

**SEXUAL MISCONDUCT
GRIEVANCE PROCESS TRAINING
FOR UNIVERSITY-APPOINTED
ADVISORS**

SAVANNAH COLLEGE OF ART AND DESIGN

DECEMBER 2020

Sexual Misconduct Policy

SCAD's Sexual Misconduct Policy:

- It is the policy of the Savannah College of Art and Design (the “University”) to maintain an environment for students, faculty, and staff that is **free of sex-based discrimination and harassment**, including sexual harassment prohibited by Title IX of the Education Amendments of 1972 (“Title IX”).
- The Sexual Misconduct Policy (the “Policy”) addresses sexual harassment that is prohibited by Title IX (“***Title IX Sexual Harassment***”) and sexual misconduct that occurs outside of the U.S. and/or outside an Education Program or Activity.

Scope of Policy:

- **Applies to all University community members** — including faculty, staff, and students — as well as to third parties (including, but not limited to, vendors, alumni/ae, visitors, volunteers, and local residents) who may have contact with members of the University community.
 - A third party may report a violation of the Policy committed by a member of the University community.
 - A third party may also be barred permanently from the University or subject to other restrictions for failing to comply with this Policy.
- **By definition, Title IX Sexual Harassment can only occur in the United States and in an Education Program or Activity.**

Retaliation Prohibited:

- **No individual may intimidate, threaten, coerce, or discriminate** against any individual for the purpose of interfering with any right or privilege secured by Title IX, the Policy, or the Grievance Process for the Sexual Misconduct Policy (the “*Grievance Process*”), or because the individual has made a Report or Complaint, testified, assisted, participated or refused to participate in any manner in an investigation, Proceeding, or hearing under this Policy or the Grievance Process.
 - SCAD protects the identity of all individuals involved.
- Complaints regarding retaliation may be filed under the Grievance Process.

Amnesty:

- To encourage truthfulness in reporting, an individual who reports Sexual Misconduct or participates in this Grievance Process, either as a Complainant, a Respondent, or a witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Educational options will be explored, but no conduct proceedings or record will result. However, records regarding the provision of amnesty will be maintained.

Definitions

Title IX Coordinator:

- Responsible for **oversight** of the assessment, investigation, hearing process, and resolution of all Reports of Sexual Misconduct;
- Knowledgeable and trained in this Policy, the Grievance Process, and Title IX;
- Available to **advise any individual** associated with potential Sexual Misconduct about the care and support resources, Supportive Measures, reporting options, and other resources available at the University, both informally and formally, and in the community;
- Available to **provide assistance to any University Employee** regarding how to respond appropriately to a Report of Sexual Misconduct;
- Responsible for **monitoring full compliance** with all procedural requirements and time frames outlined in this Policy and the Grievance Process;
- Responsible for **training, prevention and education efforts**, and periodic reviews of climate and culture related to the conduct prohibited under this Policy.

Sexual Misconduct:

- Conduct **on the basis of sex** that satisfies one or more of the following:
 1. An Employee of the University **conditioning** the provision of a University aid, benefit, or service 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 University's education program or activity;
 3. "Sexual assault"- an offense classified as a **forcible or non-forcible sex offense** under the uniform crime reporting system of the Federal Bureau of Investigation;
 4. Dating Violence;
 5. Domestic Violence;
 6. Stalking.

Sexual Assault:

- Includes:
 - Rape – penetration without Consent
 - Attempted Rape
 - Fondling – touching private body parts without Consent
 - Incest
 - Statutory Rape

Consent:

- Effective consent consists of an **affirmative, voluntary, conscious** decision by each participant to engage in **mutually agreed upon** (and the conditions of) **sexual activity**. In order to give effective consent, one must **not be incapacitated** and must be of legal age and have the capacity to give consent. The age of consent for this Policy is 16 years, which is the legal age of consent in the State of Georgia.
- Consent must be:
 - Informed and reciprocal
 - Freely and actively given
 - Mutually understandable
 - Revocable
 - Specific
 - Not valid if obtained through force or coercion

Title IX Sexual Harassment:

- Sexual Misconduct that occurs **in the United States** and in an **Education program or activity**.
- At the time of filing a Complaint alleging Title IX Sexual Harassment, a **Complainant must be participating in or attempting to participate** in the University's education program or activity.

Education Program or Activity:

- **Education program or activity** means the locations, events, or circumstances where the University exercises **substantial control** over both **the Respondent and the context** in which alleged Title IX Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a University.
- At SCAD, this includes (but is not limited to): all property owned or operated by SCAD and events hosted by SCAD at off-campus properties since SCAD pays for and organizes those events (e.g., field trips, off-site educational experiences hosted by SCAD, Career Fair, Sidewalk Art Fest, Fashion Show, Film Fest, etc.).
- SCAD does not have buildings owned or controlled by student organizations.

Complainant and Respondent:

- A Complainant is an individual **who is alleged to be the victim** of conduct that could constitute Sexual Misconduct and **who files a formal Complaint**.
- A Respondent is an individual who has been **alleged in a Complaint as a perpetrator of conduct** that could constitute Sexual Misconduct.
- It is **presumed that the Respondent is not responsible** for the alleged conduct until such a determination regarding responsibility is made at the conclusion of the grievance process.

Advisor:

- An individual who **accompanies** a party to any meeting or proceeding under the Policy.
- The parties have the opportunity to be accompanied by one (1) Advisor of their choice, who may be, but is not required to be, an attorney.
- The University will not limit the choice or presence of an Advisor for either party in any meeting or Proceeding.

University-Appointed Advisor:

- If a party does not have an Advisor, the University must provide one for purposes of cross-examination at the live hearing.
- University-Appointed Advisors must:
 - Be willing to ask questions on behalf of any party, Complainant or Respondent.
 - Be actively engaged during the hearing.
 - Adhere to policies, procedures, and Rules of Decorum
- The parties' right to an advisor differs from the right to legal representation in a criminal proceeding. The University-Appointed Advisor is not expected to provide legal representation.

Role of Advisors at Live Hearings:

- At the live hearing, the Hearing Officer(s) must permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Advisor and never by a Party personally.
- Advisors do not otherwise participate in the live hearing, make opening or closing statements, lodge objections, or talk at the hearing.

The Grievance Process

SCAD's Grievance Process:

- Begins when a **Complaint** is filed
- The parties are provided **notice** of the grievance process
- An **investigation** is conducted and an **investigative report** is produced
- Both parties have an **equal opportunity** to inspect and review any evidence.
- After the investigation, a **live hearing** is conducted to determine responsibility
- Advisors are required to conduct **cross-examination** at the hearing
- **Sanctions** are determined after a finding of responsibility
- Both parties have a right to **appeal**

The Nature of the Hearing:

- Not a civil or criminal proceeding and is not designed to mimic formal trial proceedings.
 - Primarily educational in nature.
 - Not public; confidentiality applies.
- The purpose is to reach factual determinations of whether the Sexual Misconduct Policy was violated.
- Both parties are permitted to present evidence and witnesses.
- The following standards apply:
 - **Standard of Evidence.** Preponderance of the evidence (more likely than not).
 - **Production of Evidence.** All evidence subject to the parties' inspection and review at the conclusion of the investigation will be available at any hearing.
 - **Burden of Proof** and the burden of gathering evidence rests on the University and not on the parties.

Hearing Logistics:

- The parties will be in separate rooms enabled by technology so the Hearing Officer(s) and Parties can simultaneously see and hear each other and the witnesses.
- There will be a recording of the hearings for review by the Parties and decision-makers.
- Be prepared for hearings to last a full day, and they may go beyond that.
- Usually scheduled on Fridays via Zoom.

Notice of Meetings and Timeframes:

- The University will provide **sufficient written notice** of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings.
- The University will establish **reasonably prompt timeframes** for conclusion of the grievance process.
- The University seeks to resolve all Complaints generally within **120 business days** of the filing of the Complaint.
- All timeframes expressly outlined in the Policy and this Grievance Process are meant as guidelines rather than rigid requirements.

Preparing for the Hearing:

- **Ten (10) days** prior to the hearing, the University will send to each party **and each party's Advisor**, the investigative report in an electronic format or a hard copy.
- If a party does not have an Advisor for purposes of cross-examination at the live hearing, **the University will provide an Advisor ("University-Appointed Advisor")** of the University's choice to conduct cross-examination on behalf of that party.
- **Each Advisor should carefully review the investigative report and the Sexual Misconduct Policy, Grievance Process, and Rules of Decorum.**
- The **role of the Advisor** is to ask questions on behalf of the party.
- Advisors should **meet with the party** they are assisting and discuss their role, the questions to be asked, and the Rules of Decorum. Decide together whether you can ask questions that occur to you during the hearing, but which you have not discussed in advance.
- The Hearing Officer will focus on **relevant evidence** and **credibility**.
- Parties may submit questions in advance so the Hearing Officer can determine relevance.

Order of Proceedings:

- The Hearing Officer(s) will commence the meeting.
- Parties (not Advisors) make **opening statements**; Complainant, then Respondent.
- The Hearing Officer(s) will call the Investigator(s) as the first witness, followed by the Complainant, the Respondent, the Complainant's witnesses, the Respondent's witnesses, and other witnesses.
- For each witness, the Hearing Officer(s) will ask questions of the parties and witnesses prior to examination/cross-examination by Advisors.
- Direct examination will occur first and then cross-examination.
- **The Hearing Officer will determine relevance after each question.**
- The Hearing Officer(s) will allow for any additional questions by the Advisors after both Advisors have asked questions.

Connecting the Policy and Evidence:

- You and your advisee should review the Policy and discuss which provisions are at issue.
- Example: Dating Violence
 - **Violence** committed by a person **who is or has been in a social relationship of a romantic or intimate nature** with the victim. The existence of such a relationship is determined based on a consideration of the following factors: (i) The length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship;
- You advisee should prepare questions that illuminate their perspective and highlight evidence that supports that perspective.

Relevance:

- Prior to any question being answered, the Hearing Officer will determine relevancy.
- **Relevance:** Evidence is relevant if it has a tendency to make an allegation or fact more or less probable than it would be without the evidence
- **Past Sexual History:** Evidence about the Complainant's sexual predisposition or prior sexual behavior is **not relevant, unless:**
 1. questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 2. the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- **Medical Records:** No questions or evidence related to treatment records, unless the University obtains that party's voluntary, written consent.
- **Privilege:** No questions or evidence that constitute information protected under a legally recognized privilege, unless it is properly waived.

Credibility:

- Credibility is assessed based on a number of factors, including:
 - specific **details** (the regulations do not require a certain level of specificity)
 - inherent **plausibility**
 - internal **consistency**
 - **corroborative** evidence
 - **motivation**
 - **body language** and **demeanor**
- Credibility is evaluated to determine the truth when there are different perspectives on the same event.

The Advisor's Role in Questioning:

- Under Title IX, the Advisor is responsible for conducting **cross-examination on the advisee's behalf** at the live hearing.
 - Relay the advisee's desired questions.
 - Not responsible for drafting questions.
 - May discuss evidentiary issues and the questions the advisee would like asked.
- SCAD permits Advisors to ask **direct questions** of the advisee.
- Your role is to facilitate questioning. You should NOT:
 - Refuse to ask relevant questions posed by an advisee;
 - Change the wording of an advisee's question, unless it would violate the Rules of Decorum;
 - Refuse follow-up questions
 - Provide an opening statement on behalf of the advisee
 - Act based on stereotypes or implicit bias.

Examination/Cross-Examination:

- **Examination and Cross-examination:** questioning to ascertain the truth.
- Parties have an **equal right** to have an Advisor cross-examine any witness, including the investigator.
- Hearing Officer has an opportunity to **observe** parties and witnesses answer questions and ascertain **credibility, accuracy, consistency, and plausibility**.
- Examination/Cross-examination will be conducted **directly, orally, and in real time** by the party's Advisor of choice and **never by a party personally**.
- Advisors serve as a buffer so the parties avoid direct confrontation.
- Questions asked must be **relevant**.
- Before an individual answers a question, **the Hearing Officer(s) will first determine whether the question is relevant** and explain any decision to exclude a question as not relevant.

Necessity of Cross-Examination:

- If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility.
- The Hearing Officer(s) cannot draw an inference relevant to the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- An individual will not be required to answer questions that could be self-incriminating and used against the individual in a criminal proceeding.
- If a Party does not attend the live hearing, an Advisor must still be made available on their behalf so the other Party and witnesses can be cross-examined and ensure the Hearing Officer may rely on their statements in the determination regarding responsibility.
- A Party can choose not to ask questions of another Party or witness, but must have the opportunity.

How to Conduct Questioning:

- Follow the Rules of Decorum.
- Questions should probe a party's or witness's narrative, such as whether or not consent is present.
- Wait for the Hearing Officer(s) to determine relevance of a question before a Party or witness answers.
- Right before you say you are finished with each witness, ask the advisee if they have more questions.

Conferral During the Hearing:

- No Party or witness subject to examination may consult with an Advisor while a question is pending.
- Where a Party's Advisor is examining that Party, pauses for consultation are not permitted.
- In the event a Party or witness desires consultation with an Advisor during cross-examination, such party must first answer the pending question in full and thereafter may confer with their Advisor.
- Pauses for consultation will only be permitted a reasonable number of times as determined in the sole discretion of the Hearing Officer.
- Parties are permitted to confer with their Advisor in private about questions to be asked during cross-examination before questioning of each individual and/or at final call.

Rules of Decorum:

- Rules of Decorum are **applied equally** to both parties
- Questioning of parties or witnesses **must not be abusive, intimidating, or disrespectful**, as determined by the Hearing Officer(s).
- Refer to other Parties, witnesses, Advisors, and institutional staff using the name and gender used by the person.
- Do not yell, scream, badger, intentionally intimidate, or use profanity during the hearing.
- Do not use questioning to make accusations or irrelevant character attacks.
- Do not ask repetitive questions. When the Hearing Officer instructs you to move on, do so.
- Do not interrupt a party or witness being examined or cross-examined.
- Do not object or obstruct a person from answering a question deemed relevant.
- **Take no action that a reasonable person in the shoes of the affected party would see as intended to intimidate that person into not participating in the process or meaningfully modifying their participation in the process.**

Violation of Rules of Decorum by Advisors:

- Where an Advisor asks a relevant question in a manner that violates the Rules of Decorum, the question may not be deemed irrelevant by the Hearing Officer simply because of the manner it was delivered.
 - The Hearing Officer will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules).
- Advisors who violate the Rules of Decorum will be given one warning.
- Continued violations may result in removal from the hearing.

Determination Regarding Responsibility, Sanctions, and Remedies:

- After the live hearing, the Hearing Officer(s) will make **determinations regarding responsibility**.
- If there is a finding of responsibility, the Hearing Officer(s) will refer the matter to the Sanctioning Officer(s).
- The Sanctioning Officer(s) will determine sanctions and remedies. Sanction(s) will be structured to **end the conduct and prevent its recurrence** by the Respondent. Remedies will be designed to **remedy the effects** on the Complainant and the University community.

Appeals:

- The University will offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a Complaint or any allegations therein.
- The opportunity to submit an Appeal is not provided to simply refute or express dissatisfaction with the outcome of the hearing.
- An appeal may be made on the following bases that **affected or could have affected the outcome**:
 1. **Procedural irregularity**;
 2. **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made; and
 3. **Conflict of interest or bias** by the TIX Coordinator(s), Investigator(s), Hearing Officer(s), or Sanctioning Officer(s).

Conflicts of Interest:

- The grievance process generally requires that all school personnel handling the process have no conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- The Department of Education has stated that the prohibition does not apply to a party's advisor. Therefore a party's advisor can also serve as a witness, but the decision-maker would take that into account in weighing the credibility of the testimony.
- However, for SCAD personnel who are University-appointed advisors, we expect there to be no conflict of interest or bias.

If you believe you may have a conflict of interest or bias, you must inform the Title IX Coordinator immediately.

Confidentiality:

- Complaints and investigations are treated as confidential by the University.
- The University complies with all applicable federal and state laws regarding privacy and reporting/disclosure of campus security information.
- The University will keep confidential the identity of those who make a Report or Complaint of Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of Sexual Misconduct, any Respondent, and any witness, except as may be permitted or required by law, or in order to conduct any investigation, hearing, or judicial Proceeding arising from the Policy.
- The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory.
- The investigation, investigation report, and proceedings are considered confidential.

Test Our Knowledge

Question 1:

- You have been assigned as a University-Appointed Advisor for a Respondent at an upcoming hearing. You contact the student, but the student doesn't respond. You email again two more times and call the student. The student does not respond.
 - What do you do?
 - Must you attend the hearing?

Question 1 (response):

- *You have been assigned as a University-Appointed Advisor for a Respondent at an upcoming hearing. You contact the student, but the student doesn't respond. You email again two more times and call the student. The student does not respond.*
 - *What do you do?* **Inform the Title IX Coordinator and confirm contact information, and continue to contact the student.**
 - *Must you attend the hearing?* **Yes**
- SCAD must still provide an Advisor to appear and conduct cross-examination even when the party whom they are advising does not appear. Similarly, where one party does not appear and that party's Advisor of choice does not appear, a University-Appointed Advisor must still cross-examine the other party and witnesses.

Question 2:

- You have been assigned as a University-Appointed Advisor. Your advisee states they did not commit the policy violation. Among the evidence is a video showing your advisee committing the policy violation. The advisee wants you to ask cross-examination questions of the witnesses and to ask questions that you think are far-fetched. What do you do?

Question 2 (response):

- *You have been assigned as a University-Appointed Advisor. Your advisee states they did not commit the policy violation. Among the evidence is a video showing your advisee committing the policy violation. The advisee wants you to ask cross-examination questions of the witnesses and to ask questions that you think are far-fetched.*
 - *What do you do?*
- You should ask all questions requested by your advisee, unless they would clearly violate the Rules of Decorum, and in such instance, they should be re-phrased.
- You should discuss relevance with your advisee and the Rules of Decorum.

Question 3:

- You have talked to your advisee and between the two of you, you only have two questions for a witness. Is this adequate? What should you do?

Question 3 (response):

- *You have talked to your advisee and between the two of you, you only have five minutes of questions for a witness. Is this adequate? What should you do?*
- There is no minimum number of questions you must ask. Be prepared to ask the questions you discussed in advance and ask your advisee before you complete your questions, if there are any others.
- If you think of additional questions while you are engaged in questioning during the hearing, you can either ask them or request to confer with your advisee in private and discuss the potential questions. This may arise, for example, if a witness says something inconsistent at the hearing.

Question 4:

- Your advisee becomes frustrated during the hearing and refuses to answer questions. What do you do?

Question 4 (response):

- *Your advisee becomes frustrated during the hearing and refuses to answer questions. What do you do?*
- Your advisee is not required to answer questions. No negative inference can be made from an advisee's refusal to answer questions. However, statements not subject to cross-examination may not be relied upon by the decision-maker.
- You can ask your advisee if they want to take a break and confer.

Question 5:

- Are the following questions permissible under the Policy and Rules of Decorum? Why/why not?
 - Of the Complainant: How many people have you had sex with?
 - Of the Respondent: Have you ever been treated for bipolar disorder?
 - Of either Party: Did your attorney advise you not to answer these questions?
 - Of a Witness: You don't like men, do you?
 - Of a Witness: How do you think your fraternity/sorority members would feel about you being here and testifying at this hearing?
 - Of a Party or Witness: You're an international student, aren't you, and aren't you here on a visa?
 - Of a Party or Witness: Were you intoxicated during the timeframe in question?

Question 5 (response):

- *Are the following questions permissible under the Policy and Rules of Decorum? Why/why not?*
 - *Of the Complainant: How many people have you had sex with?*
 - Past Sexual History: Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant, unless:
 - questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - *Of the Respondent: Have you ever been treated for bipolar disorder?*
 - No questions or evidence related to treatment records, unless the University obtains that party's voluntary, written consent.
 - *Of either Party: Did your attorney advise you not to answer these questions?*
 - No questions or evidence that constitute information protected under a legally recognized privilege, unless it is properly waived.

Question 5 (response, cont'd):

- *Are the following questions permissible under the Policy and Rules of Decorum? Why/why not?*
 - *Of a Witness: You don't like men, do you?*
 - Questioning witnesses must not be abusive, intimidating, or disrespectful.
 - Do not use questioning to make accusations or irrelevant character attacks.
 - *Of a Witness: How do you think your fraternity/sorority members would feel about you being here and testifying at this hearing?*
 - Take no action that a reasonable person in the shoes of the affected party would see as intended to intimidate that person into not participating in the process or meaningfully modifying their participation in the process.
 - *Of a Party or Witness: You're an international student, aren't you, and aren't you here on a visa?*
 - Same analysis as above.
 - *Of a Party or Witness: Were you intoxicated during the timeframe in question?*
 - Consider relevance.
 - Amnesty policy would apply if question is relevant.

Contact the Title IX Coordinator:

- Title IX Coordinator and Deputy Title IX Coordinator
Keys Hall 308
912.525.6810
titleixcoordinator@scad.edu
- In Lacoste, students may report Sexual Misconduct to the Coordinator of Student Services, 33(0)6.07.21.99.93.