

# **Title IX as Amended May 6, 2020 and Its Impact on the Kansas State University “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” (PPM 3010) FAQs**

## **Generally, what does Title IX State?**

Title IX states, “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”. This includes sex, sexual orientation, gender, and gender identity and expression

## **Does the University have an anti-discrimination policy that includes title IX?**

Yes, KSU’s “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” ([PPM 3010](#)) complies with Title IX as amended May 6, 2020 and implemented August 14, 2020 which prohibits discrimination on the basis of sex in the University’s programs or activities.

## **How can a Title IX report be filed?**

A report can be made verbally, by phone (785) 532-6220, TRS 711, email [equity@ksu.edu](mailto:equity@ksu.edu), submitted online to <https://ksu.edu/report>, or be delivered by postal mail or in person to the Office of Institutional Equity at 103 Edwards Hall, 1810 Kerr Drive. Complaints may also be made to the Title IX Coordinator, Scott Jones.

## **Who must report alleged violations of Title IX and PPM 3010?**

Supervisors (within their area of supervision) and administrators must make [reports](#) of possible violations of this Policy to OIE as soon as practicable upon notification (including by email if after regular business hours), must keep reports confidential, and must protect the privacy of all parties involved in a report. Failure to do so is a violation of this Policy.

## **I heard there are new Title IX regulations. Did they impact the University’s anti-discrimination policy, the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and Procedure for Reviewing Complaints” (PPM 3010)?**

Yes, the Department of Education published new Title IX Regulations on May 6, 2020, which became effective August 14, 2020. The University revised its “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and Procedure for Reviewing Complaints” ([PPM 3010](#)) to be compliant.

## **Who was involved to assist the University in becoming legally compliant with Title IX as amended May 6, 2020?**

The Office of Institutional Equity (OIE) formed a targeted working group comprised of University officials with compliance responsibilities to update existing policies to be legally compliant within the short timeframe (May 6 – August 14, 2020).

Members of the working group are: OIE: Scott Jones, Cleo Magwaro, James Nitta, and Deb Simone (OIE); Linda Cook (President’s Office); Bryan Samuel (CDIO); Brian Niehoff (Provost’s Office); Shana Legleiter, Jay Stephens, Paul Volino (Human Capital Services); Shari Crittendon, Erin Good (Office of General Counsel); Andy Thompson (Office of Student Life); Elliot Young (Risk and Compliance).

**Where is the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and Procedure for Reviewing Complaints” (PPM 3010) published?**

The “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and Procedure for Reviewing Complaints” is published in Chapter 3010 of the University’s Policy and Procedure Manual ([PPM 3010](#)).

**What aspects of the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” (PPM 3010) “remain unchanged?”**

1. Sex-based discrimination including sexual harassment, sexual violence, and stalking, dating and domestic violence is prohibited within University programs and activities.
2. Supportive measures and reasonable and available changes available regardless of whether a complaint is made.
3. The preponderance of the evidence standard is used to determine whether a violation has occurred.
4. “Responsible Employees” – supervisors and administrators must [report](#) harassment or discrimination in University programs and activities.
5. All reports are reviewed under PPM 3010.
6. Retaliation is prohibited against any person participating in the PPM 3010 reporting or resolution process.

**What aspects of the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” (PPM 3010)” were changed to reflect the new regulation?**

1. A complaint must be within the Jurisdiction of Title IX and be signed by the complainant or Title IX coordinator to proceed. If either is lacking, it must be dismissed
2. “Sexual harassment” must be severe and pervasive and objectively offensive (previously: severe or pervasive).
3. Title IX does not apply to conduct that occurred outside of the U.S.
4. A live hearing with the right to cross-exam parties through an advisor of choice. The University must provide an advisor if one is not selected by either party, need not be an attorney.
5. A stated presumption of innocence until such time that the required grievance process determines a violation has occurred.
6. Decision-maker cannot also be the investigator, is trained, must be impartial, presides over hearing, rules on evidence, and makes a written determination based on a preponderance of the evidence.

**What is the jurisdiction of the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” (PPM 3010)?**

This Policy covers discrimination, harassment, sexual harassment, and retaliation occurring on campus, or otherwise within the context of University education programs and activities, whether those are on campus or off campus. It applies to persons who are on campus or who otherwise participate in or attempt to participate in the University education programs and activities (as further defined herein), such as employees, students, applicants for employment or admission, contractors, vendors, visitors, and guests. Conduct that occurs off campus and outside the context of the University’s education programs and activities is covered by this Policy only to the extent such conduct has a nexus to discrimination, harassment, sexual harassment, or retaliation that is alleged to have occurred on-campus or in the context of the University’s education programs and activities.

**Who can file a report under Title IX?**

Any person may file a report of possible sexual harassment. If the reporting party is not the party alleged to be subjected to the harassing conduct, the person who is alleged to have been subject to the harassing conduct will be contacted and requested to make a report.

**Who can file a complaint under Title IX?**

Any person who believes they have been subject to conduct that violates Title IX. A complaint must be signed to proceed.

**Does the University's anti-discrimination policy comply with any additional federal regulations and applicable law related to sex-based discrimination?**

Yes, in addition to Title IX, KSU's "Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints" (PPM 3010) complies with relevant sections of the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex in employment; and other applicable law.

**What is the impact of the new Title IX regulations on how KSU OIE will investigate reports and complaints under PPM 3010?**

The new Title IX regulations include a revised definition of sexual harassment, revised jurisdictional elements, and require a signed complaint from the complainant. These aspects apply to Title IX only and not to any other conduct prohibited under the PPM 3010.

**Did the definition for "sexual harassment" change under the new Title IX regulations?**

Yes. The new regulation defines "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an 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 recipient's educational program or activity; or
3. "Sexual assault" as defined in 34 U.S.C. 12291(1)(10) of the Violence Against Women's Act ("VAWA"), "domestic violence as defined in 34 U.S.C. 12291(a)(10) of the VAWA, or stalking as defined in 34 U.S.C. 12291(a)(30) of the VAWA.

**Will the new Title IX regulations impact the time needed to resolve a Title IX complaint?**

Generally, the university will strive to complete Title IX investigations within 120 days of a complaint. The new Title IX regulations include additional procedural requirements such as the review and comment by the parties regarding the initial investigation report, the right to a live hearing, and the right to appeal decisions. These and other factors may extend the time needed to resolve a complaint.

**What is the University's definition of its "education program or activity"?**

PPM 3010, defines the University's education programs and activities as "the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events,

or circumstances over which the University exercises substantial control over the alleged perpetrator and the context in which the misconduct occurs.”

**Are student organizations an “education program or activity” of the University?**

As defined in PPM 8540, only Departmental Student Organizations (DSO’s) are part of the University’s “education program or activity”.

**Does PPM 3010 apply to conduct that occurs at fraternity and sorority owned or controlled property?**

No, as defined by PPM 8540, fraternities and sororities are Independent Student Organizations (ISOs) and are not an education program or activity of the University. Further, the Greek houses are on private, non-University property. Therefore, conduct that occurs at fraternity and sorority houses is not subject to PPM 3010 unless such conduct has a nexus to discrimination, harassment, sexual harassment, or retaliation that is alleged to have occurred on-campus or in the context of the University’s education programs and activities.

**Do the new Title IX regulations apply to both ISOs and DSOs who own or control a property?**

The new Title IX regulations do NOT apply to ISO’s who own or control property. The new Title IX regulation DO apply to DSOs if they own or control property.

**Do the new Title IX regulations apply to campus ministry and scholarship house owned or controlled property?**

No, as defined by PPM 8540, campus ministries and scholarship houses are Independent Student Organizations (ISOs) and are not an education program or activity of the University, and the property is privately owned. Therefore, conduct that occurs at those houses is not subject to PPM 3010 unless such conduct has a nexus to discrimination, harassment, sexual harassment, or retaliation that is alleged to have occurred on-campus or in the context of the University’s education programs and activities.

**What is the definition of “complainant”?**

A “complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**What is the definition of “respondent”?**

A “respondent” is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The respondent is to be treated as not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

**Will complainants and respondents be involved in each stage of the grievance process?**

Yes. The new rule requires equitable treatment of both the complaining party and the party responding to the allegations. Both parties will be provided an equal opportunity to participate in the investigation, hearing, and appeal if one is made.

**In the event of a Title IX Investigation, what notice are the parties required to receive?**

Upon receipt of a formal complaint of Title IX sexual harassment, the University must provide written notice to the parties explaining the grievance process. The notice to the respondent must include sufficient details known at the time concerning the allegations and that the respondent is presumed not to be responsible for the alleged conduct and that a determination of responsibility will be made following the grievance process. This notice must also inform both parties of any provision prohibiting the making

of false accusations or knowingly submitting false information. Each party will also receive notice of any meetings concerning the allegations.

**Will both parties have equal access to materials/evidence collected during the investigation?**

Yes, during the investigation, both parties will be given an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the complaint, including any relevant evidence the University does not intend to rely on reaching a determination of responsibility.

**What is standard of proof that will be used to determine if a violation has occurred?**

A preponderance of the evidence will be used to determine whether a violation has occurred.

**Who will serve as investigators?**

Investigations will be conducted by two persons, an investigator from (OIE) and the respondent's supervisor.

**Will investigators be trained?**

Investigators will be adequately trained to perform their Investigative responsibilities as defined by Title IX.

**Who will serve as advisors and will they be trained?**

In Title IX Sexual Harassment cases, an Advisor is a person chosen by a party or appointed by the University to accompany a party to meetings related to the Policy process, and to conduct cross-examination for the party at the hearing, if any. An Advisor may be an employee or non-employee of the University. University-provided Advisors will be adequately trained to perform their responsibilities as defined by Title IX.

**Does Title IX require that advisors be of certain credentials?**

No. Parties are free to select any advisor they choose, including an attorney. If no advisor is selected, the university must provide one, but the university is not required to provide an attorney.

**Who will serve as a hearing officer/decision-maker at the live hearing and will they be trained?**

Only Title IX Sexual Harassment cases have a Hearing Officer. The Hearing Officer oversees the hearing, may ask questions of witnesses, and will rule on whether questions are permissible. After the hearing, the Hearing Officer will issue a written determination of responsibility. The Hearing Officer is designated by the University, and may be an employee or non-employee of the University. The Hearing Officer will be adequately trained to perform their responsibilities as defined by Title IX.

**Who will serve as an appeal officer and will they be trained?**

In Title IX Sexual Harassment proceedings, the Vice President of Student Life or designee will review and decide on any appeal submitted to the Title IX Coordinator by a student, and the Provost or designee will review and decide on any other appeals submitted to the Title IX Coordinator, except in the case of USS employees as respondents. If the Provost is a respondent, then the President will be the Appeal Administrator. If the President is a respondent, then the Title IX Coordinator will designate an Appeal Administrator.

For all cases in which USS employees are respondents, the Peer Review Committee evaluates an appeal based upon the same standards required of Appeal Administrators, makes a written recommendation to the Director of Employee Relations (DER), and the DER makes the final decision.

The Appeal Officer will be adequately trained to perform their responsibilities as defined by Title IX.

**Title IX regulations require that a record of training undertaken by investigators and decision-makers be posted on the University's website. What is that location?**

The required training documentation is found at: <https://www.k-state.edu/oie/titleix/training.html>

**What are supportive measures?**

Supportive measures are available regardless of whether a report or complaint is filed or the party participates in Title IX grievance process, including the live hearing.

The new Title IX regulations requires the University to restore or preserve equal access to its educational program or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment to deter sexual harassment. Supportive measures are non-punitive and may include counseling, escorts, extension of deadlines, modifications to work or class schedules, and mutual restrictions on contact.

**What if a complainant does not wish to participate in a hearing?**

A Complainant may choose not to participate at any time and will not be forced to participate.

If a complainant had signed a complaint but later chose not to participate in the hearing process, the University has the discretion to dismiss the matter because without the participation in cross-examination during the live hearing, none of the Complainant's statements could not be used by the Decision-maker in reaching a determination of responsibility, which may result in insufficient evidence to proceed.

**Will complainants and respondents be required to meet face-to-face?**

No. KSU will conduct the Title IX grievance hearing virtually.

**Will the live virtual hearing be private? Who will have access?**

The live virtual hearing will be private and access will be limited to those persons who have been invited. Participation of witnesses will be limited to their respective testimony. The University will make a recording of the hearing and maintain its security. Participants are not allowed to record any portion of the hearing.

**What about confidentiality?**

The University endeavors to keep reports and other information obtained through this Chapter 3010 process confidential to the extent possible. To protect the privacy of the parties and the integrity of the process, parties, witnesses, and any others involved are encouraged to limit their discussion of the matter except as necessary for a party to gather or present evidence relevant to the matter or otherwise seek resources. Employees who are witnesses to misconduct shall not disclose information about the matter or their involvement in the case to anyone who does not have a need to know in connection with the Policy process.

A party or witness may be questioned about any conversations they have about the matter, and those conversations may be considered as evidence in the case, except to the extent they are protected under a legally recognized privilege.

Reports and other information may be disclosed to state or federal anti-discrimination agencies for investigations or audits, and during litigation.

**Will the live hearing be recorded?**

Yes. The University will initiate and maintain the recording, including sufficient protocols to ensure the confidentiality of the recording.

**What is the cross-examination provision for live hearings?**

The parties advisor is permitted to cross-examine witnesses and the other party/parties verbally and in real-time. The parties will NOT directly question one another.

**What questions will be allowed?**

The Hearing Officer may ask questions and will rule on the relevance of questions posed by the parties through their respective Advisor. Rape shield protections prohibit certain types of questions.

**What if someone refuses to answer questions during cross-examination in the live hearing?**

If someone refuses to answer relevant questions posed during cross-examination, the decision-maker must not consider any of that persons statements when reaching a determination.

**Will a Title IX hearing make any determination on allegations other than sex-based discrimination?**

No.

**Is it permissible for the parties to conduct their own investigation, independent of the Title IX grievance investigation and can parties speak with persons who may have relevant information?**

Yes. Generally, the Title IX regulation does not prohibit the parties from speaking with others. However, all participants in the Title IX grievance process are prohibited from any conduct that interferes with or could be seen as interfering with the processes under this Policy. This includes, but is not limited to, coercing or bribing witnesses or tampering with evidence.

**If a case is dismissed, how does that impact current or future supportive measures?**

Supportive measures will be made available regardless of whether a report is filed or dismissed.

**Will mediation, restorative justice or other non-hearing alternative be available?**

The University is exploring this option for possible future implementation.

**Under what circumstances can “emergency removal” occur under Title IX?**

Emergency removal can occur only after an individualized risk assessment through the PPM 3015 process has determined there is an immediate physical threat to the health and safety of the complainant or others. The person subject to the decision will have an opportunity to provide input.

**Is retaliation prohibited?**

Retaliation is prohibited against persons who are cooperating with the Title IX grievance process in any way, including the complainant, respondent and any witness.

**What opportunities will University stakeholder have to provide input on the discretionary, operational aspects of the “Policy Prohibiting Discrimination, Harassment, and Sexual Harassment, and procedure for Reviewing Complaints” (PPM 3010)?**

Stakeholder feedback on the discretionary, operational aspects of the Policy will be collected during the August 31, 2020 virtual open forum to inform possible revisions to the Policy. A recording of the open forum will be posted on the OIE website through September 15, 2020.

Additional meetings with University groups to gather input around elements of PPM 3010 will continue through October 2020. A PPM 3010 feedback link will be posted on the OIE website and will remain active through October 2020.

An invitation to meet with University officials to discuss the new Title IX regulations and required changes to PPM 3010 has been extended to faculty, staff and student affinity groups, leadership bodies and offices providing supportive services. Any University group may request such a meeting by contacting OIE at (785) 532-6220, TRS 711, or [equity@ksu.edu](mailto:equity@ksu.edu).