



MARQUETTE UNIVERSITY'S

Policy Against Discrimination and Harassment

Office of Title IX and Civil Rights Compliance

MARQUETTE UNIVERSITY
Policy Against Discrimination and Harassment

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I. INTRODUCTION

Marquette University (“the University” or “University”) strives to provide an educational environment that reflects its Catholic, Jesuit mission and preserves the safety and dignity of its community members. University community members, guests, and visitors have the right to be free from all forms of Harassment, Discrimination, and Retaliation (collectively, “Prohibited Conduct”) on the basis of that person’s actual or perceived Protected Characteristic(s).

The University does not tolerate incidents of Prohibited Conduct. To that end, it has developed this Policy, which covers Student- and Faculty-, or Staff-related matters of Prohibited Conduct, whether the alleged conduct occurred on- or off-campus and regardless of whether the alleged perpetrator is a Student, Faculty, Staff, or third party.

When an allegation of Prohibited Conduct is reported to the Title IX Coordinator or other Official with Authority, the University will respond promptly, equitably, and thoroughly to reasonably ensure such conduct ends and is not repeated, and to institute Supportive Measures to restore or preserve equal access to the University’s Education Program or Activity. Further, Students, Faculty, and Staff who retaliate against individuals who report Prohibited Conduct will be subject to disciplinary action for Retaliation as described in this Policy.

The University strongly encourages University community members to report incidents of Prohibited Conduct to the Title IX Coordinator and Director of Student Civil Rights (hereafter, the “Title IX Coordinator”). The University mandates that all Employees, except those with a Confidential designation, promptly report incidents Prohibit Conduct that is Sex Discrimination

and Sexual Harassment to the Title IX Coordinator. Any report of Prohibited Conduct to the Title IX Coordinator will prompt a coordinated response as outlined in this Policy.

Any person may report Prohibited Conduct to the Title IX Coordinator in person, by mail, by email, by telephone, or by virtual communication platform. See Section XVI on reporting Prohibited Conduct.

Consistent with Title IX, the University also provides support and accommodations for pregnant individuals or those experiencing pregnancy-related conditions. The University's separate Pregnancy Accommodations Policy governs the provision of such support and accommodations.

II. SCOPE OF THIS POLICY

This Policy, housed within the Office of Title IX and Student Civil Rights Compliance, applies to all allegations of Sex Discrimination and Sexual Harassment, regardless of the identity of the Complainant or Respondent, as well as all other forms of discrimination listed below when either the Complainant or Respondent is a Student.¹ The Human Resources Department addresses all Prohibited Conduct that is not Sex Discrimination or Sexual Harassment when both the Complainant and Respondent are Employees.²

This Policy prohibits all forms of discrimination based on actual or perceived Protected Characteristic(s), including:

- Age
- Color
- Disability (physical or mental)
- Gender expression
- Gender identity
- Marital status
- Military status
- National origin
- Predisposing genetic characteristic
- Pregnancy or related conditions
- Race
- Religion
- Sex
- Sexual orientation
- Shared ancestry

¹ Any matriculated Marquette University law student accused of engaging in discrimination based on Protected Characteristic(s) that is not Sex Discrimination, Sexual Harassment, or Retaliation related to allegations of Sex Discrimination or Sexual Harassment is subject to the Marquette University Law School Academic Regulations rather than this Policy. See <https://law.marquette.edu/assets/current-students/pdf/current-academic-regulations.pdf>.

² See <https://www.marquette.edu/tools/non-discrimination.php>.

Accordingly, this Policy was drafted considering the University's commitment to addressing Prohibited Conduct and the following federal laws and regulations:

- Title IX of the Higher Education Act of 1972³
- Title IX 2020 Amendments issued on May 19, 2020⁴
- Violence Against Women Act ("VAWA")⁵
- Clery Act⁶
- Title VI of the Civil Rights Act of 1964⁷
- Title VII of the Civil Rights Act of 1964⁸
- Section 504 of the Rehabilitation Act of 1973⁹
- Title III of the Americans with Disabilities Act of 1990¹⁰
- Fair Housing Act¹¹
- Age Discrimination Act of 1975¹²

This Policy and the procedures set forth below may be applied to incidents, patterns, or institutional culture or climate, all of which may be addressed per this Policy.

This Policy is not intended to inhibit or prohibit educational content or discussions inside or outside the classroom that include controversial or sensitive subject matters protected by academic freedom.

³ Title IX of the Education Amendments of 1972 prohibits sex-based discrimination in any school or any other education program that receives funding from the federal government. *See* 20 U.S.C. §§ 1681–1688 (1972).

⁴ The U.S. Department of Education released its final regulations that govern Title IX, entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance" (hereinafter 2020 Title IX Regulations). *See* 34 CFR 106 (2020).

⁵ Section 304 of the Violence Against Women Reauthorization Act of 2013 requires that universities have procedures in place to respond to sexual assault, relationship violence, and stalking. *See* Pub. L. No. 113-4, § 304, 127 Stat. 89 (2013).

⁶ The Clery Act requires universities that participate in federal financial aid programs to keep and disclose information about crime on and near their campuses. *See* 20 U.S.C. § 1092 (1990).

⁷ Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. *See* 42 U.S.C. § 2000d (1964).

⁸ Title VII of the Civil Rights Act of 1964 protects Employees against discrimination based on race, color, national origin, sex, and religion. *See* 42 U.S.C. § 2000e (1964).

⁹ Section 504 of the Rehabilitation Act of 1973 forbids organizations and employers that accept federal funding from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. *See* 29 U.S.C. § 701 (1973).

¹⁰ Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability in public accommodations and requires newly constructed or altered places of public accommodation to comply with the ADA Standards. *See* 42 U.S.C. § 12182 (1990).

¹¹ The Fair Housing Act prohibits discrimination by providers of housing, such as landlords, whose discriminatory practices make housing unavailable to persons because of race or color, religion, sex, national origin, familial status, or disability. *See* 42 U.S.C. § 3601 (1968).

¹² The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive federal financial assistance, in schools and colleges that receive federal funds from the United States Department of Education. *See* 29 U.S.C. § 6101 (1975).

Inquiries concerning the above federal laws and regulations may be referred to:

Kristen Kreple, J.D.
Title IX Coordinator and Director of Student Civil Rights Compliance
AMU 437
P.O. Box 1881
Milwaukee, WI 53201-1881
(414) 288-3151
kristen.kreple@marquette.edu

Elizabeth (Liz) Sides
Director of Employment and Employee Relations
313 N. 13th St., Suite 221
Milwaukee, WI 53233
(414) 288-0830
elizabeth.sides@marquette.edu

Questions about the University's application of this Policy and compliance with certain federal civil rights laws relating to Students and Employees may also be addressed to:

United States Department of Education
Office for Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, D.C. 20202
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
Telecommunications Device for the Deaf: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Complaints involving Employee-on-Employee conduct may also be addressed to:

Equal Employment Opportunity Commission
Milwaukee Field Office
310 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203
Telephone: (414) 662-3680
Facsimile: (414) 297-4133
Telecommunications Device for the Deaf: (800) 669-6820
Web: <https://www.eeoc.gov>

The University recognizes that allegations under this Policy may include multiple forms of discrimination and harassment and violations of other University policies; may involve various

combinations of Students, Employees, and other members of the University community or third parties; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

Students and Employees are responsible for knowing the information and procedures outlined in this Policy. Other University handbooks, bylaws, statutes, policies, and procedures may be referred to or referenced in this Policy.

To the extent other University policies conflict with the rights, processes, and procedures under this Policy, this Policy shall govern. These rights apply irrespective of the Federal Education Rights and Privacy Act (“FERPA”)¹³ provisions to the contrary.

Regarding Sex Discrimination and Sexual Harassment, to the extent this Policy or other University policies conflict with the rights, processes, and procedures under the 2020 Title IX Final Regulations, the regulations shall govern.

III. APPLICATION OF THIS POLICY

This Policy applies to all allegations of Sex Discrimination and Sexual Harassment, and allegations of all other Prohibited Conduct in which with Party is a Student.^{14, 15} It applies to the allegations of Prohibited Conduct that occur in a University program or activity and may also apply to the effects of off-campus Prohibited Conduct that limit or deny a person’s access to a University program or activity.

For disciplinary action to be issued under this Policy, the Respondent must be a University Employee or Student at the time of the alleged incident. If the Respondent is unknown or is not a member of the University community, the Office of Title IX and Student Civil Rights Compliance will assist the Complainant in identifying appropriate university and local resources and support options and will implement appropriate Supportive Measures. The Office of Title IX and Student Civil Rights Compliance can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

¹³ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

¹⁴ Allegations of Prohibited Conduct that are not Sex Discrimination or Sex-Based Harassment and that involve only Employees are addressed by the Human Resources Department under its prescribed Grievance Procedures. See <https://www.marquette.edu/tools/non-discrimination.php>.

¹⁵ Any matriculated Marquette University law student accused of engaging in discrimination based on Protected Characteristic(s) that is not Sex Discrimination, Sexual Harassment, or Retaliation related to allegations of Sex Discrimination or Sexual Harassment is subject to the Marquette University Law School Academic Regulations rather than this Policy. See <https://law.marquette.edu/assets/current-students/pdf/current-academic-regulations.pdf>.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Office of Title IX and Student Civil Rights Compliance can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

The University acknowledges that Prohibited Conduct that occurs off-campus, within study abroad programs, or otherwise outside of the University's Education Program or Activity can and often do have continuing effects on campus. For this reason, the application of this Policy extends to allegations of Prohibited Conduct when the conduct occurs outside the University's Education Program or Activity, the alleged perpetrator is a Student or Employee, and the alleged Prohibited Conduct affects a substantial University interest.

Similarly, the Office of Title IX and Student Civil Rights Compliance may be able to assist and support an Employee or Student Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a Student or Employee's work or educational environment, those effects can often be addressed remedially by the Office of Title IX and Civil Rights Compliance if brought to their attention.

IV. THE OFFICE OF TITLE IX AND STUDENT CIVIL RIGHTS COMPLIANCE

The individuals listed below comprise the University's Office of Title IX and Student Civil Rights Compliance. The Title IX Coordinator and Director of Student Civil Rights Compliance (hereafter, the "Title IX Coordinator") oversees the application of this Policy and compliance with applicable legislation, regulations, and case law. Administrators from the Human Resources Department and Office of Student Development serve as collaborators and contributors to the University's compliance efforts within this Policy.

The Title IX Coordinator shall document all reports of incidents of Prohibited Conduct, evaluate the reports consistent with this Policy, institute Supportive Measures for the Parties, and may perform or assign investigations of Complaints made under the Policy. The Title IX Coordinator may solicit other trained University or non-University personnel to investigate Complaints, serve as Advisors, or conduct the Resolution and Appeal Processes under this Policy.

The Title IX Deputy Coordinators work with the Title IX Coordinator and may act on the Title IX Coordinator's behalf when so designated. Reports to the University's Title IX Coordinator and Title IX Deputy Coordinators may be made in person, by mail, by email, by telephone, or by other virtual platform:

Title IX Coordinator and Director of Student Civil Rights Compliance:

Kristen Kreple, J.D.
Office of Title IX and Student Civil Rights Compliance
AMU 437
(414) 288-3151
kristen.kreple@marquette.edu

Title IX Deputy Coordinators:

Cara Hardin, J.D.
Office of Title IX and Student Civil Rights Compliance
AMU 437
(414) 288-1742
cara.hardin@marquette.edu

Sarah Bobert – Intercollegiate Athletics
Senior Associate Athletics Director
Senior Women’s Administrator
Al McGuire Center 223G
(414) 288-5253
sarah.bobert@marquette.edu

Elizabeth (Liz) Sides – Employees
Director of Employment and Employee Relations
Human Resources
313 N. 13th St., Suite 221
(414) 288-0830
elizabeth.sides@marquette.edu

Title IX and Equity Investigator:

Michaela Stamper
Office of Title IX and Student Civil Rights Compliance
AMU 427
(414) 288-0054
michaela.stamper@marquette.edu

All individuals who participate in the Grievance Procedure described in this Policy receive ongoing training, including anti-bias training, to effectively and objectively fulfill their roles under this Policy.

To raise any concern involving bias, conflict of interest, or other misconduct by the Title IX Coordinator and Director of Student Civil Rights Compliance, contact Provost Kimo Ah Yun, at (414) 288-8033 or james.ahyun@marquette.edu. Concerns of bias, a potential conflict of interest, or other misconduct by any other Title IX team member should be raised with the Title IX Coordinator.

V. KEY CONCEPTS AND DEFINITION OF TERMS

This section introduces key concepts and defines terms that are used in this Policy. Where terms in this Policy are capitalized, those terms are explained or defined here. Refer to any cross-referenced section for more information.

ACTUAL KNOWLEDGE: Actual Knowledge means notice of conduct that could constitute Prohibited Conduct to the Title IX Coordinator. Actual Knowledge relating to Sex Discrimination and Sexual Harassment occurs when the Title IX Coordinator or an Official with Authority witnesses Prohibited Conduct, learns about it from a Complainant or third party, receives a written or verbal complaint about it, or learns about it by any other means.¹⁶

ADMINISTRATIVE LEAVE: The University placing an Employee Respondent on Administrative Leave from employment responsibilities during the pendency of the Grievance Procedure.

ADVISOR: Both the Complainant and the Respondent have the right to an Advisor of their choice (who may be, but need not be, an attorney) relating to any report of Prohibited Conduct to support the Party and assist the Party in navigating the Grievance Procedure.¹⁷ If the allegations are Sexual Harassment, each Party must have an Advisor for the Hearing Process. If a Party does not choose an Advisor, the University will provide an Advisor to help the Party navigate the Hearing Process and conduct Cross-Examination. The role of the Advisor is limited within the Grievance Procedure. See Sections XV, XXXV.

APPEAL OFFICER: The Appeal Officer is a trained individual from within or outside the University who hears appeals filed by a Complainant or a Respondent relating to a Dismissal decision or a finding of Responsibility. Appeal Officers are independent of the Hearing or Prompt and Equitable Resolution Processes, including being independent from any appeal of a Dismissal that may have been heard earlier. The Appeal Officer has final decision-making authority over Dismissal decisions and determinations of Responsibility.

APPEAL PROCESS: The Appeal Process is the process in which Parties may challenge a Dismissal decision or a determination of Responsibility rendered in either the Hearing Process or the Prompt and Equitable Resolution Process. See Section XXVIII.

ATTEMPTED OFFENSE(S): The University will treat attempts to commit any Prohibited Conduct as completed acts.

COERCION: Coercion is unreasonable pressure to participate in sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain Consent. When someone makes clear that they do not want sexual contact, that

¹⁶ 2020 Title IX Regulations, 34 C.F.R. § 106.30.

¹⁷ For employees who are members of a union, a union representative may serve as an advisor where applicable; and nothing in this section will limit or abridge rights otherwise afforded under a collective bargaining agreement.

they want to stop, or that they do not want to go past a certain point of sexual activity, verbal or physical pressure beyond that point can be coercive. Consent obtained as a result of Coercion is invalid.

COMPLAINANT: Complainant refers to an individual who is alleged to be the victim of alleged Prohibited Conduct, including Sexual Harassment¹⁸, Sex Discrimination,¹⁹ or Retaliation. A Complainant is a Party to a Formal Complaint filed under this Policy, whether the Formal Complaint is filed by the Complainant or the Title IX Coordinator.

CONFIDENTIAL/CONFIDENTIALITY: For the purposes of this Policy, “confidentiality” and “privacy” have different and distinct meanings. Confidentiality refers to the privilege the law creates between medical and clinical care providers, mental health care providers, and counselors and their patients; attorneys and their clients; ordained clergy and their parishioners; and spouses. It also refers to the privilege the University has designated exists between certain individuals who can have privileged communications. The persons whose specific relationships are protected by law or by University designation are called Confidential Resources within this Policy. This means that when a Party shares information with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. Additionally, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the Clery Act.

CONFIDENTIAL RESOURCES: Persons required to keep all information disclosed to them Confidential within the legal and ethical bounds of their professions. At the University, these individuals include Employees at the Marquette University Medical Center, Employees at the Counseling Center and Center for Psychological Services, and ordained clergy acting in their pastoral role. The University also grants Confidentiality to the University’s victim advocates, who provide support and assistance to Complainants regardless of whether a Complainant chooses to report to law enforcement or pursue a Formal Complaint through the University’s Resolution Processes. This Confidentiality privilege extends to the Employees within the University’s Advocacy Network while acting in this role.

Like the Confidentiality the University grants to the University victim advocates, the University also grants Confidentiality to the University’s Respondent support person and to Advisors selected by Complainants and Respondents. A Mandatory Reporter Employee or non-Confidential Resource serving as an Advisor is Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.

¹⁸ 2020 Title IX Regulations, 34 C.F.R. § 106.30(a).

¹⁹ *Id.*

CONSENT: Consent is knowing, voluntary, and clear permission by words or actions to engage in mutually agreed upon sexual activity. Because individuals may experience the same interaction in different ways, each person is responsible for making certain that the other person has given Consent before engaging in the sexual activity. For Consent to be valid, there must be a clear expression in words or actions that the other individual consented to *that specific sexual conduct*. Consent can be withdrawn once given when the withdrawal is clearly communicated.

If Consent is not clearly provided prior to engaging in the activity, Consent may be confirmed by words or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be Consent for other sexual activity (such as intercourse). A current or previous dating or social relationship is not sufficient to constitute Consent. The existence of Consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Sexual activity that occurs by Force is, by definition, non-consensual, but sexual activity without Consent is not necessarily forced. Silence or the absence of Force or resistance alone is not Consent. Consent is not demonstrated by the absence of Force or resistance. But while resistance is not required or necessary, such resistance is a clear demonstration of a lack of Consent.

Consent obtained while a person is Incapacitated may be a violation of this Policy.

Under Wisconsin law, it is illegal for a person 18 years of age or older to have sexual intercourse with someone younger than 18, even if the sexual intercourse is consensual. It also violates this Policy.

CROSS-EXAMINATION (Applicable to Sexual Harassment Formal Complaints only): At a Hearing, each Party's Advisor may ask the other Party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. This process of questioning is referred to as Cross-Examination. Cross-Examination occurs when the Parties, through their Advisors, pose questions intended to challenge credibility, plausibility, and reliability of statements by the other Party and Witnesses, to promote the Party's perspective with respect to the allegations at issue, and to bring out additional facts and details about the alleged incident. The purpose of Cross-Examination is to ask questions that probe an individual's narrative to give the Hearing Panel the fullest view of the evidence related to the allegations at issue. Cross-Examination is permissible but not required. Parties and Witnesses are not required to submit to Cross-Examination. The University does not allow Cross-Examination to embarrass, humiliate, blame, or emotionally berate a Party or Witness.

DAY: A business Day in which the University is in normal operation. All references in this Policy refer to business Days rather than calendar Days.

DECISIONMAKER: The individual or panel of individuals who hears and evaluates the Relevant evidence, makes the Final Determination of whether Policy has been violated, and issues Disciplinary Sanctions and Remedies, if applicable.

DISCIPLINARY SANCTION: A Disciplinary Sanction (or “Sanction”) is a consequence imposed on a Respondent who is found by a Preponderance of the Evidence to have violated this Policy. Disciplinary Sanctions may be punitive and/or educational. *See* Section XXVII.

DISMISSAL: The conclusion of a Formal Complaint of Prohibited Conduct outside the applicable Resolution Processes. *See* Section XXIII.

EDUCATION PROGRAM OR ACTIVITY: A location, event, or circumstance in which the University exercises substantial control over both the Respondent and the context in which the alleged Prohibited Conduct occurs, including: buildings or other locations that are part of the school’s operations, including remote learning platforms; off-campus settings if the school exercised substantial control over the respondent and the context in which the alleged Prohibited Conduct occurred; and off-campus buildings owned or controlled by a student organization officially recognized by a postsecondary school, such as a building owned by a recognized fraternity or sorority.²⁰

EMERGENCY REMOVAL (Applicable to Sexual Harassment Formal Complaints only): An Emergency Removal occurs when the Title IX Coordinator, on behalf of the University, temporarily removes a Student Respondent from University housing, University campus/facilities/events, including classes, and/or all other University activities or privileges for which the Respondent might otherwise be eligible. *See* Section XVII.5.

EMPLOYEE: Refers collectively to University Faculty and Staff.

EXCULPATORY EVIDENCE: Evidence that tends to show that the Respondent is Not Responsible for the alleged Prohibited Conduct.

FACULTY: Individuals appointed by the University to teach, research, or engage in the administration thereof, including Regular Faculty and Participating Faculty (tenure-track and non-tenure track) as defined by Section 301 of the Faculty Handbook.

FORCE: Force is the use of physical violence, and/or imposing on someone physically, to gain sexual access. Force includes hitting, kicking, restraining, or otherwise exerting control over another person. Force also includes threats, intimidation (implied threats), and Coercion that overcome resistance or produce Consent to sexual activity.

²⁰ 34 C.F.R. 106.44(a); U.S. Dept. of Ed. Office for Civil Rights, Questions and Answers Regarding the Department’s Final Title IX Rule, Question 9 (July 2021).

FORMAL COMPLAINT: A document filed by a Complainant²¹ or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent(s) and requesting that the University investigate the allegation of Prohibited Conduct. A Formal Complaint may be filed with the Title IX Coordinator or an Official with Authority in person, by mail, by email, by telephone, or by other virtual communication platform.²²

GENDER EXPRESSION: Gender Expression refers to the outward ways in which a person manifests, indicates, or expresses their gender. Such expression may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

GENDER IDENTITY: Gender Identity means the gender with which a person identifies, regardless of the person's biological sex.

GOOD CAUSE: Good Cause is the adequate grounds to take an action, including but not limited to: (1) the complexity of the case; (2) the number of Parties or Witnesses involved; (3) the amount of evidence available to obtain and consider; (4) the unavailability of Parties, Witnesses, or Advisors due to extenuating circumstances; (5) University closure or academic breaks; (6) concurrent law enforcement activity, (7) the need for language assistance or accommodation of disabilities, and (8) any other extenuating circumstances articulated by the Title IX Coordinator or Investigator.²³

GRIEVANCE PROCEDURE: Grievance Procedure refers to the formal process that begins once a report of alleged Prohibited Conduct is made to the Title IX Coordinator. The Grievance Procedure concludes after the report is resolved by any manner or process set forth in this Policy. The Grievance Procedure applies equally to both Parties and complies with the 2020 Title IX 2020 Amendments.

HEARING (Applicable to Sexual Harassment Formal Complaints only): A Hearing is a live proceeding managed by the Hearing Chair or Hearing Officer during which the Hearing Panel or Hearing Officer questions the Parties and Witnesses, and the Parties' Advisors question the opposing Parties and Witnesses, and after which the Hearing Panel or Hearing Officer determines whether a Respondent is Responsible or Not Responsible for violating this Policy.

HEARING PROCESS: Hearing Process refers to the Resolution Process for the adjudication of a Formal Complaint of Sexual Harassment and that complies with the requirements of the Title IX 2020 Amendments. *See* Section XXV.

²¹ A "Document filed by a Complainant" is a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. *See* 2020 Title IX Regulations, 34 C.F.R. § 106.30.

²² *See id.* § 106.30(a).

²³ *See id.* § 106.45(b)(v).

HEARING CHAIR: The Hearing Chair oversees the Hearing Process as described in Section XXV when a Hearing Panel is assembled to adjudicate a Formal Complainant alleging Sexual Harassment. The Hearing Chair serves as one of the Hearing Panelists, attending the Hearing and voting during Hearing Panel deliberations.

HEARING OFFICER: The Hearing Officer is a trained University and/or non-University individual who oversees the Hearing Process as described in Section XXV when a single decisionmaker, as opposed to a Hearing Panel, adjudicates a Formal Complaint alleging Sexual Harassment. The Hearing Officer determines whether a Preponderance of the Evidence exists to find the Respondent Responsible for violating the Policy, and, if the Respondent is found Responsible, imposes a Sanction(s).

HEARING PANEL: The Hearing Panel is a trained group of University and/or non-University individuals that hears Formal Complaints of Sexual Harassment, determines whether a Preponderance of the Evidence exists to find that the Respondent is Responsible for violating the Policy, and, if the Respondent is found Responsible, imposes a Sanction(s). The Hearing Panel includes two panelists and the Hearing Chair. The three-person Hearing Panel has decision-making and sanctioning authority.

INCAPACITATION: Incapacitation occurs where the Complainant is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity. Incapacitation is defined as a state in which a person cannot make rational, reasonable decisions because they lack the capacity to give knowing Consent (i.e., to understand the “who, what, where, why or how” of their sexual interaction). Consumption of alcohol or drugs alone is insufficient to establish Incapacitation. It is a state beyond drunkenness. Incapacitation can occur mentally or physically, from developmental disability, by alcohol or drug use, or blackout. Blackouts are periods of amnesia during which a person actively engages in behaviors (e.g., walking, talking) but their brain is unable to create memories for the events.

A person cannot Consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is Incapacitated violates this Policy. This Policy also covers a person whose Incapacitation results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

The consumption of alcohol or other drugs is not a defense for any behavior that violates this Policy.

INCULPATORY EVIDENCE: Evidence that tends to show that the Respondent is Responsible for the alleged Prohibited Conduct.

INFORMAL RESOLUTION FACILITATOR: The Facilitator within the Informal Resolution Process is a neutral and objective third-party who guides the Informal Resolution Process. The Facilitator’s

role is not to evaluate the evidence or render or recommend a determination on Responsibility. If the Facilitator facilitates a negotiated resolution, the Facilitator encourages and guides meaningful dialogue between the Parties to ensure each Party is heard and can share their underlying needs and interests in informally resolving the Formal Complaint. The Parties are not required to engage in any direct person-to-person dialogue. The Informal Resolution Facilitator shall facilitate dialogue between the Parties.

INFORMAL RESOLUTION PROCESS: The Informal Resolution Process is a voluntary resolution option that enables Parties to resolve a Formal Complaint in a separate and distinct forum from the University's Hearing and Prompt and Equitable Resolution Processes. The Informal Resolution Process is applicable when (1) the Title IX Coordinator deems it appropriate, and (2) the Parties voluntarily agree to resolve the matter through the Informal Resolution Process.

INVESTIGATIVE FILE: A compilation of all the documents, files, electronic communication, photographs, video footage, and any other evidence directly related to the allegations of Prohibited Conduct raised in a Formal Complaint. The Investigative File includes the interview transcripts or summaries of the testimonies of the Complainant, the Respondent, and Witnesses, and the Parties' written responses, if any, to their review of the Investigative File and draft Investigative Report.

INVESTIGATIVE PROCESS: The part of the Grievance Procedure where the Investigator gathers evidence related to the Prohibited Conduct, compiles the Investigative File, and writes the Investigative Report prior to the Hearing Process. *See Sections XX, XXI.*

INVESTIGATIVE REPORT: A report created by the Investigator that fairly and neutrally summarizes the Relevant Evidence gathered in response to the allegations raised in a Formal Complaint. The Investigative Report generally includes: (1) a jurisdictional statement relating to the applicability of this Policy, (2) an explanation of the alleged Prohibited Conduct, (3) the applicable offenses, (4) a description of procedural steps taken during the investigation, (5) the evidence obtained by the Investigator and the Witnesses interviewed, (6) whether Supportive Measures were provided, and (7) a summary of the Relevant Evidence, including identification of undisputed facts, corroborated facts, and/or disputed facts.

INVESTIGATOR: The Investigator is a trained, neutral, fair, and objective individual who is either employed by the University or from outside the University who is responsible for gathering information about the alleged Prohibited Conduct.

MANDATORY REPORTER EMPLOYEE: University Employees who are obligated under this Policy to report actual or suspected Sex Discrimination and Sexual Harassment to the Title IX Coordinator. Except for those listed as Confidential Resources, all University Employees (including Student Employees when acting within their employment) are Mandatory Reporter Employees. *See Section XV.1.* Not all Mandatory Reporter Employees are Officials with Authority.

NON-TITLE IX SEXUAL HARASSMENT: Refers to the conduct alleged in a Formal Complaint that constitutes Sexual Harassment as defined in Section IX but that occurs off-campus or online, within study abroad programs, or otherwise outside of the University's Education Program or Activity, when the alleged perpetrator is a Student or Employee. Allegations of Non-Title IX Sexual Harassment are resolved under the Hearing Process.

OFFICIAL WITH AUTHORITY (TO INSTITUTE CORRECTIVE MEASURES): Designated University Employees with authority to institute corrective measures in response to a report of Sexual Harassment. Their knowledge of alleged Prohibited Conduct triggers the University's duty to respond in accordance with this Policy.

These individuals are as follows: [University Leadership Council](#), [Director of Residence Life](#), [Dean of Students](#), [Associate Dean of Students](#), [Director of Student Conduct](#), Associate Deans, Department Chairs, and Title IX Deputy Coordinators.

PARENTAL STATUS: Parental status means the status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a biological parent, adoptive parent, foster parent, stepparent, legal custodian or guardian, in loco parentis with respect to such a person, or actively seeking legal custody, guardianship, visitation, or adoption of such a person.

PARTIES/PARTY: Parties is a reference to both the Complainant and the Respondent, collectively, and Party refers to either the Complainant or the Respondent, individually.

PAST SEXUAL HISTORY: Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not Relevant Evidence and cannot be presented during the Hearing Process unless (1) the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove Consent.²⁴

PREGNANCY OR RELATED CONDITIONS: Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

PREPONDERANCE OF THE EVIDENCE: The standard of proof the University uses to determine whether a Respondent is Responsible for violating this Policy. A Preponderance of the Evidence standard is often described as "more likely than not" or "50.01%" or "50% plus a feather." This standard applies whether the Respondent is a Student or Employee.

PRIVATE/PRIVACY: For purposes of this Policy, "privacy" and "confidentiality" have different and distinct meanings. Privacy means that information related to a report of Prohibited Conduct will be shared with a limited number of University Employees who need to know to assist in the

²⁴ *Id.* § 106.45(b)(6).

assessment, investigation, and resolution of the report. All Employees who are involved in implementing this Policy receive specific training and guidance about sharing and safeguarding Private information in accordance with state and federal law. The Privacy of Student education records will be protected in accordance with FERPA. The Privacy of Employee records will be protected in accordance with Human Resources policies. Thus, although the words “confidential/confidentiality” and “private/privacy” are frequently used interchangeably, this Policy will use Private and Privacy unless referring to the duties of Confidential Resources.

PROHIBITED CONDUCT: Prohibited Conduct refers collectively to Discrimination, Harassment, and Retaliation based on an actual or perceived protected characteristic.

PROMPT AND EQUITABLE RESOLUTION PROCESS: The Resolution Process that follows Formal Complaints of Prohibited Conduct other than Sexual Harassment and that does not include a Hearing. *See Section XXVI.*

PROTECTED CHARACTERISTIC: Any characteristic for which a person is afforded protection against discrimination and harassment by law or this Policy, including age, color, disability, Gender Expression, Gender Identity, marital status, military status national origin, predisposing genetic characteristic, Pregnancy or Related Conditions, race, religion, sex, Sexual Orientation, and shared ancestry.

RELEVANT: Evidence is Relevant when it is related to the allegations of Prohibited Conduct under investigation under this Policy and may aid a Decisionmaker in determining whether the alleged Prohibited Conduct occurred. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Prohibited Conduct occurred.

REMEDIES: Remedies are measures provided, as appropriate, to a Complainant or any other person the University identifies as having had their equal access to the university’s education program or activity limited or denied by Prohibited Conduct. These measures are provided to restore or preserve that person’s access to the recipient’s education program or activity after a decisionmaker determines that Prohibited Conduct occurred.

REPORTING PARTY: The Reporting Party is an individual who reports alleged Prohibited Conduct to the University but who is not the Complainant.

RESOLUTION PROCESSES: Refers to the Informal Resolution Process, the Hearing Process, and the Prompt and Equitable Resolution Process, collectively. The Resolution Processes apply equally to both Parties.

RESPONDENT: An individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct. A Respondent is a Party within this Policy’s Grievance Procedure.

RESPONSIBLE/NOT RESPONSIBLE: Because the Resolution Processes under this Policy are not criminal processes, the University does not use the terms “guilty” or “not guilty” to assess a

Respondent's conduct. Rather, the Policy refers to determinations or findings of Responsibility. A Respondent is considered Responsible when the decisionmaker (i.e., Hearing Officer or Hearing Panel in the Hearing Process or Investigator in the Prompt and Equitable Process) determines that it is more likely than not that the alleged behavior did occur, and that the behavior violated this Policy. A Respondent is considered "Not Responsible" when the decisionmaker determines that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred did not violate this Policy.

RETALIATION: Intimidation, threats, Coercion, bullying, or discrimination, including charges against an individual for Code of Conduct violations that do not involve Prohibited Conduct but that arise out of the same facts or circumstances as a report of Prohibited Conduct, for the purpose of interfering with any right or privilege secured by the Title IX statute or regulations, or this Policy, constitutes Retaliation when made against a Reporting Party, a Complainant, a Respondent, a Witness, or anyone else who testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, process, or Hearing under this Policy. See Section XIII.

SEXUAL ORIENTATION: Sexual Orientation refers to the type of sexual, romantic, physical, and/or emotional attraction one feels for others, often labeled based on the gender relationship between the person and the people they are attracted to (often mistakenly referred to as sexual preference). Commonly used orientations include (but are not limited to) heterosexual (attraction to a gender different than their own), bisexual (attraction to two or more genders), and gay (attraction to members of the same gender). Asexuality is also considered a sexual orientation. Asexuality refers to a person experiencing little or no sexual attraction and/or interest in sexual relationships/behaviors.

STAFF: Employees of the University engaged in non-teaching activities of various types in support of the University's education, research, and service programs.

STUDENT: A Student is a person who has gained admission to the University (i.e., selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at a University education Program or Activity).²⁵

STUDENT WITH A DISABILITY: A Student who is an individual with a Disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 705(9)(B), (20)(B).

SUPPORTIVE MEASURES: Supportive Measures are appropriate non-disciplinary, non-punitive individualized services offered in response to a report of Prohibited Conduct. Supportive Measures must be reasonably available and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

²⁵ 34 CFR 106.2(r); 34 CFR 106.2(q).

Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of the Parties or the University's education environment or to deter Prohibited Conduct. The Title IX Coordinator coordinates the implementation of Supportive Measures and keeps them as Private as possible.²⁶

TITLE IX COORDINATOR AND DIRECTOR OF CIVIL RIGHTS COMPLIANCE: The Title IX Coordinator and Director of Civil Rights Compliance ("Title IX Coordinator" abbreviated) is the designated agent of the University responsible for overseeing this Policy and for complying with Title IX, its regulations, and case law. The Title IX Coordinator reports directly to the Provost. When the Title IX Coordinator is made aware of Sexual Harassment or Sex Discrimination, or an allegation thereof, the University is deemed to have Actual Knowledge (in other words, notice) and must respond in accordance with this Policy. The Title IX Coordinator coordinates the intake, investigation, resolution, and implementation of Supportive Measures to stop, remediate, and prevent the reoccurrence of Prohibited Conduct. It may be necessary for the Title IX Coordinator to name a designee in certain situations. Throughout this Policy, the use of the term "Title IX Coordinator and Director of Civil Rights Compliance" includes "Title IX Coordinator and Director of Civil Rights Compliance or Designee."

TITLE IX SEXUAL HARASSMENT: Refers to the conduct alleged in a Formal Complaint that constitutes Sexual Harassment as defined in Section IX when that alleged conduct took place within a University Education Program or Activity, inside the United States, by a Student or Employee. Allegations of Title IX Sexual Harassment are resolved under the Hearing Process set forth in Section XXV.

WITNESS: Individuals identified by the Parties or the Investigator to have knowledge of the alleged Prohibited Conduct, can provide context to the details surrounding the alleged Prohibited Conduct, or who have other information that would be helpful in determining Responsibility in the matter.

VI. CHARGEABLE PROHIBITED CONDUCT OFFENSES

The sections below describe the forms of legally prohibited discrimination, harassment, and Retaliation prohibited under University Policy.

When speech or conduct is protected by academic freedom, it will not be considered a violation of University Policy, though Supportive Measures will be offered to impacted individuals.

The University is not bound by the First Amendment, but respects an individual's desire to express their views, even if others may find such expression offensive. However, an expression of views regarding a Protected Characteristic that goes beyond the mere expression of views,

²⁶ See 34 C.F.R. § 106.30.

words, symbols, or thoughts and are sufficiently serious to deny or limit an individual's ability to participate in or benefit from the educational program may violate this Policy.

All offense definitions below encompass actual or Attempted Offenses.

Any of the below offenses can be charged as or combined as pattern offenses, in which case the Notice of Formal Complaint and Allegation will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance Disciplinary Sanctions, accordingly.

Violation of any other University policies may constitute discrimination or harassment when motivated by actual or perceived Protected Characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

VII. DISCRIMINATION

Discrimination is differential treatment with respect to an individual's employment or participation in an Education Program or Activity based, in whole or in part, on their actual or perceived Protected Characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for a disability.

Discrimination can take two primary forms:

1. Disparate Treatment Discrimination. Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived Protected Characteristic and that:
 - a. Excludes an individual from participation in;
 - b. Denies an individual benefits of; or
 - c. Otherwise adversely affects the term or condition of an individual's participation in a University program or activity.
2. Disparate Impact Discrimination. Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected person or group that:
 - a. Excludes an individual from participation in;
 - b. Denies an individual benefits of; or
 - c. Otherwise adversely affects the term or condition of an individual's participation in a University program or activity.

Discrimination based on sex is a type of Prohibited Conduct discrimination and is specifically discussed in Section X below.

VIII. DISCRIMINATORY HARASSMENT BASED ON PROTECTED CHARACTERISTICS OTHER THAN SEX IN THE TITLE IX CONTEXT²⁷

Discriminatory Harassment is unwelcome conduct on the basis of actual or perceived Protected Characteristics that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies an individual's ability to participate in or benefit from the University's Education Program or Activity. Such conduct is evaluated from the perspective of the individual who is allegedly being harassed and from the perspective of a reasonable person in that student's position, considering all the circumstances.

Allegations of Discriminatory Harassment based on protected characteristics other than sex in the Title IX context will be resolved through the Prompt and Equitable Resolution Process described in Section XXVI.

IX. SEXUAL HARASSMENT

Sexual Harassment includes actual or attempted conduct on the basis of sex, including Sexual Orientation and Gender Identity, that satisfies one or more of the following:

1. Quid Pro Quo Harassment. Quid pro quo harassment occurs when an Employee of the University conditions the provision of aid, benefit, or service of the University on the Complainant's participation in unwelcome sexual conduct.²⁸
2. Hostile Environment Sexual Harassment. Hostile environment sexual harassment is unwelcome conduct determined by a reasonable person [in the Complainant's position] to be so severe, pervasive, and objectively offensive that it effectively denies a Complainant equal access to the University's Education Program or Activity.²⁹

²⁷ This section covers sex-based hostile environment conduct that does not rise to the level of the Title IX standard requiring the conduct to allegedly be severe, pervasive, and objectively offensive conduct, but that may be subject to and satisfy the lesser standard promulgated by Title VII and Title VI requiring the conduct to allegedly be severe, or pervasive, or objectively when one of the parties is an employee and the other is a student.

²⁸ *Id.*

²⁹ *Id.* The University must evaluate whether a reasonable person in the Complainant's position would be effectively denied equal access to education compared to a similarly situated person who is not suffering the alleged Sexual Harassment. An effective denial of equal access to educational opportunities may include skipping class to avoid a harasser, a decline in a Student's grade point average, or having difficulty concentrating in class. A Complainant does not need to have already suffered loss of education before being able to report Sexual Harassment. Effective denial of equal access to education does not require that a person's total or entire educational access has been denied. While the foregoing examples help illustrate an effective denial of access, no concrete injury is required to prove an effective denial of equal access. See U.S. Dept. of Ed. Office for Civil Rights, Questions and Answers Regarding the Department's Final Title IX Rule (July 2021).

3. Sexual Assault.³⁰ Sexual Assault is defined as a forcible or nonforcible sexual act directed against another person, without the Consent of the other person, including instances where the individual is incapable of giving Consent due to age or temporary or permanent mental or physical incapacity. Sexual Assault is the umbrella term for actions that constitute the forcible offenses of Rape and Fondling, and the non-forcible offenses of Incest and Statutory Rape.
- a. *Rape* – Attempted or completed anal or vaginal penetration of another person, no matter how slight, by a body part or object without Consent and/or completed or attempted oral penetration by a sex organ of another person.
 - b. *Fondling* – The touching of the private body part (breast, buttocks, groin, genital, or other intimate part) of another person for the purpose of sexual gratification without Consent.
 - a. *Incest* – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Wisconsin law.³¹
 - b. *Statutory Rape* – Sexual intercourse with a person who is under the age of 18, the statutory age of consent in Wisconsin.³²
4. Dating Violence.³³ Defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and where the existence of such a relationship shall be determined based on the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, Dating Violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
5. Domestic Violence.³⁴ Defined as felony or misdemeanor crimes committed by a person who—
- a. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of Wisconsin, or a person similarly situated to a spouse of the victim;

³⁰ Section 106.30(a) of the Title IX 2020 Amendments provides that “sexual assault” for purposes of Title IX is defined in 20 U.S.C. 1092(f)(6)(A)(v), which in turn provides that “[t]he term ‘sexual assault’ means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.” The definitions for forcible and nonforcible sex offenses are derived from the FBI’s Summary Reporting System (SRS) and/or National Incident-Based Reporting System (NIBRS). On January 1, 2021, the FBI retired the SRS and transitioned to a NIBRS-only data collection. On August 13, 2020, OCR provided guidance that a university may use definitions from either SRS or NIBRS, so long as it includes in its definition of sexual assault all forcible and nonforcible sex offenses described by the FBI. The July 2021 Questions and Answers on the Title IX Regulations on Sexual Harassment provides confirmation of the guidance (Question 5). Consistent with this guidance, the University has elected to use definitions from each system that provide the most flexibility.

³¹ See Wis. Stat. 944.06.

³² See Wis. Stat. 948.02.

³³ Violence Against Women Act (VAWA), 34 U.S.C. § 12291(a)(10) (2013).

³⁴ *Id.* § 12291(a)(8).

- b. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- c. Shares a child in common with the victim; or
- d. Commits acts against a youth or adult victim who is protected from those acts under Wisconsin's family or domestic violence laws.

6. Stalking.³⁵

- a. Defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to –
 - i. Fear for the person's safety or the safety of others; or
 - ii. Suffer substantial emotional distress.
- b. For the purposes of this definition –
 - i. "Course of conduct" means two or more acts, including but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - ii. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - iii. "Substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- c. Stalking based on sex, including Sexual Orientation and Gender Identity, includes stalking that occurs online or through messaging platforms, commonly known as cyberstalking.³⁶

X. SEX DISCRIMINATION

Sex Discrimination is a broad term encompassing conduct based on sex, including Sexual Orientation and Gender Identity, as defined below. Acts of Sex Discrimination may be committed by any person upon any other person, regardless of the sex, Sexual Orientation, and/or Gender Identity of those involved.³⁷

Allegations of Sex Discrimination are typically resolved through the Prompt and Equitable Resolution Process described in Section XXVI. Absent a Formal Complaint alleging Sex Discrimination, the Title IX Coordinator may engage in remedial action that may be necessary to eliminate existing discrimination on the basis of sex, including Sexual Orientation and Gender Identity, or to eliminate the effects of past discrimination.³⁸

³⁵ *Id.* § 12291(a)(30).

³⁶ See <https://www2.ed.gov/about/offices/list/ocr/blog/index.html>.

³⁷ See 34 C.F.R. § 106.30.

³⁸ 34 C.F.R. § 106.4.

1. Non-Sexual Harassment Sex Discrimination. Providing differential treatment on the basis of sex, such as in athletics, or with respect to employment, admissions, or enrollment or participation in an academic course or program. This includes discrimination on the basis of Sexual Orientation, Gender Identity, and Gender Expression.
2. Sexual Exploitation. Occurs when a person engages in non-consensual or abusive conduct that takes sexual advantage of another individual for the person's own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited and does not constitute any other offense addressed in this Policy.
3. Non-Physical Intimate Partner Abuse. The actual or threatened sexual, verbal, emotional, or economic abuse of an individual by someone with whom they have or have had an intimate relationship.
4. Discrimination against Pregnant or Parenting Students. Providing differential treatment on the basis of a Student's status as a pregnant or parenting Student or harassment on the basis of a Student's status as a pregnant or parenting Student.

XI. ONLINE HARASSMENT AND MISCONDUCT

University policies are written and interpreted broadly to include online manifestations of any of the Prohibited Conduct identified in this Policy, when those behaviors occur in or have an effect on the University's Education Program and Activities, or when they involve the use of University networks, technology, or equipment.

Although the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in various means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to University's education program or activity.

XII. CONSENSUAL RELATIONSHIPS POLICY

The University is committed to fostering a community free from conflicts of interest, favoritism, bias, and exploitation that can occur in consensual relationships between members of the University community in inherently unequal positions of power. Prohibited consensual relationships risk undermining the real or perceived supervision or evaluation provided and can disrupt the workplace and learning environment. The University policy that addresses such consensual relationships is available [here](#).

Prohibited consensual relationships do not run afoul of this Policy. However, these relationships can be less consensual than the individual of higher power believes. Similarly, each of the Parties may view the relationship differently, particularly in retrospect. Circumstances may change, and

once welcomed conduct may become unwelcome at some point in the relationship. Those situations may implicate this Policy.

Alleged violations of the Consensual Relationships Policy may be referred to the Human Resources Department for follow-up. If conduct that was previously welcome becomes unwelcome, it may violate the University's Non-Discrimination Policy and thus will be handled under this Policy's Grievance Procedure.

XIII. RETALIATION³⁹

It is a violation of this Policy to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured in the Title IX statute or regulations, or this Policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or Hearing under this Policy.

This Policy protects Reporting Parties, Complainants, Respondents, Witnesses, and other individuals who exercise rights under the Title IX statute or regulations, and this Policy. Formal Complaints of Retaliation may be filed with the Title IX Coordinator and will be resolved through the Prompt and Equitable Resolution Process set forth in Section XXVI.

Intimidation, threats, Coercion, bullying, or discrimination, including charges against an individual for Code of Conduct violations that do not involve Prohibited Conduct but arise out of the same facts or circumstances as a report of Prohibited Conduct, for the purpose of interfering with any right or privilege secured by the Title IX statute or regulations, or this Policy, constitutes Retaliation.

The University will act to prevent Retaliation and will respond appropriately if it occurs. The University will keep Private the identity of any Reporting Party, Complainant, Respondent, and Witness, except as required to comply with this Policy, with FERPA,⁴⁰ or as otherwise required by law.

The following do not constitute Retaliation: the exercise of First Amendment rights,⁴¹ University action against a Respondent in pursuit of a reasonable Supportive Measure or to maintain campus safety, or a charge of a Code of Conduct violation for making a materially false statement in bad faith during the Grievance Procedure.

XIV. DIFFERENCES BETWEEN UNIVERSITY AND LEGAL PROCESSES

³⁹ See *id.* § 106.71.

⁴⁰ Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

⁴¹ 34 C.F.R. § 106.71.b

The Grievance Procedure for reports of Prohibited Conduct does not mirror criminal or civil legal processes. The Grievance Procedure—particularly the Resolution Processes—are administrative, not legal; thus, rules of law, evidence, and criminal/civil procedure do not apply and will not be used, with minor exceptions as discussed in this Policy. The University does not have subpoena power, the ability to collect or process forensic evidence (e.g., sexual assault examination kits, DNA test, etc.), the ability to issue warrants, or to otherwise compel individuals to participate in the University’s Grievance Procedure.

Nonetheless, Prohibited Conduct may also constitute a criminal offense. Incidents that occur on campus or the surrounding areas fall within the jurisdiction of the Marquette University Police Department (MUPD). MUPD has the legal authority to investigate criminal complaints, issue search warrants, collect forensic evidence, and assist in obtaining court orders of protection.

Criminal investigations are separate and independent from University investigations under this Policy. If a person files a report with the Office of Title IX and Civil Rights Compliance and with the police, the University will attempt to coordinate its investigation with the police to the extent possible. The University may delay its investigation while police gather evidence so as not to interfere with their investigation, but the University will not wait for the conclusion of a criminal investigation or proceeding before commencing (or completing) its own investigation.

The definition of Prohibited Conduct under this Policy and the related definitions under criminal statutes may differ. Likewise, the burden of proof for a finding of Responsibility under this Policy—a Preponderance of the Evidence—is lower than the burden of proof for a finding of guilt under criminal law—beyond a reasonable doubt. For these reasons, the outcome of any criminal investigation will not determine the outcome of any proceedings or processes under this Policy or vice versa.

XV. THE GRIEVANCE PROCEDURE: OVERALL

The Grievance Procedure under this Policy consists of six parts: First, the reporting of Prohibited Conduct; second, the University’s response to such a report; third, the filing of a Formal Complaint; fourth, the Investigative Process; fifth, use of one of the Resolution Processes; and sixth, the Appeal Process.

Not all reports of Prohibited Conduct will necessarily trigger one of the Resolution Processes. This section explains (1) the duties of Mandatory Reporter Employees, (2) the purpose/duties of Confidential Resources, (3) considerations for Complainants before they report Prohibited Conduct, (4) reporting options, (5) the time frame for the Grievance Procedure, and (6) the role of and rules for Advisors.

1. The Duties of Mandatory Reporter Employees. All University Employees (except those listed as Confidential Resources) are required to report incidents or suspected incidents of Sex Discrimination and Sexual Harassment of which they become aware to the Title IX Coordinator.

- a. *When and What to Report.* Mandatory Reporter Employees become aware of Sex Discrimination or Sexual Harassment when they observe it or have Knowledge of it from a Complainant or third party. A Mandatory Reporter Employee who observes or receives a report of Sex Discrimination or Sexual Harassment must promptly report to the Title IX Coordinator all known details about the alleged misconduct, including the date, time, location, and the names of those involved.
- b. *Privacy.* In addition to the responsibility to promptly report the foregoing information to the Title IX Coordinator, Mandatory Reporter Employees must also keep Private the names of Complainants, Respondents, or others involved in an incident falling under this Policy.
- c. *Failure to Report.* Failure of a Mandated Reporter, as described above in this section, to report Sex Discrimination or Sexual Harassment of which they become aware is a violation of University Policy and can be subject to disciplinary action for failure to comply/failure to report. This includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under the applicable administrative Policy (i.e., Employee Handbook or Faculty Handbook).
- d. *When the Mandatory Reporter Employee is a Target.* A Mandatory Reporter Employee who is themselves a target of Sex Discrimination or Sexual Harassment under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.
- e. *Reporting a Risk of Harm.* Mandatory Reporter Employees who have reason to believe a Student, colleague, or the campus community is at risk of harm should contact MUPD immediately.

Marquette University Police Department (Open 24/7)
 749 N. 16th Street
 Milwaukee, WI 53233
 Emergency Phone: (414) 288-1911

2. Confidential Resources. The following are Confidential Resources:⁴²

- a. *Advocacy Services.*⁴³ A Marquette University victim advocate is available to provide support and assistance to those affected by Sex Discrimination and Sexual Harassment. Services are free and Confidential to the extent allowed by law and University policy. Victim advocates do not provide legal or other advice relating to this Policy. They will assist a Complainant in making a report to the Office of Title IX and Civil Rights Compliance and/or MUPD, if the Complainant desires. A victim advocate is available 24 hours a day, 7 days a week by telephone at (414) 288-5244 or by email at advocacy@marquette.edu.

⁴² All listed Confidential Resources will maintain Confidentiality except in extreme cases of immediate threat or danger or abuse of a minor.

⁴³ Victim Advocates must break Confidentiality and notify the appropriate authority when a person is a threat to themselves or others.

- b. *Advisors.*⁴⁴ An Advisor may be (but need not be) an attorney. A Mandated Reporter Employee or non-Confidential Resource serving as an Advisor is Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.
- c. *Ordained Clergy.* Ordained clergy are a Confidential reporting option when they are serving in the role of providing pastoral counseling.
- d. *Off-Campus Confidential Reporting Options:*
 - i. Aurora Healing and Advocacy Services
Aurora Sinai Medical Center
945 N. 12th Street
Milwaukee, WI 53233
(414) 219-5555
**Provides medical, counseling, and advocacy services to sexual assault survivors*
 - ii. Sojourner Family Peace Center
619 W. Walnut Street
Milwaukee, WI 53212
(414) 933-2722
**Provides support and advocacy to relationship violence survivors*
 - iii. Milwaukee LGBT Community Center
1110 N. Market Street, 2nd Floor
Milwaukee, WI 53202
(414) 271-2656
**Provides support and counseling to LGBTQ survivors of violence*
 - iv. Aurora Employee Assistance Program
(800) 236-3231
**For Marquette Employees*
- e. *On-Campus Confidential Reporting Options:*
 - i. [Counseling Center](#)
Holthusen Hall 204
(414) 288-7172
 - ii. [Marquette University Medical Clinic](#)
Schroeder Complex, Lower Level
(414) 288-718
 - iii. [Center for Psychological Services](#)
Cramer Hall 307
(414) 288-3487
 - iv. [Director of Student-Athlete Mental Health & Performance](#)
Intercollegiate Athletics
(414) 288-3040

⁴⁴ Advisors must break Confidentiality and notify the appropriate authority when their advisee is a threat to themselves or others.

3. Considerations for Complainants Before They Report Sex Discrimination or Sexual Harassment. Pursuant to Title IX 2020 Amendments and this Policy, when the University has Actual Knowledge of possible Sex Discrimination or Sexual Harassment, the Title IX Coordinator *must* respond promptly by contacting the Complainant to discuss the availability of Supportive Measures and to explain to the Complainant the process for filing a Formal Complaint. Complainants who do not wish to make a Formal Complaint may still receive Supportive Measures.

In order for the Complainant to make informed choices about reporting Sex Discrimination or Sexual Harassment, they should be aware that all University Employees (except those listed as Confidential Resources) are Mandatory Reporter Employees with regard to Sex Discrimination and Sexual Harassment. While Mandatory Reporter Employees are required to report Prohibited Conduct to the Title IX Coordinator, they are required to keep Private the names of Complainants, Respondents, and others involved in an incident falling under this Policy. *See* Section XV.1.

Some University resources and Employees, however, must maintain as Confidential what the Complainant tells them and are not required to report Sex Discrimination and Sexual Harassment, except in limited circumstances. *See* Section XV.2. These Confidential Resources may offer options and resources without any obligation to inform an outside agency or a University official unless a Complainant has requested the information be shared.⁴⁵

Accordingly, Complainants may want to consider whether they want to share personally identifiable details with those who have a duty to report Sex Discrimination and Sexual Harassment to the Title IX Coordinator or whether they would prefer to share only with those who must maintain Confidentiality.

4. Reporting Options. Anyone who wishes to make a report of Prohibited Conduct under this Policy has the following reporting options:
 - a. Make a Formal Complaint to the Title IX Coordinator or an Official with Authority and engage in the Grievance Procedure.
 - b. Report to MUPD or other police agency with jurisdiction over the conduct and pursue a criminal investigation. Reports may be made to MUPD in person or via telephone:

Marquette University Police Department (Open 24/7)
749 N. 16th Street
Milwaukee, WI 53233
Emergency Phone: (414) 288-1911
Non-Emergency Phone: (414) 288-6800

⁴⁵ Confidentiality may be broken if a Confidential Resource learns of information that may present a threat to the campus community generally or a person within it.

- c. Make a Formal Complaint to the Title IX Coordinator and report to the police, thereby engaging in both the Grievance Procedure and a criminal investigation.
 - d. Report to the U.S. Department of Education Office for Civil Rights in addition to, or in lieu of making a Formal Complaint to the Title IX Coordinator and/or filing a police report.
 - e. Report to the Title IX Coordinator and receive Supportive Measures but not file a Formal Complaint.
5. Time Frame for Grievance Procedure. The Grievance Procedure, beginning with the Formal Complaint, will be completed within a reasonably prompt time, typically within 120 business days after the filing of a Formal Complaint.

The Title IX Coordinator or Investigator may extend this time frame for Good Cause with written notice to the Parties. Written notice of a delay or extension and the reason therefor shall be sent to the Parties.

Complainants, Respondents, and Witnesses are encouraged but not obligated to participate in the Hearing Process or the Prompt and Equitable Resolution Process but will not face any recourse if they decline to participate. If either Party chooses not to participate, the applicable Resolution Process may continue without that Party's participation.

6. Role of and Rules for Advisors. The Complainant and the Respondent both have a right to an Advisor of their choosing throughout the Grievance Procedure. This section explains (a) who can serve as an Advisor, (b) the role of the Advisor in the Grievance Procedure, generally, and (c) the role of the Advisor in the Hearing Process, specifically.
- a. *Who Can Serve as an Advisor.* The Advisor may be any person of the Party's choosing, including a friend, Employee, family member, or attorney. University-designated Advisors may be Employees or may be non-University persons hired by the University. University-designated Advisors may or may not be attorneys. No Party is required to have an Advisor, except within in the Hearing Process.
 - i. *Confidentiality.* All Advisors have been deemed Confidential Resources (see Section XV.2), meaning that they will maintain Confidentiality throughout the Grievance Procedure; however, a Mandatory Reporter Employee or non-Confidential Resource serving as an Advisor is Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.
 - ii. *Parties' Consent to Share Information with Advisor.* Each Party must consent to the University sharing information related to the report of Prohibited Conduct directly with the Party's Advisor before information can be shared. The University may require Advisors to sign a non-disclosure agreement to ensure the Confidentiality of the information shared with them by the University.

- b. *Role of the Advisor in the Grievance Procedure, Generally.* Advisors support the Parties and assist them through the Grievance Procedure. The Parties are expected to ask and respond to questions on their own behalf throughout the Investigative and Resolution Processes. Although the Advisor may not speak on behalf of a Party, the Advisor may consult with the Party, either privately as needed, or by conferring during any meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.
- c. *The Advisor's Role in the Hearing Process.* The Parties are required to have an Advisor during the Hearing Process. This section explains (i) a Party's options for choosing an Advisor, (ii) the Advisor's limited role, and (iii) the consequences for Advisors who overstep their role.
 - i. *Options for Choosing an Advisor.* A Party may, of course, use the Advisor they initially selected at the start of the Grievance Procedure. If that Advisor is unable or unwilling to serve as an Advisor for the Hearing Process, the Party may select a new Advisor. If a Party does not choose an Advisor for the Hearing Process, the University will provide an Advisor for them to conduct Cross-Examination of the other Party and Witnesses. The University cannot guarantee equal advisory rights, meaning that if one Party selects or hires an Advisor who is an attorney, but the other Party does not hire or cannot afford an attorney, the University is not obligated to provide an attorney Advisor. Advisors appointed by the University may not be dismissed by the Party, unless the appointed Advisor refuses to conduct relevant Cross-Examination on behalf of the Party.
 - ii. *The Advisor's Limited Role.* The Advisor's role in the Hearing Process is limited to Cross-Examination of the other Party and of any Witnesses. An Advisor may not make a presentation on behalf of or represent the Party during any meeting or proceeding in the Hearing Process and may not speak on behalf of the Party to the Investigator(s) or Hearing Panel, except during Cross-Examination. Advisors may ask process-related questions of the Title IX Coordinator, Investigator(s), Hearing Chair, or Hearing Officer.

The Parties are expected to respond to questions on their own behalf throughout Hearing Process, though the Party may consult with their Advisor as explained in Section XXV.

- iii. Any Advisor who fails to respect the limits of the Advisor role within any part of the Grievance Procedures, the Title IX Coordinator, Investigator, Hearing Chair, or Hearing Officer may require the Party to select a new Advisor.

XVI. THE GRIEVANCE PROCEDURE: REPORTING PROHIBITED CONDUCT

This section explains the first part of the Grievance Procedure: reporting Prohibited Conduct. It explains (1) who can report Prohibited Conduct, (2) to whom a report of Prohibited Conduct must be made to trigger the Grievance Procedure, and (3) how a report must be made.

1. Who Can Report Prohibited Conduct. Any person may report Prohibited Conduct, regardless of whether the person reporting is the Complainant.
2. To Whom a Report of Prohibited Conduct Must be Made to Trigger the Grievance Procedure. The Grievance Procedure in this Policy is triggered when reports of Prohibited Conduct are made to the Title IX Coordinator or reports of Sex Discrimination or Sexual Harassment are made to any Official with Authority.
 - a. *Reports to the Title IX Coordinator.* The Title IX Coordinator is:
Kristen Kreple, J.D.
Title IX Coordinator
AMU 437
Milwaukee, WI 53233
Phone: (414) 288-3151
kristen.kreple@marquette.edu
 - b. *Reports to an Official with Authority.* Reports may be made to any Official with Authority. The University has designated the following as Officials with Authority to Institute Corrective Measures:
 - i. [University Leadership Council](#),
 - ii. Director of Residence Life,
 - iii. Dean of Students,
 - iv. Associate Dean of Students,
 - v. Director of Student Conduct,
 - vi. Associate Deans,
 - vii. Department Chairs, and
 - viii. Title IX Deputy Coordinator(s)
3. How to Report Prohibited Conduct. Reports of Prohibited Conduct, including Sex Discrimination and Sexual Harassment, may be made to the Title IX Coordinator and reports of Sex Discrimination or Sexual Harassment may also be made to an Official with Authority at any time, including during non-business hours, in person, by mail, by email, by telephone, or by virtual communication platform. Please note that the University's ability to respond to anonymous reports may be limited.

XVII. THE GRIEVANCE PROCEDURE: THE UNIVERSITY'S RESPONSE TO A REPORT OF PROHIBITED CONDUCT

This section explains the second part of the Grievance Procedure: the University's response to a report of Prohibited Conduct. When the Title IX Coordinator or an Official with Authority becomes aware of an allegation of Prohibited Conduct, or an Official with Authority becomes aware of an allegation of Sex Discrimination or Sexual Harassment, the Title IX Coordinator will

coordinate a prompt response, treat the Complainant and the Respondent equitably, and follow the Grievance Procedure before imposing any Sanctions or other actions that are not Supportive Measures against a Respondent.⁴⁶

This section explains (1) the University's initial response to the Complainant, (2) the Title IX Coordinator's initial assessment of a report of Prohibited Conduct, (3) the University's response to the Respondent, (4) Supportive Measures, (5) Emergency Removals, (6) Privacy issues, and (7) requests for Privacy and/or no University Action.

1. University's Initial Response to the Complainant. The University's initial response to the Complainant includes promptly contacting the Complainant to offer Supportive Measures, to explain the process for filing a Formal Complaint, and/or to request additional information.
 - a. *Supportive Measures.* The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (which are available at no cost with or without the filing a Formal Complaint), including access to a Confidential University victim advocate.⁴⁷
 - b. *Process for Filing a Formal Complaint.* The Title IX Coordinator will also explain the process for filing a Formal Complaint,⁴⁸ if the Complainant so wishes. See XVIII.
 - c. *Request for Additional Information.* The Title IX Coordinator may solicit from the Complainant additional information about the alleged Prohibited Conduct to determine the appropriate Supportive Measures, to complete an initial assessment of the allegations to determine if the alleged conduct falls under this Policy, and to determine whether there is an immediate threat to the physical health or safety of the Complainant or anyone else arising from the allegations of Prohibited Conduct.
2. Initial Assessment of Report of Prohibited Conduct. The Title IX Coordinator will assess the alleged conduct in the report to determine whether the alleged conduct, if it were proven true, constitutes Prohibited Conduct.
 - a. *Alleged Conduct That Does Not Constitute Prohibited Conduct.* If the Title IX Coordinator determines after an initial assessment that based on the totality of the circumstance the alleged conduct is not Prohibited Conduct and therefore does not trigger the Grievance Procedure, the Title IX Coordinator will inform the Complainant of other resolution options (e.g., Student Code of Conduct, Employee Handbook, Faculty Handbook, MUPD, etc.)
 - b. *Alleged Conduct That Does Constitute Prohibited Conduct.* If the alleged conduct presented constitutes Prohibited Conduct, the Title IX Coordinator will work with the Complainant to determine how the Complainant wishes to proceed under this

⁴⁶ 2020 Title IX Regulations, 34 C.F.R § 106.44(a).

⁴⁷ *Id.*

⁴⁸ *Id.*

Policy: (i) to forego filing a Formal Complaint; (ii) to request a supportive and remedial response; (iii) to file a Formal Complaint and pursue the Informal Resolution Process; or (iv) to File a Formal Complaint and pursue the Hearing Process or the Prompt and Equitable Resolution Process.

- i. *Foregoing the Filing a Formal Complaint.* The Complainant may wish to forego the filing of a Formal Complaint. However, if the allegations constitute Prohibited Conduct, if proven true, the Title IX Coordinator, at the request of the Complainant, may have an educational conversation with the Respondent or provide educational awareness training to a larger audience within the University. Where warranted, the Title IX Coordinator may file a Formal Complaint even though the Complainant chose not to. See Section XVIII.2.
 - ii. *Requesting a Supportive and Remedial Response.* A supportive and remedial response is available for allegations of any Prohibited Conduct. If the Complainant prefers a supportive and remedial response, the Title IX Coordinator will work with the Complainant to identify their wishes, assess the request, and implement them accordingly. No Resolution Processes are initiated, though the Complainant can elect to initiate them later, if desired.
 - iii. *Filing a Formal Complaint and Pursuing Informal Resolution Process.* The Informal Resolution Process may be available for allegations of Prohibited Conduct after the filing of a Formal Complaint. If the Complainant prefers the Informal Resolution Process, the Title IX Coordinator will assess whether the report of Prohibited Conduct is suitable for that process, which informal mechanism may serve the situation best or is available and will seek to determine if the Respondent is also willing to engage in the Informal Resolution Process. See Section XXIV.
 - iv. *Filing a Formal Complaint and Pursuing the Hearing Process or the Prompt and Equitable Resolution Process.* If the Complainant prefers to resolve the Formal Complaint through the Hearing Process or the Prompt and Equitable Resolution Process, the Title IX Coordinator will initiate the appropriate process. Allegations of Sexual Harassment must use the Hearing Process. Allegations of other Prohibited Conduct must use the Prompt and Equitable Resolution Process. Allegations of Sexual Harassment and other Prohibited Conduct arising out of the same facts and circumstances, may be consolidated by the Title IX Coordinator for resolution under the Hearing Process.
3. University's Response to Respondent. The Title IX Coordinator will notify a Respondent when it takes action that impacts the Respondent directly, such as instituting Supportive Measures to the Complainant that impact the Respondent or upon the filing of a Formal Complaint. However, depending on the circumstances and the Complainant's wishes, the Respondent may not be notified of a report of Prohibited Conduct, the institution of

Supportive Measures if they do not impact the Respondent, or the outcome of the Title IX Coordinator's initial assessment of the allegations.

Once a Respondent is notified by the Title IX Coordinator about allegations raised against the Respondent under this Policy, the Title IX Coordinator will offer to meet with the Respondent to review available Supportive Measures, including access to a Confidential University-designated Respondent support person. The Title IX Coordinator will discuss the Grievance Procedure and answer any questions.

4. Supportive Measures.⁴⁹ The Title IX Coordinator will treat the Complainant and the Respondent equitably by offering Supportive Measures to both Parties.
 - a. *Supportive Measures Defined.* Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate in response to a report of Prohibited Conduct as reasonably available and without fee or charge to the Complainant or Respondent. Supportive Measures are available to the Complainant or Respondent before and/or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of the Parties or the University's education environment or to deter Prohibited Conduct.

Supportive measures may include, but are not limited to:

- i. Counseling, medical, and/or mental health services, on- and off- campus;
 - ii. Victim advocacy;
 - iii. Respondent support person;
 - iv. Extensions of deadlines or other course-related adjustments;
 - v. Modifications of work or class schedules;
 - vi. Campus escort or other transportation services;
 - vii. Mutual or one-way restrictions on contact between the Parties;⁵⁰
 - viii. Changes in work or housing locations;
 - ix. Leaves of absence;
 - x. Increased security and monitoring of certain areas of the campus;
 - xi. Student financial aid;
 - xii. Emergency Removal; and
 - xiii. Any other actions deemed appropriate by the Title IX Coordinator.
- b. *Privacy Related to Supportive Measures.* Supportive Measures used by either the Complainant or the Respondent are kept Private to the extent that maintaining such Privacy does not impair the ability of the University to provide the Supportive Measures.

⁴⁹ *Id.* § 106.30.

⁵⁰ Violations of no-contact orders will be referred to the appropriate Student, Faculty, or Employee conduct processes for enforcement.

- c. *Considerations.* The Title IX Coordinator coordinates the implementation of Supportive Measures, determining what is appropriate on a case-by-case basis. The Title IX Coordinator considers, among other factors: the specific requests of the Complainant or the Respondent; any continuing burdens on the Complainant or Respondent; and whether the Complainant and the Respondent share the same residence hall, classes, athletic team, on-campus job location, etc.
- d. *Protective Measures.* The Title IX Coordinator reserves the right to take protective measures to ensure a safe and nondiscriminatory environment even when the Parties do not specifically request the measures.
- e. *Duration and Alteration of Supportive Measures. Supportive Measures are short-term measures and will be re-evaluated periodically.*
 - i. *If a Formal Complaint is pending.* If a Formal Complaint is pending, the Supportive Measures will remain in place through the duration of the applicable Resolution Process. If there is a continuing need for supportive measures after the conclusion of the Resolution Process, the Title IX Coordinator will work with the Complainant and the appropriate University resources to provide continued assistance. *See Section XXX.*

Supportive Measures may remain in place or be altered even after a finding of non-Responsibility following the resolution of a Formal Complaint. If there is a finding of Responsibility after the Resolution Processes, the Supportive Measures imposed for a Complainant may become Remedies. *See Section XXVIII.*

- ii. *If no Formal Complaint is pending.* If no Formal Complaint is pending, Supportive Measures expire after six months unless the Title IX Coordinator provides otherwise in writing. Supportive measures may be subject to renewal after their expiration at the request of either party.
5. Emergency Removals. The University may remove a student Respondent entirely or partially from any of its Programs or Activities on an emergency basis when an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment justifies removal.
- b. *Within Power and Discretion of Title IX Coordinator.* The Title IX Coordinator has is the only administrator who has the power and discretion to implement, revise, or invoke an Emergency Removal on behalf of the University and to determine the conditions and duration. The Title IX Coordinator will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular

activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

- b. *May Be Pursued Throughout Grievance Procedure.* Emergency Removals may be pursued at any time before the initiation of and throughout the Grievance Procedure if circumstances warrant it.
 - c. *Notice to the Respondent.* Prior to the Emergency Removal or as soon thereafter as reasonably possible, the Title IX Coordinator will provide to the Respondent written notice of the Emergency Removal.
 - d. *Challenging an Emergency Removal.* Within 48 hours of an Emergency Removal, Respondents will have an opportunity to challenge an Emergency Removal in writing before the Title IX Coordinator.⁵¹ A challenge of the Emergency Removal is not a Hearing on the merits of the allegation(s) but rather is an administrative process intended to determine solely whether the Emergency Removal is appropriate.⁵² There is no appeal process for Emergency Removal decisions.
 - e. *Violation of an Emergency Removal.* Violation of an Emergency Removal under this Policy may be grounds for expulsion or termination.
 - f. *Removal from programs or activities for Non-Title IX Sexual Harassment and other Prohibited Conduct.* A University administrator who deems it appropriate to temporarily remove a respondent from a University program or activity while allegations of Non-Title IX Sexual Harassment and other Prohibited Conduct are pending, the administrator must consult with the Title IX Coordinator before the removal occurs or as soon as practicable after the removal.
 - g. *Removal of employee.* The University may, at any time, place an Employee or Student-Employee Respondent on Administrative Leave from employment responsibilities during the pendency of the Grievance Procedure.
6. Privacy Issues. The University makes every effort to preserve the Privacy of reports of Prohibited Conduct. The University will not share the identity of any Reporting Party, Complainant, individual who has been reported to be the perpetrator of Prohibited Conduct, Respondent, or Witness, except as permitted by FERPA,⁵³ as required by law, or to carry out the purposes of the Title IX 2020 Amendments,⁵⁴ including conducting the Grievance Procedure.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to FERPA. Only a small group of officials who need to know will typically be told about the report of Prohibited Conduct.

⁵¹ The University will respect all rights under the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.

⁵² The opportunity for a Respondent to challenge an Emergency Removal does not prescribe Cross-Examination as a necessary procedure within the challenge.

⁵³ 20 U.S.C. § 1232g.

⁵⁴ 34 C.F.R. Part 106.

Information will be shared as necessary with Investigators, the Hearing Panel or Hearing Officer, Witnesses, and the Parties. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and Privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk to a Student but will usually consult with the Student first before doing so.

7. Requests for Privacy and/or No University Action.

- a. *Requests for Privacy and/or No University Action.* The University will honor a Complainant's request that their report or identity be kept Private and/or that no formal action be taken under this Policy, unless the University determines that it must take formal action to mitigate a risk of harm to the Complainant or others, or it identifies similar important reasons to take formal action under this Policy that is not clearly unreasonable in light of the known circumstances.⁵⁵
- b. *Determining Requests for Privacy.* The University will weigh the Complainant's request for Privacy against the University's obligation to provide a safe, nondiscriminatory environment for the entire University community. The University will consider a range of factors when determining whether to grant a Complainant's request for Privacy and/or no University action, including but not limited to:
 - i. Whether the Respondent has a history of violent behavior or whether Respondent is alleged to have engaged in a pattern of Prohibited Conduct;
 - ii. Whether there is a pattern of alleged Prohibited Conduct by a Respondent in a position of authority;
 - iii. Whether the allegation suggests escalation from the Respondent's previously noted behavior;
 - i. Whether there is information that indicates predatory conduct;
 - ii. Whether the Respondent is alleged to have used a weapon or Force in the perpetration of the alleged conduct;
 - iv. Whether the allegation suggests an identifiable and tangible risk to the University community;
 - v. Whether the Complainant is a minor;
 - vi. Whether the Complainant is a Student and the Respondent is an Employee;
 - vii. Whether the University possesses other means to obtain evidence;
 - viii. Whether the allegation suggests a pattern of conduct at a given location or involves a particular group; and/or
 - viii. Whether the Title IX Coordinator otherwise determines that the allegation warrants resolution through the Grievance Procedure.

⁵⁵ The Title IX Coordinator has the authority to file a Formal Complaint on behalf of the University. See Section XVIII.2. Should this occur, the University must disclose the name of the Complainant to the Respondent to allow the Respondent to appropriately respond to the allegations within the Grievance Procedure.

- c. *Effects of Maintaining Privacy.* Honoring a Complainant's request for Privacy may limit the University's ability to meaningfully address the alleged Prohibited Conduct. The University may nevertheless take steps to limit the effects of the alleged Prohibited Conduct and prevent its recurrence without undermining the Complainant's request for Privacy by, for example, increasing monitoring, supervision and/or security at locations or activities where the Prohibited Conduct is alleged to have occurred, and by providing training and education for Students and Employees. The University will continue to offer the Complainant Supportive Measures as appropriate.
- d. *Inability to Honor Request for Privacy and/or No University Action.* If the University cannot honor a Complainant's request for Privacy and/or no University action, the Title IX Coordinator will inform the Complainant and put in place Supportive Measures as necessary to protect the Complainant and the University community. The University will disclose information only to individuals who are responsible for handling the University's response and to those needed to conduct an effective investigation and the appropriate Resolution Process.
- e. *No Gag Orders for Parties.* (Applicable to Sex Discrimination and Sexual Harassment allegations) The University may not restrict a Complainant or a Respondent from discussing the allegations of Sex Discrimination or Sexual Harassment under investigation or from soliciting information for the purpose of presenting it as Relevant Evidence within the Grievance Procedure. The University urges Parties and Witnesses to use discretion in discussing the alleged conduct or the identities of those involved. Public discussion of any alleged Prohibited Conduct other than for the purpose of participating in the Grievance Procedure can not only cause harm and deter others from reporting or responding to such conduct, but it may also constitute Retaliation.

XVIII. THE GRIEVANCE PROCEDURE: FILING THE FORMAL COMPLAINT

The third part of the Grievance Procedure is the filing of a Formal Complaint. The filing of a Formal Complaint triggers one or more Resolution Processes. This section explains (1) the Formal Complaint, generally, (2) when the Title IX Coordinator may file a Formal Complaint, (3) possible consolidation of Formal Complaints, (4) Formal Complaints involving graduating Students and Students and Employees who withdraw or resign during the pendency of a Resolution Process, and (5) how the Parties are notified of the filing of a Formal Complaint.

1. The Formal Complaint, Generally. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator that alleges that a Respondent engaged in Prohibited Conduct and that requests that the University investigate the allegation(s).⁵⁶

⁵⁶ 2020 Title IX Regulations, 34 C.F.R. § 106.30(a).

- a. A “document filed by a Complainant” is a document or electronic submission that contains the Complainant’s physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint.⁵⁷
 - b. For a Complainant to file a Formal Complaint or allegations of Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in a University Education Program or Activity at the time of filing a Formal Complaint for Sexual Harassment.⁵⁸
 - c. Formal Complaints will be deemed to be made in good faith unless proven otherwise.
2. Formal Complaint Filed by the Title IX Coordinator. The Title IX Coordinator may file a Formal Complaint in situations where the Complainant does not wish to do so. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by a particular Respondent, in deciding whether to sign a Formal Complaint. The Title IX Coordinator’s decision to file a Formal Complaint will include consideration of the Complainant’s wishes regarding how the University should respond to the allegations. The Title IX Coordinator may sign a Formal Complaint regardless of whether a Complainant is participating or attempting to participate in a University Education Program or Activity. In these cases, the Complainant maintains the “Complainant” designation and becomes a Party throughout the Grievance Procedure, regardless of whether the Complainant chooses to participate in it. When the Title IX Coordinator files a Formal Complaint alleging Sexual Harassment, the Complainant will receive written Notice of Formal Complaint and Allegations, a copy of the Investigative File for inspection and review, written notice of interviews requested, a copy of the Investigative Report, written notice of any Resolution Processes, and a copy of the written determination regarding Responsibility.
3. Possible Consolidation of Formal Complaints. The Title IX Coordinator has authority to consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, 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 circumstances or allege a pattern of conduct that individually would not rise to the level of Prohibited Conduct, but collectively, if proven, would constitute Prohibited Conduct.⁵⁹
4. Formal Complaints Against Graduating Students and Students and Employees Who Withdraw or Resign During the Pendency of a Resolution Process. If a Respondent is a

⁵⁷ *Id.*

⁵⁸ *Id.* § 106.30. “Attempting to participate” in a Program or Activity may include when a Complainant: (1) has withdrawn from the school due to alleged sexual harassment and expresses a desire to re-enroll if the school responds appropriately to the allegations, (2) has graduated but intends to apply to a new program or intends to participate in alumni programs and activities, (3) is on a leave of absence and is still enrolled as a student or intends to re-apply after the leave of absence, or (4) has applied for admission.

⁵⁹ *Id.* § 106.45(b)(4).

graduating Student and the resolution of a Formal Complaint cannot be completed prior to the Respondent's graduation or a Respondent withdraws during the pendency of the Formal Complaint, the University may continue the Resolution Process to completion. The University has the authority to make appropriate notations on a Respondent's transcript following graduation or withdrawal, if warranted upon a determination of Responsibility. Likewise, the University has the authority to make appropriate notations within a Respondent's personnel file, if warranted upon a determination of Responsibility if an Employee resigns during the pendency of a Formal Complaint. See Section XXXIII.

XIX. THE GRIEVANCE PROCEDURE: NOTIFYING THE PARTIES OF A FORMAL COMPLAINT

This section describes the third part of the Grievance Procedure: notifying the Parties of a Formal Complaint. It explains (1) the written notice the Title IX Coordinator will provide the Parties and (2) the Title IX Coordinator's request to be notified of conflicts that may affect the Investigative Process and/or the Resolutions Processes.

1. Notice of Formal Complaint and Allegations. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to both Parties in the form of a Notice of Formal Complaint and Allegations. The Notice of Formal Complaint and Allegations may, to extent possible at the time of the written notice:⁶⁰
 - a. Identify the Complainant(s) and the Respondent(s);
 - b. Inform the Parties of the Privacy of the Grievance Procedure;
 - c. Request the Parties preserve any evidence directly related to the allegations;
 - d. Notify the Parties of the allegations potentially constituting Prohibited Conduct, including sufficient details known to the Title IX Coordinator at the time (e.g., date, time, and location);
 - e. Explain the specific offenses implicated under this Policy;
 - f. Inform the Parties that they may have an Advisor of their choice to accompany them throughout the Grievance Procedure, including the Resolution Processes;
 - g. Explain the Grievance Procedure and the applicable Resolution Processes, including that the Parties will have an opportunity to inspect, review, and respond to the evidence collected;
 - h. Identify the Investigator and provide the Parties 24 hours to notify the Title IX Coordinator if a Party believes the Investigator has a conflict of interest;
 - i. Inform the Parties that the Respondent is presumed to be Not Responsible for the alleged Prohibited Conduct and that determinations about Responsibility are made during the Hearing Process or Prompt and Equitable Resolution Process;
 - j. Inform the Parties that the Respondent will have sufficient time to prepare a response to the allegations before an initial interview;
 - k. Inform the Parties that the Student Conduct Code prohibits knowingly furnishing false information to the University by specifically misrepresenting information

⁶⁰ *Id.* § 106.30(b)(2).

about oneself or others when providing information to a University official acting in performance of their duties;

- l. Explain the rights of the Parties, including the right to present Witnesses (including fact and expert Witnesses) to present other evidence both Inculpatory and Exculpatory, and to review all evidence collected;
- m. Explain the University's policy on Retaliation;
- n. Detail how the Parties may acquire disability accommodations during the Grievance Procedure, and
- o. Inform the Parties that the Title IX Coordinator may amend the allegations and charged offenses within the Notice of Formal Complaint and Allegations as more information becomes available throughout the Investigative Process.

XX. THE GRIEVANCE PROCEDURE: THE INVESTIGATIVE PROCESS, GENERALLY

This section introduces the fourth part of the Grievance Procedure: the Investigative Process. All investigations are thorough, reliable, impartial, prompt, and fair. This section outlines (1) the time frame in which the University will complete the Investigative Process, (2) the University's commitment to keep the Parties updated during the Investigative Process, (3) the activities undertaken during the Investigative Process, (4) the burden of proof, and (5) the presumption of non-Responsibility.

1. Timeline to Complete the Investigative Process. The University will make a good faith effort to complete the Investigative Process as promptly as circumstances permit. Investigations are completed expeditiously, though some may take longer than others, depending on the nature, extent, and complexity of the allegations, number and availability of Witnesses, police involvement, etc.
2. University's Commitment to Update Parties. During the Investigative Process, the Title IX Coordinator and/or Investigator will communicate regularly with the Parties to update them on the progress and timing of the Investigative Process.
3. Activities Undertaken During the Investigative Process. During the Investigative Process, the Investigator will attempt to interview all Parties and Witnesses; obtain available Relevant Evidence; and identify sources of expert information, as necessary. The Parties have a full and fair opportunity through the Investigative Process to suggest Witnesses and questions to be asked of Witnesses and the other Party, to provide evidence and expert Witnesses, and to fully review and respond to evidence directly related to the allegations and all Relevant Evidence.
4. Burden of Proof. Throughout the Grievance Procedure, the University—not the Parties—bears the burden of gathering Relevant Evidence sufficient to reach a determination

regarding Responsibility and has the burden of proof during the Formal Resolution Processes.⁶¹

5. Presumption of Non-Responsibility. The Respondent is presumed Not Responsible for the alleged conduct throughout the Grievance Procedure, until a determination regarding Responsibility is made at the end of the Formal Resolution Processes.⁶²

XXI. THE GRIEVANCE PROCEDURE: THE INVESTIGATIVE PROCESS

This section details the fourth part of the Grievance Procedure: the Investigative Process itself. After the Parties receive the Notice of Formal Complaint and Allegations, a formal investigation of the allegations will likely begin. The Investigation Process will proceed as follows:

1. Assignment of Investigator. The Title IX Coordinator will assign a Title IX Deputy Coordinator or other Investigator from within or outside of the University to investigate the allegations in the Formal Complaint.
 - a. *Challenging Investigator for Perceived Bias or Conflict of Interest*. The Title IX Coordinator will ensure the assigned Investigator has no conflicts of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.⁶³ However, either Party may assert to the Title IX Coordinator that the Investigator has a conflict of interest or perceived bias. This assertion is requested in writing within 24 hours of the Parties receiving notice of the identity of Investigator but may be filed with the Title IX Coordinator at any time during the Investigative Process. If the Title IX Coordinator determines that such a conflict or bias exists, the Title IX Coordinator will replace the Investigator. The Title IX Coordinator's determination is final.
 - b. *Title IX Coordinator as Investigator*. The Title IX Coordinator may also serve as an Investigator. When the Title IX Coordinator serves as the Investigator, the Title IX Coordinator may designate a Title IX Deputy Coordinator to serve as acting Title IX Coordinator for that case only.
2. Scope of Investigation. The Investigator will undertake a thorough search for Relevant Evidence pertaining to the Formal Complaint. This search includes but is not limited to interviewing the Parties and Witnesses and collecting both Inculpatory and Exculpatory Evidence, such as documents, files, electronic communications, photographs, video

⁶¹ *Id.* § 106.45(b)(5)(i).

⁶² *Id.* § 106.45(b)(1)(iv). The purpose of the presumption of non-Responsibility is not to favor Respondents at the expense of Complainants or to demonstrate animus or hostility toward Complainants. Rather, such a presumption is mandated by the Title IX 2020 Amendments as a measure of fairness in the same way that Formal Complaints are deemed to be made in good faith unless proven otherwise. This Policy establishes a fair Grievance Procedure for all Parties, and the presumption of non-Responsibility does not affect or diminish the strong procedural rights granted to both Complainants and Respondents throughout the Grievance Procedure.

⁶³ *Id.* § 106.46(b)(1)(iii).

footage, and/or any other evidence directly related or relevant to the allegations of Prohibited Conduct.

3. Interviews. The Investigator will interview the Complainant, the Respondent, and Witnesses.
 - a. *Written Notice of Interviews.* In order for the Parties to prepare for and meaningfully participate in interviews with the Investigator, the Investigator will provide advance written notice to the person the Investigator plans to interview. The written notice will include the date, time, location, participants in, and purpose of the investigative interview or other meeting.
 - b. *Virtual Interviews.* Interviews may be conducted virtually with technology enabling the Investigator and interviewee to simultaneously see and hear each other, or by phone.
 - c. *Written Statements Instead of or in Addition to Interview.* The Parties and Witnesses may provide a written signed statement instead of or in addition to an interview.
 - d. *Multiple Interviews.* The Investigator may request to interview the Complainant, Respondent, or any Witness more than once during the Investigative Process. The Investigator's request to interview one Party more times than the other bears no correlation with the potential outcome of the matter and is not indicative of Investigator bias or unfairness.
 - e. *Audio Recording of Interviews.* The Investigator will audio record all interviews they conduct and will prepare an interview transcript or summary. The Parties and Witnesses may request their own audio recorded interview but may not request or access the recorded interviews of others.
 - f. *Advisors.* The Complainant and the Respondent may have their Advisor present during their interview(s) with the Investigator.
4. Parties' Participation in the Investigative Process. The Complainant and the Respondent have an equal opportunity to discuss the allegations under investigation with the Investigator, present Witnesses for the Investigator to interview (including fact and expert Witnesses), and provide evidence, including Inculpatory and Exculpatory Evidence.
5. Investigator Discretion. The Investigator may decline to interview Witnesses that the Investigator deems unlikely to yield Relevant Evidence.
6. Gathering of Evidence. The Investigator will identify and request from any available source evidence such as documents, files, electronic communications, photographs, and video footage. The Investigator will seek, but not require, a voluntary waiver of legal privilege if evidence protected under a legally recognized privilege is provided by or sought from the Parties.⁶⁴ The Investigator and/or Hearing Panel may not rely on any evidence protected by legal privilege unless the privilege is voluntarily waived.

⁶⁴ *Id.* § 106.45(b)(1)(x).

Additionally, the Investigator may independently identify and interview Witnesses and obtain evidence other than what has been presented by the Parties.

7. Evidence About Complainant's Past Sexual History (Applicable to Sexual Harassment allegations) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless (a) such questions and evidence about the Complainant's prior sexual behavior⁶⁵ are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.⁶⁶

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 if evidence of prior sexual history is deemed relevant.

8. The Investigative File. When the Investigator finishes gathering the available evidence, the Investigator will compile in the Investigative File all the evidence *directly related* to the allegations raised in the Formal Complaint. The Investigative File will include:⁶⁷
 - a. The interview transcripts or summaries of the testimonies of the Complainant, the Respondent, and Witnesses;
 - b. The questions posed in writing by the Parties and the Parties' answers to those questions, if provided, and
 - c. All Inculpatory and Exculpatory evidence collected by the Investigator, such as documents, files, electronic communications, photographs, video footage, and other forms of evidence.
 - d. Evidence the University does not intend to rely on in reaching a determination regarding responsibility.
9. Parties' Review of the Investigative File. The Investigator will provide the Investigative File to the Complainant and the Respondent and their Advisors. The Parties will have 10 business days to inspect the Investigative File and to provide a written response.⁶⁸ Each

⁶⁵ The term "prior sexual behavior" refers to sexual behavior that is unrelated to the alleged Prohibited Conduct. U.S. Dept. of Ed. Office for Civil Rights, Questions and Answers Regarding the Department's Final Title IX Rule (July 2021).

⁶⁶ *Id.* § 106.45(b)(6)(i).

⁶⁷ *Id.* § 106.45(b)(5)(vi).

⁶⁸ *Id.* § 106.45(b)(5)(vi).

Party's written response will be provided to the other Party. No other responses are permitted, unless authorized by the Investigator.

10. Parties' Responses to the Investigative File. A Party is not required to submit a response to the Investigative File; however, any response a Party wants to make must be submitted in writing.

- a. *Content of Written Responses.* A Party's written response to the Investigative File may do any of the following:
 - i. Further address the allegations;
 - ii. Identify perceived factual errors or omissions in the Investigative File and the draft Investigative Report (if provided);
 - iii. Offer any additional Relevant Evidence not previously disclosed;
 - iv. Submit in writing to the Investigator relevant questions that the Party wishes the Investigator to ask the other Party or any Witnesses. Should a Party propose a question that the Investigator deems not relevant, the Investigator will explain to the Party their decision to exclude a question as not relevant.
- b. *Additional Evidence for the Investigator.* The Parties must submit any evidence that they would like the Investigator to consider prior to the close of the evidence-gathering phase of the Investigative Process.
- c. *Written Responses Included in Investigative File.* The Parties' written responses to the Investigative File will be appended to the Investigative File.

11. Closing the Evidence-Gathering Phase. The Investigator has sole discretion to determine when to close the evidence-gathering phase of the investigation. Generally, the evidence-gathering phase of the Investigative Process concludes after the Parties provide written responses to the Investigative File. If the Investigator deems it necessary, the Investigator may conduct follow-up interviews with the Parties or any Witness or collect additional relevant evidence after receiving the responses to the Investigative File and the transcripts or summaries of the interviews and additional evidence will be provided to the Parties.

12. Finalizing the Investigative File and Drafting the Investigative Report. After the Investigator closes the evidence-gathering phase of the investigation, the Investigator will finalize the Investigative File (to include Party responses to it and any additional information provided thereafter) and draft an Investigative Report that summarizes the Relevant Evidence within the Investigative File. The Relevant Evidence summarized in the Investigative Report is the evidence intended to be relied upon in reaching a determination on Responsibility. Contents of the Final Investigative Report will generally include:

- a. A jurisdictional statement relating to the applicability of this Policy,
- b. An explanation of the alleged Prohibited Conduct,
- c. The applicable offenses,
- d. A description of procedural steps taken during the Investigative Process,

- e. The evidence obtained by the Investigator and the Witnesses interviewed,
 - f. Whether Supportive Measures were provided, and
 - g. A summary of the Relevant Evidence, including identification of undisputed facts, corroborated facts, and/or disputed facts.
13. Investigative Report Sent to Parties. The Investigator will send the Investigative Report to the Parties and their Advisors for the Parties' review and written response at least 10 days prior to a Hearing. The Parties will receive one another's written response to the Investigative Report and may respond to additional evidence, if applicable. The Parties' written responses will be appended to the Investigative Report. The Investigative Report may be revised based on the Parties' written responses to correct any factual inaccuracies. Any revisions made to the Investigative Report will be shared with the Parties prior to the Hearing.
14. Title IX Coordinator Review of Investigative Report. After the Parties have reviewed and responded to the Investigative Report, the Title IX Coordinator will review the Investigative Report and written responses and determine next steps.
- a. *Next Steps for Formal Complaints Alleging Sexual Harassment.* Formal Complaints of Sexual Harassment may (i) be dismissed, (ii) be resolved through the Informal Resolution Process, or (iii) proceed to the Hearing Process.
 - i. The Title IX Coordinator will determine whether the Investigative Process reveals facts requiring or permitting Dismissal of the Formal Complaint.⁶⁹ See Section XXIII.
 - ii. The Title IX Coordinator may gauge the Parties' interest in the Informal Resolution Process. See Section XXIV.
 - iii. If the Formal Complaint is not dismissed pursuant to Section XXIII or is not appropriate for or resolved through the Informal Resolution Process in Section XXIV, the Formal Complaint will proceed to the Hearing Process pursuant to Section XXV.
 - b. *Next Steps for Formal Complaints Alleging Prohibited Conduct other than Sexual Harassment.* Formal Complaints of alleging other Prohibited Conduct may be may (i) be dismissed, (ii) be resolved through the Informal Resolution Process, or (iii) proceed to the Prompt and Equitable Resolution Process.
 - i. The Title IX Coordinator will determine whether the Investigative Process reveals facts requiring or permitting Dismissal of the Formal Complaint.⁷⁰ See Section XXIII.
 - ii. The Title IX Coordinator may gauge the Parties' interest in the Informal Resolution Process. See Section XXIV.
 - iii. If the Formal Complaint is not dismissed pursuant to Section XXIII or is not appropriate for or resolved through the Informal Resolution Process, the

⁶⁹ *Id.* § 106.45(b)(3).

⁷⁰ *Id.* § 106.45(b)(3).

Formal Complaint will proceed to the Prompt and Equitable Resolution Process pursuant to Section XXVI.

XXII. THE RESOLUTION PROCESSES: GENERALLY

This section provides an overview of the fifth part of the Grievance Procedure: the Resolution Processes, generally. Formal Complaints under this Policy are resolved in one of four ways: (1) by Dismissal, (2) through the Informal Resolution Process, (3) through the Hearing Process, or (4) through the Prompt and Equitable Resolution Process. The Resolution Processes apply in different circumstances and as explained below.

1. Dismissal. Dismissals as described in Section XXIII apply to Formal Complaints of Prohibited Conduct.
2. Informal Resolution Process. The Informal Resolution Process may be available after the filing of a Formal Complaint alleging Prohibited Conduct. The Informal Resolution Process may be available for other forms of Prohibited Conduct before a Formal Complaint is filed. *See* Section XXIV.
3. Hearing Process. The Hearing Process as described in Section XXV applies only to Formal Complaints of Sexual Harassment and to Formal Complaints that allege both Sexual Harassment and other forms of Prohibited Conduct.
4. Prompt and Equitable Resolution Process. The Prompt and Equitable Resolution Process as described in Section XXVI applies only to Formal Complaints of Prohibited Conduct other than Sexual Harassment.

XXIII. THE RESOLUTION PROCESSES: DISMISSAL

Dismissals are mandatory or discretionary. The University must dismiss Formal Complaints alleging Title IX Sexual Harassment in one of four circumstances and Formal Complaints of other Prohibited Conduct in one circumstance. The University may dismiss Formal Complaints alleging any Prohibited Conduct in one of three circumstances.

1. Mandatory Dismissal of Formal Complaints of Title IX Sexual Harassment. The University must dismiss Formal Complaints alleging Title IX Sexual Harassment in the following circumstances:⁷¹
 - a. The allegations raised in the Formal Complaint (or certain allegations within the Formal Complaint), even if proved, do not fall under the definition of Sexual Harassment,
 - b. The alleged Sexual Harassment did not take place in the United States,

⁷¹ *Id.* § 106.45(b)(3)(i).

- c. The alleged Sexual Harassment did not take place within a University Program or Activity, or
- d. The Complainant was not participating or attempting to participate in a University Program or Activity at the time the Complainant filed the Formal Complaint.

The University's mandatory Dismissal of a Formal Complaint alleging Title IX Sexual Harassment is solely a procedural requirement under the Title IX 2020 Amendments. A Formal Complaint alleging Title IX Sexual Harassment mandatorily dismissed may be re-filed as a Formal Complaint alleging Non-Title IX Sexual Harassment, and the matter will proceed under the Grievance Procedure to the Hearing Process.

2. Mandatory Dismissal of Formal Complaints of Other Prohibited Conduct. The University must dismiss Formal Complaints alleging Prohibited Conduct when the allegations raised in the Formal Complaint (or certain allegations within the Formal Complaint), even if proved, do not fall under the definition of Prohibited Conduct.
3. Discretionary Dismissal. The University may dismiss Formal Complaints alleging both Title IX and Non-Title IX Sexual Harassment⁷² and Formal Complaints alleging other Prohibited Conduct when:
 - a. The Complainant asks the Title IX Coordinator in writing to withdraw the Formal Complaint or any allegations therein,⁷³
 - b. The Respondent is no longer enrolled at or employed by the University, or
 - c. Specific circumstances exist that prevent the Investigator from gathering evidence sufficient to reach a determination as to the allegations contained in the Formal Complaint.
4. Notice of Dismissal. The Title IX Coordinator will promptly notify the Parties in writing of a Dismissal decision and the reasons for the Dismissal. The Parties will have 24 hours to file an appeal of the Dismissal decision in writing with the Title IX Coordinator. The Title IX Coordinator will appoint an Appeal Officer to hear the appeal. See Section XXIII.
5. Availability of Supportive Measures. Parties to a dismissed Formal Complaint still have access to Supportive Measures at the Title IX Coordinator's discretion.
6. Options to Pursue Dismissed Formal Complaints. For Formal Complaints that are dismissed because the alleged conduct does not constitute Sexual Harassment, or other Prohibited Conduct, even if proven, the Complainant may still have the conduct addressed through the Conduct Code, Employee Handbook, or Faculty Handbook.
7. Finality of Dismissal Decision. The Dismissal decision becomes final either:

⁷² *Id.* § 106.45(b)(3)(ii).

⁷³ A Complainant may re-file a withdrawn Formal Complaint at a later date.

- a. On the date that the Title IX Coordinator or Appeal Officer provides the Parties with the Appeal Decision, if an appeal was filed, or
- b. On the date on which an appeal would no longer be considered timely.

XXIV. THE RESOLUTION PROCESSES: INFORMAL RESOLUTION PROCESS

The Informal Resolution Process is applicable when (1) the Title IX Coordinator deems it appropriate, and (2) the Parties voluntarily agree to resolve the matter through the Informal Resolution Process. This section also (3) outlines the options for Informal Resolution.

1. Title IX Coordinator Discretion to Offer Informal Resolution Process. The Title IX Coordinator has discretion whether to offer the Informal Resolution Process in each Formal Complainant. The Title IX Coordinator will determine whether the Informal Resolution Process is appropriate based on the willingness of the Parties to participate and the nature of the conduct at issue. The Informal Resolution Process is not available in cases in which an Employee is alleged to have sexually harassed a Student.

If the Title IX Coordinator finds the Formal Complaint is appropriate for the Informal Resolution Process, the Title IX Coordinator, in consultation with the Parties, then decides which method of Informal Resolution to employ, and when to initiate the Informal Resolution Process. Specifically, the Title IX Coordinator may not make the Informal Resolution Process available to the Parties until after the Investigatory Process concludes.

2. Parties' Voluntary Consent to the Informal Resolution Process. The Parties must provide consent to enter the Informal Resolution Process.⁷⁴
 - a. The Parties' participation in the Informal Resolution Process is never required and may not be a condition of continued enrollment or employment, or enjoyment of any other right. Accordingly, the Parties must enter the Informal Resolution Process freely, voluntarily, and without Coercion from any person or entity.
 - b. Any Party participating in the Informal Resolution Process can stop the process at any time before reaching a resolution and request the matter be resolved through the Hearing Process (Section XXV) or the Prompt and Equitable Resolution Process (Section XXVI), whichever applies.
3. Options for Informal Resolution. The University offers the following options for Informal Resolution:
 - a. *Negotiated Resolution (may also be referred to as mediation).* Negotiated Resolution is an Informal Resolution Process by which the Parties, with the help of an Informal Resolution Facilitator (i.e., a mediator), negotiate and agree upon a resolution of the Formal Complaint.

⁷⁴ Consent to engage in Informal Resolution for Formal Complaints alleging Sex Discrimination or Sexual Harassment must be provided in writing.

- i. *How it Works.* The Title IX Coordinator will serve as or will assign an Informal Resolution Facilitator who is free from conflicts of interest and bias and trained to serve impartially without preconceived judgements about the allegations at issue. The Facilitator will assist the Parties in negotiating an amenable resolution resulting in a Resolution Agreement signed by both Parties and the Title IX Coordinator. The Parties are not required to meet or interact during the Negotiated Resolution; this process is often conducted with the Facilitator conversing with each Party separately.
- ii. *Advisors.* Each Party has the right to an Advisor of their choice during the Informal Resolution Process. A Party's Advisor may accompany them during any meetings with the Informal Resolution Facilitator.
- iii. *Confidentiality.* Should this method of Informal Resolution fail at any point prior to reaching a resolution, the information provided or discussed within the Informal Resolution Process is for negotiated resolution purposes only and is therefore Confidential. Accordingly, unless otherwise agreed to by the Parties, information obtained or disclosed during the Informal Resolution Process is irrelevant to the Formal Complaint's adjudication should the matter return to the Hearing Process or Prompt and Equitable Resolution Process. In most instances, the Informal Resolution Facilitators are Confidential and will not disclose information obtained during the Informal Resolution Process.⁷⁵ However, if the Title IX Coordinator is serving as the Informal Resolution Facilitator, and during the Negotiated Resolution process, the Title IX Coordinator obtains Actual Knowledge of a previously undisclosed allegation of Title IX Sexual Harassment, Confidentiality cannot be upheld as to the newly disclosed allegations of Title IX Sexual Harassment. The Title IX Coordinator must respond to the newly disclosed allegations pursuant to Sections XVII.
- iv. *Sanctions.* The Parties may agree to corrective or punitive measures for the Respondent, or other adverse consequences coordinated or implemented by the University. For example, a Respondent could agree to withdraw or resign, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the Complainant's safety/educational or employment access in lieu of formal sanctions that would create a disciplinary record for the Respondent.
- v. *Title IX Coordinator Approval of Resolution Agreement.* The Title IX Coordinator must approve the proposed outcome of the Negotiated Resolution and has discretion to reject any proposed outcomes that result from the Informal Resolution Process.

⁷⁵ Informal Resolution Facilitators must break Confidentiality and notify the appropriate authority when a person is a threat to themselves or others.

- vi. *Record Keeping.* The Title IX Coordinator will maintain records relating to any outcome reached through Negotiated Resolution. See Section XXV.
- vii. *Finality.* In reaching an agreement, the Formal Complaint is deemed resolved and, accordingly, the Parties agree to forego the Hearing Process or Prompt and Equitable Resolution Process, whichever is applicable.
- viii. *Failure to Comply with the Terms of Resolution.* Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.).
- ix. *Non-Appealable.* The Parties may not terminate or challenge the Informal Resolution Process or outcome after they and the Title IX Coordinator have signed a Resolution Agreement, unless such ability to challenge is expressly written into the Resolution Agreement.
- b. *Respondent Admits Responsibility for Alleged Violations and Desires to Accept Corrective or Punitive Resolution Imposed by the Title IX Coordinator.* The Respondent may admit Responsibility for the alleged Policy violations at any point during the Informal Resolution Process and agree to accept a corrective or punitive resolution imposed by the Title IX Coordinator.
 - i. *How it Works.* The Respondent notifies the Title IX Coordinator of their desire to admit Responsibility for the alleged Policy violations and agrees to accept a corrective or punitive resolution imposed by the Title IX Coordinator.
 - ii. *Written Consent from Complainant Required.* The Title IX Coordinator must obtain written consent from the Complainant for this method of Informal Resolution to proceed. The Complainant may provide an impact statement to express the harm experienced by the Prohibited Conduct and share their desired outcome with the Title IX Coordinator. Otherwise, the Complainant plays no role within this method of Informal Resolution and agrees to accept the Title IX Coordinator's chosen resolution.
 - iii. *Title IX Coordinator Determines Resolution.* The Title IX Coordinator will determine an appropriate resolution for the Prohibited Conduct that may include corrective or punitive measures (including Disciplinary Sanctions) and measures designed to effectively stop it, prevent its recurrence, and remedy its effects on the Complainant and the University community. The potential terms that may be included in an informal resolution agreement under this option include but are not limited to:
 - 1. Restrictions on contact; and

2. Restrictions on the Respondent's participation in one or more of the University's Education Programs or Activities or at specific events, including restrictions the University could have imposed as Remedies or Disciplinary Sanctions had the University determined after the applicable adjudicatory Resolution Process that Prohibited Conduct occurred.
- iv. *Effect of Accepting Responsibility for Some Alleged Conduct.* If the Respondent accepts Responsibility for some of the alleged Policy violations and the Title IX Coordinator has determined and implemented the appropriate responsive actions, then the remaining allegations will continue to be investigated and resolved under the applicable Resolution Processes. The Complainant will be informed of this outcome. The Parties are still able to seek a Negotiated Resolution on the remaining allegations, subject to the provisions in Section XXIV.3.a.
 - c. *Resolution Agreement.* The resolution is memorialized in a Resolution Agreement signed by the Respondent and the Title IX Coordinator.
 - d. *Advisors.* Each Party has the right to an Advisor of their choice during the Informal Resolution Process. A Party's Advisor may accompany them during any meetings with the Title IX Coordinator.
 - e. *Confidentiality.* Should this method of Informal Resolution fail at any point prior to reaching a resolution, the information provided or discussed within the Informal Resolution Process is for resolution purposes only and therefore Confidential. Accordingly, unless otherwise agreed to by the Parties, information obtained or disclosed during the Informal Resolution Process is irrelevant to the Formal Complaint's adjudication should the matter return to the Hearing Process or Prompt and Equitable Resolution Process. If the Title IX Coordinator obtains Actual Knowledge of a previously undisclosed allegation of Title IX Sexual Harassment, Confidentiality cannot be upheld as to the newly disclosed allegations of Title IX Sexual Harassment and the Title IX Coordinator must respond pursuant to Section XVII.
 - f. *Record Keeping.* The Title IX Coordinator will maintain records relating to any outcome reached through this method of Informal Resolution. See Section XXXV.
 - g. *Finality.* In reaching an agreement, the Formal Complaint is deemed resolved and the Parties agree to forego the Hearing Process or Prompt and Equitable Resolution Process, whichever is applicable.
 - h. *Failure to Comply with the Terms of Resolution.* Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.).
 - i. *Non-Appealable.* The Parties are precluded from terminating or challenging the resolution imposed by the Title IX Coordinator after the Resolution Agreement is signed by the Respondent and the Title IX Coordinator.

XXV. THE RESOLUTION PROCESSES: THE HEARING PROCESS

When the Formal Complaint alleges Sexual Harassment and is not dismissed as described in Section XXIII or informally resolved as described in Section XXIV, the Formal Complaint will be resolved through the Hearing Process. This section explains the Hearing Process by describing: (1) the appointment of a Hearing Panel or sole Hearing Officer; (2) the scope of the Hearing; (3) the notice of the Hearing to the Parties, (4) what will occur before the Hearing, (5) the pre-Hearing conference, (6) the logistics for the Hearing; (7) what will occur during the Hearing, (8) what will occur after the Hearing, and (9) when the outcome of the Hearing is final.

1. The Appointment of a Hearing Panel or Sole Hearing Officer. The Title IX Coordinator will appoint a Hearing Panel or sole Hearing Officer to hear the case and determine the outcome.
 - a. The Title IX Coordinator may serve as an administrative facilitator of the Hearing for procedural efficiency.
 - b. The Title IX Coordinator will coordinate with the Hearing Panel or Hearing Officer and the Parties to schedule a date and time for the Hearing.
2. Scope of the Hearing. The Hearing Panel or Hearing Officer has the authority to hear and make determinations on all allegations of Sexual Harassment and may also hear and make determinations on any additional alleged violations of this Policy that would otherwise be subject to the Prompt and Equitable Resolution Process when those alleged violations occurred in concert with the Sexual Harassment.
3. The Notice of Hearing to the Parties. The Parties will receive a Notice of Hearing that will inform them of date, time, location, and the participants (including the Witnesses who will be requested to testify) at the Hearing. The Notice of Hearing will also include names of the members of the Hearing Panel or the Hearing Officer, the Hearing Rules and Procedures, potential Sanctions, and the purpose of the Hearing, which is to adjudicate the allegations, determine Responsibility, and issue an appropriate Sanction, if applicable.
 - a. *Challenging Members of Hearing Panel for Perceived Bias or Conflict of Interest.* Within 24 hours of receipt of the Notice of Hearing, either Party may assert to the Title IX Coordinator, in writing, that a member of the Hearing Panel or the Hearing Officer has a perceived bias or conflict of interest. If the Title IX Coordinator determines that such a bias or conflict exists, the Title IX Coordinator will replace that member of the Hearing Panel with an alternate. The Title IX Coordinator's determination is final.
 - b. *Party Choice to Participate in the Hearing.* The Parties are not required to participate or submit to Cross-Examination in the Hearing Process and cannot be forced to do so.
 - c. *Virtual or In-Person Hearing.* The Title IX Coordinator will choose whether to hold the Hearing in-person or virtually. A Party may request that the Hearing occur with the Parties located in separate rooms or entirely virtual with technology

enabling the Hearing Panel or Hearing Officer and Parties to simultaneously see and hear the party or the Witness answering questions.

- d. *Participants with disabilities.* The University will ensure that individuals with disabilities have an equal opportunity to participate in the Hearing process.

4. Before the Hearing.

- a. *Hearing Panel or Hearing Officer to Review Investigative Report and Relevant Evidence.* The Hearing Panel or Hearing Officer will review the Investigative Report and Investigative File before the Hearing. The Hearing Panel or Hearing Officer will specifically review and focus on the Investigative Report and the Relevant Evidence relied upon therein.
- b. *Notice to Witnesses.* The Parties have equal opportunity to present Witnesses at the Hearing. The Hearing Panel or Hearing Officer may also request the presence of Witnesses that it deems necessary, even if those Witnesses are not presented by the Parties. The Title IX Coordinator will notify each Witness in writing of the request to participate in the Hearing.
- c. *Unavailability of Witnesses.* Witnesses are not required to participate in the Hearing and cannot be forced to do so. Any Witness who agrees to participate but cannot attend the Hearing must let the Title IX Coordinator know prior to the Hearing so that appropriate arrangements can be made.

5. The Pre-Hearing Conference. The Title IX Coordinator may coordinate an in-person or virtual pre-Hearing conference with the Parties and their Advisors with the Hearing Chair or Hearing Officer. The pre-Hearing conference will be audio recorded. The purposes of the pre-Hearing conference are to:

- a. Ensure that the Parties and their Advisors understand the Hearing Process and answer any Hearing Process-related questions;
- b. Have the Hearing Chair or Hearing Officer hear and rule on any evidentiary challenges raised by the Parties;⁷⁶
- c. Provide the opportunity for the Parties and their Advisors to seek a pre-determination of relevance for questions the Advisors intend to ask the other Party and Witnesses (optional);
- d. Conduct an overview of the Hearing Rules and Procedures;
- e. Test the technology to be used at the Hearing, and
- f. Address any other pre-Hearing matter.

6. The Logistics of the Hearing. This section covers the logistics of the Hearing, including how the Parties will be physically separated for in-person Hearings, the use of technology in Hearings, rules for Advisors, handling of Witnesses (including the Investigator as a Witness), and what will happen if Parties or Witnesses fail to appear at the Hearing.

⁷⁶ For example, the Hearing Chair will consider arguments that evidence identified as relevant in the final Investigative Report is, in fact, not relevant. Similarly, evidence identified by the Investigator as directly related but not relevant may be argued to be relevant.

- a. *Location of In-Person Hearing.* If held in person, the Hearing will typically be held in the Alumni Memorial Union.
- b. *Separation of Parties and Witnesses During an In-Person Hearing and Use of Technology.* If the Hearing is in person, the Parties and Witnesses are generally not permitted to be in the same room; video of the Hearing will be streamed in real time. The technology will enable each Party and the Hearing Panel to simultaneously see and hear (or, if Hearing impaired, to access through auxiliary aids or services) the Party or Witness answering questions. The Hearing Panel or Officer must be able to see the Parties and Witnesses as they are speaking. The use of technology does not compromise the fairness of the Hearing.
- c. *Virtual Hearings.* Hearings may be conducted with all Parties physically present in the same geographic location or, at the University's discretion, any or all Parties, Witnesses, and other participants may appear at the Hearing virtually with technology enabling the participants to simultaneously see and hear each other.
- d. *Closed to Public.* Hearings are closed to the public. All participants involved in a Hearing are expected to respect the seriousness of the matter and the privacy of the individuals involved. The school's expectation of privacy during the Hearing process should not be understood to limit any legal rights of the Parties during or after the resolution. The school may not, by federal law, prohibit the Complainant from disclosing the final outcome of a Formal Complaint process (after any appeals are concluded). All other conditions for disclosure of Hearing records and outcomes are governed by the school's obligations under the Family Educational Rights and Privacy Act (FERPA), and any other applicable privacy laws.
- e. *Audio Recording.* Hearings are audio recorded and will be made available to either Party by request. The Hearing Panel's deliberations are not recorded.
- f. *Cross-Examination.* At the Hearing, each Party's Advisor must be permitted to ask the other Party and Witnesses all relevant questions and follow-up questions, including those challenging credibility. This type of questioning is referred to as Cross-Examination. Party Advisors conduct all questioning on behalf of their Parties.
- g. *Rules for Advisors.* The Parties *must* have an Advisor accompany them to the Hearing or to appear on their behalf if they do not attend the Hearing. See Section XV.6. The Complainant and the Respondent are prohibited from questioning each other and Witnesses directly; rather, they must do so through their Advisors. An Advisor's role in the Hearing Process is limited as follows:
 - i. The Advisor's role is to pose questions to the other Party and Witnesses on their Party's behalf.
 - ii. The Advisor cannot respond to questions from the Hearing Panel or Hearing Officer or the other Advisor that are directed at their Party.
 1. Complainants and Respondents are expected to respond to questions from the Hearing Panel or Hearing Officer and from the other Party's Advisor on their own behalf.
 - iii. The Advisor may consult with their Party in private during the Hearing but not while a question is pending.

- h. *Witnesses.* The Hearing Panel will call the relevant Witnesses named in the Investigative Report. The Investigator may also serve as a Witness. Witnesses (other than the Investigator) are not allowed to be present to hear the testimony of the Parties or of other Witnesses.
 - i. *“New” Witnesses and Evidence.* The Hearing Chair or Hearing Officer may decide whether or how to place limits on evidence introduced at a Hearing that was not gathered and presented before the Hearing. If, at the Hearing, the name of a Witness arises, and that Witness was not previously disclosed during the Investigative Process, or if a Witness who was identified during the Investigative Process but who chose not to participate now desires to participate, the Hearing Chair or Hearing Officer may:
 - 1. Temporarily adjourn the Hearing and request that the Investigator interview the Witness and provide the interview transcript or summary to the Parties before reconvening the Hearing, or
 - 2. Continue the Hearing and invite the Witness to appear and submit to questions from the Hearing Panel or Hearing Officer and the Parties’ Advisors.
 - i. *No-Show Parties or Witnesses.* If the Complainant, the Respondent, or Witnesses fail to appear and/or participate, the Hearing will continue as scheduled unless the Hearing Chair or Hearing Officer determines there is Good Cause to suspend the Hearing.
 - j. *The Investigator.* The Investigator may be present for the entire Hearing but not present during the Hearing Panel deliberations.
- 7. The Hearing. The Hearing Rules and Procedures will be provided to the Parties in advance of the Hearing and will provide more specifics about how the Hearing will be conducted, the rules within the Hearing, including rules of decorum. The Hearing Rules and Procedures will apply equally to both Parties. The Hearing is not intended to be a repeat of the Investigation. In general, the Hearing will proceed as follows:
 - a. To begin the Hearing, the Hearing Chair/Officer will provide to the Parties and their Advisors a brief overview of the Hearing Process and the expectations for participants’ conduct. The Parties and their Advisors must agree to abide by those expectations or risk removal from the Hearing. If an Advisor is removed for failure to abide by the Hearing rules, the Hearing will continue after a new Advisor is selected by the Party or appointed by the University.
 - b. The Hearing Chair or Hearing Officer shall:
 - i. Exclude non-relevant questions and testimony;⁷⁷
 - ii. Observe recognized legal privileges, and
 - iii. Take reasonable steps to maintain order and decorum.

⁷⁷ Examples may include immaterial, extraneous, or unduly repetitious questioning or testimony, prior bad acts unrelated to the alleged incident(s), information regarding a Party’s character.

- c. The Hearing Panel or Hearing Officer will question the Complainant, the Respondent, and Witnesses directly.
- d. The Hearing Panel or Hearing Officer and the Advisors may question the Investigator as a Witness.
- e. Advisors must ask only relevant questions and follow-up questions to the other Party and Witnesses. Generally, Advisors will ask questions in the following manner:
 - i. Advisors will pose each question verbally to the Hearing Chair or Hearing Officer, who will determine whether the question is relevant.
 - ii. If the Hearing Chair or Hearing Officer deems the question relevant, the Hearing Chair or Hearing Officer will instruct the Party or Witness to answer the question.
 - iii. If the Hearing Chair or Hearing Officer deems the question not relevant, the Hearing Chair or Hearing Officer will explain the rationale for the determination and instruct the Party or Witness not to answer.
 - iv. The Hearing Chair or Hearing Officer may ask Advisors to frame why, from the Advisor's perspective, a question is or is not relevant, but the Hearing Chair or Hearing Officer will not entertain argument from the Advisors on relevance once the Hearing Chair has ruled on a question.
 - v. The Hearing Chair's or Hearing Officer's decision on whether a question is relevant is final.
- f. The Hearing Panel or Hearing Officer may consider relevant statements made by Parties or Witnesses, even if those Parties or Witnesses do not submit to Cross-Examination at the Hearing, in reaching a determination on responsibility. This includes, but is not limited to, relevant statements made by the Parties and Witnesses during the Investigation, emails or text exchanges between the Parties leading up to or following the alleged Prohibited Conduct, and other statements about or related to the alleged Prohibited Conduct. Also subject to Hearing Panel or Hearing Officer consideration are statements contained in police reports, sexual assault nurse examiner documents, medical reports, and other documents even if those statements are made by a Party or Witness who is not Cross-Examined at the Hearing. The Hearing Panel or Hearing Officer may consider certain types of statements by a Party where the statement⁸² itself is the alleged Sexual Harassment, even if the Party does not submit to Cross-Examination. These statements can appear in text messages, e-mails, social media postings, audio or video recordings, or other documents or digital media created and sent by a party as a form of alleged Sexual Harassment, or as part of an alleged course of conduct that constitutes Stalking.
- g. The Hearing Panel or Hearing Officer cannot draw an inference about Responsibility based solely on a Party's absence from the Hearing or refusal to answer Cross-Examination or other questions posed by an Advisor or the Hearing Panel or Hearing Officer.⁷⁸

⁷⁸ *Id.*

- h. Typically, the questioning at the Hearing proceeds as follows:
 - i. The Hearing Panel or Hearing Officer will first question the Complainant.
 - ii. Respondent's Advisor may then question the Complainant.
 - iii. The Hearing Panel or Hearing Officer will question each Witness.
 - 1. After the Hearing Panel or Hearing Officer questions a Witness, the Complainant's Advisor, then the Respondent's Advisor, may question that Witness.
 - iv. The Hearing Panel or Hearing Officer will next question the Respondent.
 - v. The Complainant's Advisor may then question the Respondent.
 - i. If necessary, the Hearing Chair or Hearing Officer may re-call the Complainant, the Respondent, or any Witness for further questioning. If any Party or Witnesses are re-called, the Parties' Advisors may ask follow-up questions.
8. After the Hearing. Following the close of the Hearing, the Hearing Panel or Hearing Officer will deliberate to determine Responsibility. Deliberations are conducted in Private and are not recorded. Following those deliberations and as soon as practicable the Hearing Chair or Hearing Officer will draft a written determination, including Sanctions and Remedies if the Respondent is found Responsible, and the Title IX Coordinator will contemporaneously inform the Parties of the outcome.
- a. *Determination of Responsibility.* The Hearing Panel will determine whether the Respondent is either Not Responsible or Responsible.
 - i. *Not Responsible.* The Respondent will be found Not Responsible when the Hearing Panel or Hearing Officer determines either that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred but did not violate this Policy.
 - ii. *Responsible.* The Respondent will be found Responsible when the Hearing Panel or Hearing Officer determines that it is more likely than not that the alleged behavior did occur, and that the behavior violated this Policy.
 - b. *Written Determination.* The Hearing Chair or Hearing Officer will draft a written determination ("Notice of Outcome Following Hearing") that will include:
 - i. Identification of the allegations potentially constituting Sexual Harassment;
 - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination of Responsibility, including any notices to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather evidence, and Hearings held;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of this Policy to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, and where credibility of the Parties is an issue in determining Preponderance of the Evidence, the rationale will include an explanation of how the Hearing Panel or Hearing Officer resolved questions of credibility.

Credibility determinations will not be based upon a person's status as Complainant or Respondent.

- vi. The procedures and permissible bases for appeal.
 - c. *Sanctions and Remedies.* If the Respondent is found Responsible, the Hearing Chair will include an appropriate Sanction within the Notice of Outcome Following Hearing. The Hearing Panel or Hearing Officer will also issue Remedies for the Complainant to preserve or restore the Complainant's equal education access.
 - d. *Notice of Outcome to Parties.* The Title IX Coordinator will contemporaneously inform the Complainant and the Respondent of the Hearing Panel's or Hearing Officer's determination by issuing a Decision Notification Letter, attaching the Hearing Panel's Notice of Outcome Following Hearing.
9. Finality of Outcome. The Hearing Panel's or Hearing Officer's determination regarding Responsibility becomes final either:
- a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
 - b. On the date on which an appeal would no longer be considered timely.

XXVI. THE RESOLUTION PROCESSES: PROMPT AND EQUITABLE RESOLUTION PROCESS

Formal Complaints alleging all Prohibited Conduct except Sexual Harassment are adjudicated through the Prompt and Equitable Resolution Process. If a Formal Complaint alleges Sexual Harassment in addition to another form of Prohibited Conduct, the Title IX Coordinator may combine all the allegations and have them adjudicated simultaneously through the Hearing Process in Section XXV, or separate the Sexual Harassment allegations from the other Prohibited Conduct allegations and have the matter proceed separately under the Hearing Process in Section XXVI (for the allegations of Sexual Harassment) and under the Prompt and Equitable Resolution Process (for the allegations of other Prohibited Conduct).

1. Incorporates the Investigative Process. The Prompt and Equitable Resolution Process incorporates the Investigative Process described in Section XXI, which includes the right of the Parties to have an Advisor of their choosing.
2. Investigator Determines Responsibility. Following the Parties' review and written responses to the Investigative File and Investigative Report (as explained in Section XXI.9-13), the Investigator will objectively evaluate all Relevant Evidence—both Inculpatory Evidence and Exculpatory Evidence—and determine Responsibility. The Investigator will determine whether the Respondent is Not Responsible or Responsible.
 - a. *Not Responsible.* The Respondent will be found Not Responsible when the Investigator determines that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred but did not violate this Policy.

- b. *Responsible*. The Respondent will be found Responsible when the Investigator determines that it is more likely than not that the alleged behavior did occur, and that the behavior violated this Policy.
3. Written Report. Following the Investigator's objective evaluation of the Relevant Evidence, the Investigator will draft a written determination called the Notice of Outcome Following Prompt and Equitable Resolution Process. That document will include:
 - a. Identification of the allegations potentially constituting Prohibited Conduct;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination of Responsibility, including any notices to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather evidence, and the process held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of this Policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, and where credibility of the Parties is an issue in determining Preponderance of the Evidence, the rationale will include an explanation of how the Investigator resolved questions of credibility. Credibility determinations will not be based upon a person's status as Complainant or Respondent.
 - f. The procedures and permissible bases for appeal.
4. Review by Title IX Coordinator. The Title IX Coordinator will review the Notice of Outcome Following the Prompt and Equitable Resolution Process and approve the determination if the evidence supports the determination by a Preponderance of the Evidence. If the Investigator has found the Respondent Responsible, the Title IX Coordinator will determine the appropriate Sanction. If the Title IX Coordinator serves as the Investigator, the Title IX Coordinator will appoint a designee to assume the role of the Title IX Coordinator at this stage of the process.
5. Inclusion of Sanctions and Remedies in Written Report. If the Title IX Coordinator has determined a Sanction, the Investigator will include the imposed Sanction in the Notice of Outcome Following the Prompt and Equitable Resolution Process. The Investigator may also issue Remedies for the Complainant to preserve or restore the Complainant's equal education access.
6. Notice of Outcome to Parties. The Title IX Coordinator will contemporaneously inform the Complainant and the Respondent of the Investigator's finding and Sanctions, if applicable, by issuing a Decision Notification Letter, attaching the Investigator's Notice of Outcome Following the Prompt and Equitable Resolution Process.
7. Finality of Outcome. The Investigator's determination regarding Responsibility becomes final either:

- a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
- b. On the date on which an appeal would no longer be considered timely.

XXVII. DISCIPLINARY SANCTIONS

The University is free to make disciplinary decisions that it believes are in the best interest of its educational environment. The University may impose appropriate Sanctions on a case-by-case basis, depending on the severity and/or pervasiveness of the violation. In determining the appropriate Sanction(s), the Hearing Panel or Hearing Officer (in the Hearing Process) or the Title IX Coordinator (in the Prompt and Equitable Resolution Process) may examine and consider a number of factors, including, but not limited to: (1) level of risk or harm to the community; (2) the nature and seriousness of the offense; (3) use of drugs or alcohol; (4) motivation underlying the Respondent's behavior; and (5) the Respondent's record of past misconduct, including prior violations of the same or similar type.

Sanctions will not be implemented until after the appeal deadline has passed or, if an appeal is filed, until after the appeal has concluded. However, the University will keep Supportive Measures in place until the decision is final.

The following includes a non-exhaustive list of the possible Sanctions that may be imposed upon any Respondent found to have violated this Policy. The University has the authority to tailor Sanctions, such as both punitive outcomes and non-punitive educational outcomes, to address specific situations.

1. Student Sanctions.

- a. University Warning
- b. University Probation
- c. Suspension*
- d. Expulsion*
- e. Postponement of Graduation
- f. Withholding Proof of Degree
- g. Degree Recission
- h. Transcript Notation
- i. Prohibited Admission or Re-Admission
- j. Organizational Sanctions
- k. Other Actions, including limitations on residential or co-curricular engagement, such as removal from or limitations on access to a specific or all residence halls, or a co-curricular program

*In the event a Respondent is suspended or expelled because of a finding of Responsibility under the Policy, a notation will appear on their transcript. See the [Undergraduate Bulletin](#).

2. Employee Sanctions.

- a. Corrective counseling

- b. Performance Improvement Plan
 - c. Referral to the Employee Assistance Program
 - d. Required training or education
 - e. Suspension without pay
 - f. Suspension with pay
 - g. Termination
 - h. Ineligibility for re-hire
3. Participating or Tenure-track Faculty Sanctions.
- a. Corrective counseling
 - b. Written reprimand
 - c. Loss of prospective benefits for a stated period (e.g., suspension of "regular" or "merit" increase in salary)
 - d. Reassignment of duties and/or teaching assignments
 - e. Suspension without pay
 - f. Suspension with pay
 - g. Termination of employment
 - h. Other Actions, including teaching assignments, committee membership, research opportunities, office location, etc.
4. Tenured Faculty Sanctions.
- a. Corrective counseling
 - b. Written reprimand
 - c. Loss of prospective benefits for a stated period (e.g., suspension of "regular" or "merit" increase in salary)
 - d. Reassignment of duties and/or teaching assignments
 - e. A recommendation to the President for suspension without pay
 - f. A recommendation to the President for suspension with pay
 - g. A recommendation to the President for termination of employment
 - h. Other Actions, including teaching assignments, committee membership, research opportunities, office location, etc.

XXVIII. REMEDIES

The University is free to make remedial decisions that it believes are in the best interest of its educational environment. If a finding of Responsibility occurs under any of the Resolution Processes, the Complainant may be awarded Remedies designed to preserve or restore equal access to the University's Education Program or Activity.⁷⁹

⁷⁹ *Id.* § 106.45(b)(1)(i).

The range of Remedies available to a Complainant include but are not limited to the Supportive Measures listed in Section XVII.4, but Remedies are not required to be non-disciplinary or non-punitive and may burden a Respondent.⁸⁰

XXIX. APPEAL PROCESS

This section describes the sixth and final part of the Grievance Procedure: the Appeal Process. This section will describe (1) what resolutions may be appealed, (2) the grounds for appeal, (3) how to file an appeal, (4) the deadline for filing an appeal, (5) the use of Advisors during the Appeal Process, (6) what the Title IX Coordinator does after receiving an appeal, (7) the Appeal Officer, (8) cross-appeals, (9) whether Supportive Measures are available during the Appeal Process, (10) how Sanctions are postponed during the Appeal Process, (11) the scope of the Appeal Process, (12) the outcome of the Appeal Process, (13) the written appeal decision, (14) finality of the Appeal Officer's determination, (15) what happens with Sanctions and Remedies that remain, and (16) what happens regarding a Dismissal or determination of Responsibility if there is no appeal or an untimely appeal.

1. What Resolutions May Be Appealed. Any Party may appeal a Dismissal of part or all of a Formal Complaint rendered pursuant to Section XXIII or a determination regarding Responsibility rendered under either Section XXV or Section XXVI.
2. Grounds for Appeal. A Party may appeal on one or more of the following grounds:
 - a. Procedural irregularity that affected the outcome;
 - b. New evidence that was not reasonably available at the time the Dismissal or determination regarding Responsibility was made and that could affect the outcome, and/or
 - c. The Title IX Coordinator, Investigator(s), and/or Hearing Panelists or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome.
3. How to File an Appeal. An appeal must be filed in writing with the Title IX Coordinator, articulate the specific ground(s) for the appeal, and provide a statement in support of or challenging the Dismissal or the determination regarding Responsibility.
4. Deadline for Appeal. Generally, an appeal will be considered timely in the following circumstances. The time for appeal is offered equitably to all Parties and will not be extended for any Party solely because the other Party filed an appeal.
 - a. *Appeal of Notice of Dismissal.* An appeal submitted to the Title IX Coordinator is timely if it is filed with the Title IX Coordinator within two business days of the delivery of Notice of Dismissal.

⁸⁰ *Id.*

- b. *Appeal of Notice of Outcome.* An appeal submitted to the Title IX Coordinator is timely if it is filed with the Title IX Coordinator within five business days of the delivery of the Decision Notification Letter attaching the Notice of Outcome Following Hearing or the Notice of Outcome Following Prompt and Equitable Resolution Process. A Notice of Dismissal or Decision Notification Letter is considered “delivered” when provided in-person or sent via email.
- 5. Advisors During Appeal. The Parties may select an Advisor of their choice for the Appeal Process. Parties are not required to have an Advisor during the Appeal Process; therefore, the University will not appoint an Advisor if a Party does not have one.
- 6. Upon Receipt of Appeal. Upon receipt of an appeal, the Title IX Coordinator will simultaneously issue a Notice of Appeal to both Parties. The Notice of Appeal will:
 - a. Inform the Party that an appeal has been filed by the Complainant and/or the Respondent;
 - b. Indicate whether the appeal is timely;
 - c. If the appeal is timely, contain a copy of the appeal appended to the Notice of Appeal and disclose the name of the Appeal Officer assigned by the Title IX Coordinator.
- 7. Appeal Officer. The Appeal Officer is independent of the previous processes, including independent from any appeal of a Dismissal that may have been heard earlier in the process. The Title IX Coordinator will ensure the Appeal Officer does not have a conflict of interest or bias against complainants and respondents in general or the individual Complainant and Respondent in the appeal.
 - a. *Challenging Appeal Officer for Perceived Bias or Conflict of Interest.* Within 24 hours of receipt of the Notice of Appeal, either Party may assert in writing to the Title IX Coordinator that the Appeal Officer has a perceived bias or conflict of interest. If the Title IX Coordinator determines that such a bias or conflict exists, the Title IX Coordinator will replace the Appeal Officer. The Title IX Coordinator’s determination is final.
 - b. When the selection of the Appeal Officer is final, the Title IX Coordinator will provide the materials for the appeal to the Appeal Officer, including but not limited to, the audio/video recording of the Hearing, the Investigative File, the Investigative Report, the Notice of Outcome, and the Parties’ appeal statements.
 - c. *Non-Appealing Party’s Response to Appeal.* The non-appealing Party will have two business days to submit to the Appeal Officer a written response to the appeal, which response will be provided to the appealing Party.
 - d. *Other Responses to Appeal.* The Appeal Officer may invite the Investigator or Hearing Chair or Hearing Officer to submit a response to the appeal, which written responses will be provided to the Parties. No further submissions are permitted.

8. Cross-Appeals. If both Parties submit appeals (i.e., cross-appeals or counter-appeals⁸¹), the same Appeal Officer will decide both appeals individually but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.
9. Supportive Measures During Appeal Process. Supportive Measures may be continued or modified during the Appeal Process, as appropriate.
10. Postponing of Sanctions During Appeal Process. If an appeal was timely filed, any Sanctions that had been imposed on Respondent are postponed until the conclusion of the Appeal Process.
11. Scope of the Appeal Process. The Appeal Process is not a review of the entire matter; rather, it is an objective review of the written record of the Prompt and Equitable Resolution Process or of the record (written and audio recorded) of the Hearing Process, along with the appeal-related submissions described in this section. Accordingly, the Appeal Officer will not interview, question, or meet with the Parties or their Advisors. The Appeal Officer will defer to the original findings and determination regarding Responsibility, remanding only when there is clear reason to do so, and modifying the outcome and Sanction(s) only when there is a compelling justification to do so.

The Appeal Officer will review the appeal and determine whether the appeal articulates a valid ground(s) for appeal (i.e., whether the appeal is actionable). If not, the Appeal Officer will dismiss the appeal in writing for failing to articulate a valid ground for appeal. The Title IX Coordinator will communicate the Dismissal decision to the Parties simultaneously.

12. The Outcome of the Appeal Process. The Appeal Officer may take one or more of the following possible actions on appeal:
 - a. Dismiss the appeal for failure to state or meet the grounds of appeal, therefore upholding the initial outcome and Sanction(s), if applicable.
 - b. Remand to the original Investigator or Hearing Panel with specific instructions on the remanded issue(s).
 - c. Modify the outcome and/or Sanction with a rationale supporting the modification.
 - d. In rare cases where a procedural or substantive error cannot be cured by the original Investigator or Hearing Panel, the Appeal Officer may order a new Investigatory Process and/or Hearing Process with a new Investigator and/or Hearing Panel or new Prompt and Equitable Resolution Process with a new Investigator.

⁸¹ A cross-appeal results when both Parties appeal the determination in a Formal Complaint. Counter-appeals arise from two separate Formal Complaints that were adjudicated contemporaneously because they arose from the same set of facts and circumstances and involved the same Parties.

13. Written Decision. The Appeal Officer will generally render to the Title IX Coordinator a written decision on the appeal (“Appeal Decision”) as to each ground raised and provide the rationale for the decision.
 - a. *Timing of Appeal Decision.* Absent exigent circumstances, the Appeal Decision will be delivered to the Title IX Coordinator within five business days from when the Appeal Officer received the written responses from the Parties or from the Investigator or Hearing Panel, as described in XXIV.7.c and XXIV.7.d
 - b. *Delivery of Appeal Decision to Parties.* The Title IX Coordinator will forward the Appeal Decision to the Parties simultaneously.
 - c. *No Further Appeal.* The Appeals Officer’s decision is final and there are no further appeal options.
14. Finality. The Dismissal decision or the determination regarding Responsibility becomes final either:
 - a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
 - b. On the date on which an appeal would no longer be considered timely.
15. Sanctions and Remedies Post-Appeal. If a Sanction imposed in the original determination regarding Responsibility remains, the Title IX Coordinator will coordinate the implementation of the Sanction. The Title IX Coordinator will also coordinate and implement the Remedies owed to the Complainant and implement any other long-term Supportive Measures, as necessary.
16. If There is No Appeal or an Untimely Appeal. If no appeal is filed or an appeal is not timely, the original Dismissal decision or the determination of Responsibility will stand.

XXX. LONG-TERM SUPPORTIVE MEASURES OR OTHER ACTIONS

Following the conclusion of any of the Resolution Processes, including the Appeal Process, and in addition to any Sanctions implemented, the Title IX Coordinator may implement additional long-term Supportive Measures or other actions with respect to the Parties and/or the University community that are intended to stop Prohibited Conduct, remedy its effects, and prevent its reoccurrence. This section describes (1) the Supportive Measures or other actions that may be taken, (2) requests for long-term adjustments, (3) the Title IX Coordinator’s discretion to implement Supportive Measures in absence of a Policy violation, and (4) Privacy matters. [I recommend we use the newly drafted language from our 2024 policy in this section as we made it more concise.]

1. Supportive Measures or Other Actions Available. Supportive Measures or other actions that may be taken may include but are not limited to:
 - a. Referral to counseling and health services;
 - b. Referral to the Employee Assistance Program;

- c. Education to the individual and/or the University community;
 - d. Provision of campus safety escorts;
 - e. Climate surveys;
 - f. Policy modification and/or training;
 - g. Provision of transportation accommodations;
 - h. Implementation of long-term contact limitations between the Parties.
2. Requests for Long-Term Adjustments. If a Party requests the implementation of long-term adjustments to academic deadlines, course schedules, etc., such requests will be transferred to the Office of Disability Services. “Long-term” means an adjustment that would last longer than six months after completion of the applicable Resolution Process and the Appeal Process.
 3. Title IX Coordinator’s Discretion to Implement Supportive Measures in Absence of Policy Violation. At the discretion of the Title IX Coordinator, certain long-term Supportive Measures or other actions may also be provided to the Parties even if no Policy violation is found. When no Policy violation is found, the Title IX Coordinator will address and coordinate any Supportive Measures owed by the University to the Complainant to ensure equal education access is accomplished without unduly burdening the other Party.
 4. Privacy Matters. The University will maintain the Privacy of any long-term Remedies, Supportive Measures, or other actions, provided that maintaining Privacy does not impair the University’s ability to provide these such Remedies, Supportive Measures, or other actions.

XXXI. FALSE REPORTS AND STATEMENTS

The University will not tolerate false reports of Prohibited Conduct or intentional misrepresentations of oneself or others relating to Prohibited Conduct. Knowingly furnishing false information to a University official acting in performance of their duties or any individual serving as an Investigator or decision-maker within any of the Resolution Processes violates the Student Conduct Code and expectations for professional conduct of Employees, and it may also violate state criminal and civil laws.

A finding of non-Responsibility following either the Hearing Process or Prompt and Equitable Resolution Process is not the same as a false report. A false report occurs when a person knowingly and intentionally falsifies an allegation of Prohibited Conduct, and that allegation is proven by a Preponderance of the Evidence to be false. Generally, allegations of false reporting will be handled by the Office of Student Development for Students or the Department of Human Resources for Employees. However, in some instances, alleging a Policy violation or knowingly providing false information may be a form of Prohibited Conduct and will be resolved under this Policy.

Additionally, Parties and Witnesses who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official performing their duties in the Resolution Processes can be subject to discipline.

XXXII. AMNESTY OR GOOD SAMARITAN EXCEPTION FOR STUDENTS REPORTING PROHIBITED CONDUCT

The University encourages Students to report Prohibited Conduct. Sometimes Complainants or Witnesses hesitate to report Prohibited Conduct to the Title IX Coordinator or an Official with Authority or hesitate to participate in the Grievance Procedure for fear that they themselves may have violated certain policies or laws, such as underage drinking, or the use of illicit drugs. Respondents may hesitate to be forthcoming during the Grievance Procedure for the same reasons.

It is in the best interest of the University community for Complainants to report Prohibited Conduct to University officials, that Witnesses come forward to share what they know, and that all Parties be forthcoming during the Grievance Procedure.

To encourage reporting and participation in the Grievance Procedure, the University offers Student Parties and Student Witnesses amnesty from minor policy violations, such as underage consumption of alcohol, or the use of illicit drugs related to an incident involving Prohibited Conduct.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

The University maintains a policy of amnesty for Students who offer to help others in need. See the Good Samaritan Policy.

XXXIII. RESPONDENT'S WITHDRAWAL OR RESIGNATION FOLLOWING THE FILING OF AND PENDING OF A FORMAL COMPLAINT

If a Student Respondent withdraws from the University or an Employee Respondent resigns while a Formal Complaint is pending, the Title IX Coordinator has discretion to dismiss the applicable Resolution Process. See Section XXIII. The Title IX Coordinator will assess the facts and circumstances of a case before deciding whether to dismiss the Formal Complaint because the Respondent has left the University. If a Dismissal occurs, the University may address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Prohibited Conduct.

If the Formal Complaint is dismissed due to withdrawal or resignation, the Title IX Coordinator or the Complainant may re-file the Formal Complaint if a Student Respondent re-enrolls, re-registers for classes, or obtains admittance to a graduate program, or an Employee Respondent is re-hired.

Should the applicable Resolution Process continue after a Student Respondent withdraws from the University while a Formal Complaint is pending, and the Student is found Responsible for violating the Policy, the University may note the Student's transcript if the Sanction calls for it. Should the applicable Resolution Process continue after a Student Employee resigns from the University while a Formal Complaint is pending, and the Employee is found Responsible for violating the Policy, the University may note the Employee's personnel file if the Sanction calls for it.

XXXIV. FEDERAL STATISTICAL REPORTING OBLIGATIONS (THE CLERY ACT)

Certain campus officials must report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). They must report the date, general location of the incident (e.g., on- or off-campus, but no addresses are given or reported), and type of incident.⁸² All personally identifiable information is kept Confidential, but statistical information must be reported to MUPD for publication in the University's Annual Security and Fire Safety Report. This report informs the University community about the extent and nature of campus crimes to ensure greater community safety.

Complainants, Witnesses, or Confidential Resources (with legal privilege) with information about incidents of sexual assault, domestic violence, dating violence or stalking may report crimes to MUPD on a voluntary basis and withhold personally identifiable information for inclusion in the Clery Act annual disclosure of crime statistics.⁸³

Complainants should be aware that the University must issue timely warnings for reported incidents that pose a serious or ongoing threat to Students and Employees. The University will make every effort to ensure that a Complainant cannot be identified while still providing enough information for community members to make safety decisions considering the threat or danger.

XXXV. RECORDKEEPING

The University shall maintain documents and other data relating to Formal Complaints or other reports of Prohibited Conduct involving Students and Employees for seven years, including the following:

1. Each Sexual Harassment investigation, including any determination regarding Responsibility, and any audio or audiovisual recording or transcript required under the Title IX 2020 Amendments;

⁸² Reports of crimes required under the Clery Act include murder/non-negligent manslaughter, negligent manslaughter, forcible and non-forcible sex offenses, domestic violence, dating violence, stalking, robbery, aggravated assault, burglary, motor vehicle theft, arson, and hate crimes.

⁸³ The University encourages accurate and prompt reporting of all crimes to MUPD when the victim of a crime elects not to, or is unable to, make such a report. "Unable" includes physical and mental incapacitation.

2. Any Sanctions imposed on a Respondent;
3. Any Remedies provided to a Complainant designed to restore or preserve equal access to the University's Education Program or Activity;
4. Any appeal and the result thereof;
5. Any Informal Resolution and the result thereof;
6. All materials used to train Title IX Coordinators, Investigators, Hearing Panelists, Appeal Officers, and Informal Resolution Facilitators. These materials are made publicly available on the University's website.
7. Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the University's Education Program or Activity; and
 - c. If no Supportive Measures were provided to the Complainant or Respondent, or certain requested Supportive Measures were denied, the documented reasons why such a response was not clearly unreasonable considering the known circumstances.

The records are maintained by the Office of Title IX and Civil Rights Compliance. The University will not release these records to any person and/or entity unless authorized to do so by a Student or Employee or when required or authorized by law or University policy. The University maintains all records in accordance with state and federal laws.

XXXVI. AMENDMENTS TO OR TERMINATION OF THIS POLICY

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, or Retaliation. The Title IX Coordinator reviews and updates these policies and procedures as needed. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

Revised: October 17, 2024

(Previous versions of the policy are available upon request.)