committee for review. Salem University has designated Joseph Shaver, Director of Campus Safety and Security as the Title IX Investigator.

Contact Information for the Title IX Investigator

Joseph Shaver, Director of Campus Safety and Security, Title IX Investigator

Phone: 304-326-1481

Email: JShaver@salem.edu

Level III Judicial Board- The judicial board is responsible for hearing suspendable and expellable offenses, including Title IX incidents. The committee will determine whether a respondent is responsible or not responsible and sanction(s) if found responsible.

The Judicial Board is comprised of the Dean of Student Affairs, who acts as Chair and votes only to break ties, four professional or faculty members appointed by the President, and two designated Student Government Representatives. All appointed members of the Judicial Board will serve for one academic year and may be reappointed.

The Judicial Board for the 2020/2021 year includes:

- Dr. Stephen Scherrer
- David Shulimson
- Maria Kendall
- Dr. Javaid Syed
- Ashia King (SGA)
- Alaina Weltz (SGA)
- Pam Schield (Alternate)
- Jason Walker (Alternate)

Advocates- Individuals bringing forward allegations (“Complainants”), and individuals responding to allegations (“Respondents”) who participate in a Title IX investigation process, have the right to have one individual of their choosing serve as their advocate throughout the investigation process. The right to an advocate is extended so that the Complainant or Respondent can identify someone that they want to assist them with navigating and understanding the investigation process, including providing support during each portion of the investigation process and any meeting or interview that is associated with the investigation process. It is recommended that an advocate not be someone who is a witness in the same matter.

The advocates for the 2020/2021 school year include:

- Ashley Ziegle
- Bridgett White
- Jason Walker
- Noel Shaver
- Justin Kassab
- Hillary Leon
- Karen Morgan
- Cody Gilmore

President of the University- If either the complainant or respondent appeal the decision of the judicial board, the President will have the opportunity to hear the appeal and either overturn the decision(s), modify the decision(s), or uphold the decision(s).

TITLE IX TRAINING INFORMATION

In an effort to provide updated information regarding the recent Title IX changes, Salem University has developed a training for all Title IX Personnel. The Training topics include:

- Policies and Procedures
- Process for Title IX incidents
- Implicit and Unconscious Bias

The annual training session will be provided virtually to all Title IX personnel and documentation of the completion of training will be kept by the Title IX coordinator. Title IX Personnel will include:

- Title IX Coordinator
- Director of Campus Safety and Security
- Dean of Student Affairs
- Judicial Board
- Advocates

The materials used for the training can be found at <https://www.salemu.edu/student-life/campus-safety/>

COMPLAINTS AND REPORTING PROCEDURES

Employees

Any employee of Salem University who feels that he/she has been subjected to sex discrimination and/or sexual harassment by fellow employees, vendors, visitors, students and/or guests should report the incident to his or her immediate supervisor or the Title IX Coordinator. Any employee that witnesses or receives information on such behavior should also report to their immediate supervisor or the Title IX Coordinator.

Students

Students that wish to report sexual misconduct should contact the Title IX Coordinator or Campus Security to file a complaint.

Contractors, Vendors, and Community Members

Anyone who wishes to file a complaint of sexual misconduct is directed to the Title IX Coordinator or Campus Security.

Complaints will be documented and thoroughly investigated by the Title IX Investigator. Investigations will be designed to protect the reasonable privacy interests of all parties concerned. All parties must cooperate with and provide information relative to these investigations. Disciplinary and corrective action, up to and including discharge, will be taken dependent upon the circumstances and as appropriate.

Any person that wishes to file a complaint that constitutes a criminal act (Sexual Assault, Domestic Violence, Dating Violence, and Stalking) is encouraged to report the incident to law enforcement or Campus Security immediately. Assistance in this process is available by contacting the Title IX Coordinator or the Director of Campus Safety and Security.

INVESTIGATION PROCEDURES

Once a complaint is filed with the Title IX Coordinator, all related information will be shared with the Investigator. The Investigator will review the information and commence a thorough investigation of the alleged incident.

The Title IX Investigator or designee will investigate the incident by:

- Interviewing the Complainant (the person making the initial report)
- Interviewing the alleged Victim (if different from the Complainant)
- Interviewing the alleged Perpetrator(s) who is(are) accused of the violation
- Interviewing any or all eyewitnesses
- Collecting signed statements, photographs, artifacts, *etc.* from all parties.

If it appears that a violation of law may have occurred, the victim will be advised that the university's procedure for processing violations of the Student Code of Conduct does not limit, encumber, or reduce the legal remedies that may be available to the victim.

The Title IX Investigator will assemble the incident report, interview notes, signed statements and may add other items to the report, as needed. Final copies of the report and any supporting evidence, statements, notes, or other items will be made available to both complainant and respondent prior to any judicial proceedings.

RESOLUTION OF COMPLAINTS

Student Judicial Proceedings

The Judicial Board is comprised of the Dean of Student Affairs, who acts as Chair and votes only to break ties, four professional or faculty members appointed by the President, and two designated Student Government Representatives. All appointed members of the Judicial Board will serve for one academic year and may be reappointed.

An advocate will be assigned to **both parties** to assist them in understanding and preparing for the hearing. Questions of procedures and what to expect will be explained. Either party involved may choose their own advocate if they wish to do so.

The complainant will be advised of the date, time, and location of the hearing. The complainant may attend the hearing to make his or her statement in person. The complainant also may submit a written statement or ask the assigned advocate to speak for them.

Both Complainant and Respondent will be given 24-hours' notice to appear unless there is an emergency or other extenuating circumstance. This notice will include a written description of the allegations, copies of the investigation file, information regarding the process, student rights, and advocate assignments.

Upon completion of the investigation, the Board will review the documentation and hear testimony. Each party involved will be given the opportunity to relay their account to the Board,

submit evidence, and cross examine testimony via their advocate. Neither party will be permitted to directly question one another and will only communicate through their assigned advocates.

The Judicial Board will decide “Responsible” or “Not Responsible” using the “Preponderance of Evidence” as the burden of proof. If the Board finds the alleged perpetrator is “Not Responsible,” the incident will be dismissed. The decision will be placed in the judicial files.

If the Judicial Board decides the alleged perpetrator is “Responsible,” the Board will then determine sanctions. Sanctions include, but are not limited to: penalties listed in the Student Code of Conduct, monetary fines, remuneration or compensation to the victim, community service, behavioral contracts, and/or University No-Contact Orders. The decision will be placed in the judicial files and conveyed in writing to the affected parties simultaneously.

Appeals of Judicial Board Decisions

Either party that disputes a decision by the Judicial Board may appeal the decision to the President or designee. The President or designee may choose whether to hear an appeal or not. The grounds for appeal include:

- Sanction is too severe given the level of severity of the violation.
- Complaint, witness statements, or other evidence presented is false or misleading.
- Finding of responsibility is not based on the facts presented.
- Procedures were not followed.

The President may discuss the incident with any or all of the affected parties, including Hearing and Judicial Board members, to make an informed decision to:

Confirm the decision of the Judicial Board.

- Increase or decrease the duration or severity of the sanction.
- Dismiss the case.

The President’s decision is final. The written decision will be placed in judicial files and conveyed to the affected parties.

The universities judicial process is built to provide fair and impartial adjudication for incidents that occur within its jurisdiction. This process is separate from any criminal or civil proceedings that may follow. Salem University will cooperate with any external investigation or proceeding in accordance to university policy and State/Federal Law.

Employees and Others

Complaints will be promptly and thoroughly investigated by an appropriate person or persons. Investigations will be designed to protect the reasonable privacy interests of all parties concerned. All employees must cooperate with and provide information relative to these investigations. Disciplinary and corrective action, up to and including discharge, will be taken dependent upon the circumstances and as appropriate. Just as discrimination and harassment may result in the

imposition of disciplinary penalties, so too may any attempt to retaliate against or otherwise interfere with a complainant's attempts to enforce his or her legal rights or a witness' participation in an investigation.

PROTECTIVE ORDERS AND OTHER INTERIM MEASURES

The university is obligated to offer reasonable interim measures that are used to protect the safety and well-being of alleged victims of a crime. The Director of Campus Safety and Security, along with the Dean of Student Affairs, will ensure students receive written notification of all their rights and options, regardless of whether a student chooses to report the incident Campus Security or to Law Enforcement Officers. This written notification will describe options for, available assistance in and how to request changes to academic, living, transportation and working situations or other protective measures. The university will make such accommodations or provide such protective measures if the complainant requests them and if they are reasonably available, regardless of whether the complainant chooses to report the incident to Campus Security or local law enforcement.

The university does not have the authority to issue or enforce legally mandated protective orders but will assist the victim of sexual assault, domestic violence, dating violence, and/or stalking in applying for and obtaining such an order from the local court system. The university may also issue a "No-Contact Order". This order is enforceable as a violation of the Student Code of Conduct or University Policy. Campus Security Officers will remain vigilant and assist in reporting violations of protective orders.

A victim may also request that the alleged respondent's campus privileges be temporarily suspended (temporary suspension) until the investigation and judicial process is complete. This request can be filed with the Director of Campus Safety and Security and if reasonable, action will be taken promptly.

Protective measures and accommodations will remain confidential to the fullest extent possible.

The Director of Campus Safety and Security is responsible for overseeing these measures and that they are applied appropriately to ensure the safety and well-being of the victim.

RETALIATION

Retaliation against any individual exercising a legal right, such as filing a complaint in good faith or providing information during an investigation, is also expressly prohibited, will not be tolerated and will result in disciplinary action, regardless of the disposition of the underlying complaint. Complaints of retaliation can be made in the same manner as above.

VIRTUAL HEARINGS

Title IX hearings now may be heard virtually. Either the complainant or respondents may request a virtual hearing. The advocate can walk them through the advantages to remote hearings, which may include:

Remote hearings ensure complete physical separation of the parties. This means the parties no longer need to request this approach and the school no longer has to scramble to accommodate it. The fact that students are physically distanced from each other can help reduce some of the tension and stress that comes with Title IX hearings.

The technology can be a help rather than a hindrance. Hearing Officers can keep individuals muted, and/or keep their video feeds off when they are not providing testimony. This allows the parties to have physical reactions — sighs, eye-rolls, and head shakes — without distracting the person providing testimony. If an advocate chooses not to follow admonitions to remain silent, the Judicial Board Chairperson can simply mute their microphone, allowing the advisor to hear all testimony without disrupting others.

Many students feel more comfortable and safe conducting hearings from the location of their choice. They no longer need to worry about where they might be housed for a campus live hearing, or if the location will cause them discomfort or anxiety.

The process will be very similar to the in person hearing, the hearing will simply occur virtually. Each participant will receive a virtual link for the scheduled time of the meeting. The hearing board will be in one room together to hear the incident. If any party needs a webcam or microphone, one will be provided by the Salem University IT department.

The chair of the hearing board will ensure everyone has a chance to speak and respond. Questions can be posed by the complainant, respondent, or members of the committee. Once the committee has heard from all of the relevant parties, the committee will close the collaborate meeting. The meeting will be recorded by the judicial board chairperson. After all decisions have been made, the judicial board chairperson will communicate with the complainant and respondent, individually.