# Policy on Title IX Sexual Harassment

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## I. Notice of Non-Discrimination

Mount St. Mary's University (the "University") is committed to providing an educational and work environment in which all members of the campus community are able to participate without being subjected to discrimination on the basis of sex, sexual orientation, or gender identity. When the University learns that any such discrimination occurs, the University is committed to remedying the discrimination and its effects.

## II. Statement of Policy Against Title IX Sexual Harassment

In compliance with Title IX, a federal law, the University does not discriminate on the basis of sex in the education programs or activities that it operates. Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq*.) and its implementing regulations (34 C.F.R. Part 106) prohibit discrimination on the basis of sex in education programs and activities.

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Education Program or Activity receiving Federal financial assistance.

Title IX requires that colleges and universities maintain an environment free from sex discrimination for all faculty, staff, and students. Under Title IX, discrimination on the basis of sex includes Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Sexual harassment is also prohibited by Title VII of the Civil Rights Act of 1964 and by state law.*

Inquiries about the application of Title IX and its regulations may be referred to:

**Love Sechrest, Ph.D.**
Title IX Coordinator
Associate Provost
Bradley 223
301-447-5734 (office)
301-401-6455 (mobile)
l.l.sechrest@msmary.edu
titleix@msmary.edu

* Revised September 1, 2022

**OR**

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Deputy Title IX Coordinator for Employees Director of Human Resources
Bradley Hall 220
301-447-5522
k.hurley@msmary.edu

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Seminary-Keating Hall 002
301-447-8323
jlove@msmary.edu

**Justine Miller**
Deputy Title IX Coordinator for Athletics Deputy Athletic Director
ARCC 209
301-447-6782
justine_miller@msmary.edu

**OR**

Assistant Secretary for Civil Rights
U.S. Department of Education, Office for Civil Rights
ocr@ed.gov
800-421-3481

If you need immediate help

- **Call Public Safety at 301-447-5911**
- **Call 911**

Non-Confidential Resources

- **Department of Public Safety**
  301-447-5357
  inside.msmary.edu/public-safety/index.html

- **Center for Campus Ministry**
  301-447-5223
  msmary.edu/campus-life/get-involved/campus-ministry-office.html

- **Frederick County Sheriff's Office** (off-campus)
  301-600-1046
  www.frederickcosheriff.com/

Confidential Resources

- **Counseling Services**
  301-447-5288
  inside.msmary.edu/health-services/counseling-services.html

- **Health Services**
  240-566-7101
  inside.msmary.edu/health-services/index.html

- **Frederick Health Hospital** (off-campus) 240-566-3300
  www.frederickhealth.org/locations/frederick-health-hospital-hospital/

- **University Chaplain**
  301-447-5317
  msmary.edu/about/office-of-the-university-chaplain.html

- **University Ombud Office**
  ombud@msmary.edu

- **Heartly House** (off campus)
  301-662-8800
  www.heartlyhouse.org/

- **Maryland Coalition Against Sexual Assault** (off-campus) 301-328-7023
  mcasa.org/

## III. Scope of this Policy

This Policy on Title IX Sexual Harassment (the "Policy") applies to all Employees (faculty, staff, and all other non-student Employees), and all students. This Policy only addresses incidents of Title IX Sexual Harassment, as defined in this Policy. Allegations of discrimination based upon other protected traits and allegations of sex discrimination that do not fall within this Policy's definition of Title IX Sexual Harassment will be addressed under other University policies, including other applicable discrimination policies and procedures, as contained in the Code of Student Conduct and Governing Documents.

This Policy governs the University response in all incidents involving behavior that fits the parameters of Title IX Sexual Harassment as defined in this Policy. In the event of a conflict regarding incidents of Title IX Sexual Harassment between this Policy and any other University policy, this Policy supersedes other University policies.

Title IX Sexual Harassment is defined as conduct:

1. On the basis of sex,
2. That occurs within the University's Education Program or Activity,
3. Within the United States, and
4. Involves
   (a) a University Employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
   (b) unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity;
   (c) Sexual Assault;
   (d) Dating Violence;
   (e) Domestic Violence; or
   (f) Stalking.

All allegations of Title IX Sexual Harassment will be addressed according to this Policy. The University may take action against third Parties who engage in conduct prohibited by this Policy in connection with a University Education Program or Activity. In such circumstances, the University will determine whether to apply this Policy or another policy or procedure.

This Policy applies when any Employee of the University is alleged to have engaged in Title IX Sexual Harassment as defined by this Policy. To the extent this Policy is inconsistent with any provisions of any faculty or Employee handbook, Policy, or procedure, because this Policy on Title IX Sexual Harassment is mandated by federal law, this Policy shall prevail. Federal law

requires the University to use the same Standard of Evidence in all matters alleging Title IX Sexual Harassment, which, therefore, fall within this Policy. The University has no discretion to do otherwise.

All Employees who have experienced Title IX Sexual Harassment, who have provided a Report alleging Title IX Sexual Harassment, or have been alleged to have engaged in Title IX Sexual Harassment can seek confidential assistance through the Employee Assistance Program:

www.wellspaneap.org/

## IV. Defined Terms

This Policy uses many defined terms, indicated by the capitalization of the first letter(s) in the term. All defined terms are included in a Glossary at the end of the Policy. The definitions in the Glossary are important to a complete understanding of this Policy.

## V. Responsibilities of the Title IX Coordinator and Deputy Title IX Coordinators

The Title IX Coordinator coordinates the University's efforts to comply with Title IX, including overseeing this Policy and the publication and dissemination of information required by Title IX. The Title IX Coordinator's responsibilities include: (1) receiving and responding to Reports of conduct that may constitute a violation of this Policy; (2) coordinating the effective implementation of Supportive Measures; (3) designating Investigators, Facilitators, and Decision-Makers to act pursuant to the Grievance Process; (4) ensuring that the technology needed to conduct and record hearings is available;
(5) implementing any Remedies or discipline imposed by a Decision-Maker upon a finding of a violation of this Policy; and, (6) complying with the record-keeping requirements of this Policy.

The Deputy Title IX Coordinators support the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator's designee to carry out any response, action, initiative, project, or other responsibility outlined in this Policy.

**An individual requiring immediate help should call 911** or the Department of Public Safety at 301- 447-5911. An individual requiring non-emergency support should contact the Title IX Coordinator, or other resources provide d in this Policy.

## VI. Reports of Potential Violations of this Policy

All University employees, including faculty, staff, and student employees who work closely

with students in accomplishing their duties (e.g., Resident Assistants, Peer Leaders, or Mount Guides), are Mandatory Reporters under this Policy. As such, any time they receive a report of sexual misconduct, it must be reported to the Title IX Coordinator. This requirement does not extend to the employees listed as confidential resources in this Policy (e.g, the University Chaplain).

The University strongly encourages anyone who has information about a potential violation of this Policy to provide a Report to the Title IX Coordinator or another Campus Official. Any person may provide a Report of a potential violation to the Title IX Coordinator in person, by mail, by phone, or by email. A Report does not constitute a Formal Complaint. The procedure for filing a Formal Complaint is described in this Policy. Any Campus Official who receives information or who otherwise has information about a potential violation of this Policy is required to provide the information received, in full, to the Title IX Coordinator.

## VII. Reporting to Law Enforcement, Seeking Treatment, Civil Remedies

A Complainant has the right to file criminal charges with an appropriate law enforcement agency. At the request of a Complainant, the University's Department of Public Safety or Title IX Coordinator will promptly assist the Complainant in contacting the appropriate law enforcement agencies. The following law enforcement agencies may have jurisdiction over incidents that occur on or near campus:

- Frederick County Sheriff's Office (301-600-1046 )
- Maryland State Police, Frederick County Barrack B (301-600-4150)

A Complainant who wishes to seek medical attention may request cooperation and support of the Department of Public Safety, which will provide prompt cooperation in obtaining medical attention, including transport to one of the hospitals listed below

- Gettysburg Hospital, 147 Gettys St., Gettysburg, PA 17325 (13 miles)
- Frederick Health Hospital, 400 W. 7th St., Frederick MD 21701 (21 miles)
- Meritus Health, 11116 Medical Campus Rd., Hagerstown, MD 21742 (23 miles)

The hospital nearest to campus equipped with the Maryland Department of State Police Sexual Assault Evidence Collection Kit is Frederick Health Hospital. Gettysburg Hospital is also able to collect forensic evidence of a sexual assault.

The University offers counseling to any Complainant, Respondent, or any other student through its Counseling Center. Other counseling and Supportive Measures are available from the Resources noted above.

Individuals experiencing harassment or discrimination have the right to file a complaint with the

United States Department of Education:

U.S. Department of Education
Office for Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline: 800-421-3481
Facsimile: 202-453-6012
TDD: 877-521-2172
OCR@ed.gov
http://www.ed.gov/o
cr

## VIII. Response to Potential Violations of this Policy

When the Title IX Coordinator or a Campus Official receives a Report, the University will respond equitably and impartially. Supportive Measures will be offered to both the Complainant and Respondent, whether or not a Formal Complaint is filed. Disciplinary sanctions will be imposed only if the Respondent is found responsible for a violation of this Policy through a completed Grievance Process.

However, the University may impose an emergency removal or Administrative Leave as provided in this Policy.

## IX. Initial Assessment

### A. Purpose

When the Title IX Coordinator receives a Report of alleged Title IX Sexual Harassment or a Formal Complaint alleging Title IX Sexual Harassment, the Title IX Coordinator will seek to gather information to undertake an initial assessment of any risk of harm to individuals or to the campus community and the description of the alleged misconduct in order to evaluate the appropriate response.

### B. Addressing Risk of Harm

The Title IX Coordinator will take any action necessary to address any risk of harm identified by the Title IX Coordinator, including implementation of Supportive Measures, initiation of actions designed to protect the larger campus community, and/or emergency removal of a Respondent. A decision to remove a Respondent from campus pending the Grievance Process will follow the

emergency removal of aRespondent process described in this Policy. At the Title IX Coordinator's discretion, other Campus Officials may be included in this initial assessment.

### C. Evaluation of the Report

The first step of the assessment is an evaluation of the Report. When possible, this will involve conversations or correspondence with the reporting party, the Complainant, and other individuals with relevant knowledge. The purposes are to:

- assess the nature and circumstances of the allegations;
- address the immediate physical safety and emotional well-being of the Complainant;
- assess any risk to the greater University community;
- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- provide the Complainant with information about on- and off-campus resources;
- discuss the range and implementation of Supportive Measures;
- enter an accurate Report into the University's report management system;
- assess the Reported conduct for the need for a timely warning under the Clery Act; and
- explain the University's policy prohibiting retaliation.

### D. Determination After Initial Assessment

After the initial assessment of the information gathered, the Title IX Coordinator will take one of the following steps regarding the Grievance Process:

#### 1. Initiate the Grievance Process

If the Title IX Coordinator determines that the alleged misconduct falls within this Policy and a Formal Complaint has already been submitted, the Title IX Coordinator will proceed to initiate the Grievance Process, unless the Formal Complaint proceeds to Informal Resolution.

If a Formal Complaint has not yet been submitted, the Title IX Coordinator will advise the Complainant that a Formal Complaint is required to initiate an investigation. The Title IX Coordinator will provide the option and information for submitting a signed Formal Complaint. If and when a signed Formal Complaint is submitted, the Title IX Coordinator will proceed to initiate the Grievance Process, unless the Formal Complaint proceeds to Informal Resolution.

If the Complainant determines not to file a Formal Complaint, and the Title IX Coordinator determines, in their discretion, that the allegations must be investigated, the Title IX Coordinator may initiate the Grievance Process by completing and signing a Formal Complaint.

### 2. Refer for Action Pursuant to Different Policy

With or without a Formal Complaint, when the initial assessment concludes with a determination that the alleged misconduct does not fall within the scope of this Policy but involves conduct that, if found to have occurred, violates another University policy, the matter will be referred for further action under the applicable Policy. The determination regarding next steps will be communicated to the Parties in writing.

### E. Amnesty

To encourage Reporting, the University provides amnesty for certain minor policy violations to persons who, in good faith, report conduct prohibited by this Policy to the University or a law enforcement officer and to persons who, in good faith, participate in an investigation under this Policy. Under this amnesty provision, the University will not impose disciplinary sanctions for that person's own violations of University drug and alcohol policies, COVID-19 policies, or other similar minor policy violations, for conduct that occurred during or near the time of conduct prohibited under this Policy, as long as the person's conduct did not place the health or safety of another person at risk. The University reserves the right to impose educational sanctions, as necessary, when disciplinary sanctions are not available.

## X. Supportive Measures

Supportive Measures are temporary non-disciplinary and non-punitive services that are offered, without fee or charge, by the University on an individualized basis designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party. They are available to Complainants, Respondents, and, where appropriate, other impacted members of the community. Supportive Measures are available with or without the filing of a Formal Complaint. In determining the Supportive Measures to be provided, the Title IX Coordinator will make individualized determinations that will be provided to the Complainant and Respondent to restore or preserve equal access to the University's Education Programs or Activities, to protect the safety of the Parties, and/or to deter Title IX Sexual Harassment.

Supportive Measures will be maintained as confidential by the University to the extent that confidentiality will not impair the ability to provide the Supportive Measures.

Examples of Supportive Measures that may be implemented by the University include:

- Referral to counseling, medical, and/or other healthcare services
- Altering work arrangements for Employees or student-workers

- Academic extensions or adjustments
- Academic withdrawals or leaves of absence
- Campus safety escorts
- Housing reassignments
- Increased security or monitoring of certain areas of the campus
- Mutual no contact orders
- Other actions deemed appropriate by the Title IX Coordinator

## XI. Emergency Removal of a Respondent

The University may implement emergency removal of a Respondent, whether or not a Formal Complaint has been submitted, if there is an immediate threat to the physical health or safety of any student or other individual that arises from allegations of conduct that could constitute a violation of this Policy.

Prior to implementing an emergency removal, the University will first gather information to undertake an individualized safety and risk analysis. The analysis will be conducted by Campus Officials free from bias or conflict of interest, who have relevant knowledge and experience, and who will not serve as Decision- Maker in any later Grievance Process related to the student being evaluated for potential removal.

The analysis will evaluate whether Supportive Measures or other less restrictive means can negate or sufficiently minimize the threat. The University shall also consider Respondent's rights, if any, under applicable federal and/or state disability laws.

The emergency removal of a Respondent is neither disciplinary nor a Determination of Responsibility. At all stages of the process, the University will ensure that an emergency removal will not impose a premature sanction on the Respondent or circumvent the Grievance Process. An emergency removal does not equate to a determination that a Respondent has engaged in a violation of this Policy and will not result in a presumption of responsibility in any subsequent Grievance Process.

In the event the University determines that emergency removal of a Respondent is appropriate, the Respondent will be notified immediately in writing. The written notice will include details about the specifically identified emergency threat of physical safety or harm underlying the decision, as well as information about the Respondent's immediate opportunity to challenge the removal decision by filing an Appeal.

## XII. Administrative Leave for Employee Respondent

In the event a Formal Complaint alleges conduct that could constitute Title IX Sexual Harassment and identifies an Employee as Respondent, the University may decide to place the Respondent on Administrative Leave, in emergency and non-emergency situations. The purpose of such an Administrative Leave is to allow a temporary separation of the Employee while the Grievance Process is ongoing. The University will determine the terms and conditions of the leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, the Americans with Disabilities Act, and all other applicable employment laws.

## XIII. Grievance Process for Formal Complaints

### A. Overview

All entitlements established in this section apply equally to the Parties. The Grievance Process applies when a Formal Complaint is signed and submitted, whether by a Complainant or by the Title IX Coordinator on behalf of the University. This process is grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility is issued at the conclusion of this process. The standard of review for determinations regarding responsibility is a preponderance of the evidence. The preponderance of the evidence standard of proof is met when the evidence shows that it is more likely than not that an allegation is true.

### B. Filing of Formal Complaint

The Grievance Process begins with the filing of a Formal Complaint that alleges that a Respondent has engaged in Title IX Sexual Harassment is signed by the Complainant or the Title IX Coordinator and requests that the University investigate the allegation of Title IX Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email at titleix@msmary.edu.

### C. Dismissal or Withdrawal of Formal Complaint

If, at any time during the Grievance Process, the Title IX Coordinator determines that the alleged misconduct does not fall within this Policy because the conduct did not occur within the University's Education Program or Activity, or the conduct did not occur within the United States, the Title IX Coordinator will dismiss the Formal Complaint by issuing a Notice of Dismissal.

If, at any time during the Grievance Process, the Respondent is no longer enrolled or employed by the University or the Title IX Coordinator determines that specific circumstances prevent the

University from gathering evidence sufficient to reach a determination of the allegations of the Formal Complaint, the University may dismiss the Formal Complaint by issuing a Notice of Dismissal. If the Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or any allegations in the Formal Complaint, the Title IX Coordinator may dismiss the Formal Complaint.

Alternatively, the Title IX Coordinator may decide that proceeding with the Grievance Process is necessary. In making that determination, the Title IX Coordinator will weigh the Complainant's wishes and the University's interests in eliminating Title IX Sexual Harassment, preventing its recurrence, and remedying its effects.

A Notice of Dismissal, which will be issued to the Complainant and Respondent within five (5) Business Days of the Title IX Coordinator's determination, will include the reasons for the dismissal. A dismissal of a Formal Complaint from the Grievance Process shall not prevent the University from addressing the allegations in the Formal Complaint under another applicable policy. Any Party has the right to appeal the dismissal of a Formal Complaint.

### D. Length of Process

The University seeks to resolve all Reports of Title IX Sexual Harassment promptly, thoroughly, fairly, and equitably. The timeframes that the University strives to meet are set forth in this Policy. The University will inform the Parties regularly of the status of the Grievance Process, including the status of the investigation and other steps in the process. Circumstances may arise that require the extension of anticipated time frames. Such circumstances may include the complexity of the allegations, the number of Witnesses involved, the availability and cooperation of the Parties, Witnesses, or others involved, breaks or other closures of campus, concurrent law enforcement activity, the need for language assistance or accommodation of disabilities, or unforeseen circumstances. In the event timelines are modified, the University will provide notification to the Parties.

### E. Privacy of Process

The University will keep confidential the identity of any individual who has made a Report or Formal Complaint, and the identity of any Complainant, Respondent, and Witness except as permitted by FERPA, required by law, or as necessary for the University to take action under this Policy.

### F. Participation in Grievance Process is Voluntary

Parties and Witnesses are not required to participate in the Grievance Process. However, the

Decision- Maker can only rely on relevant evidence available through the investigation and Live Hearing when making a Determination of Responsibility. The University may not threaten, coerce, or intimidate a Party or Witness into participating, nor may the University retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

### G. Right to an Advisor

Each Party has the right to choose an Advisor of their choice to assist and advise them (at the Party's own expense). Each Party has the right to be accompanied by their Advisor throughout the Grievance Process, including during all related interviews, meetings, and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role in supporting the Parties. Each Party should notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisor and any change in their Advisor. If a Party does not select an Advisor and the matter proceeds to a Live Hearing, an Advisor will be appointed by the University, at no fee to the Party, for the purpose of Hearing and Cross-Examination.

### H. Assistance in Securing an Advisor

Upon request, the Title IX Coordinator can assist students in securing an Advisor from among internal faculty and administrators who are willing to serve in this capacity, and who do not have a conflict of interest regarding the Title IX matter under consideration. These Advisors are trained by the Title IX Coordinator regarding their roles and the overall Title IX process. After notification about the identity of the assigned Advisor, the Party securing the Advisor must respond in writing to the Title IX Coordinator that they are willing to work with the assigned Advisor.

In accordance with Maryland law, in cases where a formal Title IX investigation is initiated to determine if a Sexual Assault occurred, students can access an attorney and have reasonable attorney costs and fees reimbursed by the Maryland Higher Education Commission (MHEC) Legal Representation Fund for Title IX Proceedings. Student Parties can obtain a list of licensed attorneys who will assist on a pro bono or reduced fee basis by contacting MHEC at 800-947-0203 or visiting the website mhec.maryland.gov/Pages/Title-IX-Campus-Sexual-Assault-Proceedings---Attorney-List.aspx.

### I. 'Request to Remove an Investigator, Decision-Maker, or Title IX Coordinator

Parties have the right to request that the Title IX Coordinator remove an Investigator or Decision-Maker based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial.

### 1. Challenge to an Investigator

A challenge to an Investigator must be raised in writing within five (5) Calendar Days of receipt of the Notice of Investigation or as soon as a Party becomes aware of any such grounds for removal, whichever is first. The Title IX Coordinator will determine whether to remove the Investigator. If the Investigator is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If an Investigator is removed and replaced, the Title IX Coordinator will send written notification of the new Investigator.

### 2. Request to Remove a Decision-Maker

Following receipt of the Notice of Live Hearing, Parties have the right to request that the Title IX Coordinator remove a Decision-Maker based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. This request must be raised in writing within 48 hours of receipt of the Notice of Live Hearing. The Title IX Coordinator will determine whether to remove the Decision-Maker. If the Decision-Maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If a Decision-Maker is removed and replaced, the Title IX Coordinator will send written notification of the new Decision-Maker.

### 3. Request to Remove the Title IX Coordinator

A Party may request that someone other than the Title IX Coordinator oversee the Grievance Process based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. Any such request must be submitted in writing to the Vice President for Human Resources and Community Engagement (VPHRCE) as soon as a Party becomes aware of any such grounds for removal. The VPHRCE will determine whether to designate another person to perform the Title IX Coordinator's duties for the specific matter, and if so, will identify the person to undertake those duties.

## J. Procedures Following a Formal Complaint

### 1. Initiate an Investigation

The Title IX Coordinator will initiate an investigation, unless the Formal Complaint is proceeding through the Informal Resolution Process (see below). The Title IX Coordinator will issue a Notice of Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. This Notice of Investigation will include:

a. Notice of these grievance procedures, including the Informal Resolution process, and a copy of this Policy.
b. The conduct alleged to violate this Policy, and the date and location of the alleged incident, if known.
c. Known Parties involved in the alleged incident.
d. A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the process.
e. Notice of the Parties' right to an Advisor of their choice.
f. Notice of and citation to the University's prohibition on knowingly making false Statements or submitting false information during a University process.

If during the course of an investigation, new or additional allegations arise that require investigation, the University will send the Parties an updated Notice of Investigation revising the scope of the investigation.

### 2. Concurrent Law Enforcement Activity

When the University receives a Report of Title IX Sexual Harassment to which it has determined it must respond through its Grievance Process, the University's process continues regardless of whether a Complainant has made or decides to make a report to law enforcement. The filing of a report with law enforcement, or an ongoing law enforcement investigation or proceeding, does not relieve the University of its obligation to address the Complaint through its Grievance Process. At the University's discretion, the University may temporarily pause its investigation at the request of law enforcement. Questions about the Grievance Process should be directed to the Title IX Coordinator, while questions about any criminal investigation should be directed to law enforcement.

## K. Consolidation of Formal and Collateral Complaints

There are conditions where the University may consolidate Formal Complaints for purposes of investigation and adjudication:

a. If there are multiple Complainants and one Respondent, the University may consolidate Formal Complaints where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.
b. If there are multiple Respondents or multiple Complainants against one or more Respondents, or cross-complaints involving allegations by one party against the other party; and/or

c. If there is an allegation of collateral misconduct, such as that which is prohibited under another University policy but occurred in conjunction with a Report of Title IX Sexual Harassment.

Whenever there is a consolidation of Complaints, the Title IX Coordinator will notify all Parties in writing of the decision.

## L. Investigation

The University's investigation process is designed to allow for the thorough, impartial, and reliable gathering of information and to result in a comprehensive investigation report summarizing relevant, admissible evidence. The University strives to complete its investigation within thirty (30) Business Days, understanding that various issues arise during investigations that may justify a good cause extension of the timeline.

### 1. Assignment of Investigator(s)

The Title IX Coordinator will assign the Investigator(s) and supervise the investigation. Investigators may be University Employees or external Investigators. At times the Title IX Coordinator may serve as Investigator. All Investigators will conduct the investigation with a presumption that the Respondent is not responsible and will act without bias or conflict of interest.

### 2. Process Overview

The Investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and Witnesses with relevant information. The Investigator will provide advance written notice to Parties of the date, time, location, participants, and purpose of any requested meeting(s). Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The burden of gathering relevant, admissible information sufficient for the University to reach a determination of whether a violation of this Policy has occurred rests on the University. The Parties will have an equal opportunity to submit evidence and suggest Witnesses (including fact and expert Witnesses).

The Investigator will decide which individuals to interview based on the information the

Investigator gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator may ask the Witnesses to describe the information the Party expects the Witness to provide. The Title IX Coordinator may direct that additional interviews be conducted.

The Investigator will not collect information or documents protected by a legally recognized privilege, such as healthcare records, without consent to use such documents in the Grievance Process from the person protected by the privilege. The Investigator will not seek information about a Complainant's sexual predisposition and will only allow submission of or pursue information about a Complainant's prior sexual behavior if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct; or, (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to establish Consent.

The investigation will be conducted in a manner that is respectful of individual privacy concerns. However, full confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence. The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, the Parties are advised to avoid disclosures that could be considered Retaliation as defined in this Policy, which could result in attendant sanctions. Likewise, when the Parties are advised not to disclose the contents of written notices, reports, and outcomes, subsequent breaches of privacy may also result in sanctions under applicable University policies.

Intentional efforts by a Party or Witness to fabricate information, alter evidence, improperly influence a Witness, or otherwise undermine the integrity of the Grievance Process may be subject to discipline under this Policy or other applicable policies.

### 3. Parties' Review of and Response to Evidence

At the conclusion of the investigation, the Investigator will assemble all Inculpatory and Exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint, including information upon which the University does not intend to rely in reaching a determination regarding responsibility. The Investigator will redact information that is irrelevant to the allegations of the Formal Complaint or otherwise not admissible in the Grievance Process (i.e., because it is subject to an unwaived legally recognized privilege or constitutes prior sexual history not offered to establish Consent or that Respondent did not engage in the alleged misconduct). Content that is irrelevant or inadmissible but which is directly related to the Formal Complaint may be removed from the Report, but will be available to the Parties for inspection. In this case, the Investigator may create a list describing

information it has redacted or removed as irrelevant or inadmissible, but directly related to the allegations of the Formal Complaint, which information the Parties may inspect.

The assembled information will then be shared with the Parties and their Advisors in hard copy or an electronic format. Depending on the nature of the information shared, the University may require Parties and their Advisors to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process. The Parties shall have ten (10) Calendar Days to review the assembled information and submit a written response to it.

The Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

### 4. Investigation Report

After considering the Parties' responses and conducting any additional investigation deemed necessary, the Investigator will prepare a report summarizing all of the relevant, admissible information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator will incorporate the Parties' responses into the report as appropriate, as well as an explanation of any additional steps taken after receipt of Party responses and include any related materials. All of these written submissions and all information gathered during the investigation will collectively be considered the investigation report.

To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

### 5. Parties' Review of and Response to Investigation Report

When the investigation report is complete, the University will provide a copy to the Parties and their Advisors in electronic format or hard copy for their review and written response. The Parties shall have ten (10) Calendar Days to respond to the investigation report. When a response is received, the Investigator shall determine whether it is appropriate to amend the investigation report. Consultation with the Title IX Coordinator may be appropriate.

The investigation report and all evidence will be available at any hearing to give each Party equal opportunity to refer to the evidence. Any hearing on the allegations investigated will not

be held sooner than ten (10) Business Days after the investigation report is provided to the Parties and their Advisors.

### M. Determination After Investigation

At the conclusion of the investigation, the Title IX Coordinator will review the investigation report to determine whether the conduct, if proved, falls within this Policy. When the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Charge based on information contained in the investigation report.

If the conduct, even if proved, does not fall within this Policy because it would not constitute Title IX Sexual Harassment because it did not occur within the University's Education Program or Activity, or because it did not occur within the United States, the University must dismiss the Formal Complaint. The University may dismiss a Formal Complaint if the Title IX Coordinator determines: that there is not sufficient cause to believe the alleged conduct may have occurred; the Respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering sufficient evidence to reach a Determination of Responsibility or No Responsibility. In either instance, the Title IX Coordinator will issue a Notice of Dismissal, including the reasons for the dismissal, to the Parties simultaneously within five (5) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different University Policy, the Notice of Dismissal will direct the Parties to that policy. The Parties have a right to appeal a dismissal of a Formal Complaint.

### N. Notice of Charge

If the Formal Complaint is not dismissed, the Title IX Coordinator will issue a Notice of Charge simultaneously to the Parties. The Notice of Charge will include the following information:

- a brief summary of the conduct alleged to have violated the Policy, including date, time, and location;
- the specific Policy provision(s) at issue; and
- possible sanctions associated with a finding of responsibility for the alleged Policy violation(s)

## XIV. Live Hearings

Following the issuance of the Notice of Charge, if Informal Resolution is not being conducted, the Grievance Process will proceed to a Live Hearing.

### A. Notice of Live Hearing

The Notice of Live Hearing will be sent to the Parties simultaneously within ten (10) Business Days of the delivery of the Notice of Charge and at least five (5) Business Days before the scheduled hearing date. The Notice of Live Hearing may be, but need not be, sent with the Notice of Charge. The Notice of Live Hearing will include the following information:

- the date, time, and location of the Live Hearing;
- the Live Hearing will be recorded via audio recording or audiovisual recording;
- the identity of the Decision-Maker(s); and,
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Grievance Process

### B. Title IX Coordinator's Role

Hearings are convened by the Title IX Coordinator. The Title IX Coordinator, or designee, will oversee and serve as a non-voting participant of the Live Hearings, advising on process and policy to the Decision-Maker. The Title IX Coordinator is never a Decision-Maker, whether in connection with a Live Hearing or an Appeal, but may serve as Investigator.

### C. Decision-Maker

The Decision-Maker conducts the Live Hearings and ultimately makes the Determination of Responsibility. Prior to the Live Hearing, the Decision-Maker will have read the investigation report and reviewed any accompanying evidence. The Parties will have the same information as the Decision-Maker.

#### 1. Gathering Information

The Decision-Maker will focus questions on those areas where it needs clarification or more information. The Decision-Maker will not necessarily need the Parties or Witnesses to repeat everything they shared during the investigation, but the Decision-Maker is obligated to come to its own Findings of Fact. The Decision-Maker has the right and responsibility to ask questions and elicit information from Parties and Witnesses to obtain relevant information, both Inculpatory and Exculpatory.

The Decision-Maker is responsible for ensuring that they have sought and probed all information necessary to make an informed decision. At times, the Decision-Maker may need to ask difficult or sensitive questions in order to understand the allegations and related information and to gain a full understanding of the context. If at any time a Party does not understand a

question or why the Decision- Maker is asking a question, the Party should let the Decision-Maker know. The Decision-Maker may explain or modify the question if necessary.

The Parties have equal rights to present information in front of the Decision-Maker, which ensures that the Decision-Maker has the benefit of each Party's perspectives about the evidence. Parties have no right to self-representation and may not ask questions directly of the other Party or Witnesses.

### 2. Evaluating Information

The Decision-Maker must objectively evaluate all admissible, relevant evidence for weight and Credibility, including both Inculpatory Evidence and Exculpatory Evidence. The Decision-Maker must focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness. Determinations of Credibility must be based on objective evaluation of relevant evidence, not on inferences based on Party or Witness status. Credibility determinations are based on a number of factors, including demeanor (but never only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility.[1] The evaluation of Credibility also takes into account the normal fallibility of human memory.

## D. Role and Obligations of Advisors During Hearings

1. The Advisor is present to provide support to the Party and not to serve as a proxy voice for the Party.
2. Advisors may not speak during the hearing process, except where permitted to present Cross- Examination Questions. Therefore, in all instances other than Cross-Examination Questions, Advisors may not speak to the Decision-Maker, make statements or arguments, or answer questions.
3. Advisors conducting Cross-Examination must be capable of understanding the purpose or scope of Cross-Examination. Equal competency between the Parties'

[1] U.S. Equal Employment Opportunity Commission: Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). https://www.eeoc.gov/laws/guidance/enforcement-guidance- vicarious-liability-unlawful-harassment-supervisors

Advisors is not required.

4. When conducting Cross-Examination, Advisors need not be advocates for Parties, but simply may be individuals who ask questions.
5. Advisors can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the Party should ask for a break in the Live Hearing.
6. Advisors cannot direct the Party how to answer a question.
7. Advisors should conduct themselves quietly and professionally, must not disrupt the proceedings and must comply with any rules of decorum adopted by the University. An Advisor who does not do so may be removed from the Live Hearing. In that instance, the Party may select another Advisor, or the University will appoint a substitute Advisor.

### E. Location of the Live Hearing

Live Hearings may be conducted with all Parties physically present in the same geographic location or, at the University's discretion, any or all Parties, Witnesses, and other participants may appear at the Live Hearing virtually, with the Parties being able to see and hear each other and Witnesses in real time.

At the request of either Party, the University will provide for the entire Live Hearing (including Cross- Examination) to occur with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Unlike Parties, Witnesses do not have the right to demand to testify in a separate room, but the University, in its discretion, may permit any participant to appear remotely.

### F. Recording of Live Hearing

The University will create an audio or audiovisual recording of the entire Live Hearing. The recording or transcript will be made available to the Parties for inspection and review, upon request.

### G. Scope of the Live Hearing

The Live Hearing will relate solely to charges set forth in the Notice of Charges issued to the Parties. If the Parties or any Witnesses share information that goes beyond these charges, the Decision-Maker will redirect the speaker to the charges at hand.

If judicious, the University may, at its discretion, use this Grievance Process to address collateral misconduct. This may include misconduct that arises from the investigation or conduct that is prohibited under another University policy but occurred in conjunction with a

Report of Title IX sexual harassment.

### H. Attendance at the Hearing

The Live Hearing is closed, meaning it is not open to the public. The following individuals may be present for the Live Hearing:

- Decision-Maker(s)
- Title IX Coordinator, or designee
- Complainant
- Respondent
- Complainant's Advisor
- Respondent's Advisor
- Witnesses (only for their individual testimony)
- Investigator(s)

If a Party, after having been given notice, does not appear at the Live Hearing, the Live Hearing will be conducted in their absence, and the Party's Advisor may appear and conduct Cross-Examination. In the event neither a Party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing Party.

### I. Expectation of Honesty

Parties and other individuals who offer information at a Live Hearing are expected to respond honestly and to the best of their knowledge. The Decision-Maker may recall any Party or Witness for further questions and to seek additional information as they deem necessary. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

### J. Cross-Examination Questions and Effect of Failure to Submit to Cross-Examination

#### 1. Advisors Conduct Cross-Examination

Advisors are allowed, on behalf of the Party they are advising, to Cross-Examine the other Party and Witnesses by asking relevant questions and follow-up questions, including questions challenging Credibility.

#### 2. Relevance Determination Before Answering

Before a Party or Witness answers a Cross-Examination Question, the Decision-Maker will

determine if the question is relevant and appropriate. If a question is deemed irrelevant, the Decision-Maker will state their reason. The requirement of Relevance applies throughout the hearing, including during Cross- Examination, and will be determined by the Decision-Maker. Parties should understand that the process of Cross-Examination may be difficult and may feel uncomfortable because its purpose is to promote the perspective of the other Party. Cross-Examination Questions cannot be required to be submitted in writing in advance of the Live Hearing or during the Live Hearing for purposes of seeking an evaluation of Relevance.

### 3. Effect of Not Submitting to Cross-Examination

Any Party or Witness may choose not to offer evidence and/or answer questions at the Live Hearing, either because they do not attend the Live Hearing, or because they attend but refuse to participate in some or all questioning. The Decision-Maker can only rely on whatever relevant evidence is available through the investigation and Live Hearing in making the ultimate Determination of Responsibility. The Decision-Maker may not draw any inference solely from a Party's or Witness's absence from the Live Hearing or refusal to submit to Cross-Examination or answer other questions.

## K. Breaks

At any time, a Party may request a break to speak with their Advisor or for other necessary reasons. If a Party or Witness requests a break after a question has been asked of them, the break will occur after the question has been answered. The Decision-Maker will also schedule a break for lunch and shorter breaks as needed.

## L. Rape Shield Protections

All questions and evidence about Complainant's sexual predisposition or prior sexual behavior with anyone other than Respondent are irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove Consent.

## M. Order of the Live Hearing

1. The Decision-Maker will call the Live Hearing to order, make introductory remarks, and allow the participants to introduce themselves.
2. The Decision-Maker will explain the hearing process, which will include a reading of the charge(s) at issue, and will provide an opportunity for all Parties to ask procedural questions prior to opening statements.
3. The Parties shall be reminded that the Live Hearing is being recorded. The recording is the sole official verbatim record of the Live Hearing and is the

property of the University.

4. The Complainant and Respondent may present a brief opening statement related to the charges.
5. The Decision-Maker will ask the Complainant questions relevant to the charges.
6. The Respondent's Advisor may ask Complainant relevant questions and follow-up questions, including those challenging Credibility (Cross-Examination Questions).
6. The Decision-Maker will ask the Respondent questions relevant to the charges.
7. The Complainant's Advisor may ask Respondent relevant questions and follow up questions, including those challenging Credibility (Cross-Examination Questions).
8. The Decision-Maker may call Witnesses to provide relevant information.
9. For each Witness, Complainant and Respondent's Advisors may ask each Witness relevant questions and follow up questions, including those challenging Credibility (Cross- Examination Questions).
10. At the conclusion of testimony, the Complainant and Respondent will be able to make a brief closing statement.
11. The Decision-Maker will make closing remarks and conclude the Live Hearing.

Note: Direct-examination, or the questioning of a Party by the Party's own Advisor, is not permitted.

## N. Deliberations and Written Determination

When the Live Hearing concludes, the Decision-Maker will deliberate and make a determination in accordance with the Preponderance of the Evidence Standard. The Decision-Maker will issue a Written Determination, which will be sent to the Parties simultaneously within ten (10) Business Days of the conclusion of the Live Hearing. The Written Determination will include:

a. Procedural History.
b. Summary of allegations in Notice of Charge/Notice of Live Hearing.
c. Policy provisions at issue.
d. Findings of Fact related to each allegation potentially constituting Title IX Sexual Harassment, made by the applicable Standard of Evidence.
e. Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which should include an evaluation of the weight or Credibility of admissible, relevant evidence.
f. A determination of whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility).
g. Rationale (or evidentiary basis) for the Determination of Responsibility

or No Responsibility.

h. A statement of any disciplinary sanctions imposed on the Respondent and the rationale for the sanctions.
i. A statement of whether Remedies will be provided to the Complainant, using the phrase: "Remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided by the University to the Complainant." The nature of such Remedies will not appear in the Written Determination. Remedies that do not directly affect the Respondent will not be disclosed to the Respondent.
j. Information about how to file an Appeal and how to access the transcript or recording before the time to file an Appeal lapses.

The Title IX Coordinator is responsible for the effective implementation of any Sanctions or Remedies.

## O. Sanctions

### 1. Possible Sanctions

The following sanctions and/or conditions may be imposed following a Determination of Responsibility for a violation of this Policy. The described range of sanctions is required by Federal law under Title IX and the published range is purely for purposes of notice as to the possibility of a range of Remedies and disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

**a. Students**

- Expulsion (permanent separation)
- Suspension
- Deferred suspension
- Disciplinary Probation
- Disciplinary probation with deferred removal from the residence halls
- Loss of housing contract
- Residence hall probation
- Conduct warning
- Title IX Sexual Harassment education or other relevant education
- Parent or guardian notification (subject to privacy restrictions)
- Financial restitution
- Fine
- Community restoration and/or community service
- Loss of campus privileges

- Loss of campus employment and/or opportunities for campus employment
- Withholding records or degree
- Revocation of admission and/or degree
- Bar against registration
- Discretionary action
- Substance abuse education and/or evaluation

**b. Employees**

- Termination of employment
- Revocation or denial of tenure
- Suspension
- Demotion
- Progressive discipline
- Warning
- Loss of pay or other pay adjustments
- Job transfer
- Change or restrictions in work location and/or job responsibilities
- Title IX Sexual Harassment education
- Restrictions on the Employee's communications
- Limitations on the Employee's movement in or on the University's campus
- Limitations on the Employee's access to programs, and activities

**2. Factors in Determining Sanctions**

In considering the appropriate sanction within the recommended outcomes, the Decision-Maker may consider the following factors:

- Respondent's prior disciplinary history;
- How the University has sanctioned similar incidents in the past;
- The nature of the conduct at issue, including whether there was violence or force;
- The impact of the conduct on the Complainant;
- The impact of the conduct on the University's community, its members, or its property;
- Whether the Respondent accepted responsibility;
- Whether the Respondent is reasonably likely to engage in the conduct in the future;
- Any other mitigating or aggravating circumstances, including the University's values; and
- The University's interest in eliminating Title IX Sexual Harassment, preventing its recurrence, remedying its effects, and maintaining an environment free from Title IX Sexual Harassment.

Respondent's lack of comprehension that conduct constituting Title IX Sexual Harassment

violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in the University's discretion, factor into the sanction decision.

#### 3. Remedial Action

The Decision-Maker may consider other remedial actions that may be taken to address and resolve any incident of Title IX Sexual Harassment and to prevent its recurrence, including: strategies to protect the Complainant, Respondent, and any Witnesses from retaliation; counseling for the Complainant or Respondent; other steps to address any impact to members of the campus community; and any other reasonable steps necessary to prevent future occurrences of harassment.

#### 4. Failure to Comply with Sanctions

Failure to comply with the sanctions or conditions imposed by the Decision-Maker will result in action under the University's Code of Student Conduct or Governing Documents, as applicable. The Title IX Coordinator will meet with University officials who will implement sanctions to ensure that sanctions imposed under the Title IX Policy are properly and fully enforced.

### P. Effective Date of the Written Determination and Possible Notice to Parents

The Written Determination becomes final only after the time to file an Appeal has expired or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed.

The University reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary sanctions.

## XV. Appeals

### A. Filing an Appeal

The Complainant and Respondent have equal rights to appeal. Appeals must be submitted in writing to the Title IX Coordinator within five (5) Business Days of the issuance of the Notice of Dismissal or Written Determination that the Party seeks to appeal.

### B. Grounds for Appeal

An Appeal is not intended to be a rehearing of the information presented at the Live Hearing. An Appeal may only be based upon one or more of the following grounds:

1. Procedural Irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, Investigator, or Decision-Maker 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
4. The sanction imposed is substantially disproportionate to the policy violation.

**C. Actions upon Receipt of Appeal**

1. The Title IX Coordinator shall designate an Appeal Decision-Maker to consider and decide the Appeal.
2. The Title IX Coordinator will notify all Parties with a Notice of Appeal. That notification will include (1) the name of the Appeal Decision-Maker, (2) a copy of the Appeal for the non- appealing Party's review, and (3) relevant deadlines.
3. Upon learning the identity of the Appeal Decision-Maker, the Parties may request that the Title IX Coordinator reassign the Appeal Decision-Maker based on reasonable and articulated grounds of bias, conflict of interest, or an inability to be fair and impartial. This must be sent to the Title IX Coordinator within 48 hours of the Notice of Appeal. If received, the Title IX Coordinator shall determine whether to remove the Appeal Decision-Maker and reassign that responsibility.
4. The non-appealing Party is entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Calendar Days of the Notice of Appeal.
5. After the two deadlines above have run, the Appeal Decision-Maker will be provided with (1) the entire case file provided to the Decision-Maker, (2) the Decision-Maker's Written Determination, (3) the Appeal, and if provided, (4) any response to the Appeal.
6. The Appeal Decision-Maker must first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal grounds set forth above has been properly alleged by the Appellant. If not, the Appeal Decision-Maker will send `written notification to the Parties simultaneously that the Appeal has been rejected, along with the Appeal Decision- Maker's rationale.
7. The Appeal Decision-Maker will then analyze all the materials provided for review. In addition, the Appeal Decision-Maker may also request review of any audio or audiovisual recordings of the Live Hearing. After review, the Appeal Decision-Maker will take one or more of the following actions:

a. Uphold or reverse the original finding;
b. Increase or decrease the sanction(s); and/or
c. Other action as deemed appropriate by the Appeal Decision-Maker.

8. The Appeal Decision-Maker will issue a decision on the Appeal to all Parties involved. Normally, this decision will be made within fifteen (15) Business Days from the date the Appeal was received.

### D. Appeal Decisions are Final

The written decision of the Appeal Decision-Maker shall constitute the University's final action.

## XVI. Informal Resolution

### A. Option for Voluntary Informal Resolution

The University offers a voluntary process for Formal Complaints to be addressed through Informal Resolution. During the Informal Resolution process, a Facilitator will attempt to help the Parties come to an agreement about how to resolve a Formal Complaint. The Informal Resolution process is available at the request of the Complainant and only after a Formal Complaint is filed and before a Determination of Responsibility or No Responsibility is issued.

The Informal Resolution process cannot be used to resolve an incident where a Formal Complaint alleges that a University Employee engaged in Title IX Sexual Harassment toward a student.

All Parties' participation in the Informal Resolution process must be voluntary. In order to initiate the Informal Resolution process, each Party must sign the "Consent to Informal Resolution Process" form and submit it to the Title IX Coordinator. When all Parties to a Formal Complaint have submitted the consent forms, the University will pause the Grievance Process, including any ongoing investigation or hearing, for a period of fifteen (15) Business Days (unless a shorter or longer time is set by the Title IX Coordinator) to allow the Parties to proceed with the Informal Resolution Process. The time period during which the Grievance Process is paused for the Informal Resolution Process shall not count toward the time periods set forth to conclude the Grievance Process.

### B. Notice Prior to Informal Resolution

Prior to beginning the Informal Resolution process, the University will provide notice of the allegations of the Formal Complaint and will direct the Parties' attention to the Informal Resolution provisions of this Policy.

### C. Role of the Facilitator

The Facilitator will decide the process and procedures to be used in the Informal Resolution process but shall not take actions inconsistent with this Policy. The Facilitator will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during any portion of the Informal Resolution process. The Facilitator may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution. The Facilitator shall not require the Parties to meet together, in-person, unless the Parties agree to do so.

If the Parties reach an agreement to resolve a Formal Complaint informally, the Facilitator shall create a written agreement that lists the terms of the Informal Resolution for the Parties to sign. A Party may withdraw from the Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution and within 48 hours after the Party signs the written agreement. If a Party timely withdraws from the informal resolution process, then the University shall resume the Grievance Process.

Under no circumstances may the Facilitator be called as a Witness in the Grievance Process.

### D. Approval of Informal Resolution by Title IX Coordinator

If no Party withdraws from the written agreement within 48 hours, the agreement shall be presented to the Title IX Coordinator for final approval and implementation. The Title IX Coordinator shall give
deference to the Parties' agreement but shall not approve an agreement that the Title IX Coordinator determines to be impractical, unduly burdensome, or inconsistent with the University's obligations under this Policy, Title IX, or another applicable law or policy. If the Title IX Coordinator disapproves the Parties' written agreement, the Facilitator and the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, then the University shall resume the Grievance Process.

## XVII. Prohibition Against Retaliation

Neither the University nor any other person may retaliate against an individual who has participated or refused to participate in any matter addressed under this Policy. Retaliation includes any action to intimidate, threaten, coerce, or discriminate against an individual (a) for the propose of interfering with any right or privilege secured by Title IX or its implementing regulations; or (b) because the individual has made a Report or Formal Complaint, testified,

assisted, or participated or refused to participate in any manner in any investigation, proceeding, or hearing under this Policy. Retaliation is also prohibited against individuals involved in matters that do not arise under this policy but arise out of the same facts or circumstances as a Report or Formal Complaint of sex discrimination or sexual harassment.

## XVIII. Recordkeeping

The University will maintain the records identified in this section of this Policy for a period of seven (7) years. The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained in paper or digital files.

In connection with each Report and each Formal Complaint, the University will maintain the following records, to the extent they exist:

- documentation of any Report of alleged Title IX Sexual Harassment;
- documentation of any Supportive Measures or if no Supportive Measures are provided, the reasons why and an explanation of how the University's response was not clearly unreasonable;
- the Formal Complaint;
- documentary evidence gathered in the course of an investigation and photographs or descriptions of non-documentary evidence gathered in the course of an investigation;
- written responses of the Parties provided prior to the finalization of the investigation report;
- the investigation report;
- the audio recording, audiovisual recording, or transcript of any Live Hearing;
- the Written Determination;
- any Appeal and written Appeal decision;
- records of the sanctions and/or Remedies;
- records of any other steps taken to restore or preserve equal access to the University's Education Program or Activity,
- any written agreement of an informal resolution; and
- a statement documenting the basis for the University's conclusion that its response to a Report or Formal Complaint was not deliberately indifferent.

The University shall also maintain all materials used to train its Title IX Coordinators, Investigators, Decision-Makers, and Facilitators and a copy of each version of its Title IX Policy on Sex Discrimination.

## XIX. Modifications to this Policy

This Policy is periodically updated for changes in assigned personnel or title or contact information

changes. The last substantive revision was September 1, 2026 (rescinding the September 1, 2022revision). This Policy may be modified at any time, during an academic year or otherwise, at the University's discretion or as required by law. University Employees and Students will be notified whenever this Policy is modified.

## APPENDIX

## GLOSSARY OF DEFINED TERMS

- **Advisor**: A person selected by a Complainant or Respondent or appointed by the University to support Complainant or Respondent, or a person appointed by the University to ask Cross- Examination questions if the Party has not selected another Advisor.
- **Administrative Leave**: Temporary separation from a person's job, with or without pay and benefits intact, as determined by the University and any relevant obligations binding the University.
- **Appeal**: An objective review of the prior process and outcome, unless new evidence must be considered.
- **Appeal Decision-Maker**: An individual tasked with determining whether an Appeal is accepted and deciding the Appeal. An Appeal Decision-Maker cannot be the Investigator, the Title IX Coordinator, or the original Decision-Maker.
- **Appellant**: A person who files an Appeal.
- **Business Days:** Any day, excluding Saturday, Sunday, and University closures.
- **Calendar Days**: Any day, including Saturday, Sunday, holidays, and University closures. The Title IX Coordinator has discretion to extend deadlines when holidays, University closures, or other circumstances would reasonably prevent timely compliance.
- **Campus Official**: An Employee of the University who has authority to institute corrective measures on behalf of the University.
- **Complainant**: An individual who is alleged to have been the target of conduct that could constitute Title IX Sexual Harassment under this Policy, whether or not the individual has filed a Formal Complaint.
- **Consent**: Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
    - Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
    - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
    - Consent may be initially given but withdrawn at any time.
    - Consent cannot be given when a person is incapacitated, which occurs when an

individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent.
    - Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
    - When Consent is withdrawn or can no longer be given, sexual activity must stop.
- **Credibility**: The worthiness of belief of information shared by a Party or a Witness.
- **Cross-Examination Questions**: Relevant questions and follow-up questions, including questions challenging Credibility. Cross-Examination Questions are intended to give the Parties equal opportunity to meaningfully challenge the plausibility, reliability, Credibility, and consistency of the information provided by the other Party and Witnesses so that the outcome of each individual case is more likely to be factually accurate.
- **Dating Violence**: Violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and, (b) where the existence of such a relationship shall be determined by (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Title IX requires that the University use this definition of Dating Violence.
- **Decision-Maker**: A person or persons designated to conduct Live Hearings, to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals. Decision-Makers may or may not be Employees of the University. Decision-Makers are trained on the definition of Title IX Sexual Harassment, the scope of the University's Education Program or Activity, the Grievance Process, Relevance, the technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially.
- **Determination of Responsibility or No Responsibility**: A determination by the Decision-Maker regarding whether the conduct of Respondent found to have occurred (the Findings of Fact) violates this Policy.
- **Domestic Violence**: 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 spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state, 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

the state. Title IX requires that the University use this definition of Domestic Violence.

- **Education Program or Activity**: Locations, events, or circumstances over which the University exercised substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sexual Harassment occurred. Education Program or Activity includes any building owned or controlled by the University and/or by a student organization that is officially recognized by the University
- **Employee**: Faculty, staff, administrator, and any other individual employed by the University in any capacity or role, except not including a person who is also enrolled as a full-time student of the University.
- **Exculpatory Evidence**: Evidence, such as a Statement, tending to excuse, justify, or absolve the alleged fault or responsibility of a Respondent.
- **Facilitator**: A person or persons designated to facilitate an Informal Resolution of a Formal Complaint. Facilitators may or may not be Employees of the University. Facilitators are trained on the definition of Title IX Sexual Harassment, the scope of the University's Education Program or Activity, how to conduct an Informal Resolution process, and how to serve impartially.
- **Formal Complaint**: A document signed by a Complainant or a Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the allegation(s) be investigated.
- **Findings of Fact**: The Decision-Maker's decision regarding what occurred.
- **Grievance Process**: The process for investigating and resolving a Formal Complaint.
- **Inculpatory Evidence**: Evidence that shows or suggests that a Respondent engaged in the alleged Title IX Sexual Harassment.
- **Informal Resolution**: A voluntary process that allows the Parties to engage in discussions in an attempt to come to an agreement, subject to approval by the University to resolve a Formal Complaint that does not involve a full investigation, hearing, and/or determination.
- **Investigator**: A person or persons, internal or external to the University, designated by the University to investigate the allegations of a Formal Complaint. An Investigator may also be the Title IX Coordinator but may not be the Decision-Maker or the Appeal Decision-Maker. Investigators are trained on the definition of Title IX Sexual Harassment, the scope of the University's Education Program or Activity, the Grievance Process, Relevance, how to conduct an investigation, how to draft an investigation report, and how to serve impartially.
- **Live Hearing**: A hearing where all Parties can see and hear each other in real time, whether in the same location or connected via technology.
- **Mandatory Reporter:** All University employees, including faculty, staff, and student employees who work closely with students in accomplishing their duties (e.g. Resident Advisors, Peer Leaders, or Mount Guides), are required to report suspected Title IX

violations to the Title IX Coordinator or another Campus Official. This requirement does not apply to the employees listed as Confidential Resources on page 4 of this Policy.

- **Notice of Charge**: A notice sent to the Parties detailing the allegations potentially constituting Title IX Sexual Harassment (the charges) and indicating that charges and information gathered during an investigation will proceed to the Grievance Process for evaluation.
- **Notice of Dismissal**: Written notice of the Title IX Coordinator's decision to dismiss a Formal Complaint, including the basis of the decision.
- **Notice of Investigation**: A written notice to the Parties commencing the Grievance Process.
- **Notice of Live Hearing**: The letter sent to the Parties providing notice that allegations falling within the scope of this Policy will proceed to a Live Hearing.
- **Party or Parties**: Individuals who are Complainants and Respondents in a Grievance Process. When referencing the Complainant, the Respondent may be referred to as the "other Party" and when referencing the Respondent, the Complainant may be referred to as the "other Party."
- **Procedural History**: A section of the Written Determination describing the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties; the date Respondent received notice of the allegation; the investigation process; and hearings held.
- **Procedural Irregularity**: A failure to follow the University's own procedures.
- **Rape Shield Protections**: Rules that protect Complainants from questions about or submission of evidence regarding the Complainant's sexual predisposition or prior sexual behavior except in very limited circumstances.
- **Relevance**: Information that is relevant directly relates to the allegations in dispute, and, therefore, is probative of a material fact concerning the allegations. Information that is not relevant includes information protected by a legally recognized privilege; evidence about a Complainant's prior sexual predisposition or prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or offered to prove Consent, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent); and any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; and evidence duplicative of other evidence.
- **Remedies**: Measures taken by the University following a Determination of Responsibility on the part of Respondent designed to restore or preserve equal access to the University's Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent.
- **Report**: The submission of information to the Title IX Coordinator or a Campus

Official regarding a potential violation of this Policy. A Report is not a Formal Complaint and, therefore, does not trigger the Grievance Process.

- **Respondent**: Any individual who has been alleged to have engaged in conduct that could violate this Policy.
- **Sexual Assault**: Sexual Assault includes the following prohibited conduct:
  1. **Rape** the of a person, with any body part or object, or oral penetration of a sex organ of a person by another person's sex organ or by a sex-related object, without that person's Consent, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  2. **Criminal Sexual Contact** – the intentional touching of the clothed or unclothed body parts of another person without the Consent of the person, for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.
  3. **Incest** - nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  4. **Statutory Rape** - nonforcible sexual intercourse with a person who is under the statutory age of Consent.
- **Stalking**: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress.
- **Standard of Evidence**: The Standard of Evidence reflects the degree of confidence that a Decision-Maker has in the correctness of the factual conclusions reached. The University will apply the Preponderance of Evidence Standard of Evidence to matters within the scope of this Policy.
- **Statement**: Evidence that constitutes a person's intent to make factual assertions.
- **Supportive Measures**: Temporary non-disciplinary and non-punitive services that are offered, without fee or charge, by the University on an individualized basis to a Complainant or Respondent designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party.
- **Title IX Coordinator**: The person or persons designated by the University as a Title IX Coordinator, including any persons designated as an "acting," "deputy" or "interim" Title IX
  Coordinator. In the event that special circumstances require the Title IX Coordinator to designate another person to address their responsibilities, the term also includes the Title IX Coordinator's designee.

- **Title IX Sexual Harassment**: Conduct, on the basis of sex, that occurs within the University's Education Program or Activity within the United States, and that involves:
    1. An Employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
    2. Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity;
    3. Sexual Assault;
    4. Dating Violence;
    5. Domestic Violence; or,
    6. Stalking.
- **Witness**: A person who has seen, heard or otherwise has knowledge or information relevant to an alleged violation of this Policy, but not including the Investigator.
- **Written Determination**: A letter delivered simultaneously to the Parties that describes the Decision-Maker's determination regarding responsibility, which must be supported by evidence.