

# **SEXUAL MISCONDUCT UNDER TITLE IX POLICY**

(Effective 8/14/2020; Revised 9/8/2020)

## **I. Statement of Policy**

Consistent with its Non-Discrimination and Equal Employment Opportunity Notice and the U.S. Department of Education’s implementing regulations for Title IX of the Education Amendments of 1972 (“Title IX”) (*see* 34 C.F.R. § 106 *et seq.*), the School of the Art Institute of Chicago (“SAIC”) prohibits Sexual Misconduct that occurs within its Education Programs and Activities (as defined herein).

As further defined herein, Sexual Misconduct includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

SAIC also prohibits Retaliation (as defined herein) against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

False accusations, made with knowledge that they are false, are prohibited and will be treated as violations of this Policy. An individual who, in good faith, makes a report or complaint that later is not substantiated is not considered to have made a false accusation and, therefore, is not in violation of this Policy. Further, charging an individual with a violation for making a materially false statement in bad faith during a grievance proceeding under this Policy does not constitute retaliation. A determination regarding responsibility, alone, is insufficient to conclude that any party made a materially false statement in bad faith.

## **II. Scope of Policy**

This Policy applies to Sexual Misconduct that occurs within SAIC’s Education Programs and Activities, as that term is defined below, and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the SAIC community.

This policy does not apply to Sexual Misconduct that occurs off-campus, in a private setting, and outside the scope of the SAIC’s Education Programs and Activities; such Sexual Misconduct may be prohibited by the Rules of Conduct in the Student Handbook, SAIC’s Policies Prohibiting Discrimination, Harassment, and Retaliation, the Policy Prohibiting Sexual Assault, Domestic Violence, Dating Violence and Stalking and other SAIC policies and standards, as applicable.

Consistent with the U.S. Department of Education’s implementing regulations for Title IX, this Policy does not apply to Sexual Misconduct that occurs outside the geographic boundaries of the United States, even if the Sexual Misconduct occurs in SAIC’s Education Programs and Activities, such as a study abroad program. Sexual Misconduct that occurs outside the geographic boundaries of the United States is governed by the Rules of Conduct in the Student Handbook, SAIC’s Policies Prohibiting Discrimination, Harassment, and Retaliation, the Policy Prohibiting Sexual Assault, Domestic Violence, Dating Violence and Stalking and other SAIC policies and standards, as applicable.

This Policy addresses conduct that is unwelcome and/or not based on consent. SAIC has an additional, separate policy that applies to consensual romantic or sexual relationships with students. That policy, called the Consensual Romantic or Sexual Relationship Policy is in the Student Handbook and Faculty Dashboard. SAIC also has separate policies that apply to discrimination, harassment, and retaliation. Please see the Discrimination, Harassment, and Retaliation policies in the Student Handbook, Faculty Dashboard, and Employee Guidelines.

## **III. Policy Definitions**

### **A. Sexual Misconduct, under this Policy, includes the following definitions:**

#### **i. Sexual Harassment.** Conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SAIC’s Education Programs and Activities.

**ii. Sexual Assault.** Conduct that includes Sexual Intercourse Without Consent, Sexual Contact Without Consent, Incest, and Statutory Rape.

- Sexual Intercourse Without Consent means having or attempting to have sexual intercourse with another individual without Affirmative Consent, as defined below. Sexual intercourse means vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.
- Sexual Contact Without Consent means the touching of the person's breasts, anal, groin or genital areas for the purpose of sexual gratification without Affirmative Consent, as defined below.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape is sexual intercourse with a person who is under the statutory age of consent.

**iii. Affirmative Consent**

Consent represents the cornerstone of a respectful and healthy intimate relationship. SAIC strongly encourages its community members to communicate – openly, honestly and clearly– about their wishes and intentions when it comes to sexual behavior, and to do so before engaging in sexual conduct.

Consent is the communication of an affirmative, conscious, and freely-made decision by each participant to engage in agreed upon forms of sexual contact. Consent requires an outward demonstration, through understandable words or actions that conveys a clear willingness to engage in sexual contact.

Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may result in a violation of this Policy. For example, a person who does not physically resist or verbally refuse sexual contact may not necessarily be giving consent. There is no requirement that an individual verbally or physically resist unwelcome sexual contact for there to be a violation of this Policy.

Consent is not to be inferred from a current or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual consent to engage in sexual contact.

Consent to one form of sexual contact does not constitute consent to any other form of sexual contact, nor does consent to sexual contact with one person constitute consent to sexual contact with any other person. Additionally, consent to sexual contact on one occasion is not consent to engage in sexual contact on another occasion. A person's manner of dress does not constitute consent.

Consent cannot be obtained by coercion or force or by taking advantage of one's inability to give consent because of Incapacitation or other circumstances. Under Illinois law, a person must be at least 17 years old in order to give consent to Sexual Intercourse. It is also illegal in Illinois for a person 17 years old or older to commit sexual acts on or with a person under the age of 18 if they have a position of authority or trust over that person.

A person who has given consent to engage in sexual contact may withdraw consent at any time. However, withdrawal of consent requires an outward demonstration, through understandable words or actions that clearly conveys that the person is no longer willing to engage in sexual contact. Once consent is withdrawn, the sexual contact must cease immediately.

**iv. Incapacitation**

An individual who is incapacitated is unable to give Affirmative Consent. States of Incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact.

Alcohol or drug use is one of the prime causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or "drunkenness." Because the impact of alcohol or other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Affirmative Consent, requires an assessment of whether the

consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- Making decisions about the potential consequences of sexual contact;
- Appraising the nature of one's own conduct;
- Communicating Affirmative Consent to sexual contact; or
- Communicating unwillingness to engage in sexual contact.

Where an individual's level of impairment does not rise to Incapacitation, it is still necessary to evaluate the impact of intoxication from drug or alcohol use on Affirmative Consent. In evaluating whether Affirmative Consent was sought or given, the following factors may be relevant:

- Intoxication may impact one's ability to give Affirmative Consent and may lead to Incapacitation (the inability to give Affirmative Consent).
- A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include difficulty walking, poor judgment, difficulty communicating, slurred speech, or vomiting.
- An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.
- No matter the level of an individual's intoxication, if that individual has not affirmatively agreed to engage in sexual contact, there is no Affirmative Consent.

Anyone engaging in sexual contact must be aware of both their own and the other person's level of intoxication and capacity to give Affirmative Consent. The use of alcohol or drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or Incapacitation, the safest course of action is to forgo or cease any sexual contact. An individual's intoxication is never an excuse for or a defense to committing Sexual Assault and it does not diminish one's responsibility to obtain Affirmative Consent.

**v. Domestic Violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Illinois, or 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 Illinois.

**vi. Dating Violence.** Violence committed by a person who is or has been in a relationship of romantic or intimate nature with the other person. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. The existence of such a relationship shall take into account the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**vii. Stalking.** A course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to fear for their safety (or the safety of a third party) or suffer emotional distress.

- Course of conduct means two or more acts, including, but not limited to, acts in 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## B. Other Policy Definitions.

**i. Retaliation.** Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

**ii. Designated Officials.** Designated Officials are those officials who have the authority to institute corrective action and are required to inform the Title IX Coordinator of reports of Sexual Misconduct. These individuals are the Vice President and Dean of Student of Affairs, Provost and Senior Vice President of Academic Affairs, Dean of Faculty, Chief Human Resources Officer, and President.

**iii. Education Programs and Activities.** All the operations of SAIC, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, 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 SAIC. It also includes off-campus locations, events, or circumstances over which SAIC exercises substantial control over the Respondent and the context in which the Sexual Misconduct occurs. This Policy does not apply to conduct that occurred in a private, off-campus location and is not a part of SAIC’s Education Programs and Activities.

**iv. Formal Complaint.** A Formal Complaint is a document filed by the Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct as defined under this Policy against Respondent(s) and requesting an investigation of the allegation of Sexual Misconduct under this Policy. Only a Complainant or the Title IX Coordinator may file a Formal Complaint.

**v. Complainant.** The person who is alleged to have experienced the conduct that could constitute Sexual Misconduct will be referred to as the “Complainant.”

**vi. Respondent.** The person who is the subject of the Formal Complaint and alleged to have violated the Policy will be referred to as the “Respondent.”

**vii. Appeal Reviewer.** An SAIC administrator responsible for reviewing and determining the outcome of appeal(s) filed by the Complainant or Respondent.

## IV. Reporting Obligations

All SAIC staff (excluding Confidential Resources), SAIC student Teaching Assistants and Resident Advisors, and volunteers are required to report incidents or allegations of Sexual Misconduct to the Title IX Coordinator. This allows SAIC to provide resources, options, and rights to those who have reported they have experienced Sexual Misconduct and those who are the subject of the report. This allows for SAIC to take consistent action to respond to reports of such conduct. In these circumstances, SAIC is committed to maintain privacy. SAIC does not publicize the name of crime victims nor does it include identifiable information in Campus Security’s Daily Crime Log. Please see Annual Security Report at [https://www.saic.edu/sites/default/files/security\\_fire\\_safety\\_report.pdf](https://www.saic.edu/sites/default/files/security_fire_safety_report.pdf)

## V. Confidentiality vs. Privacy

When making a choice about how to get help, it is important to understand the difference between seeking confidential assistance through Confidential Resources and making a report to SAIC. Making a report to SAIC means that the report, while handled with privacy, will be shared with other administrators, and will lead to further actions to respond appropriately as outlined in this Policy.

Different employees on campus have different abilities to maintain confidentiality. Most SAIC community members, including faculty and staff members, cannot maintain confidentiality because of reporting obligations. In these circumstances, SAIC is committed to maintain the privacy of the information shared. The terms “confidentiality” and “privacy” are defined below.

**Confidentiality**, as used in this Policy, refers to a legal obligation not to disclose information without the express written permission of the individual who provided the information, with certain exceptions, such as if there is a continuing threat of serious harm to self or others or another legal obligation to reveal such information (e.g., where there is suspected sexual abuse or neglect of a minor). Only the professional counselors in SAIC’s Counseling Services, the nurses in Health Services, and the Confidential Advisor (“Confidential Resources”) can maintain confidentiality. These Confidential Resources are available only to students. The Confidential Resources provide support to students who have experienced Sexual Misconduct. Confidential Resources (excluding the Confidential Advisor) also provide support to students who are the subject of a report alleging Sexual Misconduct. Confidential Resources are not required to report information to the Title IX Coordinator. The Confidential Resources will not report to the Title IX Coordinator any personally identifiable information about a student; however, they will provide aggregate data about incidents of Sexual Misconduct to the Title IX Coordinator.

Various off-campus resources available to anyone, such as counselors, advocates, and health care providers, will also generally maintain confidentiality and not share information with SAIC unless the individual providing the information requests disclosure and signs a consent form. The Employee Assistance Program (800.311.4327), which is available to faculty and staff, is considered a confidential off-campus resource even though it is paid for by SAIC.

**Privacy** generally means that information related to a report will be shared only with those employees who “need to know” in order to assist in the review, investigation, or resolution of a report. While not bound by confidentiality, individuals who receive private information will be discreet and do their best to respect the privacy of all individuals involved in the process. If an investigation is required, the information may also be shared with the alleged offender or others as required to conduct a complete and fair investigation. Although SAIC manages private information with discretion, it is not possible to maintain confidentiality for any information other than information provided to the Confidential Resources as noted in the definition of *Confidentiality* provided above.

## VI. Making a Report

Reports can be made in person to the individuals listed below under “Making a Report” or electronically. Electronic reports may be submitted anonymously at the reporter’s option at <http://www.saic.edu/lifeatsaic/stopsexualviolence/makeareport/>.

	<b>Making a Report</b>
<b>For All Community Members</b>	<p><b>SAIC Campus Security</b> 312.899.1230 Available 24 hours a day, seven days a week</p>
	<p><b>Lumturije “Luma” Akiti</b> Title IX Coordinator 116 S. Michigan Ave., 12th Floor Chicago, IL 60603 lakiti@saic.edu 312.499.4165</p> <p><b>D. Lance Lockett</b> Deputy Title IX Coordinator 116 S. Michigan Ave., 12th Floor Chicago, IL 60603 312.629.3381 dlockett@saic.edu</p>

<b>For Students</b>	<p><b>Lumturije “Luma” Akiti</b>  Title IX Coordinator  116. S. Michigan Ave., 12th Floor  Chicago, IL 60603  lakiti@saic.edu  312.499.4165</p> <p><b>Mike Blackman</b> (or designee)* – Office of Student Affairs (Intake Person)  Assistant Dean of Student Affairs for Student Support and Conflict Resolution  36 S. Wabash Ave., Suite 1204  Chicago, IL 60603  mblackman@saic.edu  312.629.6725</p> <p>*When Mike is not available, a Dean on Call will serve as the intake for student reports. Deans on Call are staff members in the Office of Student Affairs who have received training in responding to reports of Sexual Misconduct. A Dean on Call is available 24 hours a day.</p>
<b>For Faculty</b>	<p><b>Lumturije “Luma” Akiti</b>  Title IX Coordinator  116. S. Michigan Ave., 12th Floor  Chicago, IL 60603  lakiti@saic.edu  312.499.4165</p> <p><b>Raja El Halwani</b>  Faculty Liaison  37 S. Wabash Ave., Suite 816  Chicago, IL 60603  relhalwani@saic.edu  312.345.3751</p>
<b>For Staff &amp; Visitors</b>	<p><b>Lumturije “Luma” Akiti</b>  Title IX Coordinator  116. S. Michigan Ave., 12th Floor  Chicago, IL 60603  lakiti@saic.edu  312.499.4165</p> <p><b>Timeka Young</b>  Employee Relations and Training Manager  116 S. Michigan Ave., 12th Floor  Chicago, IL 60603  tyoung6@artic.edu  312.629.3378</p> <p><b>Alan Hooker</b>  Employee Relations and Training Manager  116 S. Michigan Ave., 12th Floor  Chicago, IL 60603  ahooker@artic.edu  312.629.3385</p>

## VII. Intake & Supportive Measures

Upon receiving a report of Sexual Misconduct, the Title IX Office will determine the identity of the alleged victim of the reported Sexual Misconduct (who may be the reporting party themselves) and provide that individual information about rights, options, and resources, which include supportive measures and the process for filing a Formal Complaint. If the Title IX Coordinator receives a report that lacks sufficient detail to determine if it falls within this Policy, the Title IX Coordinator may collect additional information about the report to assess what procedures will be utilized.

The Title IX Office will arrange for supportive measures if the individual requests them and they are reasonably available.

Supportive measures are designed to restore and preserve equal access to SAIC's Education Programs and Activities. Examples of supportive measures include: mutual no contact instructions, changes to academic or work schedules such as extension of deadlines or other course-related adjustments, leaves of absence, or housing, counseling services, campus escort services, and increased security and monitoring of certain areas of the campus. Although supportive measures are not punitive or disciplinary in nature, they may impose a burden, albeit a reasonable one, on a member or members of SAIC's community. SAIC will maintain as private any supportive measures provided to an individual, except as necessary to provide the supportive measure; for example, both individuals would be informed of a mutual no contact instruction. Supportive measures are available to both the individual making a report and the individual who is the subject of a report; and they are available before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. The Title IX Office also reassess the availability and implementation of supportive measures on an ongoing basis.

## **VIII. Formal Complaint**

*1. Formal Complaint.* A Formal Complaint is a document filed by the Complainant, who experienced the alleged Sexual Misconduct, or signed by the Title IX Coordinator alleging Sexual Misconduct (as defined herein) against Respondent(s), and requesting an investigation of the allegation of Sexual Misconduct under this Policy. Only a Complainant or the Title IX Coordinator may file a Formal Complaint.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by electronic mail, provided that the document or electronic submission contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. At the time of filing, a Complainant must be participating in or attempting to participate in SAIC's Education Programs and Activities with which the Formal Complaint is filed.

The Title IX Coordinator has discretion to initiate a Formal Complaint when the Title IX Coordinator believes that, with or without a Complainant's participation, an investigation is required. The Title IX Coordinator, in deciding whether to sign a Formal Complaint, may consider a variety of factors, including a pattern of alleged misconduct by a Respondent, violence involved, use of weapons, minor involved, or similar factors. The Title IX Coordinator's decision to sign a Formal Complaint includes taking into account the wishes of the person who reported experiencing Sexual Misconduct regarding how SAIC should respond to their report; to this end, the Title IX Coordinator will seek to contact that person to discuss the availability of supportive measures, the consider that person's wishes with respect to supportive measures, and explain the process for filing a Formal Complaint. Where a Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

The Title IX Coordinator has discretion to consolidate Formal Complaints in situations that arise out of the same facts or circumstances and involve more than one Complainant, more than one Respondent, or allegations between the Complainant and Respondent.

*2. Notice of Formal Complaint.* Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to the Complainant(s) and the Respondent(s) that includes:

- a. Notice of the allegations of Sexual Misconduct under Title IX, as defined above, including the conduct allegedly constituting Sexual Misconduct under Title IX, the identity of the individuals involved in the incident, if known, and the date and location of the incident, if known.
- b. Notice of SAIC's grievance process, including any informal resolution process.
- c. A statement that the Respondent(s) is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. Information regarding the role of advisors in the grievance process.
- e. Information regarding the prohibition on knowingly making false statements.

If, in the course of an investigation, the Title IX Coordinator determines that additional allegations, that were not in the Notice, will be investigated, the Title IX Coordinator will provide a supplemental notice of those allegations to all known Complainant(s) and Respondent(s).

*3. Assessment of Formal Complaint.* The Title IX Coordinator, upon receipt of a Formal Complaint and throughout the investigation, will assess the information presented to determine whether:

- a. the Complainant in a Formal Complaint (i) experienced the conduct reported while in the United States and (ii) is participating or attempting to participate in a program or activity of SAIC at the time the Formal Complaint was made; and
- b. the alleged conduct occurred in SAIC's Education Programs and Activities.

If, at any point, the Title IX Coordinator determines that these requirements are not met, the Title IX Coordinator will proceed with a Dismissal of Formal Complaint, as set forth below.

In addition, if the Title IX Coordinator determines that the conduct alleged, even if substantiated, would not constitute Sexual Misconduct under Title IX (*see* "III. Policy Definitions"), then the Title IX Coordinator will proceed with a Dismissal of Formal Complaint, as set forth below.

#### 4. *Dismissal of Formal Complaint*

(1) **Mandatory Dismissal:** If the conduct alleged in the Formal Complaint, even if substantiated, would not constitute Sexual Misconduct, did not occur in SAIC's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator will dismiss the Formal Complaint with regard to that conduct for purposes of Sexual Misconduct under Title IX. This dismissal does not preclude action under another SAIC policy.

(2) **Discretionary Dismissal:** The Title IX Coordinator may dismiss a Formal Complaint or any allegations in the Formal Complaint, if at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint or any allegations in the Formal Complaint; the Respondent is no longer enrolled or employed by SAIC; or specific circumstances prevent gathering information sufficient to reach a determination as to the Formal Complaint or allegations in the Formal Complaint.

Upon a mandatory or discretionary dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the Complainant and Respondent. In addition, in the written notice of a dismissal or a subsequent written notice, the Title IX Coordinator will inform the Complainant and the Respondent if the conduct will be reviewed under another SAIC policy.

5. *Dismissal Appeal.* Both parties may appeal a dismissal within five (5) business days after receiving notice of the dismissal. An appeal must be made in writing, must be submitted to the Appeal Reviewer, and must state the basis for appeal. The appeal procedures and bases for appeal are outlined in "28. *Appeal*" and "29. *Notice of Appeal*" below.

6. *Notice of Meetings.* The Title IX Office will provide written notice to Complainant(s) and/or Respondent(s) of any meeting where their participation is invited or expected, including the date, time, location, purpose, and participants in the meeting, including investigative interviews, hearings, or other meetings.

#### 7. *Emergency Removal & Administrative Leave.*

(a) **Students.** Students may be removed on a temporary basis only if: (1) an individualized safety and risk analysis conducted by SAIC administrators determines that an immediate threat to physical health or safety of any student or other individual arising from the alleged Sexual Misconduct justifies removal, and (2) the student is given immediate written notice by the Title IX Office and opportunity to contest the removal. The student may contest the removal by providing written notice to the Title IX Coordinator outlining the basis for contesting the temporary removal within five (5) business days of receiving written notice of temporary removal.

(b) **Faculty and staff.** Faculty and staff may be placed on administrative leave or suspension pending an investigation and/or resolution of a Formal Complaint or informal resolution.

(c) **For all other Respondents.** SAIC retains broad discretion to prohibit individuals (including contractors, guests, and visitors) from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Misconduct or otherwise.

(d) **Other policies and standards implicated.** Where the conduct referenced in a Formal Complaint could constitute a violation of some other applicable institutional policy or standard, irrespective of whether it constitutes Sexual Misconduct under this policy, SAIC retains full discretion to take interim measures under other applicable policies or standards.

#### 8. *Conflict of Interest.*

- a. The Title IX Coordinator, investigator, decision maker(s), or any person designated by SAIC to facilitate a resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. The Complainant and Respondent will be given simultaneous, prior notice of the individual(s) who will investigate a Formal Complaint, who will be the decision maker(s), and, if the Complainant and Respondent voluntarily seek to engage in informal resolution, the facilitator of such informal resolution. Within twenty-four (24) hours of receiving notice of such individual(s), the Complainant and/or the Respondent shall notify the Title IX Coordinator or designee if they believe that any of those individuals has a conflict of interest. The notification shall include the basis of the alleged conflict. The Title IX Coordinator or designee shall review the alleged conflict, and determine whether the alleged conflict disqualifies that individual. If an individual is disqualified, the Title IX Coordinator or designee will select a substitute and the process for identifying conflicts set forth above shall be followed for any such additional individuals.
- b. An individual will be considered to have a conflict of interest in the event of a circumstance that would prevent them from being impartial in their review of the Formal Complaint. Factors that may be relevant, include if their actions are the subject of the Formal Complaint or if they have relevant information regarding the factual allegations in the Formal Complaint. In addition, if an individual has a potential conflict of interest with the Complainant(s) or the Respondent(s) (e.g., because of familial, intimate, financial, business or other relationship), they should not serve as the Title IX Coordinator, investigator, decision maker(s), or any person designated by SAIC to facilitate a resolution process. Whether bias exists requires an examination of the particular facts and circumstances of a situation and does not rest on generalizations.

9. *Presumption of Not Responsible.* A Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

10. *Time Frame.* SAIC will endeavor to complete an informal resolution or investigation and resolution of a Formal Complaint of Sexual Misconduct as promptly as possible. As a general matter, SAIC strives to complete its investigation, resolution, and appeal within ninety (90) calendar days. However, the time frame for any Formal Complaint may be extended for good cause such as: absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The Title IX Coordinator will provide simultaneous written notice to the Complainant and the Respondent of any extensions.

11. *Advisor.* During any investigation of a Formal Complaint, the Complainant and Respondent have a right to be accompanied by an advisor of their choice to any related meeting or grievance process. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process. The advisor's role can include helping the Complainant(s) or Respondent(s) prepare their statements (whether written or oral), advising on the procedural aspects of the matter, and being a nonparticipating supporter at any meeting which may occur. Complainant(s) and Respondent(s) must speak for themselves and present their own cases; while the party may consult with the advisor, the advisor may not present information or make statements or arguments during any meetings which may occur, with the sole exception of conducting cross-examination at the hearing. Only the advisor for a Complainant or a Respondent may conduct cross-examination in the hearing. Finally, the advisor may only be present when the person that they are advising is also present. If either the Complainant or the Respondent intends to bring an advisor to any meeting, then, in advance of the meeting, the party must notify the Title IX Coordinator in writing of the advisor's name, occupation, relationship to the party, and relationship to SAIC, if any.

12. *Investigation of Formal Complaint.* The Title IX Coordinator will designate an investigator ("Investigator"), generally a member of their staff, to investigate the Formal Complaint. The Investigator is responsible for ensuring that the investigation is prompt, thorough, and fair.

- A. *Gathering Information.* SAIC is responsible for performing the investigation and gathering relevant information. During the investigation, the Investigator will offer both the Complainant and the Respondent an equal opportunity to identify individuals who may have relevant information, including fact and expert witnesses, and other information that they believe is relevant to show responsibility or that exculpates the Respondent from responsibility. The Investigator may also meet with and/or gather information from other individuals who may have relevant information. All relevant information gathered during the course of the investigation will be included in an investigative report.

- B. *Right to Review & Inspect Information Gathered in Investigation.* The Investigator will provide both the Complainant(s) and the Respondent(s) with an equal opportunity to inspect and review any information obtained by the Investigator as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This includes both information that SAIC does not intend to rely on in reaching its decision as well as information relevant to show responsibility or that exculpates the Respondent from responsibility. Prior to completion of the investigative report, the Investigator will send to the Complainant(s) and the Respondent(s) and their respective advisors, if any, the information subject to inspection and review in an electronic format or a hard copy. The parties and their respective advisors will maintain the confidentiality of the investigative report. The Complainant(s) and the Respondent(s) will be given ten (10) calendar days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
- C. *Right to Review Investigative Report.* At least ten (10) calendar days prior to a hearing, the Investigator will send the investigative report to the Complainant(s) and the Respondent(s) and their respective advisors, if any, in an electronic format or a hard copy, for their review and written response. Any written response to the final investigative report must be submitted at least three (3) calendar days prior to the hearing. Written responses to the final investigative report will be shared simultaneously with the parties and their respective advisors.
- D. *Investigation Information Available at Hearing.* The Investigator will make such information available to the Complainant(s) and the Respondent(s) and their respective advisors for inspection and review at any hearing to give each an equal opportunity to refer to such information during the hearing, including for purposes of cross-examination.

*13. Educational Rather Than Judicial Setting.* A Formal Complaint sets in motion a process that will occur in an educational rather than a judicial setting. The hearing shall be private and will not require application of legal rules, such as rules of evidence, that govern a civil or criminal case or other judicial or quasi-judicial proceedings. In addition, as this is an educational process, not a judicial one, neither the Complainant(s) nor the Respondent(s) can depose parties or witnesses or invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, which are common features of procedural rules governing litigation and criminal proceedings.

*14. Hearing.* Once the investigation is complete, the Title IX Office will convene a hearing with all parties (Complainant, Respondent, witnesses, and other participants such as advisors and decision maker(s)). The hearing will be arranged to have everyone physically present in the same geographic location or present virtually with technology enabling participants simultaneously to see and hear each other in real time.

- A. *Hearing.* The decision maker(s) in, and format of, the hearing may depend on whether the Respondent(s) are student(s), faculty, or staff.
  - i.* If the Respondent is a student, the Vice President and Dean of Student Affairs (VPSA), or designee, will serve as the decision maker. A Student Conduct Board, as described in the Student Conduct Procedures in the Student Handbook, will be convened. The Student Conduct Board consists of representatives from SAIC's administration, faculty, and student body. As the Chair and member of the Student Conduct Board, the VPSA may determine, in their reasonable discretion, that the Student Conduct Board Meeting shall proceed in the absence of a representative from one of those three groups. The Student Conduct Board shall make a recommendation, including any proposed sanctions, and the reasons therefore, to the VPSA. The VPSA shall have final discretion as to the disposition of the case and any sanctions.
  - ii.* If the Respondent is a faculty member, Dean of Faculty and Vice President for Academic Affairs, or designee, will serve as the decision maker.
  - iii.* If the Respondent is a staff member, the Chief Human Resources Officer, or designee, will serve as the decision maker.
- B. *Pre-Hearing Review of Investigative Report and Information.* Prior to commencement of the hearing, the decision maker(s) will review the investigative report and a copy of all information transmitted to the parties by the Investigator. This review of materials is provisional and intended to provide background and orientation to the decision maker(s) in planning and conducting the hearing. The decision maker(s) must exclude from consideration in deliberation any information

developed during the investigation that is deemed inadmissible at the hearing, including specifically, but not limited to, the statements of any party or witness who refuses to submit to questioning by a party advisor.

- C. *Convening of Hearing.* The Title IX Coordinator, designee, will convene the hearing and clearly state for the record the date, time, and location of the hearing; the names of the Complainant and Respondent; the parties present at the hearing; any accommodations that have been provided at the request of a party or in SAIC's discretion; whether all or a portion of the hearing is being conducted virtually; and any other introductory matters that the decision maker deems appropriate.
- D. *Recording of Hearing.* The Title IX Coordinator, or designee, will make an audio or audiovisual recording, or transcript, of the hearing available to the parties for inspection and review after the hearing has concluded.

15. *Statements of the Parties.* After convening the hearing, the decision maker(s) will invite the Complainant to provide a statement to the decision maker(s) regarding the events in question and identify and comment on any non-testimonial information the Complainant believes is relevant. After the Complainant has made a statement, or waived the right to make a statement, the Complainant will be subject to questioning by the decision maker(s), followed by questioning from the advisor for the Respondent. After questioning of the Complainant is complete, the decision maker(s) will invite the Respondent to provide a statement to the decision maker(s) regarding the events in question and to identify and comment on any non-testimonial information the Respondent believes is relevant. After the Respondent has made a statement, or waived the right to make a statement, the Respondent will be subject to questioning by the decision maker(s), followed by questioning from the advisor for the Complainant.

16. *Testimony of Witnesses.* After questioning of the parties is complete, witnesses will be called to testify in the order determined by the decision maker(s). Unlike the parties, witnesses will not be invited to make a statement but, instead, will be subject to questioning from the decision maker(s) followed by questioning from each party's advisor commencing first with questioning from the advisor for the Complainant followed by questioning from the advisor for the Respondent.

17. *Cross Examination.* Cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Any cross examination is subject to the following rules of decorum and enforced within the discretion of the decision maker(s): (1) cross examination must be conducted in a respectful manner; and (2) engaging in abusive and intimidating behavior such as yelling or badgering is strictly prohibited and is subject to immediate removal from hearing. Further, all parties, advisors, and other persons present at a hearing are required to act professionally, maintain decorum, and abide by the Policy, these procedures, and any other rules specified by the decision maker(s). Any party, advisor, or other person who materially disrupts the proceeding or violates applicable policies, procedures, and rules, may be barred from further participation and/or have their participation limited, as the case may be, by the decision maker(s).

18. *Relevancy.* Before the Complainant, Respondent, or witness answers a cross-examination or other question, the decision maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. In addition to ruling on questions of relevancy, the decision maker(s) may limit cumulative and redundant questioning. The decision maker(s) will make these relevancy determinations by applying logic and common sense and not against a backdrop of legal expertise. Among other things, rules of evidence do not apply to these proceedings.

19. *Advisor During a Hearing.* During a hearing, advisors to the parties must play a passive role in the hearing with the sole exception that advisors are permitted to question parties and witnesses. Advisors are not permitted to speak for their advisee, make objections, present arguments, or engage in any other active role. If the Complainant or Respondent does not have an advisor present at the hearing, SAIC will provide an advisor of their choice, without fee or charge to the Complainant or Respondent, as applicable, to conduct cross-examination on their behalf. As this is an educational process, not a judicial one, there is no requirement that the advisor be an attorney.

20. *Prior Sexual Behavior.* Questions and information about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and information 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 if the questions and information concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

21. *Privilege.* Questions and information that constitute, or seek disclosure or, information protected under a legally recognized privilege, such as medical records, unless the person holding such privilege has waived the privilege.

22. *Refusal to Submit to Cross Examination.* If the Complainant, Respondent, or any witness does not submit to cross examination at the hearing, the decision maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross examination or other questions.

23. *Investigation Materials.* After the questioning of witnesses is complete, the decision maker(s) will identify any portion of the information developed during the investigation that the decision maker(s) has determined should be excluded from the hearing record based on rulings made at the pre-hearing conference, during the hearing itself, due to the refusal of a party or witness to submit to questioning by a party advisor, or for any other reason. The decision maker(s) will then provide the parties a final opportunity to raise any additional objections to inclusion of any other portions of the investigation record into evidence and resolve any such objections. All information from the investigation and hearing not specifically excluded by the decision maker(s) shall be deemed admitted into the hearing record and may be considered by the decision maker(s) as part of the deliberation.

24. *Access to and Use of Investigation Information.* During the hearing, the parties and their advisors shall have access to the investigative report and a copy of all information transmitted to the parties by the Investigator. Such information may be utilized in the questioning of witnesses where relevant. Non-testimonial information utilized during the hearing shall be marked and referred to in such a manner as to make it clearly identifiable by audio (i.e., such as sequential marking of "Records")

25. *Closing Statement.* After the questioning of the witnesses is complete, the decision maker(s) will invite the Complainant to make a closing statement. After the Complainant has made a closing statement, or waived the right to make a closing statement, the hearing officer will invite the Respondent to make a closing statement.

26. *Deliberation and Determination.* After closing statements are complete, the decision maker(s) will conclude the hearing and deliberate and render a determination. The decision maker(s)'s determination shall be made on the basis of whether it is more likely than not that the Respondent violated the Policy. The decision maker(s) must provide a written determination to both the Complainant(s) and the Respondent(s) simultaneously. The determination becomes final on either the date that SAIC provides the parties with the result of the appeal, if any, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The determination will include the following:

- a. Identification of the allegation(s) of Sexual Misconduct;
- b. Description of the procedural steps taken from the filing of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, methods used to gather other information, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the Sexual Misconduct definitions to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to SAIC's Programs and Activities will be provided to the Complainant; and
- f. Appeal bases.

27. *Timing and Extensions.* The decision maker(s) will have discretion to set the overall length of the hearing and may set time limits for statements of the parties, questioning of parties and witnesses, and closing statements. A hearing will not exceed three (3) hours in length absent extraordinary circumstances. Once a hearing is commenced, it will be extended only for good cause as determined by the decision maker(s).

28. *Sanctions.* The decision maker(s) will be responsible for assigning any sanctions if a determination of responsibility is made.

- a. If the Respondent is a student, potential sanctions are set forth in the Student Conduct Procedures section of the Student Handbook under Sanctions.
- b. If the Respondent is a faculty member, potential sanctions may include corrective action ranging from a notation in the Respondent's file, up to and including termination. In cases where the Dean of Faculty and Vice President for Academic Affairs, or designee, determines that termination is the appropriate sanction, they must first advise the President of SAIC. If the President agrees, the faculty member will be terminated immediately, except that faculty members with tenure or whose

term appointment has not expired. For those faculty, the matter will proceed in accordance with Section 9.C., AAUP Statements on Academic Due Process Procedures, in the Faculty Handbook Supplement. If the President disagrees with the Dean of Faculty's determination that the Respondent should be terminated, the Dean of Faculty will determine an appropriate alternative sanction.

- c. If the Respondent is a staff member, potential sanctions may include corrective action ranging from a notation in the Respondent's file, up to and including termination.

*29. Appeal.* Either the Complainant or the Respondent may appeal the determination of the decision maker(s) within five (5) business days after receiving notice of the determination. An appeal must be made in writing, must be submitted to the Appeal Reviewer, and must state the basis for appeal. The following are the bases for an appeal:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New information that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. The Title IX Coordinator, investigator(s), or decision maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or
- d. One or more reasons why the sanction is disproportionate with the violation.

*30. Notice of Appeal.* If an appeal is made, the Appeal Reviewer, or designee, will notify, in writing, the non-appealing party of the appeal. Both parties have an equal opportunity to submit a written statement in support of, or challenging, the determination or dismissal within three (3) business days after receiving notice of the appeal. The Appeal Reviewer, or designee, will provide simultaneous written notice of the outcome of the appeal(s), including the rationale, to both parties. The Appeal Reviewer, or designee, may undertake any inquiries that they deem appropriate, including but not limited to requesting the Title IX Coordinator's Office to conduct additional investigation. Following their examination of the matter, the Appeal Reviewer, or designee, may grant or deny the appeal or take any action that they deem appropriate. The Appeal Reviewer, or designee, will notify the Complainant and the Respondent simultaneously, in writing, of the decision on the appeal and rationale, any changes to the result, and that the determination is final.

*31. Discretion in Application.* SAIC retains discretion to interpret and apply these procedures in a manner that is not clearly unreasonable, even if SAIC's interpretation or application differs from the interpretation of the parties. Despite SAIC's reasonable efforts to anticipate all eventualities in these procedures, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably be addressed by the express language of these procedures, in which case SAIC retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

## **IX. Informal Resolution**

In a diverse community, disagreements and conflicts of various degrees of seriousness are inevitable. In many instances, an informal approach can be useful in resolving instances of inappropriate conduct. Problems are sometimes easier to resolve in an informal atmosphere that encourages people to identify the difficulty, talk it out, and agree how to deal with it.

At any time after the Complainant(s) and Respondent(s) are provided written notice of the Formal Complaint, and before the completion of any appeal specified in "*28. Appeal*" and "*29. Notice of Appeal*," the Complainant(s) and Respondent(s) may voluntarily consent, with the Title IX Coordinator's approval, to participate in an informal resolution process, the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the Complainant(s) and Respondent(s).

An informal resolution is a flexible approach to resolving disagreements. As a result, there is no fixed format. It can involve a meeting between the two parties to facilitate an informal discussion, arranging to channel communications through a third party if the parties do not want to meet, or some other approach suitable to the circumstances. Informal resolutions may include facilitated mediations.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that: (1) describes the parameters and requirements of the informal

resolution process to be utilized, (2) identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another SAIC administrator, or a suitable third-party), (3) explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint, and (4) explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will document the agreed resolution and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by SAIC, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or where required to avoid a manifest injustice to either party or to SAIC. Informal resolution is not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) calendar days. If an informal resolution process does not result in a resolution within twenty-one (21) calendar days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this section, notwithstanding, an informal resolution will not be permitted in any form if the Respondent is a non-student employee accused of committing Sexual Misconduct against a student.

## **X. Resources**

SAIC is committed to providing support and resources that are broadly accessible to all SAIC community members. Anyone who has experienced Sexual Misconduct is urged to immediately seek help. Help includes seeking medical assistance, seeking confidential counseling or crisis response, filing a report with law enforcement, and/or making a report to SAIC. The Title IX Office will help any individual who has experienced Sexual Misconduct, including providing transportation to the hospital, assisting with contacts to law enforcement, and offering information about resources. Although SAIC encourages all members of its community to report any incidents of Sexual Misconduct to the police, the individual who experienced Sexual Misconduct may choose not to make a report to the police.

### **Emergency Resources**

<b><u>On-Campus Resources</u></b>
<i>SAIC Campus Security</i> 312.899.1230 Available 24/7 Ask to speak to supervisor on duty
<b><u>Off-Campus Resources</u></b>

<p><i>Northwestern Memorial Hospital Emergency Department</i> 250 E. Erie St. 312.926.5188</p> <p><i>Hospitals are required to provide a no-cost medical examination for a person who has experienced sexual assault.</i></p>	<p><i>Chicago Police Emergency Call 911</i></p>
	<p><i>Chicago Police Department 1718 S. State St. 312.745.4290</i></p>

**Confidential Resources**  
**(Medical/Counseling/Advocacy)**

<b><u>On-Campus Resources</u></b>	
<p><i>Confidential Advisor (Students)</i> Teresa J. Sit 312.499.4271 tsit@saic.edu</p>	<p><i>Counseling Services (Students)</i> 312.499.4271 counselingservices@saic.edu</p>
<p><i>Health Services (Students)</i> 312.499.4288 healthservices@saic.edu</p>	<p><i>Employee Assistance Program (Faculty/Staff)</i> 800.311.4327</p>
<b><u>Off-Campus Resources</u></b>	
<p><i>Northwestern Memorial Hospital Emergency Department</i> 250 E. Erie St. 312.926.5188</p>	<p><i>City of Chicago Domestic Violence Helpline</i> 877.863.6338</p>
<p><i>Center on Halsted</i> 773.472.6469 LGBTQ Violence Resource Line 773.871.2273</p>	<p><i>Porchlight Counseling Services</i> Evanston, IL 773.750.7077</p>
<p><i>KAN-WIN (multilingual advocacy)</i> 773.583.1392 kanwin.org</p>	
<p><i>Resilience</i> 180 N. Michigan Ave., Suite 600 312.443.9603</p>	<p><i>YWCA Metropolitan Chicago</i> 1 N. LaSalle St., Suite 1150 312.372.6600</p>

**Additional Resources**

<p><b><u>On-Campus Resources</u></b></p>
<p><i>SAIC Student Financial Services (financial assistance)</i> 312.629.6660 (extension 9 for Receptionist) 36 S. Wabash Ave., Suite 1200 Chicago, IL 60603</p>
<p><b><u>Off-Campus Resources</u></b></p>

<p><i>Life Span Center for Legal Services &amp; Advocacy</i> 70 E. Lake Street, Suite 600 312.408.1210 life-span@life-span.org</p>	<p><i>Legal Assistance Foundation of Chicago</i> lafchicago.org</p>
	<p><i>National Immigrant Justice Center</i> 208 S. LaSalle St., Suite 1300 312.660.1370 immigrantjustice.org</p>