



Kansas City University
Of Medicine and Biosciences
Policy Library

University Policy # 1.04

Policy Name: Title IX and Sexual Misconduct Policy

Issued By: Director of Legal Affairs and Risk Management

Last Revised: August 14, 2020

Supersedes: Policy dated July 20, 2018

TITLE IX and Sexual Misconduct Policy

Policy and Procedures

I. POLICY STATEMENT

Kansas City University of Medicine and Biosciences (collectively “the University”) is committed to providing a learning and working environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination and harassment on the basis of sex. The University considers Sexual Harassment and Sexual Misconduct, as defined below, in all its forms to be serious offenses. Sexual Harassment and Sexual Misconduct constitute violations of this policy, are unacceptable, and will not be tolerated. Sexual Harassment and Sexual Misconduct include discrimination on the basis of pregnancy, gender identity, and failure to conform to stereotypical notions of femininity and masculinity.

Sexual Harassment and Sexual Misconduct, whether verbal, physical, or visual, is always inconsistent with the mission and expectations of the University. Sexual Harassment also includes Sexual Assault, Domestic Violence, Dating Violence, and Stalking (as defined below).

II. SCOPE

This policy applies to administrators, faculty, and other University employees; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the University’s Education Programs and Activities, including third-party visitors on campus (the “University Community”). This policy prohibits Sexual Harassment and Sexual Misconduct when the complainant and alleged perpetrator are members of the same or opposite sex, and it applies regardless of national origin, immigration status, or citizenship status. The Title IX procedures of this Policy do not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the University’s Education Programs or Activities. Nor do the Title IX procedures of this Policy apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University’s Education Programs or Activities, such as a study abroad program. Rather, such Sexual Harassment, along with other discrimination and misconduct will be addressed under the Sexual Misconduct procedures included in this Policy or under other University policies and standards as they apply.

III. DEFINITIONS

- i. **Sexual Harassment** is conduct, whether verbal, non-verbal, physical, or visual on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking
- ii. **Sexual Misconduct** is unwelcome conduct, whether verbal, non-verbal, physical, or visual, that is based on or relates to an individual's gender, sex, and sexual orientation, and has the effect of creating a hostile environment which:
 - Has the effect of unreasonably interfering with an individual's work or student's performance.
 - Has the effect of otherwise adversely affects an individual's employment or educational opportunities.
- iii. "Consent" refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.
- iv. "Incapacitated" refers to the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.
- v. "Retaliation" is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations 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.
- vi. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment or Sexual Misconduct.
- vii. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment or Sexual Misconduct.
- viii. "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's Education Programs or Activities. A "document filed by a Complainant" means a document or electronic submission (such as an email) that contains the Complainant's physical or

electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

- ix. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.
- x. “Education Programs or Activities” refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

IV. REPORTING SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

Any person may report sexual harassment to the Title IX coordinator, and Sexual Misconduct to the Director of Legal Affairs. Reports¹ may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX coordinator or Director of Legal Affairs receiving the person’s verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

All University employees, except those identified in Section XIX below, have a duty to file a complaint with the Title IX Coordinator or the Director of Legal Affairs when they believe or receive information indicating that a member of the University Community may have been subjected to conduct that constitutes prohibited Sexual Harassment or Sexual Misconduct. This includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. An employee not making a report as required by this policy may be disciplined accordingly, up to and including termination.

¹ “Reports” and “complaints” may be used interchangeably throughout this policy.

Students who believe they or another member of the University Community may have been subjected to conduct that constitutes prohibited Sexual Harassment or Sexual Misconduct are encouraged to file a complaint with the Title IX Coordinator or Director of Legal Affairs. Students should also be aware that all employees at the University, other than those identified in Section XIX below, have an obligation to report information about Sexual Misconduct or Sexual Misconduct that they become aware of or witness. Students may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section VI(B) below.

A. SPECIAL GUIDANCE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING

If you believe you are the victim of Sexual Assault, Domestic Violence, Dating Violence, or Stalking, do not blame yourself. These crimes are never the victim's fault. The University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement, in addition to making a prompt complaint under this policy.

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement.
- Preserve all forms of electronic communication that occurred before, during, or after the assault.
- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.

- Talk with a professional licensed counselor, University chaplain, or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore avenues for resolution under the policy and procedures.

It is also important to take steps to preserve evidence in cases of Stalking; to the extent such evidence exists. In cases of Stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the complainant has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken
- requesting further information about the University's policy for addressing Sexual Harassment
- requesting further information about available resources

V. PRELIMINARY ASSESSMENT

Initially, reports of alleged Title IX violations will be reviewed by the Title IX Coordinator, who will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of this policy and/or Title IX(see "Scope"); and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment or Sexual Misconduct.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment or Sexual Misconduct, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of Title IX, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see "Contacting the Complainant") and proceed under the Title IX procedures.

If the Title IX Coordinator determines that the conduct could fall within the scope of this Policy but does not constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Director of Legal Affairs, who will proceed under the Sexual Misconduct procedures.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

VI. TITLE IX

B. TITLE IX STATEMENT

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations. Among other things, Title IX and its implementing regulations prohibit retaliation for asserting claims of Sexual Harassment. Title IX applies only to Sexual Harassment. Complaints of other forms of Sexual Misconduct are governed under the Sexual Misconduct procedures, as addressed below. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including reports of Sexual Harassment:

Title IX Coordinator:

Jessie James
Director of Legal Affairs
and Risk Management
1750 Independence Avenue
Kansas City, MO 64106
816-654-7109
jjames@kcumb.edu

Deputy Coordinator:

Jamie Hirshey
Campus HR Director
2817 St Johns Blvd
Joplin, MO 64804
417-208-0633
jhirshey@kcumb.edu

A person may also file a complaint of Sexual Harassment with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

C. DEFINITIONS

- i. **Quid Pro Quo Sexual Harassment** is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.
- ii. **Hostile Environment Sexual Harassment** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.

iii. **Sexual Assault** includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.²

1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
2. “Sodomy” is 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
3. “Sexual Assault with an Object” is 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 his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
4. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Missouri law.
6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Missouri law.

iv. **Domestic Violence** is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri, or by any other person against

² The University’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Missouri.

- Missouri's definition of Domestic Violence can be found at Mo. Rev. Stat. § 455.010.
- Under Missouri law, Domestic Violence also includes the crime of "domestic assault" which can be found at Mo. Rev. Stat. §§ 565.072-565.074.

v. **Dating Violence** is violence committed by a person –

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

Missouri law does not specifically define Dating Violence, but conduct of this nature is covered by Missouri's definitions of Domestic Violence and domestic assault.

vi. **Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.
- Missouri's definition of Stalking can be found at Mo. Rev. Stat. § 455.010 and § 565.225.

vii. "Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's Education Programs or Activities. A "document filed by a Complainant" means a document or electronic submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

D. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

E. UNDERSTANDING CONSENT AND INCAPACITATION

i. Consent

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through unreasonable manipulation or coercion—or any kind of physical force or weapon—and requires having cognitive ability to agree to participate. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.

Impairment or incapacitation due to alcohol and/or drug use, permanent/temporary psychological or physical disability, and being below the age of consent in the applicable jurisdiction are factors which detract from or make consent impossible.

In Missouri, the minimum age of consent for purposes of Statutory Rape is 17 years of age, and no one under 14 years of age is considered capable of consent.

In addition to Missouri law, the following are essential to understanding what constitutes effective consent under this policy:

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. Warning signs of when a person may be incapacitated due to drug and/or alcohol use include: slurred speech, falling down, passing out, and vomiting.
- If a person is asleep or unconscious, there is no consent.
- If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Being in a romantic relationship with someone does not imply consent to any form of sexual activity.
- Effective consent may not exist when there is a disparity in power between the parties (e.g., faculty/student, supervisor/employee)

ii. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober,

reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

F. ROLES AND RESPONSIBILITIES

i. Title IX Coordinator

It is the responsibility of the Title IX Coordinator to coordinate dissemination of information and education and training programs to: (1) assist members of the University community in understanding that Sexual Harassment is prohibited by this policy; (2) ensure that investigators are trained to respond to and investigate complaints of Sexual Harassment; (3) ensure that employees and students are aware of the procedures for reporting and addressing complaints of Sexual Harassment; and (4) to implement this policy or to designate appropriate persons for implementing this policy.

ii. Administrators, Deans, Department Chairs, and Other Managers

It is the responsibility of administrators, deans, department chairs, and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

iii. All Employees

It is the responsibility of all employees to review this policy and comply with it.

iv. Students

It is the responsibility of all students to review this policy and comply with it.

v. The University

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that constitutes Sexual Harassment, the University will take prompt action, including a review of the matter and, if necessary, an investigation, adjudication or informal resolution, and appropriate steps to stop and remedy the prohibited conduct. The University will act in accordance with this policy and procedures.

G. INTERIM REMOVAL

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of the University's Education Programs or Activities on an temporary basis if 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 Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the University may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see "Investigation" and "Adjudication").

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

H. FORMAL COMPLAINT

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with the provisions "Investigation" and "Adjudication." Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the University's Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in "Reporting Sexual Harassment." No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in

the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) is there a risk that the incident will occur again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation as specified in this policy and proceed to adjudicate the matter as specified in "Adjudication," below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

I. CONSOLIDATION OF FORMAL COMPLAINTS

The University may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

J. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in "Scope" (that is, because the alleged conduct did not occur in the University's Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, including the Director of Legal Affairs, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

K. NOTICE OF FORMAL COMPLAINT

Within five (5) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”
- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence.”
- Notifying the Complainant and Respondent of the University’s prohibitions on retaliation and false statements specified in Sections “Bad Faith Complaints and False Information” and “Retaliation.”
- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

L. INVESTIGATION

i. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process. The University strives to complete its investigations in a reasonably prompt manner. Although the length of each investigation may vary depending on the totality of the circumstances, including the nature and complexity of the allegations, the availability of witnesses, and intervening breaks in the University’s calendar.

ii. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in "Sexual History." The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

iii. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

iv. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the Investigating Officer will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this process and may not duplicate or disseminate the evidence to the public.

v. Investigation Report

After the period for the parties to provide any written response as specified "Access to the Evidence" has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX

Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

M. ADJUDICATION PROCESS SELECTION

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes specified in “Adjudication.” The notice will explain that the hearing process specified in “Hearing Process” is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in “Administrative Adjudication (Optional)” as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of “Adjudication”), consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

Each party will have three (3) days from transmittal of the notice specified in this Section to return the signed written consent form to the Title IX Coordinator. If either party does not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

N. ADJUDICATION

i. Hearing Process

The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Hearing Process”). The hearing process will be used to adjudicate all Formal Complaints unless both parties timely consent to administrative adjudication as specified in “Adjudication Process Selection.”

a) Hearing Officer

After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

b) Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting

a date and time for the hearing; and providing a copy of the University's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this Section ("Hearing Notice and Response to the Investigation Report").

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in "Sexual History," or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the University's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for purposes of conducting questioning as specified in "Hearing."

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

c) Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties,

the advisors, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

d) Issuance of Notices of Attendance

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The University will not issue a notice of attendance to any witness who is not an employee or a student.

e) Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the University's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary University personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section ("Hearing"), the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when

good cause exists to do so, and provided the minimal requirements specified in this Section (“Hearing”) are met.

f) Subjection to Questioning

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties’ advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this Section (“Subjection to Questioning”), the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness’s absence from the live hearing and/or refusal to submit to questioning by the parties’ advisors.

g) Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of “Subjection to Questioning.” The hearing officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

h) Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such University official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing Supportive Measures or other remedies will be provided to the Complainant.

i) Written Decision

After reaching a determination and consulting with the appropriate University official and Title IX Coordinator as required by “Discipline and Remedies,” the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official as referenced in "Discipline and Remedies";
- Whether the Complainant will receive any ongoing Supportive Measures or other remedies as determined by the Title IX Coordinator; and
- A description of the University's process and grounds for appeal, as specified in "Appeal."

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in "Appeal."

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer's written determination within fourteen (14) days of the conclusion of the hearing.

O. Administrative Adjudication (Optional)

In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in "Adjudication Process Selection." At any time prior to the issuance of the administrative officer's determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in "Hearing Process."

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator as specified in "Access to Evidence."

The administrative officer will promptly send written notice to the parties notifying the parties of the administrative officer's appointment; setting a deadline for the parties to

submit any written response to the investigation report; and setting a date and time for each party to meet with the administrative officer separately. The administrative officer's meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in "Sexual History," or for any other reason;
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the parties' written responses, the administrative officer will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the administrative officer to ask questions concerning the party's written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each party, the administrative officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the parties in their respective written responses to the investigation report. The administrative officer will resolve disputed facts using a preponderance of the evidence (that is, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any University official and the Title IX Coordinator, in the manner specified in "Discipline and Remedies" and will prepare and transmit a written decision in the manner as specified in "Written Decision" which shall serve as a resolution for purposes of informal resolution.

Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal as specified in "Appeal."

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, the University strives to issue the administrative officer's written determination within twenty-one (21) days of the transmittal of the initiating written notice specified in this Section ("Administrative Adjudication").

Other language in this Section (“Administrative Adjudication”) notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student

P. DISMISSAL DURING INVESTIGATION OR ADJUDICATION

The University shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in “Scope” (that is, because the alleged conduct did not occur in the University’s Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the University, as the case may be; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, including the Director of Legal Affairs, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

Q. APPEAL

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;

- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome;
- The punishment or the corrective action imposed is disproportionate to the offense.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other party appealing, whichever is later. The appeal must be submitted in writing to the Provost, who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks. The appellant may request a meeting with the appeal officer, but the decision to grant a meeting is within the appeal officer's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

R. ADVISOR OF CHOICE

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section and "Hearing," the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in "Hearing," and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole and complete discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in "Hearing," and requests that the University provide an advisor.

S. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;
- Unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section

if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

T. SEXUAL HISTORY

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are 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, 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

U. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint as specified in "Notice of Formal Complaint," and before the completion of any appeal specified in "Appeal," the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication as specified in "Administrative Adjudication" is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University. Notwithstanding the foregoing if the form of informal resolution is Administrative Adjudication as specified in "Administrative Adjudication," there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in "Administrative Adjudication," all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

V. PRESUMPTION OF NON-RESPONSIBILITY

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

W. RESOURCES

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance.

X. CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in "Appeal," or otherwise.

Y. SPECIAL PROCEDURE CONCERNING COMPLAINTS AGAINST THE PRESIDENT AND EXECUTIVE VICE-PRESIDENTS

If a complaint involves alleged conduct on the part of the University President, the University Board of Trustees will designate the investigating officer, administrative officer, hearing officer, and appeal officer. If a complaint involves alleged conduct on the part of a University Executive Vice President, the University President will designate the investigating officer, hearing officer, and appeal officer.

Z. OBJECTIONS GENERALLY

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate.

VII. SEXUAL MISCONDUCT

For purposes of a complaint involving Sexual Misconduct filed under this Policy, "Investigating Officer" means the Director of Legal Affairs or his/her designee. The Investigating Officer shall have responsibility for administering these complaint resolution procedures.

A. COMMENCEMENT OF THE INVESTIGATION

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable. The purpose of the investigation is to determinate whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes Sexual Misconduct. During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other parties as needed.

In certain narrow circumstances, the Investigating Officer may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

B. CONTENT OF THE INVESTIGATION

During the investigation, the complainant will have the opportunity to describe his or her allegations and identify supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and identify supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

C. SUPPORT PERSON

During the investigation process, both a complainant and a respondent may ask a support person to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person cannot be another complainant or respondent. The support person does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and he or she must agree to maintain the confidentiality of the process. A support person may be removed if he or she becomes disruptive or does not abide by the limitations discussed in the previous sentence.

D. INTERIM MEASURES

At any time during the investigation, the Investigating Officer may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of this policy.

E. OTHER POLICY AND STANDARDS VIOLATIONS

In the course of conducting an investigation under these procedures, the Investigating Officer may identify evidence establishing that University policies and standards, other than this policy, were violated. The University reserves the right to take immediate action to address such other violations of policies and standards, irrespective of whether the investigation determines that Sexual Misconduct occurred. In addition, in cases involving a visitor or contractor as a respondent, the University reserves the right to take summary action to permanently prohibit such person from entering onto University property and/or to terminate the respondent's relationship with the University, irrespective of whether the investigation determines that Sexual Misconduct occurred.

G. RESOLUTION

At the conclusion of the investigation, the Investigating Officer will identify the relevant evidence collected during the investigation, and report to the Director of Legal Affairs whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence.

If, based on the evidence, the Investigating Officer determines that Sexual Misconduct occurred, the Director of Legal Affairs will confer with administrators with

supervisory authority over the respondent and identify those steps necessary to maintain an environment free from Sexual Misconduct and to protect the safety and well-being of the complainant and other members of the University community. Such actions will also include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of Sexual Misconduct and retaliation. Examples of such action include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to termination, expulsion, or other appropriate institutional sanctions.

Thereafter, the Director of Legal Affairs will provide the parties with a brief, written determination of the investigation. If necessary, the version of the determination provided to the complainant and/or respondent will be redacted to ensure that information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with Title IX, the Family Educational Rights and Privacy Act ("FERPA"), and the Clery Act. The written determination shall be final subject only to the right of appeal set forth below.

H. SPECIAL PROCEDURE CONCERNING COMPLAINTS AGAINST THE PRESIDENT AND EXECUTIVE VICE-PRESIDENTS

If a complaint involves alleged conduct on the part of the University President, the University Board of Trustees will designate the Investigating Officer. Based on the information gathered by the investigation, the University Board of Trustees will prepare and issue the written report determining the complaint. The determination of the University Board of Trustees is final and not subject to appeal.

If a complaint involves alleged conduct on the part of a University Executive Vice-President, the University President will designate the Investigating Officer. Based on the information gathered by the investigation, the University President will prepare and issue the written report determining the complaint. The determination of the University President is final and not subject to appeal.

I. INFORMAL RESOLUTION

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used with the complainant's voluntary cooperation and the involvement of the Director of Legal Affairs. The complainant, however, will not be required to work out the problem directly with the respondent. Moreover, either party may terminate any such informal means at any time and elevate the complaint to the formal process.

J. APPEALS

i. Grounds of Appeal

The complainant or respondent may appeal the determination of a complaint only on the following grounds:

- The decision was contrary to the substantial weight of the evidence;

- There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Investigating Officer, would result in a different decision;
- Bias or prejudice on the part of the Investigating Officer; or
- The punishment or the corrective action imposed is disproportionate to the offense.

ii. Method of Appeal

Appeals must be filed with the University Provost within ten (10) days of receipt of the written determination of the outcome of the complaint. The appeal must be in writing and contain the following:

- Name of the complainant;
- Name of the respondent;
- A statement of the determination of the complaint, including corrective action if any;
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it; and
- Requested action, if any.

iii. Resolution of Appeal

The University will resolve the appeal in a reasonably prompt manner. The decision of the University Provost is final. The University Provost shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Investigating Officer's previous written determination and/or the sanctions and remedial measures imposed. The written statement shall be provided to the complainant, respondent, and the Director of Legal Affairs within three (3) days of the resolution.

VIII. CONDUCT THAT CONSTITUTES A CRIME

Any person who believes they have been subject to Sexual Harassment or Sexual Misconduct that also constitutes a crime—including Sexual Assault, Domestic Violence, Dating Violence, or Stalking—is encouraged to make a complaint to local law enforcement, as well as to the University's Title IX Coordinator or Director of Legal Affairs, as applicable. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

IX. AMNESTY

The University recognizes that an individual who has been drinking alcohol or using drugs may be hesitant to report Sexual Harassment or Sexual Misconduct. To encourage reporting, the University will not take disciplinary action for drug or alcohol use against an individual reporting Sexual Harassment or Sexual Misconduct, either as the complainant or as a witness, provided that these conduct violations did not and do not place the health or safety of any other person at risk. The University may, however, require the reporting individual to attend a course or pursue other educational interventions related to alcohol and drugs.

The University's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

X. TIMING OF COMPLAINTS

The University encourages persons to make complaints of Sexual Harassment and Sexual Misconduct as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

XI. CONTACTING THE COMPLAINANT

If a complaint is not closed as a result of the preliminary assessment (see "Preliminary Assessment") and the Complainant's identity is known, the Title IX Coordinator or Director of Legal Affairs, as applicable, will promptly contact the Complainant to discuss the availability of Supportive Measures (see "Supportive Measures"); to discuss and consider the Complainant's wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

XII. SUPPORTIVE MEASURES

If a complaint is not closed as a result of the preliminary assessment (see "Preliminary Assessment"), the University will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a complaint or Formal Complaint, the Title IX Coordinator or Director of Legal Affairs will notify the Respondent of the availability of Supportive Measures for the Respondent, and the University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a complaint or Formal Complaint, if the Respondent requests such measures.

The University will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures in question.

XIII. BAD FAITH COMPLAINTS AND FALSE INFORMATION

While the University encourages all good faith complaints of Sexual Harassment, the University has the responsibility to balance the rights of all parties. Therefore, if the University's investigation reveals that a complaint was knowingly false or that the complainant should have known that the complaint was false, the complaint will be dismissed and the person who filed the false complaint may be subject to discipline.

Similarly if a witness knows or should know that information he/she provided as part of any investigation is false, the witness may be subject to discipline.

XIV. CONSTITUTIONAL RIGHTS AND ACADEMIC FREEDOM

While the University is committed to the principles of free inquiry and free expression, conduct constituting Sexual Harassment and/or Sexual Misconduct is neither legally protected expression nor the proper exercise of academic freedom.

XV. EDUCATION

Because the University recognizes that the prevention of Sexual Harassment, including Sexual Assault, Domestic Violence, Dating Violence, and Stalking, and Sexual Misconduct are an important issues, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other items, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator or Director of Legal Affairs.

XVI. RECORDINGS

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

XVII. VENDORS, CONTRACTORS AND THIRD PARTIES

The University does business with various vendors, contractors, and other third-parties who are not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

XVIII. RETALIATION

It is a violation of this policy to engage in Retaliation. Complaints and Formal Complaints of retaliation may be made in the manner specified in "Reporting Sexual Harassment," and "Formal Complaint." Any complaint or Formal Complaint of Retaliation will be processed under this policy in the same manner as a complaint or Formal Complaint of Sexual Harassment, as the case may be. The University retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual

Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus. Complaints of Sexual Misconduct and Retaliation may also be consolidated where they share the same nexus.

XIX. CONFIDENTIALITY

The University will keep confidential the identity of any individual who has made a complaint or Formal Complaint of Sexual Harassment, Sexual Misconduct or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment, Sexual Misconduct or Retaliation including any Respondent, and the identity of any witness. The University will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the University may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the University's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the University's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.

While the University will maintain confidentiality specified in this Section, the University will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment, Sexual Misconduct or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

If a victim desires to talk confidentially about his or her situation, there are resources available. The following resources are available to assist you and will not further disclose the information you provide, unless otherwise required to do so by law (e.g., if the victim is a minor):

James Dugan, PhD
Beth Epley, PsyD
Brandi Norman, PsyD

XX. OTHER VIOLATIONS OF THIS POLICY

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment, Sexual Misconduct and Retaliation, will be subject to review under the Student Handbook for students, the Faculty Handbook for faculty, the Employee Handbook for employees or other University policies and standards as they apply.

XXI. SIGNATURES AND FORM OF CONSENT

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

XXII. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL

Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by the University where, in the University's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the University's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, Director of Legal Affairs or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. The University officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the University.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties "simultaneously," notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using University email addresses.

A party is deemed to have received notice upon transmittal of an email to their University email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the University, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted.

XXIII. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, Director of Legal Affairs, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in the University's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

XXIV. TRAINING

The University will ensure that University officials acting under this policy, including but not limited to the Title IX Coordinator, Director of Legal Affairs, investigators, hearing officers, administrative officers, informal resolution facilitators, University provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

XXV. RECORDKEEPING

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

XXVI. DEFINITIONS

Words used in this policy will have those meanings defined herein and if not defined herein will be construed according to their plain and ordinary meaning.

XXVII. DISCRETION IN APPLICATION

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

TITLE IX FREQUENTLY ASKED QUESTIONS

1. What kinds of conduct constitute prohibited Sex Harassment?
2. What are some examples of Hostile Environment Sexual Harassment?
3. What should I do if I have been subject to Sexual Harassment?
4. What are some examples of Sexual Assault?
5. What constitutes “consent” for purposes of Sexual Assault?
6. What should I do if I am a victim of Sexual Assault?
7. Can I make a complaint of Sexual Assault against my boyfriend or girlfriend?
8. What should I do if I am subject to Sexual Harassment by someone who is not a University student or employee?
9. What should I do if I am subject to Sexual Harassment by a student but we are off campus?
10. Should I contact the University if I have already notified the police about Sexual Assault?
11. What should I do if I observe Sex Harassment, but it is not directed at me?
12. What is the role of the Title IX Coordinator?
13. If I make a complaint of Sexual Harassment, will it be treated confidentially?
14. Who is typically involved in investigating a complaint of Sexual Harassment?
15. What are the possible outcomes of an investigation into a complaint?
16. May I have a support person with me in the investigation process?
17. What should I do if I am retaliated against for making a complaint of Sex Harassment?
18. How does the University handle false allegations of Sex Harassment?

1. What kinds of conduct constitute prohibited Sex Harassment?

Sexual Harassment, defined as conduct on the basis of sex that constitutes Quid Pro Quo Sexual harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking, is one way a person may discriminate against another due to his or her sex. The University has a duty under Title IX to take the steps outlined in this policy when Sexual Harassment occurs. The University encourages you to report any and all instances of Sexual Harassment.

Sexual Assault is a particularly severe form of Sexual Harassment that includes Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape. Even a single instance of Sexual Assault can constitute Sex Harassment under this policy and should always be reported.

2. What are some examples of Hostile Environment Sexual Harassment?

Hostile Environment Sexual Harassment is any unwelcome conduct of a sexual nature that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities. The University's policies protect men and women equally from Hostile Environment Sexual Harassment, including harassment by members of the same sex. Staff, faculty, and students are protected from Hostile Environment Sexual Harassment by any other staff, faculty, student, or contractor. Examples of kinds of conduct that constitute Hostile Environment Sexual Harassment include, but are not limited to, the following:

- Engaging in unwelcome sexual advances
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Telling unwelcome, sexually-explicit jokes
- Displaying sexually suggestive or lewd photographs, videos, or graffiti
- Making unwelcome and unwanted physical contact, such as rubbing, touching, pinching, or patting
- Making unwelcome and suggestive sounds, such as "cat calls" or whistling
- Commenting on a person's dress in a sexual manner
- Making sexual gestures
- Repeatedly asking someone for a date after the person has expressed disinterest
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Telling another person of one's sexual fantasies, sexual preferences, or sexual activities
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Using sexually explicit profanity

3. What should I do if I have been subject to Sexual Harassment?

The University encourages you to report Sexual Harassment as soon as possible. Ignoring Sexual Harassment does not make it go away. And delayed reporting may limit the University's ability to investigate and remedy the Sexual Harassment.

If you are a student, you may report Sexual Harassment to the Title IX Coordinator, or the Deputy Coordinator. If you are the victim of Sexual Harassment that constitutes a crime, the University encourages you to also file a complaint with local law enforcement and to press charges. If requested, the University will assist you in filing a complaint with local law enforcement.

You always have the option to directly confront the person that is harassing you. Sometimes, individuals are not aware that their behavior is offensive and quickly apologize and change their behavior once it is brought to their attention. However, you are not required or expected to confront your harasser prior to filing a complaint.

4. What are some examples of Sexual Assault?

Sexual Assault is a form of prohibited Sexual Harassment and is defined in the Sexual Harassment Policy. Sexual Assault includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Examples of kinds of conduct that constitute Sexual Assault include, but are not limited to, the following:

- The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent
- Having sexual intercourse with a person who is unconscious because of drug or alcohol use
- Hazing that involves penetrating a person's vagina or anus with an object
- Use of the "date rape drug" to effect sexual intercourse or some other form of sexual contact with a person
- One partner in a romantic relationship forcing the other to have sexual intercourse without the partner's consent
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to
- Groping a person's breasts or groin on the dance floor or at a bar
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity
- Coercing someone into having sexual intercourse by threatening to expose their secrets
- Secretly videotaping sexual activity where the other party has not consented

5. What constitutes “consent” for purposes of Sexual Assault?

Lack of consent is the critical factor in determining whether Sexual Assault has occurred. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.

6. What should I do if I am a victim of Sexual Assault, Domestic Violence, Dating Violence, or Stalking?

If you are the victim of Sexual Assault, Domestic Violence, Dating Violence, or Stalking, do not blame yourself. These crimes are never the victim’s fault. Please contact the Title IX Coordinator as soon as possible for information on options and resources available to you. You may also wish to call local law enforcement (911 if an emergency), or the National Sexual Assault Hotline at 1-800-656-HOPE.

If you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. Victims of Sexual Assault, Domestic Violence, or Dating Violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. In cases of Stalking, evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence.

7. Can I make a complaint of Sexual Assault against my boyfriend or girlfriend?

Anyone can commit Sexual Assault, even if you and that person are in a romantic relationship. The critical factor is consent. If your boyfriend or girlfriend perpetrates a sexual act against you without your consent, such conduct constitutes Sexual Assault, and you may make a complaint. This type of conduct and other types of conduct perpetrated by your boyfriend or girlfriend may also be classified as Domestic Violence or Dating Violence.

8. What should I do if I am subject to Sexual Assault by someone who is not a University student or employee?

The University's policies protect you from Sexual Harassment perpetrated by vendors, contractors, and other third parties that you encounter in your University learning, and employment environment. If you believe that you have been subject to Sexual Assault, you should make a report just as if it were committed by a University student or employee.

9. What should I do if I am subject to Sexual Harassment by a student but we are off campus?

It is possible for off-campus conduct between University employees or students to contribute to a hostile working or academic environment or otherwise violate the University's policies. You may make a complaint of Sexual Harassment even if the conduct occurs off-campus. Further this conduct may be a violation of one of the University's other policies.

10. Should I contact the University if I have already notified the police about Sexual Assault?

Calling the local police or filing a police report is not the same as filing a complaint of Sexual Assault with the University. You should not assume that local law enforcement will forward your complaint to the University. As such, anyone who reports Sexual Assault to local police is also encouraged to report the matter to the University's Title IX Coordinator so that the University can begin to investigate the issue as quickly as possible.

11. What should I do if I observe Sexual Harassment, but it is not directed at me?

Anyone who witnesses Sexual Harassment, even it is directed at someone else, can still feel uncomfortable and harassed. If you are a student and witness Sexual Harassment please file a report with the Title IX Coordinator. If you are an employee or staff member of the University, it is your duty to report Sexual Harassment of any kind to the Title IX Coordinator.

12. What is the role of the Title IX Coordinator?

The Title IX Coordinator oversees the University's compliance with Title IX and receives inquiries regarding Title IX, including complaints of Sexual Harassment. The Title IX Coordinator has received special training on the University's policies and procedures pertaining to Sexual Harassment, and is available to answer questions about those policies and procedures, respond to complaints, and assist you in identifying other resources to aid in your situation.

13. If I make a complaint of Sexual Harassment, will it be treated confidentially?

The University will take reasonable and appropriate steps to preserve the confidentiality of the parties to the complaint and to protect the confidentiality of information gathered during the investigation. However, the University has an obligation

to provide a safe and non-discriminatory environment for all students and employees. Therefore, no unconditional promises of confidentiality can be provided. If your confidentiality cannot be guaranteed, the University will notify you.

14. Who is typically involved in investigating a complaint of Sexual Harassment?

The University's Title IX Coordinator or his/her designee and an investigator will be involved in investigating complaints of Sexual Harassment. The Title IX Coordinator will appoint another member of the staff or a third party to investigate the complaint. The process of gathering evidence will necessarily require the involvement of the complainant, the respondent, and any witnesses to the incident that gave rise to the complaint.

15. What are the possible outcomes of an investigation into and adjudication of a complaint?

The outcome will be determined based on the totality of the evidence using a preponderance of the evidence standard. If the preponderance of the evidence does not support a finding that the incident occurred, then the complaint is resolved in favor of the accused. If, however, the preponderance of the evidence supports a finding that Sexual Harassment occurred, the actions taken by the University will include those necessary to maintain an environment free from Sexual Harassment and to protect the safety and well-being of the complainant and other members of the University community. In addition, the University may, in its discretion, take action if the preponderance of evidence supports that improper conduct occurred even if such conduct does not rise to the level of Sex Harassment under this policy. The University's actions will include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of Sexual Harassment and retaliation. Examples of such action include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to termination, expulsion, or other appropriate institutional sanctions. In addition, it is possible that an investigation may substantiate violations of University policies and standards, other than this policy. If such other violations are identified, the University reserves the right to take immediate action to address them, irrespective of whether the investigation determines that a violation occurred.

16. May I have a support person with me in the investigation process?

Both a complainant and a respondent may ask an advisor of choice to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person cannot be another complainant or respondent. Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University about the matter without the party being included in the communication. An advisor may be removed if he or she becomes disruptive or does not abide by the limitations discussed in the previous sentence.

In the event a party is not able to secure an advisor to attend the hearing specified in "Hearing," and requests the University to provide an advisor, the University will provide

the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing.

17. What should I do if I am retaliated against for making a complaint of Sexual Harassment?

The University's Title IX: Sexual Harassment Policy prohibits retaliation against any person for making a good faith complaint of Sexual Harassment, and/or cooperating in the investigation of (including testifying as a witness to) such a complaint. Retaliation is a serious violation that can subject the offender to sanctions independent of the merits of the underlying allegation of Sexual Harassment. If you feel you are the victim of retaliation in violation of this policy, you should report the retaliation just as you would a complaint of Sexual Harassment.

18. How does the University handle a bad faith allegation of Sexual Harassment?

A bad faith allegation of Sexual Harassment occurs when the accuser intentionally reports information or incidents that he or she knows or should know to be untrue. Failure to prove a complaint of Sexual Harassment is not equivalent to a bad faith allegation. The University may impose sanctions against an individual who knowingly makes false allegations of Sexual Harassment.