

8.40 Title IX Policy

USSA is committed to maintaining an academic climate in which individuals have an opportunity to fully benefit from the Institution's programs and activities. When students experience acts of sexual misconduct, their sense of safety and trust is violated. This can significantly interfere with their lives, including their educational goals. This policy has been developed to proactively create a campus environment in which incidents of sexual misconduct can be promptly and effectively responded to without further victimization, retaliation, and with possible remediation of its effects.

8.40.1 Non-Discrimination Statement

USSA accepts students and employees regardless of race, color, sex, national origin, religion, age, disability or genetic information.

USSA does not discriminate on the basis of sex in its education programs or any activities it conducts, and it is required by Title IX not to discriminate in such a manner. Any questions regarding Title IX may be referred to USSA's Title IX Coordinator or to the U.S. Department of Education's Office for Civil Rights (OCR).

Title IX Coordinator for USSA

Phone: 251-626-3303

Email: titleIX@ussa.edu

Mailing Address: One Academy Drive, Daphne, AL 36526

Note: Please see USSA's website at www.ussa.edu for the current Title IX Coordinator.

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on sexual orientation, gender identity, or failure to conform to stereotypical notions of masculinity or femininity. Sex discrimination harassment, assault, and violence are forms of prohibited discrimination under Title IX. USSA expressly prohibits the offenses covered under this policy.

8.40.2 Sexual Harassment as Defined by Title IX

On May 6, 2020, the U.S. Department of Education (ED) unveiled a Final Rule changing how colleges and universities must handle allegations of sexual assault and harassment under Title IX of the Education Amendments of 1972, effective as of August 14, 2020. Under the Final Rule, Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination.

USSA will follow the requirements of the Title IX Final Rule regarding sexual discrimination and harassment. Furthermore, sexual harassment is prohibited by USSA.

Under the Title IX Final Rule, sexual harassment claims on the basis of sex must meet one of the following three conditions to qualify for a formal Title IX complaint:

- An employee of the recipient (USSA) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (often called "quid pro

- quo” harassment);
- 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 school’s education program or activity (often called “hostile environment”); or
- Sexual assault, dating violence, domestic violence, or stalking (as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a)), expressly including sexual assault, dating violence, domestic violence, and stalking.

In addition, the following two conditions must be met:

- The conduct must occur within the context of an “Educational Program or Activity” for which USSA exercises control over the Respondent, and
- The conduct must occur within the United States.

Sexual harassment may occur in student to student, employee to student, student to employee, or employee to employee relationships.

Mandatory dismissal of a reported grievance is required if reported allegations by the complainant do not meet the Title IX definition. However, dismissal does not preclude action under other USSA policies and processes outlined in the Student Conduct Policy and the Employee Handbook.

8.40.3 Title IX Sexual Harassment Grievance Reporting and Formal Complaint Filing

Who may report a grievance?

- A sexual harassment grievance may be reported by anyone to a USSA Responsible Party with the authority to take corrective action on the part of USSA. Reports may be provided via the ussa.edu website, email, telephone, written notice, or in person.
- The Responsible Parties who can receive actual knowledge of a grievance for USSA are:
 - Title IX Coordinator
 - President & CEO
 - Vice President of Academic Affairs
 - Director of Administration and Finance
 - Human Resources Coordinator
 - Director of Registration and Records

According to the *Code of Alabama*, essentially everyone working in higher education is considered a mandatory reporter. Therefore, all USSA employees are considered mandatory reporters, and as such employees must immediately report to a duly constituted authority (the local chief of police (251) 621-9100 or the Alabama Department of Human Resources local office (251) 948-8340) if he or she observes any form of child abuse. Child abuse reports in Alabama are taken up to the 19th birthday. Child abuse incidents must also be reported to one of the Responsible Parties as defined above.

Procedure for Formal Complaint Filing

1. Although anyone may report a sexual harassment grievance, USSA must have a signed, Formal Complaint to proceed with the grievance procedure. The Formal Complaint must be signed by

the Complainant. (Please note that a Formal Complaint may be signed by the Title IX Coordinator for limited reasons, such as an overall safety concern for the USSA community.)

2. Upon receipt of a reported grievance, The Title IX Coordinator will promptly reach out to the Complainant, or whomever submitted the report, and gather further information.
3. The Complainant will be offered supportive measures when a grievance report is received, whether a Formal Complaint is filed. Supportive measures are designed to restore or preserve access to the institution's education program or activity without unreasonably burdening the other party, protect the safety of all parties and the school's educational environment, and deter sexual harassment.

Supportive measures may include but are not limited to:

- Consultation with the Department of Public Safety or local police agency as appropriate.
- Assistance identifying additional resources and support services.
- Mutual "No Contact" orders.
- Transferring to another course section.
- Rescheduling academic assignments or tests.
- Providing additional time to complete assignment(s) or course(s).
- Accessing academic support, such as tutoring.
- Arranging for incompletes, a leave of absence, or withdrawal from course(s).
- Preserving eligibility for academic or other scholarships, financial aid, internships.
- Arranging for alternative USSA employment arrangements or work schedules.

It is the Complainant's choice to accept or not accept any supportive measures offered. These measures are offered at no charge. USSA may also assist with obtaining counseling services or other services, however, as USSA does not offer such services on campus, they are not covered by USSA.

4. If the reported allegations by the Complainant do not meet the Title IX definition of sexual harassment, the grievance reported will be dismissed as regards to Title IX. However, the grievance can be referred to and pursued based on other USSA policies and processes outlined in the Student Conduct Policy and the Employee Handbook.
5. The Complainant will be provided the opportunity to submit a Formal Complaint by the Title IX Coordinator. The Title IX Coordinator will explain how to file the Formal Complaint, and they will also review the grievance process.
6. Once a Formal Complaint has been filed with the Title IX Coordinator, a written notice will be provided to both the Complainant and the Respondent and will include information on whether an informal resolution is an available option.
7. The Respondent will receive the written notice with sufficient time to prepare before an initial interview or meeting. Specific information must be contained in the notice including the identities of the parties involved and the conduct allegedly constituting the sexual offense, including date/time/location of the alleged event. Written notice must also state that the Respondent is presumed not responsible, may have an Advisor, and may inspect and review any evidence that is collected.
8. The Respondent will be offered supportive measures which will be non-disciplinary in nature. It is the Respondent's choice whether to accept or not accept any supportive measures offered, other than a mutual "No Contact" order, or the interim actions of emergency removal or administrative leave.

- **Emergency Removal** – A student may be removed from an education program or activity if the institution conducts an individualized safety and risk analysis, determines there is an imminent physical threat of health and safety to a person which arises from the sexual harassment allegation. The Respondent must be provided with a notice and an opportunity to challenge the decision immediately following removal.
 - **Administrative Leave** – If the Respondent is an employee, they may be placed on Administrative Leave. Details concerning Administrative Leave can be found in Policy 5410.9 as set out in the USSA Administrative Manual.
9. Except for allegations that an employee harassed a student, an informal resolution process is allowed. Both parties must agree in writing to informal resolution and either party may withdraw from the informal process and resume the grievance process. If applicable, both parties will be asked by the Title IX Coordinator if they would like to pursue an informal resolution process. If the Formal Complaint is not resolved through informal resolution, a live hearing is required.

8.40.4 Title IX Grievance Procedure

8.40.4.1 Standard of Evidence and Impartiality

The evidentiary standard used for the Title IX Grievance Procedure and any alleged sexual misconduct incident is that of clear and convincing evidence, meaning that the evidence presented must be highly and substantially more probable to be true than not. All steps of the grievance procedure will be conducted with impartiality, and the Respondent will be deemed not responsible unless proven to be responsible based on the evidentiary standard of this policy.

8.40.4.2 Right to an Advisor

The Complainant and the Respondent must be assigned an Advisor and may have an Advisor of their choosing. The institution may provide a pool of advisors from whom to choose; however, the parties may decide to choose someone outside of this pool. If desired, a lawyer may be selected to serve as the Advisor. Advisors will perform the cross-examination function at the Hearing stage of the grievance procedure.

8.40.4.3 Investigation

Upon receipt of a signed Formal Complaint, the Institution's assigned Title IX investigator(s) will begin the investigative process to gather facts regarding the Complaint. The required ADA accommodations will be provided during the grievance procedure to Complainants and Respondents with the appropriate ADA documentation. Requests for accommodation will be made to the Title IX Coordinator.

The role of the Investigator(s) is to collect facts, including inculpatory and exculpatory facts, regarding the alleged incident described in the signed Formal Complaint. It is not the role of the Investigator(s) to report findings or recommendations. Both the Complainant and the Respondent may present evidence to the Investigator or provide names of witnesses and any other information for investigative consideration. The Complainant and the Respondent will have access to the Investigator(s) during the grievance procedure, and the institution will not restrict either party from discussing the allegations under investigation or from gathering and presenting relevant evidence to the Investigator(s).

Both parties will be given an equal opportunity to inspect evidence. After investigating, the Investigator(s) will provide a Preliminary Report of the gathered facts to both parties and their Advisors. The parties have ten (10) business days to review the Preliminary Report and to respond to the Investigator regarding any inaccuracies or to identify any other information or persons that need to be included in the investigation.

After follow-up and completion of the report, the Investigator(s) will provide the Final Report to both parties, their Advisors, and the Decision Maker(s). A live Hearing will be scheduled within ten (10) business days of distribution of the Final Report to the parties.

8.40.4.4 Decision Maker Role

The institution will designate a Decision Maker or Board of Decision Makers. The Decision Maker(s) will determine the relevant evidence for the hearing, the relevancy of questions proposed to be asked during the hearing, and they will ultimately determine if a Title IX policy violation has occurred.

8.40.4.5 Live Hearing

The live hearing provides an opportunity to test the credibility of parties and witnesses through cross-examination conducted by Advisors. The live hearing can be conducted either in person or remotely. The hearing must be recorded, and the recording will be made available to the parties for inspection and review.

The parties must attend the live hearing. If a party does not attend, any statements from the party regarding the complaint that were developed during the investigation cannot be used as evidence in the hearing.

All questions asked during the live hearing must be approved by the Decision Maker as being relevant to the hearing, including follow-up questions that may arise during the hearing. All questions will be asked by the Advisors.

After the conclusion of the hearing, the Decision-Maker(s) must issue a Written Determination with specific information, including the rationale for the findings and conclusion regarding each allegation. Appeal procedures must also be contained within the written determination.

8.40.4.6 Appeal Process

An appeal must be allowed for any material procedural irregularity, new evidence, or conflict of interest/bias. A request for an appeal must be made to the Title IX Coordinator within ten (10) business days from the distribution of the live hearing Written Determination. The appeal must be conducted within 30 days of receipt of a request for an appeal. The Complainant and Respondent have equal access to appeal.

An Appellate Decision Maker(s) will be assigned for the appeal process. Following the appeal, a Written Outcome with the rationale for the findings will be provided to both parties. The decision made by the Appellate Decision Maker(s) is final.

8.40.4.7 Sanctions and Remedies

If the Respondent is found to be responsible, sanctions and remedies will be determined. No sanctions or remedies will be imposed without a finding of responsibility.

8.40.4.8 Training

Title IX Coordinators, investigators, advisors, and decision-makers receive training on an annual basis on the Title IX definition of sexual harassment and the grievance procedure. USSA reserves the right to outsource the grievance procedure to other trained personnel or appropriate organizations.

8.40.4.9 Records Management

All records regarding a signed Formal Complaint, informal resolution, the grievance procedure, appeals, and associated training materials will be kept by USSA for seven (7) years and in accordance with USSA Record Retention Policies. These records will include the determination, the live hearing recordings, and any sanctions or remedies.

The Title IX Coordinator, along with USSA Administration, is responsible for maintaining these records. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from legal counsel.

8.40.4.10 Retaliation

Retaliation is prohibited by USSA. The institution will sanction any student or employee who takes adverse action against a person because of the person's participation in or support of an investigation of Title IX sexual offenses. Adverse action includes, but is not limited to, threats, harassment, intimidation (implied threats), or actual violence against the person or his or her property, adverse educational or employment consequences, ridicule, taunting, bullying, or ostracism.

Retaliation because of an allegation of a sexual offense may occur in student to student, employee to student, student to employee, or employee to employee relationships and is prohibited in any form.

8.40.5 Dissemination of the Title IX Policy

This policy shall be disseminated to USSA's students, employees, and community through the Institution's website (www.ussa.edu) as well as the USSA Academic Catalog, Student Portal website, and other appropriate channels of communication.

New and current students and employees will be provided with educational materials to promote familiarity with this policy. Annual training will be provided to the Title IX Coordinator, Responsible Parties, Investigators, Advisors, and Decision Makers.

The educational programs and employee training provide ongoing awareness and prevention campaigns that also identify safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual

assault, or stalking against a person other than such bystander. Additionally, information is provided on risk reduction so that students and employees may recognize warning signs.

8.40.6 Policy Updates

Due to changing federal or state regulations and periodic changes in institutional policies, please see the USSA website, Title IX Coordinator, or USSA Human Resources Coordinator for the most recent information:

United States Sports Academy Website:

www.ussa.edu

Title IX Coordinator for USSA:

Phone: 251-626-3303

Email: titleIX@ussa.edu

Mailing Address: One Academy Drive, Daphne, AL 36526

Note: Please see USSA's website at www.ussa.edu for the current Title IX Coordinator.

Human Resources Coordinator for USSA:

Phone: 251-626-3303

Email: hr@ussa.edu

Mailing Address: One Academy Drive, Daphne, AL 36526

Note: Please see USSA's website at www.ussa.edu for the current HR coordinator.

8.40.7 Definitions and Examples of Sexual Harassment and Misconduct

Sexual Misconduct Offenses include, but are not limited to:

- Sexual Harassment
- Sexual Assault
- Sexual Violence
- Sexual Exploitation
- Domestic and/or Dating Violence
- Stalking

The Institution uses the definitions from the Clery/Violence Against Women Reauthorization Act of 2013 (VAWA), for the purposes of this policy.

8.40.7.1 Sexual Harassment

Sexual harassment includes unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that has the effect of unreasonably interfering with an individual's academic or work performance, or creates an intimidating, hostile, or offensive environment.

If reported allegations of sexual harassment do not meet the Title IX definition of sexual harassment, the

grievance reported can be pursued via USSA policies and processes outlined in the Student Conduct Policy and the Employee Handbook.

Types of Sexual Harassment:

- Quid Pro Quo sexual harassment exists when there are:
 - Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
 - Submission to or rejection of such conduct results in adverse educational or employment action.
 - Quid pro quo harassment may occur in student to student, employee to student, student to employee, or employee to employee relationships.
- Hostile Environment includes any situation in which there is harassing conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity. Hostile Environment sexual harassment may occur in student to student, employee to student, student to employee, or employee to employee relationships. The determination of whether an environment is "hostile" may be based on any of these circumstances. These circumstances could include:
 - the frequency of the conduct.
 - the nature and severity of the conduct.
 - whether the conduct was physically threatening.
 - whether the conduct was humiliating.
 - the effect of the conduct on the alleged victim's mental or emotional state.
 - whether the conduct was directed at more than one person.
 - whether the conduct arose in the context of other discriminatory conduct.
 - whether the statement is a mere utterance of an epithet which engenders offense in an individual or offends by mere discourtesy or rudeness.
 - whether the speech or conduct deserves the protections under other principles such as academic freedom.
- Retaliation
 - The Institution will sanction a student or employee who takes adverse action against a person because of the person's participation in or support of an investigation of discrimination or sexual misconduct. Adverse action includes, but is not limited to, threats, harassment, intimidation (implied threats) or actual violence against the person or his or her property, adverse educational or employment consequences, ridicule, taunting, bullying, or ostracism.
 - Retaliation sexual harassment may occur in student to student, employee to student, student to employee, or employee to employee relationships.

8.40.7.2 Sexual Assault (Sex Offenses)

Sexual assault is defined as any sexual act directed against another person without consent of the victim, including instances where the victim is incapable of giving consent. Attempted sexual assaults are also included in this policy. Types of sexual assault for the purpose of this policy are:

- **Rape** is the penetration of the vagina or anus with any body part or object or oral penetration with a sex organ of another person without the consent of the victim. This offense includes the

rape of both males and females.

- **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- **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. The age of consent *in Alabama* is 16 years old.

8.40.7.3 Domestic Violence

Domestic violence is defined as a felony or misdemeanor crime 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 previously has or currently is cohabitating 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 the jurisdiction in which the crime of violence occurred.
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

8.40.7.4 Dating Violence

Dating violence is defined as 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 shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

8.40.7.5 Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition the:

- 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.

Stalking will only attach to Title IX if the stalking is sex based. Stalking that is not sex based will be addressed in other policies such as Student Conduct Policy or USSA Employee Handbook.

8.40.7.6 Sexual Violence

Sexual violence is defined as physical sexual acts engaged in without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion, domestic violence, dating violence, and stalking.

8.40.7.7 Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include, but are not limited to:

- Prostituting another student.
- Non-consensual video or audiotaping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism.
- Knowingly transmitting a Sexually Transmitted Disease (STD) or HIV/AIDS to another individual.

8.40.8 Consent & Incapacitation

In Alabama, consent is without forcible compulsion, or incapacity to consent, or if the offense charged is sexual abuse, or any circumstance in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

In Alabama, incapacitation is the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, mentally defective, mentally incapacitated, intoxicated, or physically helpless.

- Mentally defective means a person suffers from a mental disease or effect which renders him/her incapable of appraising the nature of his conduct.
- Mentally incapacitated means rendered temporarily incapable of appraising or controlling

their conduct because he/she is under the influence of a narcotic or intoxicating substance administered to him/her without his consent OR any other incapacitating act committed upon him/her without their consent.

- Physically helpless means unconscious or physically unable to communicate unwillingness to act.

8.40.9 Confidentiality

While reports of this nature may result in the gathering of extremely sensitive information about individuals, such information is considered confidential, and every effort will be made to keep the information confidential. Disclosures of certain personal information may be disclosed concerning a report of sexual harassment or sexual violence to USSA. In such cases, efforts will be made to protect the privacy of individuals.

Students and employees are encouraged to speak to USSA Responsible Parties to make reports of incidents. Students and employees have the right and can expect to have grievance reports taken seriously by USSA.

8.40.10 National Resources

The below listed resources are available for the reporting of crimes and policy violations, and they will take action when a report of victimization has been made to them.

Emergency and Counseling Hotline Telephone Numbers: Emergency (police, fire, and rescue)
Always dial 911 for life-threatening emergencies.

24 Hour National Suicide Prevention Lifeline / Veterans Crisis Line
(800) 273-TALK (8255) TTY Line: (800) 799-4889

24 Hour National Domestic Violence Hotline
(800) 799-SAFE (7233) TDD Line: (800) 787-3224

Poison Control Center
(800) 222-1222

National Child Abuse Hotline
(800) 4-A-CHILD (422-4453)

Counseling and Rehabilitation

American Council on Alcoholism
(800) 527-5344

Al-Anon
(888) 425-2666

The Substance Abuse and Mental Health Services Administration Treatment Helpline
(800) 662-HELP / (800) 662-4357

TDD (800) 487-4889

24 Hour National Alcohol and Substance Abuse Information Center
(800) 784-6776

American Social Health Association STI Resource Center
(800) 227-8922

CDC National AIDS Hotline / National STD Hotline
(800) CDC-INFO (232-4636)

Gay and Lesbian National Hotline
(888) THE-GLNH (843-4564)