

# **TITLE IX- SEXUAL HARASSMENT**

## **PREAMBLE**

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106), sexual harassment is a form of prohibited sex discrimination.

Title IX provides:

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

Marian University (“University”) is committed to fostering a campus environment that is free from unlawful discrimination on the basis of sex, including sexual harassment and sexual assault. In support of that commitment, the University takes steps to increase awareness of such sexual harassment and sexual assault, eliminate its occurrence on campus and in University programs and activities, encourage reporting, provide support for survivors, promptly respond to all reports of sexual harassment and sexual assault, deal fairly with accused Respondents, and take appropriate action against those found responsible.

This Title IX Policy is intended to ensure a safe and non-discriminatory educational and work environment and describes the process by which the University meets its obligations under Title IX and its implementing regulations.

## **SCOPE, APPLICABILITY AND JURISDICTION**

This policy applies to all members of the University community, including students, faculty, staff, guests, contractors, volunteers, and visitors participating in the University’s programs and activities in the United States.

To fall within the jurisdiction of Title IX, the alleged Title IX prohibited conduct must have taken place in a University program or activity, and against a person in the United States at the time the conduct occurred. A University program or activity includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Title IX prohibited conduct occurs, and includes any building owned or controlled by a student organization that is officially recognized by the University. Both study-abroad programs and off-campus locations that are not within a University program or activity are not covered by the Title IX regulations.

This policy applies to conduct on campus and off-campus in educational activities, online programs, academic programs, extracurricular programs, athletic programs, training programs,

and other programs and activities of Marian University. Conduct covered by this policy can take place physically, remotely, online, via social media, or in other forms.

## **PROHIBITED CONDUCT: SEXUAL HARASSMENT**

Title IX and this Policy prohibit sexual harassment. The types of sexual harassment covered by this Policy include conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate other University policies.

The Title IX regulations define “sexual harassment” to mean conduct on the basis of sex that satisfies one or more of the following:

- (1) any instance of quid pro quo harassment by a University employee;
- (2) any unwelcome conduct on the basis of sex that a reasonable person determines is so severe, pervasive and objectively offensive that it denies a person equal access to a University education program or activity; and
- (3) any instance of sexual assault, dating violence, domestic violence, or stalking.

**Quid Pro Quo Harassment** - Quid pro quo harassment exists when an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

**Unwelcome Sexual or Gender-Based Harassment** - Unwelcome sexual or gender-based harassing conduct is conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal access to a University education program or activity.

Sexual harassment may include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not always have to be personally directed toward the alleged victim. The alleged victim and the alleged harasser can be either a woman or a man. The alleged victim and the alleged harasser can be the same sex. The alleged harasser can be the alleged victim's roommate, another student, a faculty or staff member, a guest or visitor, a volunteer, or a third party not affiliated with the University but doing business with the university.

Although the alleged victim of sexual harassment should make it clear, or attempt to make it clear, to the alleged harasser that the conduct is unwelcome, it is not always necessary for the alleged victim to complain about the conduct before the alleged harasser can be found responsible under this policy, particularly when the conduct was obviously intended to sexually harass the alleged victim.

The following are, without limitation, examples of conduct that may constitute sexual harassment when such conduct is based on sex or gender:

**Threatening** - initiating threats of physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

**Intimidation** - implied threats or acts that cause an unreasonable fear of harm in another;

**Hazing** - acts likely to cause physical or psychological harm or social ostracism to any person within the University community based on an individual's sex or gender, including conduct related to the admission, initiation, pledging, joining any organization or group activity;

**Bullying** - repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally, because of their sex or gender identity. Other examples of bullying include, but are not limited to, inappropriate social media posts containing photos or slang intended to ridicule another person in relation to their sex or gender or revealing confidential information about another person's sexual orientation without their consent; or

**Hostile Environment** - any conduct on the basis of sex that is unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's educational programs or activities.

Although this policy does not generally prohibit isolated comments or incidents on the basis of sex, harassing conduct that violates this policy occurs when a person's actions are so severe, pervasive, and objectively offensive that it denies equal access to a University education program including but not limited to the terms, conditions, or privileges of employment, services, housing, or education. For example, a single utterance of a gender-based comment, which creates offensive feelings in an employee or student, while clearly inappropriate and inconsistent with the University's Mission and Core Values, might not be so severe, pervasive and objectively offensive to affect the terms and conditions of an individual's employment or education. On the other hand, if sufficiently severe, even a single act of gender-based misconduct or sexual harassment may violate this policy.

The determination of whether an environment is "hostile" is based on all of these circumstances:

- a. Frequency of the conduct;
- b. Nature and severity of the conduct;
- c. Whether the conduct was physically threatening;
- d. Whether the conduct was humiliating;
- e. Effect of the conduct on the alleged victim's mental or emotional state;
- f. Whether the conduct was directed at more than one person;
- g. Whether the conduct arose in the context of other discriminatory conduct;
- h. Whether the conduct unreasonably interfered with the alleged victim's educational or work performance or ability to obtain services or housing;

- i. Whether the statement is a mere utterance of an epithet which engenders offense in the other person, or offends by mere discourtesy or rudeness;
- j. Whether the conduct would objectively offend a similarly situated person;
- k. Whether the conduct actually subjectively offended the victim; and
- l. Whether the speech or conduct deserves the protections of academic freedom or the First Amendment.

## Sexual Assault, Dating Violence, Domestic Violence, and Stalking

**Sexual Assault** - any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape. Each of these terms are defined herein, along with definitions of words used within these terms:

**Rape** - Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Sodomy** - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object** - Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

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

**Incest** - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by State law.

**Statutory Rape** - sexual intercourse with a person who is under the statutory age of consent as defined by Wis. Stat. §§ 948.02 or 948.09, or whose status as a student prohibits such sexual contact by Wis. Stat. §948.095.

**Dating Violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, including sexual or physical abuse or the threat of such abuse, but excluding acts covered under the definition of Domestic Violence.

**Domestic Violence** - a felony or misdemeanor crime of violence committed by: (i) a current or former spouse or intimate partner of the victim; (ii) by a person with whom the victim shares a child in common; (iii) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime occurred; (v) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime occurred.

**Stalking** - engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress.

## **ADDITIONAL DEFINITIONS**

### **Actual Knowledge**

The notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or designee of the University who has authority to institute corrective measures on behalf of the University.

### **Consent**

Words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the 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.

A person cannot consent if he or she is unable to understand what is happening or is 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 physically or mentally incapacitated/lacks capacity has violated this policy. It is not an excuse that the responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity/lack of capacity of the other.

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 relationship is not, alone, sufficient to constitute consent. The existence of consent is based on the totality of the circumstances. Silence or the absence of resistance alone is not consent.

A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

A minor below the age of consent according to state law cannot consent to sexual activity. This means that sexual contact by an adult with a person below the age of consent is a crime as well as a violation of this policy, even if the minor appeared to have wanted to engage in the act.

### **Cross-examination**

The process by which the Advisor may ask questions during the live hearing of the complainant, respondent, and/or witnesses.

### **Exculpatory evidence**

Any evidence that supports the idea that the Respondent is not guilty.

### **Formal Complaint**

This is the written document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. This complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and any other additional method designated by University.

### **Hearings**

The part of the grievance process where both Complainant and Respondent explain their recollection of the grieved event(s)/incident(s).

### **Incapacitated**

The state where a person cannot make rational, reasonable decisions because they lack the capacity to give knowing consent. Incapacity can result from medical or mental health disability, involuntary physical restraint, the taking of incapacitating drugs or alcohol, or being asleep or unconscious.

### **Inculpatory evidence**

Evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish guilt.

### **Initial Report**

An Initial Report is a report of conduct that may constitute a violation of Title IX and this Policy, which may be made by any individual, even if not the person alleged to have experienced the conduct. An Initial Report is made prior to a Formal Complaint, and triggers the Title IX Coordinator's obligation to contact the Complainant and inform the Complainant of Supportive Measures

## Partner

The use of the word “partner” in this policy does not necessarily indicate an ongoing, intimate relationship between the individuals. While partners could be in an ongoing, intimate relationship, they could also be engaged in a casual, spontaneous or anonymous interaction.

## Preponderance of Evidence

Preponderance of the evidence is one type of evidentiary standard used in a burden of proof analysis. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true.

After assessing the quality of the evidence, the Hearing Panel can only find the Respondent responsible if the evidence convinces a majority of the Hearing Panel to reasonably conclude that a finding of responsibility is justified. That is, the decision-makers should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that the Respondent engaged in the alleged sexual harassment, and that the evidence supporting a finding of responsibility outweighs any evidence that the Respondent is not responsible for the alleged sexual harassment.

## Remedies

The means to recover a right or to prevent or obtain redress for a wrong.

## Retaliation

Retaliation is any act against a person who has filed a report/complaint or anyone who assists or supports that person or who is involved in the investigation and/or resolution of the report/complaint. It is intentional, adverse action taken by a responding individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant or supporter of a participant in a grievance proceeding or other protected activity under this policy. Retaliation against an individual for alleging harassment under this Policy, supporting a complaint, or for assisting in providing information relevant to a claim of harassment is a serious violation of University policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University will take all appropriate actions to protect individuals who fear that they may be subjected to retaliation.

## Supportive Measures

Supportive Measures are those that are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without a fee or charge to a Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment.

These measures include, but are not limited to:

- Stay Away/No Contact Orders (limiting physical contact and all forms of communication between parties)
- Counseling
- Housing reassignment
- Housing contract cancellation
- Course reassignment and/or extension of deadlines or other course-related adjustments
- Human Resource actions to limit contact between an employee and any other involved party, including work reassignment
- Temporary suspension from work or school
- Campus security escort services or increased security/monitoring
- Leaves of absence

The University must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the University's ability to provide Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

## ROLES UNDER THE POLICY

### *Advisors*

An Advisor is any one (1) person who any complainant and/or respondent would like to have present with him or her throughout any part of the grievance process. While this person may be an attorney, an Advisor need not be an attorney. The University trains faculty and staff members to act as Advisors and can help any person who seeks an Advisor to find one. Advisors are the only ones in the hearing process who asks questions during cross-examination.

### *Appeal Officer*

The Appeal Officer, who is a University official, reviews an appeal, response, and hearing record (to the extent necessary, depending on the grounds for appeal). An Appeal Officer must then draft a written decision that states the outcome of the appeal and rationale.

### *Confidential Individuals*

Confidential Individuals are employees who maintain confidentiality under their professional license or professional ethics necessary to perform their employed role at the University and are not compelled to report discussions with a victim of sexual harassment or sexual misconduct to any entity, including the University's Title IX coordinator or law enforcement in circumstances in which the reported conduct could be a crime (except, as to law enforcement, if the Complainant is a minor or is there is a belief that there is an imminent threat of harm to the victim or others). At the University, Confidential Individuals are:

- Office of Counseling Services professional counselors;
- Director of Health Services;
- Director of Campus Ministry.

### *Hearing Panel*

The Hearing Panel is comprised of three (3) University employees who act as the decision makers at the Hearing. These individuals hear all evidence at the Hearing and decide the outcome of the Formal Complaint.

### *Investigators*

Investigators are the assigned University employees who manage investigations into a student or employee's responsibility for allegedly violating this Policy. Investigators are assigned by the Title IX Coordinator or designee.

### *Complainant*

The Complainant is the individual who is alleged to be the victim of conduct that could constitute sexual harassment prohibited under this Policy. This person may be a student, University employee, visitor, guest, or contractor in some cases.

### *Respondent*

The Respondent is the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment prohibited under this Policy. This person may be a student, University employee, visitor, guest, or contractor in some cases.

### *Title IX Coordinator*

The Title IX Coordinator is the University employee responsible for overseeing the University's compliance with Title IX and this Policy. The Title IX Coordinator acts as a gatekeeper, provides Supportive Measures, due process, oversees grievance and appeal process, appoints Investigators, the Hearing Panel, Advisors, and ensures no bias or conflict of interest and full University compliance with Title IX. The Title IX Coordinator also coordinates the training, education, communications, and administration of grievance procedures for the handling of complaints alleging violations of this Policy.

The Title IX Coordinator is identified in this Policy and on the University's website.

Depending upon the nature of the harassment, the Title IX Coordinator may be required to report the alleged conduct to Human Resources and/or to the appropriate law enforcement responsible for the jurisdiction in which the conduct occurred.

### *Title IX Deputy Coordinators*

These employees are designated by the Title IX Coordinator to handle one or more aspects of the University's compliance with Title IX and this Policy. These employees are responsible for assisting in implementing and monitoring Title IX compliance at the University and for notifying the Title IX Coordinator of any alleged or suspected violations of this policy.

### *Responsible Employees*

All University employees, faculty, and staff member, other than Confidential Individuals, who becomes aware of any sexual harassment as defined in this Policy have the duty to report the sexual harassment to the Title IX Coordinator. Any person who is obligated to report sexual harassment under this Policy and fails to do so in a time manner may be subject to disciplinary action, up to and including termination of employment.

## **ADDRESSING ALLEGATIONS OF SEXUAL HARASSMENT**

### **1. Receipt of an Initial Report of Conduct Prohibited under Title IX and this Policy.**

Any person may report to the University's Title IX Coordinator any conduct prohibited under Title IX and this Policy, regardless of whether the individual making the report is the person alleged to have experienced the conduct. Initial Reports of such conduct can be made in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator:

Title IX Coordinator  
Jan Graunke, Compliance Officer  
45 South National Avenue  
Fond du Lac, Wisconsin 54935  
920-923-8724  
Title\_IX@marianuniversity.edu

To make an Initial Report of Title IX prohibited conduct, the Title IX Coordinator or designee will ask for the following information, if known:

Name of Complainant  
Complainant's role, if any, with the University  
Name of Respondent  
Respondent's role, if any, with the University  
Date of incident(s)  
Location of incident(s)  
Time of incident(s)  
Nature of conduct (provide specific allegation: e.g., "Complainant awoke to Respondent touching her genital area without permission)  
Date of previous report, if any  
To whom any previous report was made

Upon receipt of notice of an Initial Report of conduct prohibited under Title IX and this Policy, the Title IX Coordinator or Deputy Title IX Coordinator (or their designee) will promptly contact the Complainant and inform the Complainant:

- of the availability of Supportive Measures, including that the Supportive Measures are available with or without filing a Formal Complaint;
- of the availability of confidential counseling resources both on and off campus;
- how to file a Formal Complaint;
- that, if the reported conduct could be a crime, the Complainant has the right but not the obligation to file a police report, and that if there is a police investigation, the Title IX Coordinator will coordinate with law enforcement; and
- of the importance of preserving evidence and identification and location of witnesses.

If on the face of the Initial Report the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another University process. Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

### **Emergency Removal**

The University can remove a Respondent from the University's education program or activity on an emergency basis, provided that the University takes an individualized Safety and Risk Assessment, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies the removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision does not modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973 or the American with Disabilities Act.

### **Safety and Risk Assessment**

A Safety and Risk Assessment must be done by the Title IX Coordinator based on an Initial Report or Formal Complaint in order to determine if immediate threat is present and if so, implement the removal of the Respondent. This must include the process for the challenge of the decision for the removal of the Respondent due to the threat assessment.

### **Administrative Leave**

Nothing in this Policy precludes the University from placing a non-student employee Respondent on administrative leave during the pendency of a grievance process. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or American with Disabilities Act.

### **Confidentiality and FERPA**

All investigations of sexual harassment complaints under this Policy will be confidential, to the extent reasonably possible and permitted by law. Parties to an investigation are also encouraged and requested to maintain the privacy and confidentiality of the investigation and information

shared in the investigation. Information gathered during the investigation process which contain University Student records will be treated as FERPA document(s) and only shared with those individuals who have a need to know or as dictated by law.

### **Public Reports of Violations**

The University is required by federal and state law to issue public reports of gender-based misconduct or sexual harassment on campus under certain circumstances. These include the following:

#### ***Statistical Reporting Under Clery Act***

The University is required to report gender-based misconduct or sexual harassment for statistical reporting purposes (under the federal law known as the “Clery Act”).

Personally identifiable information is kept confidential, but statistical information must be passed along to campus safety regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given) for publication in the *annual Campus Security Report*.

The information that is compiled includes the date, the location of the incident (using the Clery Act location categories), and the Clery Act crime categories. The reporting protects the identity of the victim and may be done anonymously. This report helps to provide the community and others with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

Those who are required to report statistics of gender-based misconduct or sexual harassment on campus include: student/conduct affairs, campus security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities.

#### ***All-Campus Public Warning***

Victims of gender-based misconduct or sexual harassment should also be aware that the Title IX Coordinator is legally required to issue immediately public warnings to the University community for incidents that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that the victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The University’s Emergency Response Plan has the specifics to the response of situation(s).

## **2. Filing of a Formal Complaint**

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

1. **Complainant submits Formal Complaint.** A Complainant may complete and sign a Formal Complaint alleging conduct prohibited under Title IX and this Policy against a Respondent and requesting that the University investigate the allegation of Title . At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the University's Programs or Activities.
2. **Title IX Coordinator submits Formal Complaint.** The Title IX Coordinator may complete and sign a Formal Complaint.
  - a. A Complainant may request that the University not proceed with an Investigation or further resolution under this Procedure. A Complainant's wishes with respect to whether the University investigates will be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.
  - b. The Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the campus community some circumstances require the University to move forward with an investigation, even if the Complainant requests otherwise. The University's decision is subject to a balancing test that requires the University to consider a range of factors, including: the status of the Respondent and whether the Respondent has authority over students and/or staff; whether there have been multiple reports of conduct prohibited under Title IX and this Policy relating to a single Respondent; the seriousness of the alleged conduct (e.g., whether the alleged conduct involved a weapon, physical restraints or battery); whether there is a likelihood that the Respondent would be a danger to the Complainant or the University community; the age of the Complainant; whether the report of conduct prohibited under Title IX and this Policy can be effectively addressed through another type of intervention; and the ability of the University to obtain relevant evidence.

### **Response time from Formal Complaint to Appeal Decision**

The following deadlines apply to processing a Formal Complaint:

1. The written determined from the Hearing Panel must be delivered to the parties within sixty (60) calendar days from the date the Formal Complaint is signed;
2. Respondent has seven (7) calendar days to respond to the Formal Complaint;
3. Hearing Panel has ten (10) business days from the Hearing to render a decision;
4. Complainant and Respondent have three (3) business days from the date of their receipt of the Hearing Panel's written determination to submit an appeal.
5. Appeal Officer has seven (7) calendar days to make decision on an Appeal.

### *Basic requirements for grievance process*

For the purpose of addressing Formal Complaints of sexual harassment, the grievance process must comply with the requirements set forth in this section. Any provisions, rules, or practices other than those required in this Policy that the University adopts as part of our grievance process for handling formal complaints of sexual harassment must apply equally to both parties.

- Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against the respondent;
- Remedies must be designed to restore or preserve equal access to the University's education program or activity, such remedies may include the same individualized services described in Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent;
- Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determination may not be based on a person's status as a Complainant, Respondent or witness;
- Require that any individual designated by University as Title IX Coordinator, Investigator, decision-maker, or any person designated by University to facilitate an information resolution process, not have a conflict of interest or bias against Complainants or Respondents;
- Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;
- Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution process if the University offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and Respondent of the delay or extension and the reason for the action. Good cause could one or more of the following to consider:
  - Absence of party
  - Absence of party's Advisor
  - Absence of a witness
  - Concurrent law enforcement activity
  - Need for language assistance; or
  - Accommodations of disabilities.
- Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanction and remedies the University may implement following any determination of responsibility;

- Standard of Evidence is preponderance of the evidence which is applied to all Formal Complaints against both students and employees, including faculty, and apply the same standard of evidence to all Formal Complaints of sexual harassment;
- Include the procedures and permissible bases for the Complainant and Respondent to appeal;
- Not allow, require, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding privilege has waived the privilege.

### *Notice of Allegations*

Upon the receipt of a Formal Complaint, Title IX Coordinator must provide the following written notice to the parties who are known, notice of the grievance process including any informal resolution process:

- Notice of the allegations of sexual harassment potentially constituting sexual harassment including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the alleged incident, if known. The written notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that determination regarding responsibility is made at the conclusion of the grievance process;
- The written notice must inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- The written notice must inform the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
- If, in the course of an investigation, the Title IX Coordinator decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided, the University must provide notice of the additional allegations to the parties whose identities are known.

### *Dismissal of Formal Complaint*

The University must investigate the allegations in a formal complaint. If the conduct alleged in the Formal Complaint would not constitute sexual harassment even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University must dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under Title IX and such a dismissal does not preclude action under another provision of the University's code of conduct.

The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

- a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations:

- the Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations.

Upon a dismissal required or permitted under this Policy, the University must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

### *Investigation of Formal Complaint*

When investigating a Formal Complaint and throughout the grievance process, the University must:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach determination regarding responsibility rest on the University and not on the parties;
- Provide equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of an advisor for either Complainant or Respondent in any meeting or grievance proceeding: however, the University may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the recipient must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give

each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;

- Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's Advisor, if any, the investigative report in electronic format or a hard copy, for their review and written response.

## **INVESTIGATION:**

The Title IX Coordinator will determine who will conduct the investigation to determine the facts of the case as completely as possible. Investigators are individuals trained in the process.

### *Participation*

If a student reports a sexual harassment but does not wish to participate in the investigation and adjudication process, the situation will be reviewed by either the Title IX Coordinator, or a Deputy Title IX Coordinator, to determine if there is sufficient information to proceed with an investigation without reporting individual or claimant participation.

If the Respondent does not wish to participate in the investigation and adjudication process, the process will proceed without the Respondent's contribution to the determination of the facts of the case. The Respondent should note that the appeal process, based on appearance of new information not available to the Hearing Panel, does not apply in cases of deliberate omission of information by the Respondent, including refusal by the Respondent to participate in the investigation.

### *Investigative Process*

The Investigator will take primary statements from the Complainant and Respondent, ask follow up questions, reach out to and collect statements from others who have evidence/information relevant to the question of violation of the code of conduct, and ask follow-up questions as needed. The Complainant and Respondent may each suggest questions to the Investigator to be asked of others, and may also suggest others with which the Investigator should speak. The Investigator will make a final decision about who to speak with and what to ask of parties and witnesses. All of those contacted by the Investigator will be required to maintain the privacy of the investigation, except as permitted in this Policy. The investigator will also collect any additional evidence available. The Investigator may consult with the Title IX Coordinator in decisions regarding the investigation process.

The Investigator will produce a report of his/her findings, which will include a list of those interviewed and copies of any additional material referenced. The Investigator will present the

report to the Title IX Coordinator. The Title IX Coordinator will review the report and supplemental information with the Deputy Title IX Coordinators, if any. This team will review the Investigator's findings to determine whether there is adequate information available to proceed to a Hearing. The Title IX Coordinator may request that additional information be gathered in order to make an appropriate determination.

Should a determination be made that the information gathered warrants a Hearing, the complete report, with participant responses, will be sent forward to the Hearing Panel for adjudication.

## HEARING PANEL

The University's grievance process provides for a live Hearing. At the Hearing, the Hearing Panel, comprised of three (3) University employees, must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally, notwithstanding the discretion of the University to otherwise restrict the extent to which Advisors may participate in the proceedings. At the request of either party, the University must provide for the Hearing to occur with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of the party or witness. Before a Complainant or Respondent, or witness answers a cross-examination or other question, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an Advisor present at the live hearing, the University must provide without fee or charge to the party, an Advisor of the University's choice, who may be but is not required to be an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility: provided, however, that the Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness absence from the hearing or refusal to answer cross examination to other questions.

The hearing 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 participants simultaneously to see and hear each other. The University must create an audio or audiovisual recording, or transcript, of all hearings and make the recording/transcript available to the parties for inspection and review.

The Hearing Panel, the members of whom cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. The written determination must include:

- Identification of the allegations potentially constituting sexual harassment,
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held,
- Findings of fact supporting the determination,
- Conclusions regarding the application of the University's code of conduct to the facts,
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant,
- The Title IX procedures and permissible bases for the Complainant and Respondent to appeal,

The Title IX Coordinator must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date the Title IX Coordinator provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Title IX Coordinator is responsible for effective implementation of any remedies and sanctions through the Office of Community Standards.

## **APPEAL(S)**

Both parties have the right to request an appeal of the determination regarding responsibility, and from the University's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;

- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- c. The Title IX Coordinator, Investigator(s), or Hearing Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Appeals must be submitted to the Title IX Coordinator within three (3) business days of the date the Title IX coordinator provides the written determination to the parties. The Title IX Coordinator may offer an appeal equally to both parties on additional bases. As to all appeals, the Title IX Coordinator must:

- A. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- B. Ensure that the decision-maker for the appeal are not the same individuals as decision-makers that reached the determination regarding responsibility or dismissal, the investigator, or Title IX Coordinator;
- C. Ensure that the decision maker for the appeal complies with the University's standards;
- D. Gives both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- E. Issue written decision describing the result of the appeal and the rationale for the result;
- F. Provide the written decision describing the result of the appeal and the rationale for the result.

### **Appeal Officer**

The Appeal Officer's reviews is limited in scope to the grounds stated for appeal. The Appeal Officer must review the appeal, response, and hearing record (to the extent necessary, depending on the grounds for appeal). The appeal officer must then draft a written decision that states the outcome of the appeal and rationale. The Appeal Officer or Title IX Coordinator will communicate the results of any appeal simultaneously and in writing to the Complainant and Respondent. The Appeal Officer has the option to uphold the original decision and sanction, institute a modified decision and/or sanction, or request the case be reheard in its entirety. The latter will only be utilized in cases with significant procedural lapses that affected the decision-making of the Hearing Panel.

***The determination of responsibility made by the Appeal Officer is final and binding.***

### **INFORMAL RESOLUTION**

The University may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to

an investigation and adjudication of Formal Complaints of sexual harassment consistent with this section. Similarly, the University may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a Formal Complaint is filed. However, at any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process such as mediation that does not involve a full investigation and adjudication.

The following must be provided to the parties:

- A written notice disclosing the allegations, the requirements of the informal resolution process including the circumstance under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- Obtains the parties' voluntary, written consent to the informal resolution process; and
- Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

## RECORDKEEPING

The University Title IX Coordinator must maintain for a period of seven years records:

- A. Each sexual harassment investigation including recordings or transcripts, any determination regarding responsibility, disciplinary sanctions, remedies provided, any appeal, and the result from any information resolution.
- B. All the materials used to train the Title IX Coordinator, Deputy Coordinator(s), Investigators, Hearing Panel, and any person who facilitates an informal resolution process. The training materials are to be made available to the public.
- C. For each response required the Title IX Coordinator must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, documentation on the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a Complainant with supportive measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

## RETALIATION

Retaliation is prohibited – no University or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with the right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted, or participates or refused to participate in any manner in an investigation, proceeding, or hearing under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

The exercise of rights protected under the first amendment does not constitute retaliation prohibited here.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the grievance proceeding does not constitute retaliation prohibited, however that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination.

## SANCTIONS

One or more of following sanctions may be imposed upon any student for any single violation of this Policy:

1. **Warning:** An official written notice that the student has violated University policies and/or rules and that more severe conduct action will result should the student be involved in other violations while the student is enrolled at the University.
2. **Restitution:** Compensation for damage caused to the University or any person's property. This could also include situations such as failure to return a reserved space to proper condition – labor costs and expenses. This is not a fine but, rather, a repayment for labor costs and/or the value of property destroyed, damaged, consumed, or stolen.
3. **Community/University Service Requirements:** For a student or organization to complete a specific supervised University service.
4. **Loss of Privileges:** The student will be denied specified privileges for a designated time period.
5. **Confiscation of Prohibited Property:** Items whose presence is in violation of University policy will be confiscated and will become the property of the University. Prohibited items may be returned to the owner upon completion of academic year or discretion of Title IX Coordinator and/or Dean of Students.

6. **Behavioral Requirement:** This includes required activities including, but not limited to, seeking academic counseling or substance abuse screening, writing a letter of apology, etc. Follow-up to required attendance or appointments may be required.
7. **Educational Program:** Requirement to attend, present and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student was found responsible. Audience may be restricted.
8. **Restriction of Visitation Privileges:** May be imposed on a resident or non-resident student. The parameters of the restriction will be specified.
9. **University Housing Probation:** Official notice that, should further violations of Residence Life or University policies occur during a specified probationary period, the student may immediately be removed from University housing. Regular probationary meetings may also be imposed.
10. **University Housing Reassignment:** Reassignment to another University housing facility. Residential Life personnel will decide on the reassignment details.
11. **University Housing Suspension:** Removal from University housing for a specified time period after which the student is eligible to return. Conditions for re-admission to University housing may be specified. Under this sanction, a student is required to vacate University housing within 24 hours of notification of the action. This deadline may be extended upon outcome of Appeals. This sanction may be enforced with a trespass action if deemed necessary. Prior to reapplication for University housing, the student must gain permission from the Director of Residence Life and Title IX Coordinator. This sanction may include restrictions on visitation to specified buildings or all University housing during the suspension.
12. **University Housing Expulsion:** The student's privilege to live in, or visit, any University housing structure is revoked indefinitely. This sanction may be enforced with a trespass action if deemed necessary.
13. **Probation:** The student is put on official notice that, should further violations of University policies occur during a specified probationary period, the student may face suspension or expulsion. Regular probationary meetings may also be imposed.
14. **Eligibility Restriction:** The student is deemed "not in good standing" with the University for a specified time period. Specific limitations or exceptions:
  - a. Ineligibility to hold any office in any student organization recognized by the University or hold an elected or appointed office at the University; or
  - b. Ineligibility to represent the University to anyone outside the University community in any way including: participating in the study abroad program, attending conferences, or representing the University at an official function, event or intercollegiate competition as a player, manager or student coach, etc.
15. **Suspension:** Separation from the University for a specified minimum period of time, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension. The student is required to vacate the campus within 24 hours of notification of the action. During the suspension period, the student is banned from University property, functions, events and activities. This sanction may be enforced with a trespass action as necessary.

16. **Expulsion:** Permanent separation from the University. The student is banned from University property and the student's presence at any University-sponsored activity or event is prohibited. This action may be enforced with a trespass action as necessary.

17. **Other Sanctions:** Additional or alternate sanctions may be created and designed as deemed appropriate to the offense with consultation of Director of Community Standards or Dean of Students.

### *Failure to Complete Conduct Sanctions*

All students, as members of the University community, are expected to comply with conduct sanctions within the timeframe specified in the Title IX Findings letter. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions and/or suspension from the University. In such situations, resident students will be required to vacate University housing within 24 hours of notification by the Dean of Students and Title IX Coordinator, though this deadline may be extended upon application to, and at the discretion of, the Dean of Students and/or Title IX Coordinator. A suspension will only be lifted when compliance with conduct sanctions is satisfactorily achieved. This determination will be made by the Title IX Coordinator.

### *Group Violations*

A student group or organization and its officers and membership may be held collectively and individually responsible when violations of this Policy by the organization or its member(s):

- Take place at organization-sponsored or co-sponsored events, whether sponsorship is formal or tacit;
- Have received the consent or encouragement of the organization or of the organization's leaders or officers; or
- Were known or should have been known to the membership or its officers.

Conduct review processes for student groups or organizations follow the same general student conduct procedures. In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and individually and will be proportionate to the involvement of each individual and the organization.

The following sanctions may be imposed upon groups or organizations found to have violated the *Code of Student Conduct- Title IX Violation*:

1. One or more of the sanctions listed above.
2. Deactivation, de-recognition, loss of all privileges (including status as a University registered group/organization), for a specified time period.

## Remedies

If a violation is found, the University must take steps to restore or preserve the Complainant's access to education. There are many types of supportive measures that can be utilized after the determination to restore or preserve access. The University is not required to provide the exact remedy requested, but must provide a remedy that is not clearly unreasonable.

**END OF POLICY STATEMENTS**