



MID-AMERICA  
CHRISTIAN UNIVERSITY

## Title IX Policy and Procedures

rev 08.01.2024

### **DISCLAIMER**

*These policies and procedures are implemented on an interim basis for renewable six-month intervals. Should a court strike down, either temporarily or permanently, any terms or provisions of these policies and procedures, Mid-America Christian University reserves the right to make immediate modifications to the policies and procedures that take effect upon publication on our website. Further, should any court strike any portion of the 2020 Title IX Regulations (34 C.F.R. Part 106), or should an administration order them suspended or withdrawn, the Mid-America Christian University reserves the right to withdraw these interim policies and procedures and immediately reinstate previous policies and/or procedures or revise them accordingly.*

## I. Statement of Non-Discrimination

This policy of Mid-America Christian University (MACU) addresses the requirements of Title IX of the Education Amendments of 1972 ("Title IX"); final Title IX regulations issued by the U.S. Department of Education's Office of Civil Rights in May 2020, federal law prohibiting gender discrimination in federally funded education programs and activities. Title IX states as follows:

**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.**

Discrimination on the basis of sex includes gender discrimination, sexual harassment, sexual assault, sexual violence, and sexual exploitation/misconduct (terms are defined below). Title IX prohibits sex discrimination in both the educational and employment settings.

This policy also addresses the requirements of the Clery Act, Campus Sexual Violence Elimination Act, or Campus Save Act (Save), a 2013 amendment to the federal Jeanne Clery Act and Violence Against Women Act (VAWA). VAWA and the Save Act address sexual violence in the form of sexual assault including rape, fondling, statutory rape and incest, Intimate Partner Violence including domestic violence, dating violence and stalking. *For the purpose of this document and the University's handling of such cases, "Title IX" includes the concerns of the Campus Save Act.*

## II. Statement of Purpose

MACU expects that all members of the MACU University community will treat one another with civility and respect.

The University affirms the biblical teaching that sexual intimacy is to be shared as God's gift within the context of a committed marriage relationship between a man and a woman.

It is the policy of MACU to provide and maintain a living-learning community that is free of bullying/harassment and any other verbal, physical, or electronic misconduct that disrupts the community, or creates a hostile or unsafe environment at MACU.

The MACU Title IX policy, set forth below, is intended (1) to prevent bullying/harassment and discrimination among the members of the MACU community, (2) to encourage community members to have confidence in MACU's procedures and to come forward promptly any time a student is subject to conduct that is prohibited by this or any other MACU policy, and (3) to implement appropriate discipline and other corrective measures when they are found to be warranted.

It is important that this policy be well understood by all members of the MACU community. The Title IX Coordinator is responsible for the implementation and administration of the policy. Questions and concerns related to this policy may be referred to the Title IX Coordinator or Deputy Title IX Coordinator.

## III. Scope of Policy

This policy applies broadly to the entire university community, including undergraduate and graduate students on-line and on-ground; those employed by the university, including all faculty members, and all staff positions (exempt, non-exempt, senior administrative and leadership positions) as well as adjuncts, term positions, contractors, vendors or other third parties contractually obligated to the university and alumni, visitors or guests including prospective students or employees. These definitions are solely for the purposes of this policy and the processes for resolving reports under this policy and do not apply to any other university policy.

This policy pertains to acts of policy violations committed by Students, Faculty and Staff, Third Parties, and Invitees that occur within the University's Education Program or Activity. The term Education Program or Activity includes all university operations, including locations, events, or circumstances over which the university exercised substantial control over both the Respondent and the context in which the conduct occurs, and any building owned or controlled by a student organization that is officially recognized by the university. The Title IX regulations, which direct the university response, do not draw a line between on-campus, off-campus, or online, provided the conduct occurred in an Education Program or Activity in the United States. Examples include University-sponsored, University-funded, or otherwise University-supported study off campus, research, internship, mentorship, summer session, conferences, meetings, social events, or other affiliated programs or premises.

To implement this policy, the University has developed processes to investigate or otherwise address reports of policy violations that could implicate under this policy. This policy and the corresponding processes comply with the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in May 2020, which require the University to respond promptly and reasonably when it has notice of potential sexual harassment in an Education Program or Activity committed against a person in the United States.

The grievance resolution processes for students, staff, and faculty, which address all forms of Prohibited Conduct, outline consistent processes for informal and formal resolution. Throughout all processes accordingly, the University will treat Complainants and Respondents equitably by offering Supportive Measures to a Complainant when the University has notice of potential policy violation and by following a formal resolution process that fulfills the requirements for a grievance resolution process under Title IX regulations before the imposition of any disciplinary sanction against a Respondent. Upon receipt of a report of a violation of the policy, the matter may be resolved through: provision of Supportive Measures only; pursuing the formal resolution process, which is initiated by the filing of a Formal Complaint, and involves an investigation, hearing, and appeal; or, pursuing an informal resolution process, after the filing of a Formal Complaint, which requires the consent of the Complainant and the Respondent. A Complainant is always entitled to reasonably available Supportive Measures, regardless of whether a formal or informal resolution process is initiated. The determination as to whether to proceed with Supportive Measures only or an informal or formal or informal resolution process occurs during the Initial Assessment phase of the resolution process.

The nature of the conduct alleged, and the geographic location in which it occurs, may impact the nature of the hearing used in the formal resolution process, as set forth in the relevant processes for resolving

reports. Where the reported conduct falls within the Title IX regulations, the hearing process includes cross-examination by the party's advisor and limitations on the use of statements that have not been subject to cross-examination. Where the reported conduct falls outside of Title IX jurisdiction, the hearing process provides the parties with the opportunity to submit questions through the Hearing Coordinator and Chair of the Hearing Panel, and the Hearing Panel may consider any information provided in the final investigation report that the Hearing Panel finds reliable and credible.

The individual reported to have experienced violations of the policy will be referred to as the "Complainant." The individual who is reported to have violated the policy will be referred to as the "Respondent." There may be instances where another person, who has not experienced but is aware of the occurrence of the policy violation, may report conduct, and that person is referred to as the "Reporting Party." In those limited circumstances, the University will determine which of the policy provisions provided to the Complainant, if any, are also applicable to the Reporting Party.

The University will select the appropriate process to use in a given situation based on the nature of the conduct, the geographic location in which it occurs, and the role of the Respondent. Each process, however, incorporates important procedural protections and a robust investigation and hearing process designed to be fair, impartial, prompt, and equitable.

## **IV. Violations of this Policy**

The University is committed to investigating reported violations (also referred to in this policy as sometimes alleged violations of this policy), regardless of whether a complaint alleging a violation of this policy has been filed and regardless of where the alleged conduct occurred. The University's ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a formal written complaint and/or to consent to an investigation, the location where the alleged conduct occurred, and the University's access to information relevant to the alleged violation of this policy. The University is nonetheless committed to investigating all alleged violations of this policy to the fullest extent possible.

Students, faculty, or staff who have a complaint against a student, faculty, staff member, or other individual involving allegations of harassment and discrimination, including but not limited to sexual discrimination, unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, and discrimination or harassment based upon one's race, color, religion, national origin, age, or disability in violation of this policy should contact the Title IX Coordinator. In addition to contacting the Title IX Coordinator, individuals who have experienced sexual harassment or other acts of sexual assault may contact the proper law enforcement authorities, such as the local police department. The Title IX Coordinator, or other responsible party, may also contact the local law enforcement.

## **V. Policy Coordinators**

Any inquiries regarding this policy should be directed to one or more of the Policy Coordinators identified below. These Coordinators will be available to meet with persons regarding issues relating to Title IX and

this policy.

## **Title IX Coordinator**

Title IX Coordinator is responsible for implementing and monitoring compliance with the policy on behalf of the University. This includes responsibility for training, education, communication, and administration of grievance resolution procedures for handling complaints alleging violations of this policy.

### **Jessica Russell**

Executive Director of Human Resources

Kennedy Hall, Room 123

[jessica.russell@macu.edu](mailto:jessica.russell@macu.edu)

405-692-3196

## **Deputy Title IX Coordinator**

Deputy Title IX Coordinator is responsible for assisting in the implementation and monitoring compliance with the policy on behalf of the University and administration of the informal resolution, live hearing, and grievance resolution procedures for the handling of complaints alleging violations of this policy.

### **Blake Carlson**

Director of Student Life

Fozard Hall

[blake.carlson@macu.edu](mailto:blake.carlson@macu.edu)

405-703-8240

## **Investigators**

Investigators will be notified by the Title IX Coordinator of an alleged violation of this policy, and an investigator will be assigned to determine if a violation has occurred. Investigators will follow the procedures outlined in this policy while apprising the Title IX Coordinator, Deputy Title IX Coordinator or designee of the status of their investigation with findings and recommendations.

### **Hannah Moeller**

Head Women's Basketball Coach/Senior

Woman Leader

Gaulke Activity Center

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405-692-3209

### **Dr. Kimberly Thomas**

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### **Ashley Girard**

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Director of Student Services  
Kennedy Hall  
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405-703-8214

## **VI. Privacy and Confidential**

The University is committed to making reasonable efforts to protect the privacy interests of a Complainant, a Respondent and/or other individuals involved in a report under this policy.

**Privacy:** For the purposes of this policy, privacy generally means that information related to a report of Prohibited Conduct of this policy will be shared with a limited number of individuals who “need to know” in order to ensure the prompt, equitable, and impartial review, investigation, and resolution of the report. All employees routinely involved in University’s Title IX response receive specific training and guidance about safeguarding private information per applicable laws.

**Confidentiality:** For the purposes of this policy, confidentiality means that campus or community professionals with the statutorily granted ability to maintain information as privileged cannot reveal identifiable information shared by an individual to any other person without the express permission of the individual or as otherwise permitted or required by law. Those campus and community professionals who have the ability to maintain privileged communications and keep the information confidential, referred to as Confidential Resources, include only the University Campus Pastor and Director of Counseling Center.

This individual is required to maintain confidentiality when they receive information in any of the above capacities unless (i) permitted to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

**Clery Act Reporting:** Pursuant to the Clery Act, the University includes statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the United States Department of Education; in all these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident. University also reports aggregate numbers of incidents (with no detail or personally identifying information) disclosed to Confidential Resources. University will also issue a timely warning to the community for reports of Clery-defined conduct that may constitute a serious and ongoing threat, as outlined in the Annual Security Report.

## **VII. Employee Responsibility to Report Allegations**

The University is required to take responsive action when it has notice of a potential policy violation. Notice occurs when the Title IX Coordinator receives a report from a Complainant, or any other person, alleging Prohibited Conduct as defined under this policy. To this end, the University has instituted policies and training requiring Responsible Employees (employees in a leadership or supervisory position or who have significant responsibility for the welfare of Students, Faculty, or Staff, as described below) to share any information about potential policy violation with the Title IX Coordinator. This centralized reporting

requirement increases the likelihood that a Complainant will receive access to Supportive Measures, ensures that all University community members have equitable access to the resolution processes, and allows University to take appropriate action consistent with its Title IX obligations and educational mission while still respecting Complainants' agency and autonomy.

There are (3) general categories of University employees and the respective ability of each category of individuals to maintain confidentiality differs as follows:

- A. **Confidential Resources:** Confidential Resources can maintain an individual's confidentiality, including disclosures by a Complainant, Reporting Party or Respondent, and will not share any information with the University, subject to the exceptions listed above.
- B. **Responsible Employees:** As contrasted with the Complainant's personal decision whether to make a report of policy violation once information is disclosed to a Responsible Employee, the Responsible Employee is required to involving Students, Faculty and Staff, Third Parties and Invitees to the Title IX Coordinator, "Responsible Employees" include employees in a leadership or supervisory position, or who have significant responsibility for the welfare of Students, Faculty or Staff. A supervisor is anyone who has the authority to hire, promote, discipline, evaluate, grade, or direct Students, Faculty or Staff. Responsible Employees include, but are not limited to: the Title IX Coordinator; the President, Vice Presidents and Deans; the Provost; members of the President's Senior Leadership Group; Deputy Title IX Coordinators; Assistant Coordinator, Investigations, Department of Safety and Security Officers; Human Resources Consultants; faculty department chairs; all teaching faculty; graduate assistants; undergraduate advisors; coaches; and anyone who leads, administers, advises, or directs University programs or departments. Students serving in certain positions of leadership or authority, and/or Student employees with significant responsibility for the welfare of other Students, Faculty or Staff are also considered Responsible Employees and receive appropriate training within the context of their specific programs. This list is not exhaustive; any questions about the status of an employee as a Responsible Employee should be addressed to the Title IX Coordinator and/or a Deputy Title IX Coordinator.
- C. All other **Employees** are strongly encouraged to share information with the Title IX Coordinator about any policy violation.

## **VIII. Definition and Examples of Conduct Prohibited Under this Policy**

Prohibited conduct includes harassment and discrimination, including but not limited to gender discrimination, employment, severe, pervasive, and objectively offensive, unwelcomed sexual advances, requests for sexual favors, stalking, domestic violence, dating violence, and other verbal or physical conduct or communications constituting sexual harassment, and discrimination or harassment based upon one's race, color, religion, national origin, age, or disability. The acts listed below are included to clarify examples of acts that would qualify as discrimination or harassment against those with protected status under Title IX and elsewhere. The listing of these examples does not preclude nor set aside the University's formal codes of conduct listed elsewhere in University publications, handbooks, or policies. Violations of the University's codes of conduct may not constitute a violation of this policy but

would be addressed under the proper University codes such as found in the faculty handbook, staff handbook, student Code of Conduct or other applicable policies.

## 1. Sexual Harassment

### ***Definition of Sexual Harassment--What Constitutes “Sexual Harassment” Under the Title IX Regulations?***

The final rule defines sexual harassment broadly to include any of the three types of “misconduct on the basis of sex,” all of which jeopardize the equal access to education that Title IX is designed to protect: Any instant of *quid pro quo* harassment by a University’s employee; any unwelcome conduct that a reasonable person would find so severe, pervasive and objectively offensive that it denies a person equal education access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence or stalking as defined in the VAWA. The “misconduct on the basis of sex” constitutes sexual harassment when it occurs in the United States and in the University’s education program or activity, includes locations, events or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.

The final rule prohibits sex-based misconduct in a manner consistent with the First Amendment. *Quid Pro quo* harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness or denial of equal education access because such misconduct is sufficiently serious to deprive a person of equal access.

The final rule uses Supreme Court’s *Davis* definition (severe and pervasive and objectively offensive conduct, effectively denying a person equal education access) as one of the three categories of sexual harassment, so that where unwelcome sex-based conduct consists of speech or expressive conduct University’s balance Title IX enforcement with respect for free speech and academic freedom.

The final rule emphasized that it intentionally applied a narrower definition of actionable sexual harassment than that used when analyzing claims under Title VII of the Civil Rights Act of 1964, in order to respect the unique nature and purpose of educational environments (which differ in significant ways from workplaces), and to avoid infringing on First Amendment rights of involved individuals. The rule further stated that determining whether “conduct is on the basis of sex” does not require an inquiry into the subjective motive of the respondent. Rather, where the conduct is sexual in nature, or where conduct references one sex or another, such facts are sufficient to determine that the conduct is “on the basis of sex.” The preamble to the regulations also clarifies the University may continue to address harassing conduct that does not meet the department’s definition of actionable sexual harassment under its non-Title IX policies or codes of conduct.

## 2. Discriminatory Harassment

Harassment, intimidation and bullying means any gesture, written or verbal expression, or physical act that a reasonable person should know will harm another person, damage another person’s property, place another person in reasonable fear of harm to his or her person or damage to his or her property.

- Such conduct has the purpose or effect of unreasonably interfering with the individual’s work or educational performance;
- Such conduct creates or has the intention of creating an intimidating, hostile, or offensive



- working and/or learning environment; or
- Such conduct unreasonably interferes with or limits one's ability to participate in or benefit from an educational program or activity.
- Such conduct is not limited to physical contact but may also be mediated by electronic communication.

### **3. Sex Discrimination**

- Making a distinction in favor of, or against, a person on the basis of sex rather than on individual merit
- In an educational setting, making a distinction on the basis of sex that deprives a person of the ability to participate in or benefit from the University's education program or activities
- Involves retaliation

### **4. Sexual Assault/Sexual Violence**

Sexual assault/sexual violence is a particular type of sexual harassment that includes non- consensual sexual contact, non-consensual sexual intercourse, rape, fondling, or other physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Sexual assault/sexual violence includes, but is not necessarily limited to, physical assaults of a sexual nature, such as rape, sexual assault, sexual battery, incest, statutory rape, domestic violence, dating violence, stalking or attempts to commit these acts.

#### **Non-Consensual Sexual Contact is:**

Any intentional sexual touching

- However slight,
- With any object,
- By a man or woman upon a man or woman
- That is without consent and/or by force

#### **Non-Consensual Sexual Intercourse is:**

Any sexual intercourse

- However slight,
- With any object or body part,
- By a man or woman upon a man or a woman,
- That is without consent and/or by force

#### **Domestic Violence: A felony or misdemeanor crime of violence committed by:**

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common

- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person who similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occur OR
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic of family violence law of the jurisdiction in which the crime of violence occurred.
- Domestic violence is behavior that is used to gain or maintain power and control over the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

## Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

For the purpose of this definition

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

## *Stalking*

A course of conduct means two or more acts including, but limited to,

- Acts which the stalker directly indirectly or through third parties, by any action, method, device or means follows, monitors, observes surveils, threatens or communication to or about a person, or interferes with a person's property or constitute a nuisance.
- Reasonable person means a reasonable person with similar circumstances and with similar identities to the victim
- Substantial emotion distress means significant mental suffering or anguish that may, but does not necessarily require medical and or professional treatment or counseling.
- Includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, text or other similar devices or forms of contact are used.

## *Hazing*

Any act directed toward an individual, such as coercion or intimidation of an individual to act or to participate in something which a reasonable person would perceive is likely to cause physical or psychological injury and where such act is a condition of initiation into, admission into, continued

membership in or association with any group whether that group is a formal or informal entity.

## 5. Sexual Exploitation

Sexual Exploitation occurs when a student/employee takes non-consensual or abusive sexual advantage of another.

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

- Invasion of sexual privacy
- Prostituting another student
- Non-consensual video or audio recording or broadcasting or sharing of sexual activity
- Engaging in voyeurism
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals, including electronic media communication.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation
- Use or display in the classroom or any facility of the University, including electronic, pornographic, or sexually harassing materials such as posters, photos, cartoons, or graffiti.
- Sexual activity with someone whom one should know to be – or, based on the circumstances, should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug ingestion, unconsciousness, or blackout), constitutes a violation of this policy.
- Sexual activity with someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or taking drugs.
- Sexual activity of any kind with anyone under the age of 18.

## 6. Bodily Harm

If the Title IX Coordinator receives a report of harassment or assault involving bodily harm, the Coordinator may contact the MACU DPS or local law enforcement. The victim of sexual assault also may choose to file a criminal complaint against the alleged respondent. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the University's investigation, but the University will commence its own investigation upon notification of the violation. The university reserves the right to commence and/or complete its own investigation prior to the completion of any criminal investigation or criminal proceeding

## 7. Provision of Alcohol and/or Other Drugs

The provision of alcohol and/or other drugs to an individual for the purpose of committing or facilitating violations under this policy is also in and of itself a form of prohibited conduct. Such behavior may include the provision of a drink or food which contains alcohol and/or other drugs without the knowledge of the individual to whom it is being provided or other actions taken with the intention of impairing the senses, judgment, and/or physical and mental ability of another person in order to engage in other forms of policy violations. An individual does not have to engage in sexual activity with another person to be found responsible for the prohibited provision of alcohol and/or other drugs. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

## 8. Retaliation

Retaliation means any adverse action, intimidation, threat, coercion, or discrimination against an individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or Formal Complaint of policy violations, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under to this policy. Retaliation includes such conduct through associates or agents of a Complainant, Respondent, Reporting Party, or participant in any investigation or proceeding related to this policy.

## IX. Related Definitions: Consent, Coercion or Force and Incapacitation

**Consent is evaluated according to the Oklahoma State statute definition:**

The term “consent” means the affirmative and willing agreement to engage in specific sexual forms of sexual contact with another person during a sexual encounter. Consent requires an outward demonstration through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact. Consent can be revoked at any time. Consent cannot be:

1. Given by an individual who:
  - a. is asleep or is mentally or physically incapacitated either through the effect of drugs or alcohol or for any other reason, or
  - b. is under duress, threat, coercion or force; or
2. Inferred under circumstances in which consent is not clear including, but not limited to:
  - a. the absence of an individual saying “no” or “stop”, or
  - b. the existence of a prior or current relationship or sexual activity. 21

Okla. Stat. § 113 (effective June 6, 2016).

Silence, passivity, or the absence of resistance does not imply consent. It is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stop and clarify the other’s willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn and outwardly communicated as such, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact.

An essential element of consent is that it be freely given. Freely given consent might not be present, or may not even be possible, in relationships of a sexual or intimate nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a Complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the Respondent’s position would have understood such person’s words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the Respondent, demonstrating incapacitation or lack of consent.

**Coercion or Force:** Coercion is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm, and that is employed to compel someone to engage in sexual contact. Force is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual contact.

**Incapacitation:** An individual who is incapacitated lacks the ability to make informed judgments and cannot consent to sexual contact. Incapacitation is the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to verbally or otherwise communicate consent or unwillingness to an act.

Where alcohol or other drugs are involved, incapacitation is a state beyond impairment or intoxication. Where alcohol or other drugs are involved, evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

## **X. Resources and Reporting Options**

The University offers trained professional resources for Students, Faculty, and Staff, whether as Complainants, Reporting Parties, or Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report of policy violation.

Any individual who is uncertain what they wish to do in response to an alleged incident of policy violation, including how or whether to report the conduct, may contact and consult a Confidential Resource to address questions and concerns in a confidential setting. Individuals with questions or concerns about the university processes may also contact the Title IX Coordinator directly as part of reporting the conduct to the University. Any individual may make a report of policy violation under the Title IX policy regardless of affiliation with University and regardless of whether or not the person reporting is the person alleged to be the victim of conduct. Reports can be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. A report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address or by mail to the office address listed for the Title IX Coordinator.

The University recognizes that deciding whether to make a report of policy violation is a personal decision. The following principles and values will guide the University as facts and circumstances permit:

1. When the University has notice of a potential policy violation, the University will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.
2. The University will consider the Complainant's wishes with respect to Supportive Measures and seek to respect the Complainant's autonomy in making the determination regarding how to proceed.

3. In limited circumstances, typically where a risk of imminent harm to an individual or others or a threat to the physical health and safety of the campus is determined to exist, The University may be required to take immediate action upon receipt of a report of a policy violation. In such circumstances, the reasons and steps the University will take will be explained to the Complainant and, as appropriate, the Reporting Party
4. The University is committed to educating and informing individual(s) regarding the choices and options available to them, including resources and processes inside and outside University
5. The University is committed to protecting all participants in any investigation or proceeding related to this policy from retaliation.
6. An individual may choose to seek assistance, support, or guidance from a Confidential Resource on campus or in the community. A disclosure to a Confidential Resource does not constitute a report to the University.
7. An individual may choose to make a report: (1) to the University via a Responsible Employee or to any Title IX committee member and/or (2) to external law enforcement. The most efficient and effective way to learn about the University resources and procedural options, access Supportive Measures, or to file a Formal Complaint is by directly contacting the Title IX Coordinator.

## **Resources**

The following resources are available at the University to individuals wishing to seek information and support, make a report and/or file a Complaint:

1. **Confidential Resources** – As outlined before, Confidential Resources are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.
2. **Designated Reporting Options** - Making a report does not require an individual to decide whether to request a specific course of action. Deciding how to proceed can be a process that unfolds over time with support and assistance. The following are resources that an individual can use to report conduct that could be a violation of the Policy and to access reasonably available Supportive Measures. Likewise, the persons listed below are familiar with the Policy and may be contacted to address questions or concerns about the Policy.
  - Title IX Coordinator
  - Deputy Title IX Coordinator
  - Investigators
3. **Local Law Enforcement** – The University also strongly encourages anyone who becomes aware of an incident of a policy violation which may constitute a violation of law to report the incident to local law enforcement and will provide support, resources and assistance to those who do so. If off campus, **call 911** to reach local law enforcement, or contact:

Oklahoma City Police Department Santa Fe Division **(405) 297-1190**

Cleveland County Resource Officer (SRO) Division (405) 701-8888  
YMCA Crisis Center (405) 943-7273

All Confidential Resources and Designated Reporting Options are able to provide or direct community members to this support option.

**4. Anonymous Report** – Anyone can make an anonymous report through the University Hotline and Title IX confidential report tool. The Hotline allows the reporter to report concerns and communicate with University administrators while maintaining anonymity. Depending on the nature of the information provided, the University's ability to respond may be limited. Additional information about anonymous reporting is located here.

**Telephone Number for Hotline 405-692-3292**

**Time Frame for Reporting:**

There is no time limit on reporting violations of this policy, although the University's ability to respond fully may become more limited with the passage of time.

If the Respondent is no longer affiliated with the University (e.g., a report is made after a student left or graduated or an employee no longer works for the University), the University will still provide reasonably available remedial Supportive Measures to the Complainant, assist the Complainant in identifying external reporting option, and make take other appropriate actions to address the reported conduct.

**Immunity from Disciplinary Action for Personal Ingestion of Alcohol or Other Drugs:** The University generally will grant immunity from disciplinary action to a reporting Student, whether as a Complainant or a Reporting Party, for the personal ingestion of alcohol or other drugs in violation of the University Standards of Conduct that is part of a report of policy violation. Students should be aware that any such grant of immunity from disciplinary action by the University has no effect on actions by law enforcement agencies. The University will not initiate conduct charges against a Complainant or Respondent arising from the same set of facts or circumstances for the purpose of interfering with any right or privilege secured by Title IX or the Title IX regulations.

**Initial Assessment Upon Receipt of a Report:** Consistent with the processes that accompany this policy, upon receipt of a report, The University will provide outreach to a Complainant, offer Supportive Measures, and conduct an Initial Assessment of the reported information. The goal of the Initial Assessment is to provide a consistent, integrated and coordinated response to all reports and to ensure that all University community members have access to information about the University's resources, policies, and procedural options for resolving the report. The Initial Assessment seeks to gather information only to determine whether this policy applies to the report and, if so, what form of resolution is reasonably available and appropriate. The Initial Assessment in no way represents a finding of fact or responsibility. The Initial Assessment will also include a determination of whether a timely warning pursuant to the Clery Act is necessary to protect the safety of the Complainant, any other individuals, or the campus community.

**Supportive Measures:** The University will take and/or make available reasonable and appropriate Supportive Measures designed to restore or preserve access to educational and employment opportunities without unreasonably burdening either party; address safety concerns of the Complainant, the Reporting Party, the Respondent or broader University community; maintain the integrity of the investigative and/or resolution process; and deter retaliation. Supportive Measures are available whether or not a Formal Complaint is filed and regardless of whether the Complainant or Title IX Coordinator files a Formal Complaint. Supportive Measures are non-disciplinary, non-punitive individualized measures offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent.

Supportive Measures may include:

- Facilitating access to counseling and medical services;
- Guidance in obtaining a sexual assault forensic examination;
- Assistance in arranging to reschedule exams and assignments and gain extensions of deadlines;
- Academic support;
- Assistance in requesting accommodations through the appropriate office if the Complainant or Respondent qualifies as an individual with a disability;
- Voluntary changes in the Complainant's or Respondent's class schedule (including the ability to transfer course sections or withdraw from a course), work schedule, or job assignment, including teaching and service responsibilities;
- Voluntary change in the Complainant's or Respondent's campus housing;
- Escort and other safety planning steps;
- Imposition of a "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals;
- Voluntary leave of absence;
- Referral to resources to assist in obtaining a protective order;
- Referral to resources to assist with any financial aid, visa, or immigration concerns; or
- Any other Supportive Measure that does not unreasonably interfere with either party's access to education or employment opportunities can be used to achieve the goals of this policy

In addition, other forms of Supportive Measures may involve more restrictive actions. Such Supportive Measures, listed below, are typically only available when the University has an articulable factual foundation that would support the taking of a restrictive measure against a Respondent prior to the conclusion of the investigation or in lieu of an investigation. More restrictive Supportive Measures, to the extent they are non-punitive, non-disciplinary, and can be imposed without unreasonably burdening the

Respondent, include:

- Emergency removal of a Student Respondent;
- Paid or unpaid administrative leave for the Employee Respondent;
- Withdrawal from sponsored research projects;
- Change in the Respondent's campus housing;
- Exclusion from all or part of campus housing;
- Exclusion from specified activities or areas of campus;
- Prohibition from participating in student activities or representing University in any capacity, such as playing on an official team; serving in student government; performing in an official band, ensemble, or production; participating in a recognized student organization; or participating in academic honor ceremonies; or
- Any other restrictive measure that can be used to achieve the goals of this policy.

The decision-making process for administrative leave of an Employee Respondent or emergency removal of a Student Respondent is detailed in the respective processes for resolving reports.

The University will consider a number of factors in determining which Supportive Measures to take, including the needs of the Student or Employee seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the Complainant (e.g., protective orders). The University will work in



good faith to implement the requirements of judicially issued protective orders and similar orders to the extent that doing so is within its authority.

The Title IX Coordinator is responsible for ensuring the implementation of Supportive Measures and coordinating the University's response with the appropriate offices on campus. The University will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and promptly address any protective measures violation.

The University will also provide reasonably available Supportive Measures for Invitees or Third Parties, provided that the Supportive Measures are within the scope of that individual's relationship with the University.

## **XI. Applicable Procedures Under this Policy**

In response to a report of Prohibited Conduct, the report may be resolved by:

1. the imposition of Supportive Measures only;
2. the filing of a Formal Complaint by the Complainant;
3. the filing of a Formal Complaint by the Title IX Coordinator; or,
4. an informal resolution is voluntarily and mutually reached after the filing of a Formal Complaint.

A Complainant is always entitled to reasonably available Supportive Measures, regardless of whether a formal or informal resolution process is initiated. A Formal Complaint is a document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. Following the filing of a Formal Complaint, the University will initiate an investigation and hearing process to determine if there is sufficient evidence, by a preponderance of the evidence, to establish that this policy has been violated. The nature of the reported conduct, the location of the reported conduct and the role of the Respondent determined the procedure that will be used to investigate and resolve Formal Complaints.

The University will take appropriate steps to investigate and respond to the conduct.

A Respondent whose primary status is a Student, will be considered a Student. A Respondent who is a Faculty or Staff member (full-time or part-time) will be considered an employee. Where there is a question about the primary status of the Respondent, the Title IX Coordinator or Title IX Committee, as applicable, shall determine which process applies to each Respondent name in a report.

The University will take appropriate steps to investigate and respond to the conduct by Invitees and Third Parties, consistent with the authority grade by the University's jurisdiction over the Respondent. Based on the role of the Invitee or Third Party, the University may have limited authority to discipline the Respondent.

In response to a report against an Invitee or Third Party, the University will typically follow the steps listed below

1. The Title IX Coordinator will evaluate the nature of the Respondent's relationship with the University and determine the extent to which the University has disciplinary authority or control over the Respondent. The Title IX Coordinator will seek to make this determination within five (5) business days.

2. Consistent with the University's disciplinary authority over the Respondent, if any, University may take action under this Policy. An Invitee or Third Party who is accused of violating the University policy may have their relationship with the University terminated and/or be permanently barred from university or subject to other restrictions for failing to comply with this Policy.
3. The University may take steps to investigate the conduct to inform the appropriate response. Those investigative steps may vary depending on the nature of the conduct, University's relationship with the Respondent, and the steps necessary to effectively address the conduct. Investigative steps may include interviewing the parties and witnesses, when available, and a review of other relevant information. Where there is a sufficient factual basis, an Invitee or Third Party who is accused of violating this Policy may be permanently barred from the University or subject to other restrictions for failing to comply with this policy.
4. The Title IX Coordinator will notify the Complainant about any actions taken by the University. In addition, the University may provide appropriate Supportive Measures to an Invitee or Third-Party Complainant and may help to identify external reporting options that may have enforcement authority over the Respondent.

In all instances, the Title IX Coordinator will determine the appropriate manner of resolution consistent with the University's commitment to a prompt and equitable process consistent with federal law and regulations, state law, and this Policy. The University will ensure that any process used to respond to a report of misconduct against or on behalf of an Invitee or Third Party will take appropriate steps to restore or preserve equal access to the University's education programs or activities and remedy the effects of any sex discrimination as required under Title IX.

## **XII. Sanctions**

A Student or Employee determined to have committed an act of Prohibited Conduct violating this policy or any other relevant University policy is subject to disciplinary action. Disciplinary action may include – but is not limited to – a reprimand, probation, deferred suspension, administrative leave without pay, or temporary or permanent separation from the University. Third Parties or Invitees who violate this policy may have their relationship with the University terminated and/or their privilege of being on University premises withdrawn.

If a Student withdraws from the University or an Employee separates from the University at any time after a report has been made, the University may continue with any of the processes for informal or formal resolution, even without the Respondent's participation. The University may also, in its discretion, dismiss some or all of the allegations in the Formal Complaint. The determination as to how to resolve the report once a Student or Employee is no longer affiliated with the University will be based on the Title IX Coordinator's assessment of the actions necessary to meet its Title IX obligations, in consultation with other Title IX committee members and other University officials as appropriate.

If a Student withdraws from the University after the University has begun an investigation but prior to a finding or resolution, an entry may, in appropriate circumstances, be made on their transcript that indicates the Student has withdrawn with a disciplinary investigation or Complaint pending. As noted above, the University may elect to continue with the investigation.

If an Employee separates from the University after University has begun an investigation, but prior to disciplinary charges being filed, an entry may, in appropriate circumstances, be made in their personnel file that indicates that employment terminated with an investigation pending. The University may elect to

continue with the investigation. If an Employee separates after disciplinary proceedings have been initiated but prior to resolution, an entry may, in appropriate circumstances, be made in their personnel file that indicates that employment terminated with disciplinary charges pending.

### **Conflict of Interest**

A conflict of interest may arise when a member of the University community uses or has the authority to use their position to improperly influence a University decision, action, or outcome with regard to the implementation and enforcement of this policy, including associated investigative and disciplinary procedures. It is the responsibility of all members of the University community involved in any aspect of a report of Prohibited Conduct to identify and disclose potential or actual conflicts as they arise to the Title IX Coordinator and/or Human Resources. University community members covered by the University's Conflict of Interest Policy are reminded of their obligation to comply with the requirements of that Policy. In the event, any individual with a responsibility identified in this policy is a witness or has a conflict of interest that would compromise that individual's objectivity in discharging that responsibility, the University will appoint a designee.

### **Prevention and Awareness Programs**

As part of its commitment to the prevention of Prohibited Conduct under this policy, The University offers education and awareness programs. Incoming Students and new Faculty and Staff receive prevention and awareness programming as part of their orientation, and all Students and Faculty and Staff receive ongoing training and related programs on an annual basis.

## **XIII. Initial Assessment**

When a Title IX committee member receives a report alleging a potential violation of the policy the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, explain to the Complainant the process for filing a Formal Complaint, and consider the Complainant's wishes with respect to Supportive Measures. As described in greater detail below, a Formal Complaint is a document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation.

This initial outreach to a Complainant occurs as part of an Initial Assessment, which seeks to provide a consistent, integrated, and coordinated response to all reports and to ensure that all University community members have equitable access to information about University resources, policies, and procedural options for resolving the report. The Initial Assessment seeks to gather information only to determine whether the Policy applies to the report and, if so, whether an informal or formal resolution process or the imposition of Supportive Measures only is the appropriate response under the policy. The Initial Assessment is not a finding of fact or responsibility. The Initial Assessment will also include a determination whether the reported information poses a serious or ongoing threat to campus safety which may require a timely warning pursuant to the Clery Act.

The Initial Assessment is conducted by the Title IX Coordinator or, at the discretion of the Title IX Coordinator, or a member of the Title IX Team. The Title IX Coordinator has the authority to include additional individuals or, based on considerations such as privacy, health and safety, and timeliness, to conduct an Initial Assessment independently or if there is a conflict of interest from a committee member. In the event of a conflict of interest, the Title IX Coordinator would appoint a designee. In all cases, the Title IX Team will be limited to those individuals who need to be informed in order to provide effective and equitable review and timely resolution of reports while protecting the privacy of parties and witnesses as fully as possible.

Generally, the Initial Assessment will consider the nature of the report, the safety of the individual and the

campus community, and the Complainant's expressed preference for the manner of resolution in determining the appropriate course of action to achieve the goals of Title IX and the Policy: The Initial Assessment typically includes an initial intake meeting with the Complainant or Reporting Party to understand the nature and circumstances of the report and to provide the Complainant or Reporting Party with information about resources, procedural options, Supportive Measures and an opportunity to discuss the University's policies. The University will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint, and consider the Complainant's wishes with respect to Supportive Measures.

In addition to the in-person meeting, the University will provide the Complainant or Reporting Party with written information about resources, procedural options, and reasonably available Supportive Measures. This written information shall include a notification about the process for seeking disability-based accommodations, academic adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

The Title IX Coordinator or Deputy Title IX Coordinator will be responsible for determining whether the reported conduct falls within the scope of the Policy and this process, and more specifically, whether the reported conduct falls within Title IX jurisdiction as defined by the Title IX regulations. If so, the University may move forward with a Formal Resolution process as described below. If not, the University may be required to dismiss any Formal Complaint.

The Title IX Coordinator or Deputy Title IX Coordinator will evaluate reasonably available information to make the following determinations:

1. Did the reported conduct occur within University's Education Program or Activity; this question considers:
  - i. Does the University have substantial control over the Respondent; and
  - ii. Does the University have substantial control over the context in which the conduct is reported to have occurred; or
  - iii. Did the conduct occur in a building owned or controlled by a student organization that is officially recognized by the University;
  - iv. Did the reported conduct occur in the United States; and,
  - v. Would the facts set forth by the report, if substantiated, constitute a violation of sexual harassment as defined by the Title IX regulations?

Based on the answers to these questions, the Title IX Coordinator will make a determination about scope and process. This is a threshold determination regarding scope and jurisdiction, which will determine the appropriate next steps as follows:

Where the answer to these three questions is yes, and a Formal Complaint is filed, the University will follow the formal resolution process required by the Title IX regulations (Title IX Hearing Process). The Title IX Hearing Process includes cross-examination by the party's advisor and limitations on the use of statements that have not been subject to cross-examination. The hearing will allow the participants to simultaneously see and hear each other, but may be conducted remotely through videoconferencing technology.

Where the answer to any of these three questions is no, the University will dismiss the allegations in the Formal Complaint related to sexual harassment as defined in the Title IX regulations. If there are additional allegations of Prohibited Conduct in the Formal Complaint, The University will proceed with a formal resolution process for any other allegations that, if true, may constitute

Prohibited Conduct outside of the Title IX regulations (Other Prohibited Conduct Hearing Process). The Other Prohibited Conduct Hearing Process provides the parties with the opportunity to submit questions through the Hearing Coordinator and Chair of the Hearing Panel, and the Hearing Panel may consider any information provided in the final investigation report that the Hearing Panel finds reliable and credible.

In some instances, the Title IX Office may not have jurisdiction under Title IX or the Policy to pursue the report, either because the conduct did not occur in the University Education Program or Activity, or because the conduct, even if substantiated, would not constitute a violation of any form of Prohibited Conduct under the Policy. As noted in the Policy, under limited circumstances, the University may use this process to investigate and resolve instances in which the conduct occurred outside of the Education Program or Activity.

The Title IX Coordinator will provide written notice of the determination as to scope and jurisdiction to the Complainant or Reporting Party, refer that individual to the appropriate resources, including local law enforcement resources as applicable, and provide reasonably available Supportive Measures.

In the event a Respondent is charged with a violation of an applicable conduct code that is related to the report of Prohibited Conduct, the Title IX Office may also investigate and resolve the related conduct charge. If the Respondent is charged with a violation of another University policy that is unrelated to the alleged violation of the Policy, the Title IX Coordinator or designee shall coordinate its investigation and resolution as appropriate with any such investigation or resolution under the other applicable the University policy. Such coordination may include, at the discretion of the Title IX Coordinator, the sharing of information consistent with the requirements of the Federal Educational Rights and Privacy Act, University's student records policy, and other applicable laws and policies.

The Title IX Coordinator will document each report or request for assistance, including requests for Supportive Measures, as well as the response to any such report or request; and will review and retain copies of all reports generated as a result of any investigation. The University will maintain the records for a period of seven years. The records will be kept private to the extent required or permitted by law.

As part of the Initial Assessment of the facts, the University will:

1. Promptly contact the Complainant to discuss the availability of Supportive Measures;
2. Consider the Complainant's wishes with respect to Supportive Measures;
3. Assess the nature and circumstances of the report;
4. Address immediate physical safety & emotional well-being of the Complainant or other campus community members;
5. Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
6. Notify the Complainant of the right to contact or decline to contact law enforcement, and if requested, assist them with notifying law enforcement;
7. Notify the Complainant of the availability of medical and counseling resources to address physical and mental health concerns and to preserve evidence;
8. Notify the Complainant of the importance of preservation of evidence;
9. Enter the report into University's Daily Crime Log if required by the Clery Act;
10. Assess the reported conduct for the need for a timely warning under the Clery Act;
11. Provide the Complainant with information about on- and off-campus resources;
12. Provide the Complainant with a copy of the Policy and relevant procedures and an explanation of the procedural options, including seeking Supportive Measures and the process for filing a Formal Complaint;
13. Inform the Complainant that they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the report, that the advisor may accompany them to any

meeting or proceeding under this process, and that if the matter proceeds under the formal resolution process with the Title IX Hearing Process and either party does not have an advisor, the University will provide an advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing;

14. Assess for evidence of a pattern or other similar conduct by the Respondent; and
15. Explain the University's policy prohibiting retaliation

During the Initial Assessment, a Complainant may request Supportive Measures only, or may file a Formal Complaint. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a Formal Complaint even in the absence of a Formal Complaint filed by a Complainant. After the filing of a Formal Complaint, the Complainant may decide to seek Informal Resolution. A Complainant is always entitled to reasonably available Supportive Measures, regardless of whether a formal or informal resolution process is initiated. In some instances, a Complainant may request that but that their identity not be shared with the Respondent or that University not pursue an investigation. Where possible, the University will seek to accommodate a Complainant's request, provided that it can do so in the context of The University's responsibility to provide a safe and non-discriminatory environment for all the University community members.

The formal resolution process (investigation, hearing and appeal process) is initiated by the filing of a Formal Complaint. A Formal Complaint is a document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The Formal Complaint may be submitted to the Title IX Coordinator in person, by mail, or by electronic mail, using the Formal Complaint form. The Complainant may also contact the Title IX Coordinator directly for assistance.

The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstance.

The Title IX Coordinator also has the discretion to file a Formal Complaint. In evaluating the appropriate manner of resolution, including whether the Title IX Coordinator will file a Formal Complaint in the absence of a Formal Complaint by the Complainant, the Title IX Coordinator will consider the following factors:

1. The seriousness, persistence or pervasiveness of the reported conduct;
2. The respective ages and roles of the Complainant and Respondent;
3. Whether there have been other complaints or reports of harassment, misconduct or Prohibited conduct against the Respondent;
4. The right of the Respondent to receive notice and relevant information, including the names of the Complainant and any witnesses, before disciplinary action is imposed;
5. Whether the circumstances suggest there is a risk of the Respondent committing additional acts of sexual violence or other violence, including but not limited to reported threats of sexual violence or other violence by the Respondent against the Complainant or others;
6. Whether the Respondent has a known history of arrests or prior conduct violations (at the University or elsewhere) indicating a history of violence;
7. Whether the sexual violence was reportedly committed by multiple individuals;
8. Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances;
9. Whether the sexual violence was reportedly perpetrated with a weapon;
10. Whether the Respondent is a University employee;
11. Whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence); and
12. The Respondent's right to access information if such information is maintained in an "education

record” under the Family Educational Rights and Privacy Act (FERPA), U.S.C. §1232g; 34 C.F.R. Part 99, and/or subject to any other applicable law, regulation, or policy

The University will take all reasonable steps to respond to the report consistent with a Complainant’s requested course of action but its ability to do so may be limited based on the nature of the reported information. Where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator or designee will inform the Complainant about the chosen course of action.

The Initial Assessment will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the appropriate course of action. The University will seek to complete the Initial Assessment as promptly as possible, typically within ten (10) business days. There may be circumstances, however, where the Initial Assessment takes longer based on the availability of the Complainant or other necessary information, the need to gather additional information or other factors outside of the University’s control. The University also understands that a Complainant may engage in delayed decision-making, which may impact the timing of the conclusion of the Initial Assessment.

## **XIV. Interim Actions**

The University will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent’s present on the University property, program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegation of sexual harassment justifies removal. The University may dismiss a claim and or remove a student or employee by the following:

### Mandatory Dismissal

1. The University must dismiss a complaint:
  - a. That does not meet Title IX definition of Sexual Harassment;
  - b. That alleges sexual harassment that did not occur in the University’s education program or activity;
  - c. That alleges sexual harassment that did not occur in the United States at all.
2. The University can still address these complaints under the code of conduct and dismiss even if the misconduct is not sexual harassment under Title IX.

### Discretionary Dismissals

1. The University may dismiss a complaint:
  - a. If the complainant notified the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or some of its allegations;
  - b. If the respondent is no longer enrolled or employed by the University; or
  - c. If specific circumstances prevent the University from gathering, evidence sufficient to reach a determination about the allegations.

### Emergency Removal

1. University may remove a student from an education program or activity or an employee if the University:
  - a. Conducts an individualized safety and risk and
  - b. Determines there is an immediate threat and
  - c. Provides respondent with notice and an opportunity to challenge decision immediately following removal.

### Dismissal Procedures

1. Whenever the University dismisses a formal complaint, or any allegations in it, University must promptly send written notice of the dismissal and the reason to the parties.
  - a. Both parties have the right to appeal a University's dismissal decisions.

The Title IX Coordinator will promptly provide the Respondent with written notice of the removal and an opportunity to challenge the removal. That notice shall include a statement that the University's use of any information the Respondent chooses to provide may subsequently be used in implementation of any aspect of the Policy or this resolution process. The Respondent will have 72 hours to submit a written challenge to the safety and risk analysis to the Title IX Coordinator, which will be immediately reviewed. The Title IX Coordinator will assign an impartial and neutral administrator or external professional to evaluate the information in support of the individualized safety and risk analysis. The Respondent will have an opportunity to present relevant evidence challenging the safety and risk analysis. The decision maker will submit a final decision in writing to the Respondent within 10 business days. The decision-maker may also consult with a representative of the student affairs office of the Respondent's School or seek input from the Complainant. The Title IX Coordinator will notify the Complainant and Respondent in writing of the outcome of the challenge.

At the conclusion of the Initial Assessment, the Complainant will receive a written notice of the determination about how The University will proceed.

## **XV. Grievance Resolution Procedures**

The Title IX Coordinator and Title XI committee will insure all grievance resolution procedures are followed in dealing with sexual harassment claims.

The grievance resolution procedures themselves can't discriminate on the basis of sex, and any additional provision that a University adds must apply equally to complainants and respondents.

### Handling of Complaints

- The University has two grievance resolution procedures: Informal Resolution Process or Formal Resolution Process.
- Informal Resolution includes interim remedial measures or university/community and does not involve disciplinary action against a Respondent.
- Formal Resolution Process will occur if Complainant seeks it or if the Title IX Coordinator determines it is necessary and will include interim remedial measures or University/community remedies and may involve disciplinary action against a Respondent.

### Treat Parties Equitable

- The University's grievance resolution process must treat complainants and respondents equitable by providing remedies to a complainant if a respondent is found responsible, and by follow the prescribed grievance process imposing discipline on a respondent.
- The remedies for a complainant have to be designed to restore a preserve equal access to the University's education program or activity.
- Unlike supportive measures in place with or without a grievance process pending, a complainant's remedies CAN be punitive or disciplinary against the respondent.



### Object Evaluation of Evidence

- The University's grievance resolution process must ensure an objective evaluation of all relevant evidence—including inculpatory and exculpatory evidence.
- Credibility determinations can't be made on the basis of a person's status as a complainant, respondent or witness.

### No Conflict of Interest

- The individuals involved in the process—like the Title IX Coordinator, Deputy Title IX Coordinator, Assistant Coordinator, investigators, decisions-makers, hearing panel or facilitators of informal, voluntary resolution efforts—must not have any bias or conflict of interest.
- These individuals must also be trained. The materials used to train Title IX personnel can't rely on sex stereotypes, must promote impartial investigations and adjudications/decision making and must be posted on each University's website and make them available for public inspection upon request.

### Presumption of Innocent

- Under the University's grievance resolution procedures, the respondent must be presumed not responsible, so that any finding of responsibility only comes at the conclusion of a grievance process.

### Reasonable Prompt Time Frames

- The grievance resolution process must include reasonable prompt time frames for resolving formal complaints of sexual harassment.
- Temporary delays are permitted only for good cause. Good cause can include law enforcement activities, the absence of a party or witness, the absence of a party's advisory of choice, or the need to provide language assistance or accommodations of disabilities.

### Description of Range of Outcomes

- The grievance resolution process must describe or list the range of possible remedies and disciplinary sanctions that could occur following a determination of responsibility.

### Standard of Evidence

- The grievance resolution process must state which standard of evidence the University will use to reach a determination regarding responsibility to be used for all sexual harassment proceedings. The University has chosen "Preponderance of Evidence" standing. (i.e., more likely than not).
- This standing will be used for all formal complaint of sexual harassment whether the respondent is a student, or employee, including a faculty or staff member.
- All sexual harassment proceeding will have the same standard of evidence.

### Advisors

- Complainants and Respondents are entitled to be accompanied and assisted by an Advisor of their choosing at both formal and informal meetings, investigation interviews and, if applicable, a subsequent panel hearing. There is no requirement that the Advisor be an individual from the University community. Generally, advisors may not participate

in the process or speak on behalf of the Complainant or Respondent, although advisors are permitted to conduct cross-examination of the parties and witnesses during a panel hearing under the Title IX Hearing Process. In addition, advisors may ask to suspend any meetings, interviews, or hearings briefly to provide consultation; the University retains the discretion to deny such requests if they are excessive, burdensome, or otherwise unreasonable. Advisors may not also be fact witnesses in the investigation. Complainants and Respondents may choose to have an attorney serve as their advisor, but adjustments to the process, including scheduling of interviews or hearings, will not be made for any Advisors, including attorneys, if they unduly delay the process. If a party does not have an Advisor and the matter is proceeding to a panel hearing under the Title IX Hearing Process, the University will provide an advisor, without fee or charge, to the party for the sole purpose of conducting questioning at the hearing on behalf of that party.

#### Right to Appeal

- The grievance resolution procedures have to contain the right to appeal the result of a grievance resolution process and information about how to invoke the right to appeal.
- University must offer an appeal to each party on certain bases and the University also has the option to expand the bases on which an appeal may be taken, as long as they apply those bases equally to both parties.

#### Description of Range of Supportive Measure

- The University's grievance resolution process must describe the range of supportive measures available to complainants and respondents.

#### Privileges

- The University grievance resolution process must explain that now information protected by a legal privilege, such as an attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.
- Neither a part nor the University is allowed to seek, permit questions about, or all the introduction of evidence that is protected by a recognized privilege.
- Individuals can always opt to wait their own privileges, if they want, but they don't have to.

## **XVI. Informal Resolution Process-Alternative Dispute Resolution (ADR)**

In recognition that a wide spectrum of conduct can constitute violations of the University policies, the Title IX Coordinator may resolve reports informally as appropriate based on the circumstances. The informal resolution process provides a mechanism for the University to take prompt action through the imposition of individual and community remedies designed to maintain or restore access to the education, extracurricular and employment activities at the University and to remedy the impacts or conduct on the member of the University community

Alternative Dispute Resolution (ADR) - is a term that refers to a set of practices and techniques aimed at

permitting the resolution outside of the live hearing or courts. This would include mediation of all parties, arbitration, evaluation and resolutions.

- a. University can offer an informal resolution process in appropriate cases
  - i. **EXCEPTION**: Where the respondent is an employee of the University and for allegations of sexual harassment that have been filed.
- b. Information resolution may only be attempted if each party enters the process completely voluntarily and must agree to an informal resolution.
- c. If information resolution proceeds, the University must provide a facilitator free from conflicts of interest or bias and who has received special training.
- d. The University needs to provide complainants and respondents with notice of the allegations, notice of their rights, information about whether an informal process is confidential, and about withdrawing from the process.
- e. Either party may withdraw from the informal process and resume the grievance resolution process.

The informal resolution process may only be offered after the filing of a Formal Complaint. However, at any time prior to reaching a determination regarding responsibility, The University may facilitate an informal resolution process that does not involve a full investigation and adjudication.

To proceed with an Informal Resolution:

The University must provide Complainant and Respondent with a written notice disclosing the allegations, the requirements of the Informal Resolution, the circumstances under which the parties are precluded from resuming a Formal Complaint arising from the same allegations, the right to withdraw from the Informal Resolution and resume the formal resolution process at any time prior to agreeing to a resolution; and, any consequences resulting from participating in the Informal Resolution, including what records will be maintained and if they will be shared; and, both Complainant and Respondent must give voluntary, written consent to the Informal Resolution process.

The informal resolution process is **NOT** available to resolve allegations that an employee sexually harassed a student. An informal resolution process is voluntary, and a Complainant or Respondent (if participating) can ask to end the informal resolution process at any time before its completion. Before the completion of an informal resolution process or if the resolution is not successfully concluded, the parties may request, and the University may pursue the formal resolution process. If an informal resolution process is ended by request, any information obtained may be used in a subsequent formal resolution process and hearing.

Once a formal complaint has been resolved through an informal resolution process that involves the participation of a Respondent in lieu of disciplinary action, the matter will generally be considered closed. Both the Complainant and Respondent will receive written notice when participation in an informal resolution is considered a final resolution of the report.

Potential remedies include targeted or broad-based educational programming or training, supported direct conversation or interaction with the Respondent, and/or indirect action by the Title IX Coordinator. An informal resolution may include mediation, as deemed appropriate by the University, although the

University will generally not pursue mediation where the Prohibited Conduct involves severe or egregious forms of Prohibited Conduct. The University will not compel a Complainant to engage in mediation, to confront the Respondent directly, or participate in any particular form of informal resolution.

In all cases, the Title IX committee will have the discretion to determine whether or not informal resolution or meditation is appropriate to the circumstances. The determination to use the informal resolution and the particular form of informal resolution will be communicated in writing to the Complainant and the Respondent. The Title IX Coordinator will maintain records of all reports and conduct referred for an informal resolution, which will typically be complete within 60 days to 90 business days of the initial report.

## **XVII. Report of an Alleged Policy Violation and Investigation**

### *When Is a The University Liable for Sexual Harassment?*

The University, with “actual knowledge” of sexual harassment allegations, engages in intentional discrimination if it responds in a “deliberately indifferent” manner to the reported allegations. The University is not required to respond if it merely “should have known” about sexual harassment; rather, its obligation to respond is triggered only after the University has “actual knowledge” of the alleged conduct. “Actual knowledge” means notice to the University’s Title IX coordinator or “any official of the University who has authority to institute corrective measures on behalf of the University” (known as the “official with authority”).

Notice occurs whenever a Title IX coordinator or official with authority: (1) witnesses sexual harassment; (2) hears about sexual harassment or receives sexual harassment allegations from a complainant or a third party (e.g., a complainant’s parent, friend, or peer); (3) receives a written or verbal complaint about sexual harassment or sexual harassment allegations; or (4) receives notice by any other means. The person who reports does not need to be the complainant; rather, a report may be made by any person.

The University is *not* liable in instances in which it took all steps required under the regulations or took other actions that were not clearly unreasonable in light of the known circumstances, though the alleged harasser is nevertheless accused of subsequent harassment allegations.

### *What Triggers a The University’s Response?*

Once the University is charged with “actual knowledge” of sexual harassment in its education program or activity, it must evaluate its response. Liability arises where the University acts with “deliberate indifference,” meaning that it responds to sexual harassment allegations in a manner that is “clearly unreasonable in light of the known circumstances.”

The University’s response must include the following mandatory, proactive, and interactive process: (1) it “must be prompt”; (2) it “must consist of offering supportive measures to a complainant”; and (3) it “must ensure that the Title IX coordinator contacts each complainant ... to discuss supportive measures, consider the complainant’s wishes regarding supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.” These regulations clarify that a Title IX coordinator should initiate a

grievance resolution process against the complainant's wishes only if doing so would not be clearly unreasonable in light of the known circumstances.

The University must treat complainants and respondents equitably. Specifically, the University must offer supportive measures for a complainant and must follow a grievance resolution process that complies with the regulations before imposing disciplinary sanctions. If a respondent is found to be responsible for sexual harassment, the University must effectively implement remedies for the complainant designed to restore or preserve the complainant's equal education access, and the University may impose disciplinary sanctions on the respondent.

#### *What Are "Supportive Measures" and When Must They Be Offered?*

The specific supportive measures offered to a complainant are up to the University but should be customized to each individual complainant's needs. As the department stated in its regulatory preamble, the University's "are best positioned to make decisions about which supportive measures and remedies meet each complainant's need to restore or preserve the right to equal access to education, and which disciplinary sanctions are appropriate against a respondent who is found responsible for sexual harassment." The regulations further emphasize that supportive measures cannot be punitive or disciplinary against any party and cannot unreasonably burden the respondent or alter or affect the respondent's presumption of innocence throughout the investigation and grievance process.

The University can offer a non-exhaustive list of examples of supportive measures that may include moving a complainant or respondent's seat in a class; alternate housing arrangements; modified work schedules; a no-contact order; course-related adjustments (such as the opportunity to retake classes or exams); revised class schedules; deadline extensions; counseling; leaves of absence; and increased campus escort services and other security services.

#### *Interim Supportive or Protective Measures*

The University reserves the right to suspend or place on immediate administrative leave any member of the campus community accused of violating this policy, or to take any other interim measures the University deems appropriate, pending the outcome of an investigation and/or disciplinary proceedings. Such interim measures can include, but are not limited to, placing an employee on paid or unpaid administrative leave, removing a student from campus housing and/or current classes, modifying course schedules, and issuing a "no contact" order, among other remedies. The University is committed to the safety of any alleged victims in pursuit of the facts of the investigation

## **XVIII. Formal Resolution Process – Investigation, Live Hearing, and Decision**

The formal resolution process will occur when:

- a. A report of a violation of this policy is made and the Complainant files a formal complaint or
- b. The Title Coordinator files a formal complaint after make the determination that a formal resolution process is necessary.

Upon receipt of a formal complaint, a trained investigator must conduct a

n investigation consistent with the University's code of conduct and/or Title IX procedures and draft an investigation report summarizing the evidence. Prior to finalizing the report, the investigator must send a preliminary report to the parties and their advisors, if any. The parties must be allowed at least 10 days to respond in writing to the evidence, and the investigator must consider the written response prior to completing the report.

At the investigation's conclusion, the investigator must either dismiss the allegations or determine if there is sufficient evidence to conclude that a Title IX violation occurred. The regulations set forth circumstances under which the University *must* dismiss a formal complaint and circumstances under which it *may* dismiss a complaint. A University *must* dismiss a complaint when the investigator concludes that: (1) sexual harassment did not occur against a person in the United States; (2) the conduct would not constitute sexual harassment, even if proven; or (3) the sexual harassment did not occur in the University's education program or activity. On the other hand, the University *may* dismiss a complaint if the complainant requests it in writing; if the respondent is no longer enrolled in or employed by the University; or if specific circumstances prevent the investigator from gathering sufficient evidence to reach a determination. If a complaint or allegation is dismissed, the parties must simultaneously receive a written explanation for the dismissal and notice of the ability to challenge the dismissal on appeal.

## **A. Investigation**

### **1. Expectations for the Parties**

During the investigation and resolution process, both the Complainant and Respondent have equal rights, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to all information gathered that is directly related to the allegations in the Formal Complaint, as well as the information contained in the investigation report that will be used in disciplinary proceedings; to timely written notice of meetings at which their presence will be requested or required, including the purpose of the meeting and participants, with sufficient time to prepare; to notice of the hearing; to question the other party during the hearing, either through the party's advisor or through the Decision Makers/Hearing Coordinator/Chair; to simultaneous written notice of the outcome, sanction, and rationale; and to seek review of appeal the outcome.

The Investigator may receive any information presented by the parties, but the Investigator, not the parties, is responsible for gathering relevant evidence. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to voluntarily provide material information, The University's ability to conduct a prompt, thorough, and equitable investigation may be impacted. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present evidence.

All University community members are expected to provide truthful information in any report or proceeding under this Policy and are further expected to cooperate with the University in any such proceeding.

Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of prohibited conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith,

even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

## **2. Initiating an Investigation**

The Title IX Coordinator or Deputy Title IX Coordinator will appoint one or more trained investigators to conduct a prompt, thorough, fair, and impartial investigation. The Title IX Coordinator will have the discretion to determine whether the investigator will be internal (an employee at the University) or external (an individual outside of the University community), or a combination of both internal and external investigators working as co-investigators. The role of the investigator will be to gather information through interviews of the Complainant, Respondent, and witnesses and synthesize the information in a report that will be provided to the Complainant, Respondent, and the Decision Makers/Hearing Panel (which is constituted as described below). The investigation report will include all relevant information provided by either party that will be used in the determination of responsibility or sanction.

Any investigator used by the University will receive annual training on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking; the definition of sexual harassment in the Title IX regulations; the scope of the University's Education Program and Activity and on how to conduct an investigation and resolution process that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of complainants while promoting accountability; how to create an investigation report that fairly summarizes relevant evidence; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The investigator will be impartial and free from conflict of interest or bias.

## **3. Informational Meeting with the Respondent**

The University will provide outreach to a Respondent, in writing, to invite the Respondent to an informational meeting, similar to the intake meeting with the Complainant. The written communication will include notice of the date, time, location, participants, and purposes of the informational meeting. It will be provided with sufficient time for the Respondent to prepare to participate in the meeting.

At the initial meeting, the Title IX Coordinator or designee will provide the Respondent with information about resources, procedural options, and remedial measures and an opportunity to discuss the University's policies. In addition to the in-person meeting, the University will provide the Respondent with written information about resources, procedural options, and reasonably available Supportive Measures. This meeting is informational in nature and is separate and distinct from a fact-gathering interview with the investigator. The University may also provide written notice of investigation during this informational meeting.

## **4. Notice of Investigation**

After a Formal Complaint is filed, the Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the following information:

1. notice of the process for formal and informal resolution;
2. Sufficient details regarding:
  - a. the identities of the Complainant and the Respondent, if known;

- b. the date, time (if known), location, and nature of the reported conduct;
3. the reported policy violation(s);
4. the name of the investigator;
5. information about the parties' respective rights and responsibilities;
6. the prohibition against retaliation;
7. the importance of preserving any potentially relevant evidence in any format;
8. how to challenge participation by the investigator on the basis of a conflict of interest or bias;
9. a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process;
10. that the parties are entitled to an advisor of their choice, including an attorney advisor, and the advisor is permitted to review the evidence gathered in the investigation;
11. any provision of the applicable student code of conduct stating that The University prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
12. and a copy of the policy

If the investigation reveals the existence of additional or different potential policy violations, including a violation of Supportive Measure, the Title IX Coordinator will issue a supplemental notice of investigation.

## **5. Overview of Investigation**

During an investigation, the investigator will seek to meet separately with the Complainant, Respondent, and relevant witnesses. The investigator will send written notice of the interview date, time, and location, name of participant(s), and purpose of the interview to the parties and witnesses in sufficient time for the party to prepare and participate. The investigator will also gather other relevant information or evidence, including documents, photographs, communications between the parties, and medical records (subject to the consent of the applicable person), and other electronic records as appropriate. The investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the investigator, they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond. At the conclusion of the investigation, the Complainant and the Respondent will both have the opportunity to review and respond to all information gathered in the investigation that is directly related to the allegations, including information shared by the Complainant or the Respondent during their interviews or through evidence either provides. The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. The University



will not consider polygraph results. The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The Title IX committee does not actively monitor social media or online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witness should bring online information to the attention of the investigator.

The investigator will seek to complete the fact gathering stage of the investigation within 10 business days of the issuance of the notice of investigation. As detailed later in this process, The Title IX Coordinator and investigator may grant temporary delays of the investigation or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Unless requested by a party or witness, the University does not conduct interviews during the finals period.

## **6. Witnesses**

Both the Complainant and Respondent have the option to provide names of potential witnesses to the investigator. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. Witnesses may also be offered to provide subject matter expert information. Witnesses may not participate solely to speak about an individual's character; how individuals present themselves in other contexts (e.g., friendly, kind, and well-liked) has little probative value in evaluating whether particular conduct occurred. Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be shared with the parties at the conclusion of the investigation. The investigator has the discretion to determine which of those potential witnesses, or other persons, may have relevant information about the alleged conduct. Witnesses may include individuals outside the University community.

## **7. Additional Evidence**

Both the Complainant and the Respondent are permitted to provide other relevant evidence to the investigator. Evidence may be inculpatory or exculpatory. Evidence includes any facts or information presented in support of an assertion and may include text messages, email exchanges, timelines, receipts, photographs, etc. Any documentation shared by the Complainant or the Respondent with the investigator will be provided to the other party. The investigator may also consider additional documents, items or other relevant information. During the course of the investigation, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation and will also share any information about retaliation or violation of the terms of an interim protective measure with the Title IX Coordinator for further action.

## **8. Relevance and Evidentiary Considerations**

The University will not restrict the ability of either party to gather and present relevant evidence. Evidence is relevant if it makes a material fact more or less probable than it would be without the evidence. In general, the investigator has the discretion to determine the relevance and probative value of information proffered or received.

Information that does not directly relate to the facts at issue, but instead reflects upon the reputation, personality, qualities, or habits of an individual is character evidence and is not relevant to the determination

of whether there is a Policy violation. In addition, the investigator has the discretion to evaluate the relevance of the following evidentiary considerations.

- a. **Prior or Subsequent Conduct of the Respondent:** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of prohibited conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the prohibited conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct so distinctive and so closely resembling either party's account of the encounter as to tend to prove a material fact may be considered. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- b. **Prior Sexual History of the Parties:** An individual's character or reputation with respect to other sexual activity is not relevant and will not be considered as evidence. Similarly, an individual's prior or subsequent sexual activity is typically not relevant and will only be considered as evidence under limited circumstances. For example, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve other questions raised in the investigation. It may also be relevant to show that someone other than the Respondent committed the conduct alleged by the Complainant. The investigator will determine the relevance of this information and both parties will be informed in writing if evidence of prior sexual history is deemed relevant.
- c. **Prior Sexual History Between the Parties:** Where the parties have a prior sexual relationship, and the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. Even in the context of a relationship, however, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

## **9. Acceptance of Responsibility**

At any point during the investigation, the Respondent may elect to accept responsibility for some or all of the policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the charges, the investigation will continue to conclusion. Where there is an acceptance of responsibility as to all of the potential policy violations, the investigator will complete an investigation report of all information gathered to date and refer the matter to the Decision Maker/Hearing Panel for sanctioning as described below.

## **10. Review of Information Gathered**

Prior to the completion of the investigation report, the investigator will make information gathered in the

investigation available for review by the parties and their advisors. The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which The University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The investigator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report. In the written submission, the parties may offer additional comment or feedback on the facts as gathered, clarify information previously shared, suggest additional witnesses, suggest additional lines of questioning or inquiry, or identify any other relevant information or evidence to assure the thoroughness, sufficiency and reliability of the investigation.

### **11. Initial Investigation Report**

The investigator will produce a written investigation report that fairly summarizes the relevant information and facts gathered during the investigation and may include direct observations and reasonable inferences drawn from the facts and discussion of any consistencies or inconsistencies between the various sources of information. As noted above, the investigator has the discretion to determine the relevance of any witness or other evidence and shall exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative. For example, the investigator shall exclude statements of personal opinion by witnesses and statements as to general reputation for any character trait, including honesty. The investigation report will be a fair and thorough summary of all relevant information gathered that is inculpatory or exculpatory the accounts of the Complainant, the Respondent or other witnesses.

The investigation report will include a determination by the investigator whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the definitions of Prohibited Conduct. In particular, the investigator will determine whether the conduct alleged, if substantiated, would constitute Prohibited Conduct. This is not a determination of responsibility, nor does it involve a determination about the credibility of the information gathered; those decisions are reserved for the Hearing Panel. Rather, this evaluation accepts all facts as presented by the Complainant as true in order to determine the format of the hearing and the potential policy violations that will be the subject of the hearing.

The Title IX Coordinator will provide the investigative report, along with a written notice of hearing, to the parties, their advisors, and the Hearing Panel members, in an electronic format or a hard copy ten (10) days prior to the scheduled hearing. The Complainant and Respondent are provided the opportunity, in writing, to offer any additional comment or feedback with respect to the facts or the investigator's determination about scope or jurisdiction.

### **12. Dismissal of Formal Complaint**

The Title IX Coordinator will review the investigator's determination as to whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the definitions of Prohibited Conduct. Based on the determination by the investigator in the investigative report, the Title IX Coordinator must dismiss some or all of the allegations in the Formal Complaint if:

- The conduct alleged, even if substantiated, would not constitute sexual harassment as defined in the Title IX regulations;
- The conduct did not occur within the University's education program or activity; or, 3) the conduct did not occur against a person in the United States.

The Title IX Coordinator may dismiss the Formal Complaint or any allegations there in if:

- The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegation therein;
- 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 on the merits.

The Title IX Coordinator has the discretion to dismiss some or all of the allegations in a Formal Complaint at any time if, throughout the initial assessment, investigation, or hearing of a Formal Complaint, it becomes apparent that the conduct, even if substantiated, would not constitute sexual harassment as defined by the Title IX regulations, did not occur in a The University Education Program or Activity, or did not occur against a person in the United States. If the Title IX Coordinator dismisses the Formal Complaint with respect to Title IX sexual harassment, the Title IX Coordinator may determine that sufficient cause exists to move forward with the resolution of the remaining allegations if those allegations, if true, would constitute Prohibited Conduct outside the Title IX regulations (Other Prohibited Conduct Hearing Process).

### **13. Notice of Hearing**

The Title IX Coordinator or designee will provide the Complainant and Respondent with a written notice of hearing. The notice of hearing will include: the specific policy violations that will be the subject of the hearing; the date time, and location of the hearing; the names of the hearing panel members; how to challenge participation by the hearing panelists on the basis of conflict of interest or bias; the right to have an advisor present at the hearing and conduct cross-examination on the party's behalf under the Title IX Hearing Process; that the University will provide an advisor, without fee or charge, to conduct cross-examination on behalf of the party at the Title IX Hearing Process if the party does not have an advisor present for the Title IX Hearing Process; how to request that witnesses be present at the hearing; and, information about the specific hearing format for sexual harassment as defined by the Title IX regulations and/or other Prohibited Conduct. If some or all of the allegations in the Formal Complaint have been dismissed, the parties will receive written information about how to appeal the dismissal of the Formal Complaint.

### **14. Impact and Mitigation Statements**

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will provide any statement(s) to the Hearing Panel, which will only be considered if there is a finding of responsibility. Each party has the opportunity to view the other party's statement

## **B. Live Hearings: Decision-Makers, Panel, Role, Procedure and Responsibility**

For postsecondary University's, hearings must be live and conducted in real time. Upon the request of either party, the hearing may be conducted by videoconference with the parties in separate rooms. However, at all times, all participants, including the parties, advisors, witnesses, and decision-maker, must be able to see and hear each other.

A decision-maker who is *not* the Title IX coordinator or investigator must preside over the hearing. The decision-maker must have extensive training in Title IX procedures as well as all applicable evidentiary requirements, standards of proof, and relevant state and local laws, and this training must be made available to the public. The decision-maker is tasked with reaching a determination regarding responsibility by applying the standard of evidence the University has designated for use in all formal complaints of sexual harassment. The University has chosen "preponderance of the evidence" standard and must apply the same standard to all sexual harassment complaints against students and employees. The decision-maker must evaluate all relevant evidence under this standard without making credibility determinations based on a party's status as a complainant or respondent.

The decision-maker may permit the parties or advisors to make opening or closing statements. Advisors must conduct cross-examination of the parties and any additional witnesses. Specifically, "cross-examination must occur 'directly, orally, and in real-time' by the party's advisor and 'never by a party personally.'" This requirement is a notable change that is intended to confer due process protections on both parties. Consistent with these protections, the regulations prohibit the decision-maker from drawing inferences about a determination regarding responsibility based on a party's failure or refusal to appear at a hearing or answer cross-examination questions.

After an advisor asks a question on cross-examination, and before the party to whom it is directed answers it, the decision-maker must determine if the question calls for relevant information. All relevant evidence must be admitted, but the decision-maker *must exclude* evidence based on legally recognized privileges, the complainant's prior sexual history (with limited exceptions), any party's medical, psychological, or similar records (without their voluntary, written consent), and party or witness statements that have not been subjected to cross-examination at a live hearing. It is important to note that both investigators and decision-makers must be trained specifically with respect to "issues of relevance," and such training materials must be publicly available

The University decision-maker needs to:

- Objectively evaluate the relevant evidence and reach conclusions about whether the respondent is responsible for the alleged sexual harassment.
- Use independent judgement, so the decision-maker cannot be the same person who conducted the investigation and cannot be the University's Title IX Coordinator.
- Decision-maker must be free from conflicts of interest or bias for or against complainants or respondents and must receive special training about how to be impartial and how to decide what evidence is relevant.
- Decision-maker will weigh the relevant evidence and decide whether it meets the University's standard of evidence for sexual harassment allegations

A Hearing Panel consists of fair and impartial decision-makers who will conduct an objective evaluation of all relevant evidence, including both inculpatory or exculpatory evidence. The role of the Hearing Panel is to provide all parties with an equitable opportunity to be heard; to serve as a safeguard on the reliability and accuracy of the investigative process; to give appropriate consideration to victim impact and mitigating factors; and to reach a full and fair determination of any sanction, should there be a finding of responsibility. All members of the Hearing Panel will have received appropriate training to participate as informed and impartial decision-makers; this training will include the content provided to investigators, as well training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including questions about prior sexual history. The Hearing Panel may reach credibility determinations, but may not base credibility determinations on a person's status as a Complainant, Respondent or witness.

Hearings must be prompt, fair, and impartial, affording the Complainant's allegations and the Respondent's defenses all due consideration and protecting the rights of both parties. The Hearing Panel will review the final investigative report. The Hearing Panel will also carefully review the evidentiary record, including witness statements, documents, and physical evidence.

A Hearing Panel comprises of the Hearing Panel Chair and two other University employees, whom the Title IX Coordinator or designee shall convene.

The Title IX Coordinator or designee shall identify one member of the Hearing Panel as the Chair. Generally, the chair will be the Deputy Title IX Coordinator. The Hearing Panel members must have no prior experience with the parties, witnesses or incident(s) in question that would present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Hearing Panel and may raise a challenge for actual bias or conflict of interest to the Title IX Coordinator before the review begins. The Title IX Coordinator shall render a determination in writing on any such challenge, which determination shall be final.

The scope of the hearing shall be as follows:

- The Hearing Panel will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue.
- If the Hearing Panel determines that the evidence is sufficient to support one or more policy violations, the Hearing Panel will issue a determination as to the appropriate sanction.

### **1. Role of the Chair**

The Chair of the Hearing Panel presides over the Hearing Panel and shall have equal voice and vote with the other members. The Chair may be assisted by an administrative, non-voting Hearing Coordinator, who will assist the Chair in the administration of the hearing process, including procedural matters and decisions leading up to the hearing, determinations about information that will be considered or not, appropriate and inappropriate lines of questioning based on relevance, and the overall decorum and conduct of the proceedings. The Hearing Coordinator may be a University employee or an external professional. The Chair, in consultation with the Hearing Coordinator, is also responsible for delivering any communications on behalf of the Hearing Panel, with appropriate input from other Hearing Panel members.

## **2. Hearing Format, Deliberations, and Outcome**

The format of the Hearing will be determined by the type of Prohibited Conduct charged and the geographic location of the conduct. For hearings that involve any allegation of sexual harassment as defined by the Title IX regulations, even where there are additional allegations not captured by the Title IX regulations, the hearing will include cross-examination by the party's advisor, to be conducted directly, orally and in real-time, as well as limitations on the use of statements that have not been subject to cross-examination. For hearings that involve only Prohibited Conduct that falls outside of Title IX jurisdiction, the parties will have the opportunity to submit questions through the Hearing Coordinator and Chair of the Hearing Panel, and the Hearing Panel may consider any information provided in the final investigation report that the Hearing Panel finds reliable and credible.

The hearing is an opportunity for the parties to address the Hearing Panel. The parties may address any information in the investigative report, supplemental statements submitted in response to the investigative report or, at the time of sanction, provide verbal impact and mitigation statements. The University will make all evidence gathered available to the parties at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. In reaching a determination, the Hearing Panel will meet with the Complainant, Respondent, investigator, and any relevant witnesses, but the Hearing Panel may not conduct its own investigation.

The Hearing Panel has the discretion to determine the format for the hearing and its deliberations. Typically, the parties will have an opportunity to provide an opening statement to the Hearing Panel. Each party will then have an opportunity to address the Hearing Panel and respond to questions by the Hearing Panel, or as described below, the other party's advisor. The Hearing Panel will also hear from relevant witnesses, including the investigator. Each party will have the opportunity to question the other party, the witnesses, and the investigator, either by submitting questions through the Hearing Panel or, as described below, through their advisor of choice. After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement. At the conclusion of the hearing, the panel will deliberate in private to determine whether there is sufficient evidence, by a preponderance of the evidence, that Respondent engaged in conduct that violated the policy. If the panel determines the Respondent violated the policy, it will determine an appropriate sanction(s).

The hearing will be audio-recorded as stated before; however, the Hearing Panel's deliberations will not be recorded and shall remain private. Neither the parties, nor any participants or observers, will be permitted to make any audio or video recordings.

The Hearing Panel may convene remotely or in person to conduct the hearing and its deliberations. The hearing will be live and require the participants to simultaneously see and hear each other. Hearings may be conducted with all parties physically present in the same geographic location, or at the request of either party, the hearing can occur with the parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or the witness answering questions. While each party is addressing the Hearing Panel, the other party shall participate in the hearing remotely. Both the Complainant and the Respondent have a right to participate in the hearing, but participation is not mandatory: neither party is required to participate in the hearing in order for the hearing to proceed, and the Hearing Panel may not draw a negative or adverse inference from a party's decision not to participate. The Complainant and the Respondent both have the right to be heard by the Hearing Panel and may each decide

whether to exercise that right in person or remotely.

**A, Title IX Hearing Process**

In a hearing that involves any allegation of sexual harassment as defined by the Title IX regulations, even where there are additional allegations not captured by the Title IX regulations, each party may question the other party and witnesses, through their advisor, directly, orally, and in real time. Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent, or witness responds to a question, the Chair, in consultation with the Hearing Coordinator, will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Chair and Hearing Coordinator will be guided by the same relevance considerations in the process.

If a party does not have an advisor present at the live hearing, the University will provide an advisor, free of charge, who may be, but is not required to be, an attorney, for questioning on behalf of that party. If a party or witness does not submit to questioning by the other party's advisors at the hearing, the Hearing Panel may not rely on any statement of that party or witness in reaching a determination regarding responsibility. The hearing panel may not draw any inference from the decision of a party or witness to not participate at the hearing

**B Participation and Cross Examination**

The regulations protect every person's right to choose to participate or not participate, in any part of the University's grievance resolution process.

No one should be forced, threatened, coerced or discriminated against for choosing not to be a part of the University's grievance resolution process.

If a party or witness choose not to appear at the live hearing, or not to answer cross-examination questions, the decision maker excludes that party's or witness's statement and evaluated any evidence that doesn't involve those statements.

The decision maker must never make inferences about the determination regarding responsibility based on the fact that a party or witness didn't come to the hearing or submit to cross-examination.

The University may hold the entire live hearing virtually or the University may allow some participants to appear virtually with technology that allows everyone to see and hear each other.

**C. Other Prohibited Conduct Hearing Format**

In a hearing that involves Prohibited Conduct that falls outside of Title IX jurisdiction, the parties shall not directly question one another, although they may offer questions for the Hearing Panel, which may choose, in its discretion, to pose appropriate and relevant questions regarding the limited issues under review in the hearing.

In reaching a determination, the Hearing Panel may rely upon any information provided in the investigative report, including the statements provided in the final investigation report that the Hearing Panel finds reliable and credible. The Hearing Panel may not draw any inference from the decision of a party or witness to not participate at the hearing.

**D. Determination by the Hearing Panel**

After the Hearing Panel has concluded its review of the Final Investigative Report and any additional information provided during the hearing, the Hearing Panel shall convene to deliberate and render a



determination. The Hearing Panel shall deliberate to determine whether the evidence presented establishes, by a preponderance of the evidence that the Respondent engaged in Prohibited Conduct in violation of this policy.

If the Hearing Panel determines that the Respondent is responsible for one or more violations of the Policy or other applicable The University policies, it will then deliberate as to an appropriate sanction as described below. If the Hearing Panel determines that the Respondent is not responsible for one or more violations of the Policy or other applicable the University policies, the Chair shall prepare a written decision and rationale on behalf of the Hearing Panel, which shall be provided simultaneously to the parties and the Title IX Coordinator.

### **3. The Sanctioning Process and Decision**

If the Hearing Panel determines that the Respondent is responsible for one or more violations of the Policy or other applicable University policies, then, following the hearing on the finding of responsibility, the Hearing Panel will then deliberate as to an appropriate sanction.

The Policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Hearing Panel has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community, and accountability for the Respondent. Sanctions should support the University's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension or separation from the University.

The Hearing Panel may impose one or more sanctions, which may include any of the sanctions that are listed below or any sanctions that are identified for violations of the applicable conduct standard of the Respondent's school.

The Hearing Panel may solicit information from the Complainant, the Respondent, the Title IX Coordinator, and any other University administrator who can provide information relevant to a determination regarding potential sanctions, including information about, any previous violations of University policies. The Hearing Panel may also review any written impact or mitigation statement submitted by the Complainant or Respondent.

In determining the appropriate sanction, the Hearing Panel shall consider the following factors:

- the nature and context of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct for which the Respondent has been found responsible, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if available), including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;

- maintenance of a safe and respectful environment conducive to learning, including whether there is a continued hostile environment on campus caused by the Respondent's conduct;
- the presence or absence of bias as a motivation for the Respondent's conduct;
- protection of the University community requiring extended protective measures or other sanctions; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination. For violations of this policy, the following sanctions may be imposed:

- fine;
- restitution;
- educational/counseling requirement;
- warning;
- reprimand;
- University probation;
- no-contact order;
- restriction from specific University programs or activities;
- housing restriction/relocation;
  - restriction from University employment;
  - suspension;
  - separation/expulsion;
- organizational loss of University recognition;
- organizational removal from University-owned housing; or
- loss of organizational insurance coverage.

The sanction shall be separation/expulsion from The University where:

- the finding of responsibility reflects that the Respondent, by use of physical force, threat, or providing alcohol or drugs to the Complainant with the intention to induce a state of incapacitation, engaged in either
- any form of sexual penetration (anal, oral, or vaginal), however slight, by a body part or object; or
- oral-genital, oral-anal, or genital-genital contact; or
- the finding of responsibility reflects that the Respondent engaged in any form of sexual penetration, oral-genital contact, oral-anal contact, or genital-genital contact, as described above, and was motivated by bias on account of race, color, religion, sex, age, sexual orientation, gender identity or expression, national origin, disability, or military/veteran status; or
- the Respondent has previously been found responsible for Sexual Assault

Sanctions will be imposed immediately. If a Respondent is found responsible and the sanction includes separation, they will be immediately removed from campus residentially and (depending on circumstances, and at the discretion of the Title IX Coordinator, consulting as necessary with other members of the Title IX

committee, either severely restricted in their movements on campus (e.g. only able to attend classes and labs) or barred completely during the entirety of the appeal process. In cases adjudicated prior to the last day of classes, if the final sanction is separation from the University (i.e. suspension, suspension with conditions, or expulsion), the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the University. At any time, for example, for cases where the outcome has not been determined prior to the last day of classes, the University may place an administrative hold on the Respondent's transcript, make a transcript notification, or defer or withhold the award of the Respondent's degree.

#### **4. Remedies**

Regardless of the outcome, The Hearing Panel may recommend to the Title IX Coordinator additional remedies for the Complainant to address the effects of the conduct on the Complainant restore or preserve the Complainant's access to The University programs and activities, and restore to the Complainant, to the extent possible, benefits and opportunities lost as a result of the Prohibited Conduct. The Hearing Panel may also identify remedies to address the effects of the conduct on University community. The Title IX Coordinator will review the remedies recommended by the Hearing Panel and will consider the appropriateness of continuing supportive measures on an ongoing basis.

#### **5. Written Notice of Outcome –Post Hearing**

The Chair will prepare the Hearing Panel's written decision and rationale, including the finding of responsibility or non-responsibility, and, if applicable, the sanction and rationale. The Chair will issue the written notice of outcome to the Complainant, the Respondent, and the Title IX Coordinator within ten (10) business days following the conclusion of the deliberations. The notice of outcome will include:

1. Identification of the allegations potentially constituting Prohibited Conduct;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the Policy to the facts;
5. A statement of, and rationale for, the result as to each alleged policy violation, including a determination regarding responsibility, any disciplinary sanctions, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and;
6. The procedures and permissible bases for the Complainant and Respondent to appeal.
7. A statement and rationale for any remedies for the complainant, addressing how those remedies will restore or preserve equal access
8. A statement of the University's procedures, a statement that the parties have a right to appeal, the initial determination regarding responsibility and the permissible bases for appeal.
9. The University must send the written determination to the parties simultaneously, along with

information about how to appeal the determination.

10. The University has discretion to set deadlines for when an appeal must be filed, bearing in mind the obligation to conclude the entire grievance resolution process and bring resolution to the situation for both parties within a reasonable prompt time frame.
11. The Title IX Coordinator is responsible for carrying out the remedies contained in the written decision.

Decisions regarding the nature and extent of discipline and remedies are left to each University. Additionally, the University must offer appeals equally to both parties on the following bases: (1) procedural deficiencies; (2) bias or a conflict of interest on the part of the investigator, Title IX coordinator, or decision-maker; or (3) newly discovered evidence that was not previously available.

The regulations also expressly prohibit retaliation for participating in the procedures required or permitted by the regulations, and complaints alleging retaliation may be filed according to the University's grievance resolution process.

### **Recordings**

The University also have to create an audio or audiovisual recording or a transcript of any live hearing and make it available to the parties for inspection and review.

It is important to remember that the University must always comply with disability laws, to that individuals with disabilities who participate in a University grievance process are appropriate accommodated including with respect to the use of technology and reliance on visual, auditory or written modes of communication.

## **XIX. Appeal Process**

Both parties have the right to appeal the dismissal of the Formal Complaint, the final determination of responsibility and/or the resulting sanction based on the following limited grounds:

1. Procedural irregularity that affected the outcome of the matter and/or sanction;
2. New evidence, not reasonably available at the time of the hearing regarding responsibility or dismissal of the Formal Complaint, that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or any member of the Hearing Panel 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.

A concise written request for appeal must be submitted to the Title IX Coordinator within three (3) business days following delivery of notice of the outcome. Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within three (3) business days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party.

Appeals are reviewed by a designated Appellate Authority. Either party may challenge the Appellate Authority on the basis of conflict of interest or bias. For Respondent cases, the Title IX Coordinator shall have the discretion to designate as the Appellate Authority, an administrator with appropriate training to

serve as an informed and impartial decision-maker.

The Appellate Authority's responsibility will be strictly limited to determining the hearing the issues on appeal. If any of the appellate issues are substantiated by the Appellate Authority, the appeal will be granted. If the appeal is denied, the matter is closed. The Appellate Authority will notify the parties in writing of its decision 5 business days.

If the appeal is granted:

1. Due to a procedural irregularity, the matter shall be heard by a new Hearing Panel, or the Appellate Authority may remand the matter for further process to remedy the error (based on the nature of the procedural error);
2. Due to the discovery of new evidence not reasonably available at the time of the initial hearing, the matter will be returned to the same Hearing Panel that originally heard the matter for reconsideration in light of the new evidence;
3. Due to bias or conflict of interest, the matter will be remanded for further action consistent with the appellate finding.

In the event of a reconsideration, the Appellate Authority will give the Hearing Panel instructions in writing regarding the nature and extent of its reconsideration. The Hearing Panel will act promptly to reconsider the matter consistent with those instructions. Following reconsideration, the finding of the Hearing Panel will be final and not subject to further appeal. The Hearing Panel will notify the parties in writing of the outcome, consistent with the time frames set forth in the hearing panel process.

#### **A. The Effect of Withdrawal and Level of Participation**

If a Complainant or Respondent chooses not to answer questions, participate in an investigation, or attend a hearing, the University may continue its process and may issue sanctions if there is a finding of responsibility. The University will not draw any adverse inference solely from a Complainant's or Respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the Complainant or Respondent should be aware that declining to participate in the investigation may impact the admissibility of certain information or the timing and outcome of the case.

At any time, The University may place an administrative hold on the Respondent's transcript, make a transcript notification, or defer or withhold the award of the Respondent's degree. Although a Respondent may withdraw from The University while the investigation is pending, this withdrawal may be considered permanent and the Respondent's transcript may note that there was a withdrawal pending a conduct investigation. If a Respondent withdraws from The University, regardless of the status of the matter under this process, the Title IX Coordinator may proceed with further action as necessary to eliminate, prevent or address any impacts of the reported conduct on the institutional environment.

The Complainant may also request to withdraw a Formal Complaint at any time before a decision is reached by a Hearing Panel. The University reserves the right to make a determination via the Title IX Coordinator or Title IX Team whether to approve or deny this request but will strongly consider the Complainant's wishes as well as the safety of the broader campus community.

#### **B. Prohibition Against Retaliation**

Retaliation exists when action is taken against a participant in the complaint process that (i) adversely affects the individual's employment or academic or residential status; and (ii) is motivated in whole or in part by the individual's participation, or lack thereof, in the complaint process.

No individual involved in a complaint alleging a violation of this policy or participating in the investigation or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Any acts of retaliation, as defined in this policy, will not be tolerated and shall be grounds for disciplinary action, up to and including expulsion/dismissal for students and termination/dismissal for faculty and staff, and termination of contracts with third-party vendors.

### **C. Confidential**

To the extent permitted by law, the confidentiality of all parties involved in the resolution of alleged violations of this policy will be observed, provided that it does not interfere with the University's ability to conduct an investigation and take any corrective action deemed appropriate. While confidentiality cannot be guaranteed, care will be taken to keep investigation discussions appropriately limited to protect the complainant's identity when requested.

## **XX. Timeframe for Completion of Investigation and Disciplinary**

The University will seek to complete its investigation and disciplinary process, if any, in a prompt, fair, and impartial manner following the issuance of the notice of the investigation. This process contemplates reasonably prompt timeframes for the major stages of the investigation and grievance resolution process, but the University may extend any timeframe in this policy for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties, witnesses, or Advisors; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the University calendar, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, The University cannot unduly or unreasonably delay the prompt resolution of a report under this policy.

Reasonable requests for delays by the parties will serve to extend the anticipated time period for resolution of the report. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances, and will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

The University's overarching goal is that all Complaints be investigated in a prompt, fair, and impartial manner. Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate Supportive Measures for the Complainant.

## **XXI. Rights of Complainants and Respondents Parties**

### **RIGHTS OF COMPLAINANTS AND RESPONDENTS PARTIES**

Complainants and Respondents shall be provided with the following in connection with any hearing or other proceeding used to reach a decision regarding whether any violation of this policy has occurred.

#### **Rights of Complainants**

- The opportunity/right to speak on one's own behalf
- To be accompanied by a single advisor or attorney and participate in live hearing
- To be accompanied by an ADA advisor (if applicable) and participate in live hearing
- To have and present witnesses who can speak about the alleged conduct at issue;
- To have present other evidence by single advisor or attorney;
- To attend the entire hearing or other proceedings,
- To review any evidence and/or written statement that will be offered by the respondent at a hearing or proceeding prior to the time that it is offered (to the greatest extent possible and consistent with FERPA or other applicable law);
- To be informed of the outcome of the hearing or other proceeding;
- And to appeal the outcome of the hearing or other proceeding.

#### **Rights of Respondents**

- The opportunity/right to speak on one's own behalf
- To be accompanied by a single advisor or attorney and participate in live hearing
- To be accompanied by an ADA advisor (if applicable) and participate in live hearing
- The right to any evidence/ written explanation of the alleged violations of this policy;
- To have and present witnesses who can speak about the alleged conduct at issue;
- To present other evidence by advisor or attorney;
- To attend the entire hearing or other proceedings,
- To review any evidence and/or written statement that will be offered by the complainant at a hearing or proceeding prior to the time that it is offered (to the greatest extent possible and consistent with FERPA or other applicable law);
- To be informed of the outcome of the hearing or other proceeding;
- And to appeal the outcome of the hearing or other proceeding.

## **XXII. Disciplinary/Corrective Actions for Violations of this Policy**

**Sanctions/Corrective Action.** Any violation of this policy involving students or faculty and staff of the University is subject to the Policy and Procedures as stated in this document and is NOT governed by any other employee or student handbook or policy. The University will take reasonable steps to prevent the recurrence of any harassment or other discrimination and to remedy the discriminatory effects on the complainant (and others, if appropriate).

**Examples** of the *range* of potential sanctions/corrective actions that may be imposed with respect to students may be found in the Student Handbook and any related policies set forth in the University's catalog. Comparable information with respect to employees can be found in the Faculty/Staff Handbook and in the Human Resources documents of the University. The University also may take any other corrective action that it deems appropriate under the circumstances.

**Employees and /or students** who are found to have violated this policy will be subject to disciplinary action up to and including expulsion or dismissal and with the additional provisions set forth in the "Rights" section of this policy.

**Faculty and staff** who are found to have violated this policy will be subject to disciplinary action up to and including discharge or termination and with the additional provisions set forth in the "Rights" section of this policy.

**Guests and other third parties** who are found to have violated this policy will be subject to corrective action deemed appropriate by the University, which may include removal from the campus location(s) and termination of any applicable contractual or other arrangements.

In instances where the University is unable to take disciplinary action in response to an alleged violation of this policy because a complainant insists on confidentiality or for some other reason, the University will nonetheless pursue other steps to limit the effects of conduct that violates this policy and prevent its recurrence.

It is important to bear in mind that stricter standards of behavior than those provided by law may apply under the University's policies so that the prevention of inappropriate conduct can occur before a student has been subject to harassment/discrimination/assault as it is defined under the law. For example, although the law defines harassment as "repeated use" of certain expressions, acts or gestures, the University reserves the right to apply disciplinary measures and other corrective action in a case of a single expression, act or gesture, if the University determines that it consists of sufficient severity to warrant disciplinary measures or other remedial action.

Note: In compliance with federal law, the disclosures above reference legal terms such as "rape," "sexual assault," "stalking," "domestic violence," etc. the University's disciplinary process does not enforce criminal law. Thus, University policies use terms such as "sexual misconduct," or "non-consensual sexual intercourse," "non-consensual sexual contact," "sexual exploitation," and "sexual harassment," that overlap significantly with legal definitions, but are policy-based, not criminal in nature. Additionally, domestic violence, dating violence and stalking can also be violations of the University's sexual assault, harassment, and discrimination policy when motivated in whole or in part by the sex or gender of the victim.



## XXIII. Recording Keeping

This duty extends for 7 years and includes several categories of documents:

- Records of the university investigation.

- Records of any appeal and the materials associated with an appeal.

- Records of any informal resolution process.

- All materials used to train Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution. These materials also have to be posted on the University's website or made available for public inspection if the University doesn't have a website

- Records of the supportive measures that they took in response to a report or complaint of sexual harassment.

## XXIV. Definitions (not address above)

Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

*Document filed by a complainant means a document or electronic submission (such as by email or through an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint*

Decision-maker is tasked with reaching a determination regarding responsibility by applying the standard of evidence the University has designated for use in all formal complaints of sexual harassment.

Inculpatory evidence is evidence that shows or tends to show a person's involvement in the act, or evidence that can establish or present guilt.

Exculpatory evidence is evidence favorable to the respondent that exonerates or tends to exonerate of guilt

Appellant Officer – Reviews the appeals from the complainant or respondent.

VAWA – Violence Against Women Act; established March 2013

Clery Act – Passed in 1990, requires the University to prepare, publish and distribute crime statistics.

University – Mid-America Christian University; MACU

Supreme Court Davis – United States v. Davis is a United States Supreme Court decision handed down June 24, 2019.

Probative Value – evidence which is sufficiently useful to provide something of importance.

Proffer(ed) – to put before a person for acceptance; offer

Title XI Committee

- Title IX Coordinator - Title IX Coordinator is responsible for implementing and monitoring compliance of the policy on behalf of the University. This includes responsibility for training, education, communication and administration of grievance resolution procedures for the handling of complaints alleging violations of this policy.
- Deputy Title IX Coordinator - Deputy Title IX Coordinator are responsible for assisting in the implementation and monitoring policy compliance on behalf of the University, and administration of the informal resolution, live hearing and grievance resolution procedures for the handling of complaints alleging violations of this policy.
- Assistant Coordinator - Assistant Coordinator is responsible for informing the Title IX Coordinator and/or Deputy Title IX Coordinator of alleged violations and procedures to address those violations or violations that have been directly report to his or her office. The Assistant Coordinator will assist alleged victims in contacting law enforcement and in accessing an advocate, counseling or other resources available on campus or elsewhere. The Assistant Coordinator can participate in the investigation process. Reporting parties may contact any assistant coordinator to report an alleged violation of this policy
- Investigators - Investigators will be notified by the Title IX Coordinator of an alleged violation of this policy and an investigator will be assigned to determine if a violation has occurred. Investigators will follow the procedures outlined, while apprising the Title IX Coordinator, Deputy Title IX or designee, of the status of their investigation with finding and recommendations

## **XXV. Additional Resources/Training**

CUPA: Title IX Final Rule: What You Need to Know Now

<https://www.cupahr.org/events/webinars/title-ix-final-rule-released-what-you-need-to-know-now/>

Office of Civil Rights

<https://www.youtube.com/watch?v=TdfT5R8ibm4>

Office of Civil Rights OPEN Outreach, Prevention, Education, Non-discrimination

[www.ed.gov.OCR](http://www.ed.gov/OCR)

Federal Digest

<https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

Title IX Preamble

<https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>