

MUSKINGUM

U N I V E R S I T Y

TITLE IX¹ Policy and Procedures

Responsible Office: Equity, Compliance, and Risk Management

Responsible Administrator: Director of Equity, Compliance, and Risk Management

Effective Date: August 14, 2020

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100. Preamble

Muskingum University (“the University”) is committed to maintaining an inclusive community that respects human dignity and is free from discrimination, harassment, and retaliation. Behaviors that constitute sexual harassment unreasonably interfere with the academic and professional experiences of those individuals who are impacted by the behavior.

Consistent with this commitment, the University complies with Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex in education programs and activities, the Jeanne Clery Disclosure of Campus Security Policy

¹ Portions of this policy have been informed by or utilize the ATIXA 2020 One Policy, Two Procedures Model. “Use and adaptation of this model with citation to ATIXA is permitted through a limited license to Muskingum University. All other rights reserved. ©2020. ATIXA.”

and Campus Crime Statistics Act (“Clery Act”), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (“VAWA”), and the Campus Sexual Violence Elimination Act (the “Campus SaVE Act”).

Gender-based and sexual misconduct on the University's campus or in other settings related to the University's educational or employment activities is a form of sex discrimination that is unlawful, unethical, and prohibited by the University.

101. Scope and Application

Muskingum University expressly prohibits sexual harassment, as defined by Title IX and this Policy. Conduct that would violate this Policy is unlawful, unethical, and prohibited by the University.

Romantic, intimate, or sexual relationships between faculty/staff (who are not student employees) and students are prohibited. When such relationships exist between employees, the University will ensure that neither employee is in a position of supervisory or evaluative authority over the other employee. The University's policy on [Consensual, Romantic, or Sexual Relationships](#) may be found in the Employee Handbook.

Other forms of conduct may not meet the definition of sexual harassment for purposes of Title IX and this Policy. However, that conduct may still be defined as sexual harassment under other laws or University policies. The Title IX Coordinator will review all reports as described in Section 109 and advise as to which policy(ies) may apply.

This Policy applies to all acts of sexual harassment, as defined in Section 106, regardless of the individual's sex, gender, gender expression, and/or sexual orientation.

The Policy is not intended to inhibit or prohibit educational content or discussions that include controversial or sensitive subject matters protected by academic freedom, which is defined in the University's Faculty Handbook.

102. Notice of Non-Discrimination

The University's official non-discrimination statement may be viewed at www.muskingum.edu/non-discrimination-statement. The following individual has been designated to receive and respond reports of discrimination:

Holly Gleason

Director of Equity, Compliance, and Risk Management

Muskingum University

10 College Drive, P.O. Box 1837

New Concord, OH 43762

Montgomery Hall – 16

740-826-8116

titleix@muskingum.edu or discrimination@muskingum.edu

Inquiries may also be directed to the U.S. Department of Education, Office for Civil Rights, 1350 Euclid Avenue, Suite 325, Cleveland, OH 44115-1812, 1-800-877-8339 or OCR.Cleveland@ed.gov

103. Privacy and Confidentiality

When disclosing information about sexual harassment and/or retaliation to a University employee, all community members should be aware of how their information may be shared, as well as the identity of confidential resources under state law. More information about who can receive reports and how they treat information received is available in Section 108 of this Policy.

Except for the confidential resources identified in Section 108, no other employee may promise or maintain confidentiality, though they are expected to maintain privacy.

The University recognizes that privacy is very important. Any action taken in response to a report or formal complaint shall be conducted with as much privacy and discretion as possible, without compromising the thoroughness and fairness of any investigation and resolution process. The University reserves the right to determine which of its employees have a legitimate educational interest² in being informed about reports. Often, the determination is based on a person's individualized needs and the coordination of supportive measures.

Any person involved in a report is expected to treat the process and the parties, witnesses, and administrators involved with respect and to maintain the privacy of the individuals involved.

Generally, the University will not notify parents/guardians of any reported sexual harassment. However, the University may contact parents/guardians where there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

104. Title IX Coordinator

A. Designation

A University employee shall be designated as the Title IX Coordinator at all times. The Director of Equity, Compliance, and Risk Management has been designated as Muskingum's Title IX Coordinator. In the event the Director of Equity, Compliance, and Risk Management is unavailable or unable to fulfill the obligations of Title IX Coordinator, an interim Title IX Coordinator shall be designated by the University until a permanent appointment may be made.

B. Responsibilities

The Title IX Coordinator has primary responsibility for developing, modifying, and implementing written procedures to respond to reports of violations of this Policy in compliance with all applicable federal and state laws, including regulatory guidance. In addition to addressing the matters under this Policy that may result in disparate treatment, the Title IX Coordinator assesses campus climate, evaluates equity in the University's operations, and provides notice to the University if operations result in disparate impact. In assessing for disparate impact, the Title IX Coordinator should utilize a civil rights investigative model to determine facts for presentation to the University President or other University

² See generally Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99.

personnel. The Title IX Coordinator manages the Title IX Team with respect to their Title IX duties.

C. Training and Resources

The University will appropriately train the Title IX Coordinator in all areas over which the Title IX Coordinator has responsibility and will ensure that the Title IX Coordinator possesses comprehensive knowledge in all areas of the Title IX Coordinator's responsibilities. Likewise, the University will ensure that the Title IX Coordinator has adequate resources to effectively carry out those responsibilities.

D. Autonomy, Bias, and Conflict of Interest

The Title IX Coordinator acts with independence and authority, free from bias and conflicts of interest. As such, University officials may not interfere with the Title IX Coordinator's participation in complaint investigations or the Title IX Coordinator's monitoring of the University's efforts to comply with and carry out its responsibilities under Title IX and other applicable law. The Title IX Coordinator will screen any individual selected to serve on the Title IX Team for bias and will provide training to ensure that the Title IX Team is not biased for or against any specific party or for or against complainants and/or respondents, generally.

E. Reports Involving the Title IX Coordinator

Reports that the Title IX Coordinator is biased, has a conflict of interest, or has engaged in sexual harassment or retaliation under this Policy, should be made to the President of the University at 740-826-8115 or president@muskingum.edu.

F. Contact Information. Questions, concerns, or reports about Title IX or this Title IX Policy may be directed to either:

Director of Equity, Compliance, and Risk Management

Holly L. Gleason
Muskingum University
10 College Drive, P.O. Box 1837
Montgomery Hall - 16
New Concord, OH 43762
Telephone: (740) 826-8116
Email: titleix@muskingum.edu

or

U.S. Department of Education Office for Civil Rights

Cleveland Office
1350 Euclid Avenue, Suite 325
Cleveland, OH 44115
Telephone: (216) 522-4970
Facsimile: (216) 522-2573
Email: OCR.Cleveland@ed.gov

G. Deputy Title IX Coordinators.

The Title IX Coordinator may designate one or more Deputy Title IX Coordinators, who shall report to the Title IX Coordinator for Title IX responsibilities, and who

shall have such responsibilities as the University may establish. However, at all times, the Title IX Coordinator shall have the overall responsibility for ensuring that the University meets its Title IX obligations. Contact information for all Deputy Title IX Coordinators is available at: <https://www.muskingum.edu/titleix/what-title-ix>

H. Recordkeeping.

The Title IX Coordinator will maintain the following records for a period of at least seven (7) years:

1. Each sexual harassment report received;
2. Investigatory files, including any determination regarding responsibility, and including any audio or audiovisual recording or transcript required under federal regulation;
3. Any disciplinary sanctions imposed upon the respondent;
4. Any remedies provided to the complainant;
5. Any appeal and the result therefrom;
6. Any informal resolution and the result therefrom;
7. All materials, which will be publicly available on its website, used to train the Title IX Coordinator or any member of the Title IX Team;
8. Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to Muskingum's education program or activity; and
 - c. If no supportive measures were provided to the complainant, documentation showing the reasons why such a response was not clearly unreasonable in light of the known circumstances.

105. Definitions

The Title IX Coordinator will provide adequate information and training regarding the following defined terms.

- A. Advisor** – a person, either chosen by a party or appointed by the Title IX Coordinator, who accompanies the party to meetings related to the resolution process, advises the party on the process, and who must conduct cross-examination for the party if a hearing is held.
- B. Complainant** – an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation under this Policy. An individual will be deemed a “complainant” when either the individual or a third party reports sexual harassment, even if the complainant does not choose to file a formal complaint. In the event that the Title IX Coordinator signs a formal complaint, the Title IX Coordinator does not become a complainant or a party to the grievance process. Any use of “complainant” in this Policy implies that there may be multiple complainants.

- C. Formal complaint** - a written or electronic 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. A Formal Complaint must include the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. Emails or online reporting forms that meet the above requirements will be a formal complaint. The Title IX Coordinator will verify whether a complainant intended to make a formal complaint and, if so, ensure it is filed correctly.
- D. Day** – a business day in which Muskingum is in normal operation. Any day designated as a paid holiday for employees or any day on which the University announces a campus closure is not counted as a “day” for purposes of this Policy.
- E. Education program or activity** – locations, events, or circumstances where the University exercises substantial control over both the respondent and the context in which the sexual harassment or retaliation occurs. This includes any building owned or controlled by the University or a student organization that is officially recognized by the University.
- F. Final determination** – following a finding that conduct did occur, a final determination is a conclusion by the preponderance of the evidence as to whether the conduct did or did not violate this Policy.
- G. Formal grievance process** - the process described in this Policy to respond to formal complaints and in compliance with Title IX regulations (34 CFR §106.45).
- H. Informal report** – any notification of sexual harassment and/or retaliation that is received by the University that is not a formal complaint.
- I. Parties** – includes the complaint and respondent, collectively.
- J. Remedies** – post-finding actions directed to the complainant and/or the community as mechanisms to address safety, prevent reoccurrence, and restore access to Muskingum's educational program.
- K. Reporter** – any individual who is neither a complainant nor respondent and who reports sexual harassment and/or retaliation under this Policy.
- L. Resolution process** – as used in this Policy, “resolution process” includes all available options for resolving an informal report or a formal complaint.
- M. Respondent** – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation under this Policy. Any reference to “respondent” in this Policy, implies that there may be multiple respondents.
- N. Resolution** – the result of an informal or formal grievance process.
- O. Sanction(s)** – any consequence imposed by the University on a respondent who is found to have violated this Policy.
- P. Sexual harassment** – for purposes of this Policy, sexual harassment is a general term, which includes sexual harassment, sexual assault, domestic violence, dating violence, and stalking. More specific information is contained in Section 106 of this Policy.

- Q. Title IX Coordinator** – is defined in Section 104 of this Policy.
- R. Title IX Team** – In addition to the Title IX Coordinator, the Title IX Team includes any University employee who serves as a Deputy Title IX Coordinator, Investigator, Adjudicator, Appellate Officer, or advisor. These individuals will be appointed by the Title IX Coordinator and may be trained to perform more than one role, though not at the same time or with respect to the same report.

106. What is Sexual Harassment?

For purposes of Title IX, the term “sexual harassment” includes several distinct types of behavior; all of which result in unlawful discrimination. Individuals should report any conduct that they believe is sexual harassment. The Title IX Coordinator will review the report to evaluate whether the conduct should be addressed under the University’s Title IX Policy or a different University policy. As appropriate, the definitions below include any such acts that occur through electronic means.

- A. Sexual harassment** is actual or attempted conduct on the basis of sex that satisfies one or more of the following:
- 1. Quid Pro Quo Sexual Harassment**
an employee conditioning the provision of an aid, benefit, or service of the University’s on an individual’s participation in unwelcome sexual conduct.
 - 2. Hostile Environment**
unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Muskingum’s education program or activity.
 - 3. Sexual assault** means “an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”³ “Sex offense” means “any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.”⁴ The term “sexual act” includes the following:
 - a. Rape** - the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim’s age or because of the victim’s temporary or permanent mental or physical incapacity.⁵ This definition excludes statutory rape.
 - b. Sodomy** – oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim’s age or

³ 20 U.S.C. 1092(f)(6)(A)(v).

⁴ Criminal Justice Information Services Division Uniform Crime Reporting Program, 2019.2 National Incident-Based Reporting System User Manual 39-40 (2020) <https://www.fbi.gov/file-repository/ucr/ucr-2019-1-nibrs-user-manual.pdf/view>. All definitions contained in this resource use binary, gendered terminology. Recognizing that Title IX protections apply to individuals who do not identify as a binary gender, definitions have been modified for purposes of this Policy. *Dodds v. U.S. Dept. of Education*, 845 F.3d 217 (6th Cir. Dec.16, 2016).

⁵ *Id.*

because of the victim's temporary or permanent mental or physical incapacity.⁶

- c. **Sexual Assault with an Object** - to use 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 the victim's age or because of the victim's temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.⁷
 - d. **Fondling** - the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or because of the victim's temporary or permanent mental or physical incapacity.⁸
 - e. **Incest** - non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.⁹
 - f. **Statutory rape** - non-forcible sexual intercourse with a person who is under the statutory age of consent.¹⁰
4. **Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.¹¹
5. **Domestic violence** includes 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 the state of Ohio, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Ohio.
6. **Stalking** means engaging in a course of conduct on the basis of sex and directed at a specific person that would cause a reasonable person to

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* See also R.C. 3101.01(A); marriage is prohibited if the individuals are "not nearer of kin than second cousins".

¹⁰ *Id.* See also R.C. 2907.04(A); establishing the 16 years of age as the age of consent.

¹¹ 34 U.S.C. 12291(a)(10)

fear for their safety or the safety of others or suffer substantial emotional distress.¹²

- a. **Course of conduct** means two or more acts in which the respondent directly, indirectly, or through third parties and by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about the complainant or interferes with the complainant's property.
- b. **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the complainant.
- c. **Substantial emotional distress** means significant mental suffering or anguish that may, but is not required to, require medical or other professional treatment or counseling.

B. Consent

Consent to any form of sexual activity must be clear, willing, cohesive, and ongoing for each participant and for each specific sexual act throughout any sexual encounter.

1. Clear

Consent must be expressed affirmatively, either by a verbal statement or through mutually understandable conduct that plainly manifests affirmative consent. Consent cannot be inferred from the absence of a "no." Consent cannot be implied from silence, passivity, or lack of active resistance. Although active resistance will be viewed as a clear demonstration of non-consent, a complainant is not obligated to actively resist.

2. Willing

The person giving consent must give consent to sexual activity on a voluntary basis. Affirmative expressions of consent, if obtained through force, coercion and/or pressure, do not constitute consent.

- a. **Force** is the use or threat of physical violence or intimidation to overcome a person's freedom of will to choose whether to engage in or continue sexual activity.
- b. **Coercion** is the use of express or implied threats of reprisal or other intimidating behavior that puts a person in immediate fear of the consequences to compel that person to engage in or continue sexual activity against their will. Coercion can include a wide range of behaviors, and examples include, but are not limited, threatening to "out" someone based on sexual orientation or gender identity, threatening to reveal private information, or threatening to harm oneself if the other party does not engage in the sexual activity.
- c. **Pressure** is the use of unreasonable statements or actions to compel another person to engage in or continue sexual activity against that person's will. In determining whether a respondent

¹² 34 U.S.C. 12291(a)(8)

used pressure to obtain consent, the totality of the circumstances will be considered using both a subjective and objective standard of reasonableness. For example, repeated requests to engage in sexual activity after a complainant has declined to participate may be considered pressure when the requests are unreasonable from both a subjective and objective standard.

3. On-going

Obtaining or giving consent is not a one-time or static event; instead, consent is a developing process throughout an entire sexual experience. Consent to a specific sexual activity does not imply consent to other forms of sexual activity, nor does past consent imply consent to continued or future sexual activity. The existence of a current or prior dating or sexual relationship does not create an inference of consent. Even in a relationship, there must be mutual consent to engage in sexual activity. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with any other person.

Consent can be withdrawn at **any** time through clear words or mutually understandable actions. Once consent is withdrawn, all sexual activity must stop immediately. After stopping the sexual activity, the parties may have a conversation about continuing the sexual activity; however, any subsequent consent to resume sexual activity must also be clear, voluntary, on-going, and cohesive.

4. Cohesive

A person who is incapacitated cannot consent to sexual activity. A person is incapacitated if they are asleep, unconscious, intermittently conscious, unaware that sexual activity is occurring, or lack the physical and/or mental ability to make informed, rational judgments about whether to engage in sexual activity.

A person may be incapacitated as a result of consuming alcohol, rape drugs, or other drugs. A person may also be incapacitated as a result of a temporary or permanent physical or mental health condition.

Where consumption of alcohol, rape drugs, or other drugs is involved, incapacitation is a state beyond intoxication, inebriation, impairment in judgment, or "drunkenness." Because the impact of alcohol, rape drugs, or other drugs varies from person to person, evaluating whether an individual is incapacitated, and therefore unable to give consent, requires an assessment, based on all of the circumstances, of whether the consumption of alcohol, rape drugs, or other drugs has rendered the individual physically or mentally incapable of:

- making decisions about the potential consequences of sexual contact;
- appraising the nature of one's own conduct;
- communicating consent to sexual contact; and
- communicating unwillingness to engage in sexual contact.

Other factors that may impact a person's level of impairment and may assist in determining whether the person was incapacitated include slurred or incomprehensible speech, unsteady gait, difficulty walking or clumsiness, combativeness, emotional volatility, vomiting, incontinence, poor judgment, or difficulty concentrating. A person's level of impairment may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.

Where it is shown that a respondent engaged in sexual activity with the complainant and either knew or reasonably should have known that the complainant was incapacitated, the respondent will have engaged in sexual assault, as prohibited by this Policy. In assessing whether the respondent reasonably should have known that the complainant was incapacitated, an objective reasonableness standard will be applied.

C. Respondent's Impairment

When a report of sexual harassment is investigated, the respondent's knowledge will be viewed from the perspective of a sober, reasonable person under the same circumstances. Unlike incapacitation, the respondent's impairment does not diminish the responsibility to obtain consent prior to engaging in sexual activity.

D. Retaliation

Taking or attempting adverse action against a person or group because that person or group made a good faith report of sexual harassment and/or retaliation or participated in any part of the resolution process. Retaliation can be committed by any individual or group of individuals, not just the respondent or complainant. Retaliation can take many forms, including threats, intimidation, bullying, harassment, physical harm, emotional abuse, damage to or theft of property, and exclusion from a position, association, or event, among others.

Retaliation against the parties by the University may be inferred if:

1. the University, with the purpose of interfering with any right or privilege secured by Title IX, charges a party with separate policy violations that do not involve sexual harassment but arise out of the same facts as reported sexual harassment;
2. the University fails to maintain as confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, required by law, or as necessary to carry out a Title IX proceeding; or
3. based solely on a finding that the respondent found responsible, the University charges the respondent with making a materially false statement in bad faith as part of the formal grievance process. Any such charges that are made in good faith and based on the totality of the circumstances are not retaliatory.

The exercise of rights protected under the First Amendment does not constitute retaliation. Although the first amendment does not apply at a private institution,

such as Muskingum University, the University does not prevent parties from discussing their experiences. Parties are cautioned that they are to respect the privacy of others and that certain forms of expression may constitute sexual harassment or retaliation.

107. Training, Prevention, and Awareness Programs

A. Training for the University community

The University provides training to students and employees to ensure they understand this Policy and procedures and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

The University is committed to the prevention of sexual harassment through regular and ongoing education and awareness programs. Incoming students and new employees receive primary programming regarding awareness, prevention, and responsive actions as part of their orientation. Returning students and current employees are offered ongoing training and related education. All athletic staff and student athletes are required to take training as required by NCAA policy.

Specifically, the University's sexual violence and prevention program will:

1. Clearly identify the resources, both on and off campus, who can provide resources such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance.
2. Provide all incoming students and new employees with:
 - a statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;
 - the definition of domestic violence, dating violence, sexual assault, and stalking in the State of Ohio;
 - the definition of consent, in reference to sexual activity, in the State of Ohio;
 - safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against another person;
 - information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
 - the information described in 20 U.S.C. 1092(f)(8)(B)(ii) through (vii).
3. Provide all students and employees with ongoing prevention and awareness campaigns, which includes:
 - a statement that the University prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;

- the definition of domestic violence, dating violence, sexual assault, and stalking in the State of Ohio;
- the definition of consent, in reference to sexual activity, in the State of Ohio;
- safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;
- information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and
- the information described in 20 U.S.C. 1092(f)(8)(B) (ii) through (vii).

B. Title IX Team

The Title IX Team will receive annual training regarding issues relating to sexual harassment, investigations, and hearings, including specific instruction on their areas of responsibility and the University's policies and procedures. Materials used to train the Title IX Team will be posted to the University's website at www.muskingum.edu/titleix.

C. Employees

In addition to the training specified in Section 107(A), all employees will be trained regarding their obligations to report sexual harassment to the Title IX Coordinator.

Employees who wish to provide instruction on sexual harassment should consult the Title IX Coordinator regarding any training or educational opportunities either sought by or offered to any member of the University community. This does not include areas of instruction covered by faculty as part of their curriculum.

108. Reporting Sexual Harassment and/or Retaliation

A. Who Should Report?

Any individual may make a report under the Policy, and all individuals are encouraged to do so.

B. When Should the Report be Made?

Regardless of when or where the sexual harassment and/or retaliation occurred, individuals are encouraged to report sexual harassment and/or retaliation. Prompt reporting ensures that complainants can be connected with medical providers, counselors, criminal justice experts, and other campus resources to provide the support they need most. Prompt reporting also maximizes the University's ability to respond promptly and equitably.

C. Emergency/Urgent Matters

Individual safety is the University's first priority. Individuals are encouraged to report promptly to local law enforcement and/or seek medical care, even if they are not ready to make a report to the University. Receiving medical care and

reporting to law enforcement ensures that immediate medical and safety concerns are addressed, evidence is preserved, and investigations are not delayed.

If the University is aware of the incident, the University will help the individual get to a safe place and will provide transportation to a local hospital, coordination with law enforcement, and information about the University's resources and complaint processes.

More information about obtaining local medical care and law enforcement options is available at www.muskingum.edu/titleix.

D. Bystander Intervention and Amnesty

The University expects all of its community members to take reasonable and prudent actions to prevent or stop an act of sexual harassment. Taking action does not mean putting yourself in harm's way, but may include direct intervention, calling law enforcement, seeking assistance from a person in authority, or creating a distraction. Community members who choose to exercise this positive moral obligation will be supported by the University.

The University encourages reporting incidents of sexual harassment and/or retaliation and seeks to remove barriers to reporting. Students who have been drinking or using drugs at the time of the incident may be hesitant to report because of potential consequences under the Code of Student Conduct. Under the University's amnesty policy, any student who reports sexual harassment and/or retaliation, either as a complainant or a reporter, will not be subject to disciplinary action by the University for their own consumption of alcohol or drugs at or near the time of the incident, provided that any such consumption did not and does not place the health or safety of any person at risk. However, the University may utilize an educational process regarding alcohol or other drugs. The amnesty policy applies only to the University's Code of Student Conduct process.

E. Where/How to Report

Individuals should consider to whom and how they wish to make a report of sexual harassment and/or retaliation, as each of the following groups of people have different obligations upon receiving a report.

1. Title IX Coordinator/Deputy Title IX Coordinators

All members of the University community are encouraged to report directly to the Title IX Coordinator and are encouraged to bring a support person if they feel more comfortable doing so.

Reports made to the Title IX Coordinator or a Deputy Title IX Coordinator may be made at any time (including during non-business hours) by using the telephone number, email address, or mailing address, listed for the Title IX Coordinator (See Section 104).

Individuals who report information to the Title IX Coordinator or a Deputy Title IX Coordinator will receive assistance from that person. Each Deputy Title IX Coordinator will refer the report to the Title IX Coordinator as part of the University's commitment to consistent, sensitive, trauma-informed, and Title IX-compliant responses.

2. **Online Reporting Form (Anonymous)**

Individuals may submit a written report using the **Title IX Reporting Form** and have the option to remain anonymous. Anonymous reports may limit the University's ability to adequately respond to the report. Written reports should include as much information as possible. To the extent possible, the Title IX Coordinator will follow-up with all submitted reports.

3. **Law Enforcement**

Promptly reporting incidents of sexual harassment and/or retaliation may help protect others from future victimization, apprehend the alleged perpetrator, and maintain options regarding criminal prosecution. Members of the University community are encouraged to pursue criminal action for incidents of sexual harassment and/or retaliation when the incident may also constitute a crime under the laws of the jurisdiction where the incident occurred. In addition, the Ohio Revised Code (R.C. 2921.22) requires anyone with knowledge that a felony is being or has been committed to report the information to law enforcement authorities.

Reports of incidents should be made to the law enforcement agency with jurisdiction where the incident occurred. If the incident occurred off-campus, the University's Police Department ("University Police") and/or the Title IX Coordinator can help identify the appropriate law enforcement agency. University Police will work closely with other law enforcement agencies; for incidents that occur on campus, University Police works closely with the Muskingum County Sheriff's Office.

Reports may be made to University Police 24 hours per day, seven days per week.

University Police

Muskingum University
104 Montgomery Boulevard
New Concord, OH 43762
(740) 826-8155
(740) 826-6110 (fax)

Under Ohio law, the reporting individual may request that their identity be kept confidential in law enforcement records; however, because University Police are employees of the University, information about the report, including personally identifiable information, will be shared with the Title IX Coordinator. **Filing a police report does not obligate the complainant or reporter to participate in criminal or campus proceedings.**

In the event the University enters into a memorandum of understanding ("MOU") with any local law enforcement agency ("LLEA") to address issues arising in connection with the investigation of matters arising under the Policy, the MOU must require the LLEA to comply with the Family Educational Right to Privacy Act ("FERPA"). Further, the MOU must permit the University to meet its obligations under Title IX and the Policy.

4. University employees

Except for the confidential resources identified in Section 108(E)(5) of this Policy, **all faculty, coaches, staff, administrators, and resident assistants have a responsibility for student welfare and are required to promptly report any acts of sexual harassment and/or retaliation of which they become aware to the Title IX Coordinator.**

Information shared with an employee is considered private, but not confidential. Therefore, all known information, including the names of the parties and any details of the alleged sexual harassment and/or retaliation must be communicated promptly to the Title IX Coordinator by the employee.

Before an individual reveals information that they may wish to keep confidential, an employee shall make an effort to ensure that the individual understands:

- a.** The employee is required to report all information shared with the Title IX Coordinator.
- b.** If the individual wishes to maintain confidentiality, they should talk with one of the confidential resources identified in Section 108(E)(5) of this Policy.

Questions about employee reporting responsibilities or this Title IX Policy should be directed to the University's Title IX Coordinator.

Failure to inform the University's Title IX Coordinator of any reports or failure to do so in a prompt manner may result in disciplinary action up to and including termination.

5. Confidential Resources

Students who do not want details of their report to be shared with the Title IX Coordinator may contact the on-campus mental health counselors, campus health service providers, or the University Chaplain. For employees of the University, the Employee Assistance Program serves as a confidential resource.

Confidential resources are subject to separate, professional confidentiality obligations that generally prohibit release of information, without an individual's express consent, unless otherwise required by law.

If a person discloses sexual harassment to a confidential resource, that confidential resource will not disclose to University officials any identifying information about the person subject to the misconduct or the person alleged to have committed the misconduct. The confidential resource is encouraged, but not required, to provide the Title IX Coordinator with limited non-identifying information about the incident to permit the University to determine if the incident should be reported among the crime statistics the University is required to report under federal or state laws.

Ordinarily, reports made to a University confidential resource will not be shared with law enforcement or any state agency. However, there are limited exceptions to a confidential resource's legal ability to keep a report of sexual harassment confidential. For example, Ohio law requires medical personnel and clergy to report abuse of minors (under the age of 18) (R.C. 2151.011, et seq.; 2921.14; 2151.421). Further, if someone discloses to a confidential resource information suggesting that they or someone else presents an imminent threat or danger to harm themselves or others, confidentiality cannot be maintained.

Additionally, the Ohio Revised Code (R.C. 2921.22) requires anyone with knowledge that a felony has been or is being committed to report the information to law enforcement authorities. Certain medical personnel, counsellors, clergy, and attorneys are exempt from the requirement to make such reports (R.C. 2921.22(G)), but typically, the hospital will report to the state and the police in the town where a rape or sexual assault occurred any data or information concerning cases of rape where the survivor seeks medical treatment.

All contact information for confidential resources is available at www.muskingum.edu/titleix.

6. Off-Campus Resources and Support

Off-campus organizations can provide resources in response to a report of sexual harassment, including counseling, crisis intervention, and medical services. A list of off-campus resources is included on the University's website. In most instances, off-campus resources may not have an obligation to report any information about the report to the Title IX Coordinator.

109. University Review of a Report of Sexual Harassment and/or Retaliation

A. Promptness

The University will act promptly once it has received an informal report or a formal complaint. Formal complaints generally take longer to resolve than informal reports and will be resolved within a reasonable time, though the University uses best efforts to resolve formal complaints within 90 days. There are exceptions and extenuating circumstances that may extend the time it takes to complete the formal grievance process. The University will avoid all undue delays within its control and will provide written notice to the parties of any delay, including the cause of the delay and how much additional time may be needed as a result of the delay.

When law enforcement is involved, the University's cooperation with law enforcement agencies may require the University to temporarily suspend its own investigation while the law enforcement agency gathers evidence and initiates charges. The University will promptly resume its own investigation as soon as it is notified by the local law enforcement agency that it may proceed. The University's obligation to notify the respondent, in writing, of delay may be suspended if an involved law enforcement agency directs the University to keep information about the criminal investigation confidential.

When a report is received near or after the end of an academic term, the University will make reasonable attempts to conclude the resolution process immediately after the end of the term or during the summer, as needed. Time may be extended in the discretion of the Title IX Coordinator, who will consider the totality of the circumstances, including the parties' wishes, the living arrangements of both parties and witnesses, the parties' ability to communicate in a private manner while away from the University, and the parties' ability to communicate with advisors in a meaningful manner.

B. Informal Reports

Upon receipt of an informal report alleging sexual harassment and/or retaliation, the Title IX Coordinator will contact the complainant promptly, unless the details contained in an anonymous report make it impossible to identify the complainant.

When meeting with the complainant, the Title IX Coordinator will explain that the respondent will not receive notice that an informal report has been received. The Title IX Coordinator will discuss the availability of supportive measures, with or without the filing of a formal complaint, and consider the complainant's wishes with respect to them. Supportive measures are discussed more fully in Section 117 of this Policy.

The Title IX Coordinator will explain the process for filing a formal complaint and provide the appropriate documentation if the complainant elects to initiate the formal grievance process. Before converting the initial report to a formal complaint, the Title IX Coordinator may gather facts sufficient to determine if the University has jurisdiction, as described in Section 109, to proceed under the formal grievance process. If the University would not have jurisdiction to proceed under this Policy, the Title IX Coordinator may discuss with the complainant and evaluate whether any other policies may apply.

The Title IX Coordinator will also explain that a complainant may seek resolution by receiving supportive measures, by utilizing the University's formal grievance process, by filing a civil lawsuit, and/or by pursuing criminal action.

The formal grievance process may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. Likewise, the complainant may choose to take no action on the informal report. The complainant may convert their informal report to a formal complaint at a later time.

C. Formal Complaints

Formal complaints may be filed by the complainant or signed by the Title IX Coordinator. Formal complaints signed by the Title IX Coordinator are explained in Section 109(C)(2) of this Policy.

Upon receipt of a formal complaint filed by the complainant, the Title IX Coordinator will contact the complainant promptly and discuss the availability of supportive measures, with or without the filing of a formal complaint, and consider the complainant's wishes with respect to them. Supportive measures are discussed more fully in Section 117 of this Policy.

The Title IX Coordinator will gather any additional facts necessary to determine whether this Policy or any other University policy may apply.

The Title IX Coordinator will also explain that the respondent will receive notice that a formal complaint has been received.

1. Jurisdiction

Title IX limits the people, places, and timeframe in which an institution of higher education may utilize the formal grievance process. The Title IX Coordinator may need to conduct a limited inquiry to determine if the University has jurisdiction to proceed with the formal grievance process.

- a.** The facts, as reported, must state sufficient evidence to support a claim of sexual harassment and/or retaliation. If, through the course of investigation, it is determined that the facts are no longer sufficient to support a claim under this Policy, the formal complaint will be dismissed.
- b.** This policy applies to the University's employment or education programs and activities (defined in Section 105). This includes sexual harassment and/or retaliation that occurs through electronic means.
- c.** The respondent must be a member of the University's community. The University community includes, without limitation, faculty, staff, administrators, students, organizations, guests, contractors, vendors, and visitors.

A person does not become a "student" until the person has attended the first class, either in person or online. A person does not become an "employee," which includes faculty, staff, and administrators, until the individual has completed all required pre-employment paperwork and has started to perform work on behalf of the University.

If the respondent is unknown to the complainant or is not a member of the University's community, the Title IX Coordinator will assist the complainant to identify appropriate campus and local resources.

Should a respondent separate from the University as either a student or employee while the formal grievance process is pending, the University will stop the process and dismiss the formal complaint. The University will provide, or continue to provide, supportive measures to the complainant. Student respondents who separate from the University during the pendency of the formal grievance process will be denied admission should they reapply, and employees who separate from employment will not be eligible for rehiring. If asked, the Human Resources Office will inform potential employers that the employee is not eligible for rehire.

If the respondent is a graduating student and the formal grievance process is not completed before graduation, the Title IX Coordinator may place a hold on graduation and/or release of official transcripts until the matter is fully resolved, including any appeal.

- d. The complainant must be participating or attempting to participate in the University's education program or activity.
- e. The sexual harassment and/or retaliation must have occurred within the United States and either on campus, on property owned or controlled by the University, at a University-sponsored event, and/or on property owned or controlled by the University's recognized student organizations.

Formal complaints that do not meet all of the following jurisdictional requirements will be dismissed. In the event that a formal complaint is dismissed due to lack of jurisdiction, the University shall not initiate the formal grievance process but will work with the complainant to determine if other policies may apply and to provide supportive measures. In the event that the Title IX Coordinator dismisses any formal complaint, the University will send prompt written notice of the dismissal and the rationale for doing so to both parties simultaneously.

2. Formal complaint signed by the Title IX Coordinator

The Title IX Coordinator may sign a formal complaint against a respondent after considering all of the following:

- a. whether the University has jurisdiction to proceed with the formal grievance process under Section 109(C)(1) of this Policy.
- b. whether a compelling risk to health and/or safety requires the University to protect the community through the formal grievance process. This factor may be determined based on either of the following:
 - i. the results of a violence risk assessment as described in Section 109(C)(5) of this Policy.
 - ii. sufficient evidence to indicate a pattern of sexual harassment, predatory conduct, threats, abuse of minors, use of weapons, and/or use of violence.
- c. Whether the complainant has requested anonymity or to not participate and the effect of that request on the University's ability to pursue the formal grievance process fairly and effectively. Although complainants may request to remain anonymous or to not participate in the formal grievance process, the Title IX Coordinator has a duty to ensure the safety of the campus and to comply with federal and state law.

3. Notice to Respondent

The Title IX Coordinator will provide notice to the respondent of a formal complaint when the Title IX Coordinator determines that the University has jurisdiction and will move forward with the formal grievance process, or if the respondent's participation is required to make a determination regarding jurisdiction. The Title IX Coordinator will contact the respondent by email, text message, or phone and advise the respondent that a formal complaint has been made, the nature of the allegations, and the next steps

in the process. The Title IX Coordinator will inform the respondent of their right to an advisor and will discuss supportive measures and retaliation with the respondent.

4. Dismissal or Withdrawal of Formal Complaint

At any time, the complainant may request the withdrawal of a formal complaint. In that situation, the formal grievance process will stop immediately, with appropriate notice provided to the respondent. A complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

In the event that a formal complaint is withdrawn or dismissed, the Title IX Coordinator will discuss with the complainant whether any other policy applies and will offer supportive measures. The Title IX Coordinator may also offer referrals to any outside resources that may assist the complainant.

If the dismissal or withdrawal occurs after the respondent has received notice of the report, the Title IX Coordinator will notify the respondent of the dismissal or withdrawal. Appeal rights as to dismissal are described in Section 116 of this Policy.

5. Violence Risk Assessment

In assessing reports, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted. The results of a VRA may be considered as a factor in making the following determinations:

- Emergency removal of a respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able complainant;
- Proper posturing of the investigation as an incident, pattern, and/or climate issue;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to communicate with a transfer university about a respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning /no-contact order, and/or persona-non-grata order is needed.

Threat assessment is the process of evaluating the actionability of violence by one person against another person or group following

the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Assessment and Intervention Team (BAIT) team members.

Where a VRA is required by the Title IX Coordinator, a respondent who refuses to cooperate may be charged with failure to comply under the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

6. Emergency Removal

In the event that there is an immediate threat to the physical health or safety of any individual, the Title IX Coordinator, in consultation with relevant campus administrators, may remove a respondent from the University's education program and activities immediately. The Title IX Coordinator will use the least restrictive emergency actions possible to remove the threat. If the Title IX Coordinator is unavailable, a Student Affairs official, human resources manager, and/or University police officer may provide the notice of removal to the respondent on behalf of the Title IX Coordinator.

The Title IX Coordinator will schedule an administrative meeting with the respondent within 3 days of the emergency removal to determine if the removal should be continued, modified, or reversed. This is not a meeting to determine the merits of the informal report or formal complaint. Prior to the meeting, the Title IX Coordinator will conduct an individualized safety and risk analysis, which may include consideration of the facts contained in the informal report or formal complaint, whether other similar or severe allegations have been made against the respondent, and consultation with the BAIT team. The Title IX Coordinator will provide to the respondent a written notice explaining the rationale for the emergency removal and may require the respondent participate in a VRA prior to the meeting.

At the meeting, the respondent may bring an advisor of their choosing. The Title IX Coordinator will consider the results of any VRA that has been conducted in the interim, as well as any information the respondent may provide. At the conclusion of the meeting, the Title IX Coordinator will either extend, modify, or reverse the removal.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined

by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to take a leave of absence while still participating in the formal grievance process, allowing a student to withdraw or take grades of incomplete without financial penalty, and/or suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. Alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the respondent. The Title IX Coordinator will select the appropriate restrictions and establish the duration of time for which they apply.

Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination. There is no appeal process for emergency removals.

D. Notification to Law Enforcement

In the event that an informal report or formal complaint alleges sexual assault or another act that would be considered a felony offense under Ohio law, the Title IX Coordinator will notify University Police of the report. Local law enforcement officials, usually from the Muskingum County Sheriff's Office, will meet with the complainant to provide information about sexual assault exams and the criminal justice process. ***Meeting with law enforcement does not create an obligation to pursue criminal action***; it is an opportunity to hear about additional options available to a complainant. If the complainant decides to pursue law enforcement action, the University will cooperate with law enforcement agencies to the extent allowed by law.

E. Timely Warnings

Individuals who report acts of sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Timely warnings will never include a complainant's name or identifying information but will provide sufficient information for community members to make safety decisions in light of the potential danger.

F. Counterclaims

A respondent may file a counter claim if it is made in good faith. Any formal counterclaim filed by a respondent will be reviewed by the Title IX Coordinator, using the same process for review of a formal complaint. Any counterclaim that is made with retaliatory intent will not be permitted and will result in a charge for retaliation.

Counterclaims determined to have been reported in good faith will be processed using the same procedures established in this Policy. The Title IX Coordinator will determine whether the counterclaim should be investigated and/or resolved at the same time as the underlying formal complaint or subsequent thereto.

G. False Allegations

The University strongly encourages the good faith reporting of sexual harassment. Good faith reporting occurs when a reporter or complainant, or a respondent making a counterclaim, has a factual basis to support the report. Intentionally making a false and/or malicious accusation under this Policy, through an informal report, formal complaint, or counterclaim, is a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a finding of responsibility.

110. Advisors

The parties may each have an advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their advisor, as long as the advisor is eligible and available.¹³

A. Selecting an Advisor

1. Initial Selection

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose advisors from inside or outside of the University community.

The Title IX Coordinator will also offer to assign a trained advisor for any party if the party so chooses. If the parties choose an advisor from the pool available from the University, the advisor will be trained by the University and be familiar with the University's resolution process.

If the parties choose an advisor from outside the pool of those identified by the University, the advisor may not have been trained by the University and may not be familiar with University policies and procedures. Several resources are identified on the University's website if a party needs assistance finding an advisor from outside of the University community.

Prior to a hearing, the parties may choose not to have an advisor. However, the parties must each have an advisor aligned with their interests for any hearing conducted under the formal grievance process.

The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

2. Changing Advisors

¹³ "Available" means the party cannot insist on an advisor who simply doesn't have inclination, time, or availability. Also, the advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Nor may the advisor be a witness.

A party may elect to change advisors during the process and is not obligated to use the same advisor throughout. Any change in advisor must be communicated to the Title IX Coordinator and/or the investigator as early as practicable.

The University will require that the party sign a new consent form, as stated in Section 110(D)(2). Parties are expected to inform the Title IX Coordinator of the identity of their hearing advisor at least two (2) business days before any meeting, interview, or hearing.

B. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including any meeting with the Title IX Coordinator and interviews. advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. advisors may not speak for the party and may not provide evidence on the party's behalf.

C. Advisors in Hearings

Each party must be available to answer questions posed by the other party's advisor. Unless mutually agreed upon, as stated in Section 113(B) of this Policy, witnesses must be available to answer questions posed by the parties' advisors. The parties are not permitted to directly question each other or any witness. If a party does not have an advisor for a hearing, the University will appoint an advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own advisor, but they may not proceed without an advisor. If the party's advisor will not conduct questioning, the University will appoint an advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself.

D. University Expectations of an Advisor

1. Advisor Rights and Obligations

The Title IX Coordinator will send correspondence to the parties' advisors informing them of their rights and obligations under this Policy. Any advisor may request a meeting with the Title IX Coordinator in advance of any interview or meeting to clarify or understand the University's Policy.

2. Correspondence to Parties

After communicating with the advisor as stated in Section 110(D)(1), all other correspondence and notices will be communicated directly with the parties. The University suggests, but does not require, that parties forward the University's communications to their advisors. In the alternative, a party may sign a consent form authorizing the University to share information directly with the advisor. Once the consent form is signed, the advisor will receive a copy of all correspondence sent to the party.

3. Privacy of Records

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University will restrict the role of any advisor who does not abide by the University's privacy expectations.

4. Scheduling

The Title IX Coordinator will attempt to accommodate all schedules; however, advisors are expected to adjust their schedule in order to attend any meetings, interviews, or hearings. The Title IX Coordinator will attempt to accommodate an advisor's timely request to reschedule, so long as rescheduling does not cause an unreasonable delay. In the alternative, the Title IX Coordinator has discretion to allow attendance by phone, video conferencing, or other similar technology as may be convenient and available.

5. Conduct

- a.** All advisors, whether attorneys or not, are required to abide by the same rules.
- b.** Advisors may not disrupt meetings, interviews, or hearings to advise the parties. Advisors may consult with their advisees in writing or by asking for a brief recess.
- c.** Advisors may not address University officials in a meeting or interview unless invited to participate.
- d.** The advisor may not make a presentation or represent their advisee during any meeting, interview, or hearing and may not speak on behalf of the advisee to the investigator(s) or Hearing Officer, except to conduct questioning during a hearing.
- e.** Advisors who do not conduct themselves in accordance with this Policy will be given one warning. Continued disruption or non-compliance may result in the conclusion of the meeting or interview, removal of the advisor, or other appropriate measures as identified by the Title IX Coordinator or Investigator to stop the conduct. The Title IX Coordinator will determine how to address the advisor's non-compliance and future role.

111. Negotiated Resolution

The Title IX regulations adopted by the U.S. Department of Education discuss the concept of informal resolution. To avoid confusion in terminology, the University refers to "informal resolution" as "negotiated resolution." The University recognizes that parties may find value in resolving formal complaints through mutual agreement. Negotiated resolution options are designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the complainant and the safety and welfare of the campus community.

Any party who wishes to engage in negotiated resolution should contact the Title IX Coordinator for review and approval of the request. In assessing whether Informal

Resolution is appropriate, the Title IX Coordinator may look to the following factors:

- The parties' amenability to negotiated resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of any individual selected to facilitate mediation or restorative justice efforts;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties; and
- Adequate resources to invest in negotiating a resolution (i.e., time, staff, etc.)

In the event the Title IX Coordinator believes that negotiated resolution may be appropriate and prior to implementing negotiated resolution, the University will provide the parties with written notice of the reported sexual harassment and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will provide information about the negotiated resolution process and obtain voluntary, written confirmation that all parties wish to resolve the matter through negotiated resolution before proceeding. The University will not threaten, coerce, or pressure any party into participating in a negotiated resolution.

Negotiated resolution may occur before, during, or after an investigation, and the parties are not required to pursue a negotiated resolution before pursuing a hearing. Any party participating in the negotiated resolution process can withdraw their participation at any time and either begin or resume the investigation and/or hearing process. Likewise, the University may determine that the report should be withdrawn from the negotiated resolution process and referred for investigation or hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator or designee for investigation.

Statements made during the negotiated resolution process may not be submitted to or considered in an investigation or by the hearing board.

Some options for negotiated resolution may include any of the following, either alone or combined:

- mediation;
- restorative justice;
- respondent may accept responsibility;
- respondent may admit the facts but deny responsibility;
- continuing or modifying supportive measures;

- conducting targeted or broad-based educational programming or training for relevant individuals or groups;
- community service options;
- permanent no-contact orders (the University only issues mutual no-contact orders);
- providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred;
- communication with the respondent by the Title IX Coordinator and/or a Student Affairs official;
- modifying or ceasing participation in certain campus activities; and/or
- any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy.

Negotiated resolution will be concluded within a reasonable time after receipt of the report. If the parties reach a negotiated resolution, the Title IX Coordinator will document all terms of the agreement, obtain signatures from both parties, and maintain records of any resolution that is reached.

Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Because the outcomes of negotiated resolutions have been mutually developed and agreed upon, an appeal of the process and its resolution are not appealable.

112. Investigation

A. Selection of Investigators

The Title IX Coordinator will determine the most effective method of investigating a report of a violation of the Policy. The Title IX Coordinator may conduct investigations or designate investigators of the Title IX Coordinator's choosing to conduct a prompt, thorough, fair, and impartial investigation.

Any investigator used by the University, whether internal or external, will be impartial and free from any conflict of interest. Investigators must be able to produce evidence of annual training specific to investigating sexual harassment.

Investigators do not function as advocates or support persons for complainants or respondents. Investigators may, however, identify issues of concern and refer the parties to the Title IX Coordinator for assistance in obtaining resources.

B. Investigative Process

The Title IX Coordinator will send notice to both the complainant and respondent that an investigation has been initiated. The notice will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),

- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an advisor of their choosing and suggestions for ways to identify an advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Complainants and respondents may choose to participate or may decline to participate in the process. However, even if a complainant or respondent declines to participate, the University may continue to investigate the matter, proceed to a hearing, and issue corrective action and/or sanctions as appropriate and based on available information.

The University will afford both the complainant and respondent a full and fair opportunity to be heard, including the opportunity to identify witnesses and other evidence. The parties may choose to provide a written statement, and other supporting materials regarding the matter under review. However, it is the responsibility of the University, not the complainant or respondent, to gather the relevant evidence to the extent reasonably available. The investigator will provide timely updates to the complainant, respondent, and Title IX Coordinator, as appropriate or requested, about the timing and status of the investigation.

In conducting an investigation, the investigator may meet separately with the complainant (if participating), respondent, reporter (if applicable), and other pertinent witnesses. All parties and witnesses are expected to provide truthful information in any proceeding under this Policy.

The Title IX Coordinator, may amend the potential charges as part of the investigative process if additional information is disclosed that would suggest the existence of additional or more serious policy violations. At the conclusion of the process, the complainant and respondent are entitled to equal and timely access to all exculpatory and inculpatory information that was considered in the investigation.

The investigator and the Title IX Coordinator have discretion to consolidate multiple reports against a respondent into one investigation and resolution if the evidence related to each incident would be relevant in reaching a determination on the other incident.

C. Role and Participation of Witnesses in the Investigation

Witnesses, as distinguished from the parties, who are students or employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant disciplinary action. Witnesses from outside the University community are encouraged to cooperate with University investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) or Title IX Coordinator determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews. The interviewer has discretion to record any interview conducted and will advise the party or witness of the interviewer's intent to record. The recording shall be used to aid the interviewer in the preparation of the initial and final investigative reports. Any interview that is recorded by the interviewer will be destroyed following completion of the Final Investigation Report.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

D. Evidence

Any and all evidence received by the investigator will be shared with the other party, except as noted below.

1. Relevant Evidence

The investigator will only consider relevant evidence, which is evidence that makes a consequential fact more likely or less likely. The investigator will determine the relevance of any proffered information. In general, the investigator will consider direct observations and reasonable inferences from facts, but not statements of personal opinion or statements as to any party's general reputation for any character trait, including honesty or chastity.

Witnesses must have observed the acts in question or have information relevant to the incident; they cannot participate solely to speak about an individual's character. The investigator may also consider physical evidence, communications between the parties, and other information either offered by a party or discovered independently by the investigator.

2. Medical and/or Counseling Records

In general, a party's medical and counseling records are confidential and not accessible to the investigator unless a party voluntarily chooses to share those records with the investigator. Any records shared with the investigator will become part of the investigative file and will be available for review by either party. The investigator may consult an expert to evaluate the relevance of any medical or counseling records.

3. Evidence of Prior Sexual History or Pattern Evidence

The complainant or respondent's character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following circumstances:

- a. Where there was a prior or ongoing relationship between the complainant and respondent and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.
- b. Where there is evidence of a pattern or conduct similar in nature by the respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant to the investigator or Hearing Board's determination of responsibility and/or assignment of a sanction. The determination of relevance will be based on an assessment of whether the prior or subsequent incident was substantially similar to the present allegation or the information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.
- c. In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed probative by the investigator.

If either party wishes to bring forth information concerning the other party's sexual history, other acts, or pattern evidence in the hearing, such information must be brought to the attention of the investigator during the investigation. Where the investigator intends to consider evidence of prior sexual history as part of the investigation, the investigator will provide written notice to the parties and allow them the opportunity to challenge its inclusion. The investigator may consult with the Title IX Coordinator in

making the determination of relevance. Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation, or conjecture.

E. Preliminary Investigation Report

Once an investigation is complete, the investigator will prepare a written Preliminary Investigation Report, which will include a summary of the facts collected through the investigation, but no findings. The Preliminary Investigation Report shall include a summary of all exculpatory and inculpatory evidence, including summaries of all interviews and refer to or attach all information reviewed by the investigator, including, but not limited to, photographs, physical and medical evidence (as available), and communications between the parties.

The investigator shall submit the Preliminary Investigation Report to the Title IX Coordinator for review. The Title IX Coordinator may suggest additional clarification, the gathering of additional evidence, or other changes as appropriate.

After consultation with the Title IX Coordinator, the investigator will serve the Preliminary Investigation Report upon the complainant and respondent using the Notice provisions established in Section 118 of this Policy.

Both parties will have equal and timely access to review all information gathered in the investigation. Witness statements may be reviewed, but neither party will have direct access to witnesses for further discussion. Both the complainant and respondent will have the opportunity to submit comments, feedback, any proposed corrections, and any additional information, including the identity of additional witnesses or evidence for the investigator to pursue. Comments must be received within ten (10) days after the date of service. Any party who does not comment during the ten (10) day review period will be deemed to have accepted the Preliminary Investigation Report.

F. Final Investigation Report

Following the receipt of any proposed corrections, or after the ten (10) day review period has lapsed without comment, the investigator will conduct any additional investigation as appropriate, consult with the Title IX Coordinator, and prepare a written Final Investigation Report that includes summaries of all interviews and refers to or attaches all other evidence collected by the investigator, including, but not limited to, photographs, physical and medical evidence (as available), and communications between the parties.

The Title IX Coordinator will review the Final Investigation Report and send copies of it to the complainant, respondent, and Hearing Board, allowing sufficient time for a thorough review.

Where the Title IX Coordinator serves as the investigator, the Vice President for Finance and Operations will assume responsibility for the oversight of the investigation, including review of the preliminary and final investigation reports.

113. Hearings

A. Hearing Board

The composition of the panel shall be determined by the Title IX Coordinator. Each Hearing Board will be comprised of three persons drawn from a pool of trained individuals from within the University community and may consist of faculty, staff, and/or external individuals. The Title IX Coordinator will designate one of the members as the Chairperson of the Hearing Board. The Title IX Coordinator or designee will be available prior to and during the hearing to provide guidance to the Hearing Board on the University's policy. At no time will the Title IX Coordinator offer an opinion as to the facts or potential outcome. No University students shall serve on a Hearing Board.

The complainant and/or respondent may submit a written request to the Title IX Coordinator asking that a member of the Hearing Board be removed if the complainant or respondent believes there are reasonable, articulable grounds of actual bias, conflict of interest, or any other inability to be fair and impartial. Absent extenuating circumstances, the written request must be received by the Title IX Coordinator within three calendar (3) days following the date of service of the Notice of Hearing and must identify the grounds for the requested removal. The Title IX Coordinator has discretion to determine any such request.

If the Title IX Coordinator removes a member of the Hearing Board in response to a request from the complainant or respondent, the Title IX Coordinator will issue an updated Notice of Hearing identifying the new board member(s). The complainant and the respondent will have the opportunity to review the request in accordance with this section, and the process will repeat until a three-person panel is formed.

The parties may waive the opportunity for hearing before a three-person board and opt for a single Hearing Officer, who will be selected by the Title IX Coordinator.

Any person selected as a Hearing Officer will have had no prior involvement with the investigation. Individuals who have served as the Title IX Coordinator/Deputy Title IX Coordinator or Investigator in a specific report may not be designated as a Hearing Officer. Likewise, no advisor may serve as a Hearing Officer regarding the same report.

B. Pre-Hearing Process

The Title IX Coordinator will serve a written Notice of Hearing to the complainant, respondent, and Hearing Board, including the Final Investigation Report using the notification process described in Section 118 of this Policy. The Notice of Hearing will identify the date, time, and place of the hearing and identify the persons serving on the Hearing Board. The Notice of Hearing will be sent at least ten (10) calendar days prior to the hearing date.

As soon as possible after issuing the Notice of Hearing, the Title IX Coordinator will arrange separate meetings for each party and their advisors, as well as the Hearing Board, to discuss the hearing process and answer any procedural questions.

The Title IX Coordinator will attempt to accommodate all schedules when scheduling the hearing. However, parties, advisors, and Hearing Board members are expected to prioritize the hearing and reschedule other commitments if possible. Requests to reschedule a hearing must be made in writing and must be

made for academic, health-related, or other good cause, as determined by the Title IX Coordinator. The Title IX Coordinator has discretion to grant or deny such request.

Unless a witness has been excused from the hearing as stated herein, the Title IX Coordinator will notify witnesses of the hearing date and time and require their attendance. Witnesses who are required to attend but do not will be subject to disciplinary action. The Investigator will also be required to attend.

The Hearing Board may also convene a pre-hearing meeting(s) with the parties and/or their advisors for the purpose of sharing questions or topics that should be reviewed prior to the hearing. This will allow the Hearing Board to rule on contested issues ahead of time and avoid improper evidentiary introduction in the hearing, and to provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Board must document and share with each party the rationale for their decisions.

The Hearing Board, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present, if their testimony can be adequately summarized by the Investigator in the investigation report or during the hearing.

The pre-hearing meeting will also allow the Hearing Board to consider any issues regarding relevancy of any evidence included in the Final Investigation Report.

The Hearing Board may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Title IX Coordinator will attend each pre-hearing meeting, and the Hearing Board may consult with the University's legal counsel as needed. Pre-hearing meetings will not be recorded.

In hearings involving more than one respondent or in which two (2) or more complainants have accused the same respondent of substantially similar conduct, the University will process the allegations jointly. If there is a compelling reason to do so, the Title IX Coordinator may permit the investigation and/or hearing to be conducted separately.

C. The Hearing

1. Recording Hearings

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Board, the parties, their advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Except for the University's recording of the hearing, no other person may record audio and/or video of any portion of any meeting, interview, hearing, or other interaction regarding a pending Title IX report. The Title IX Coordinator may require that all electronic devices be left in a secure location outside of the hearing room.

2. Participants

Participants at the hearing will include the Hearing Board, the investigator(s), the Title IX Coordinator, the parties (or three (3) organizational representatives when an organization is the respondent), advisors to the parties, any called witnesses, anyone selected to facilitate logistical or operational matters pertaining to the hearing, and anyone providing authorized accommodations or assistive services.

Both parties have the opportunity to appear in person before the Hearing Board on the date and time designated on the Hearing Notice. The complainant and respondent may, but are not required to be, present at the hearing at the same time. However, they will have the opportunity to hear the other party's statement by audio or video means. If either party does not attend the hearing, the hearing will proceed in their absence.

3. Introductions and Explanation of Procedure

The Hearing Board will explain the procedures and introduce the participants. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the Title IX Coordinator or an administrative hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

4. Presentation of Evidence

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Board and the parties, through their advisors. Neither the parties nor the Hearing Board should ask the Investigator their opinion on credibility, recommended findings, or determinations. Investigators will refrain from answering questions or discussing those topics. If such information is introduced, the Chair will direct that it be disregarded.

Following the investigator, the complainant will present a statement and be subject to questioning by the Hearing Board and the respondent, through the respondent's advisor. The Hearing Board has discretion to call any other witnesses and parties in the order of its choice.

All questions are subject to a relevance determination by the Hearing Board. The advisor, who will remain seated during questioning, will pose

the proposed question orally, unless electronic or written means have been approved by the Hearing Board as an accommodation. electronically, or in writing. The Hearing Board will determine whether the question will be permitted, disallowed, or rephrased and direct the party or witness to answer, or not. The Hearing Board will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Board will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Board has final say on all questions and determinations of relevance. The Hearing Board may consult with legal counsel on any questions of admissibility. The Hearing Board may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Hearing Board has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Board member at the hearing, the Hearing Board will refer that matter to the Title IX Coordinator and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Board should not permit irrelevant questions that probe for bias.

If a party chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Hearing Board may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. If the parties have determined that a witness did not need to appear at the hearing, the witness's statement will be considered by the Hearing Board. Otherwise, all witnesses will be subject to cross-examination, the same as the parties.

If the party does not answer select cross-examination questions, only statements related to those questions will be removed from consideration. the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Hearing Board, as distinguished from questions posed by advisors through cross-examination.

The Hearing Board may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Board may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their advisors, and may

draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

D. Deliberation, Decision-making, and Standard of Proof

The Hearing Board's purpose during hearing is to adjudicate responsibility, which will include making determinations of credibility. The Hearing Board has authority to make determinations on all allegations of sexual harassment and/or retaliation, as well as any additional alleged policy violations that occurred in concert with the sexual harassment and/or retaliation, even if those collateral allegations do not specifically fall within this Policy. The Hearing Board shall not consider the respondent's previous disciplinary record, if any, in making its determination regarding responsibility.

At the conclusion of the hearing, the Hearing Board will deliberate in closed session to determine whether the respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard will be used. The Title IX Coordinator may be consulted regarding procedural matters.

The Hearing Board will make a determination of responsibility, based on the preponderance of the evidence, immediately following deliberations and announce a verbal decision. In joint hearings, separate determinations of responsibility will be made for each respondent with respect to each alleged policy violation. Following the hearing, the Hearing Board will prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, explaining its rationale, identifying the evidence used in support of its determination and the evidence not relied upon in its determination, and determining credibility.

This deliberation statement must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension for good cause. If an extension is granted, the Title IX Coordinator will notify the parties in writing.

At the conclusion of the hearing, if the respondent is found responsible for violating any University policy, the Title IX Coordinator will inform both parties that they may submit a written impact statement to the Title IX Coordinator for consideration during the sanctioning phase. The Hearing Board will not determine sanctions or remedies in the event a respondent is found responsible.

If the respondent is found not responsible, the Title IX Coordinator will schedule a meeting to discuss any continuing needs of the both parties in regard to supportive measures and long-term remedies.

114. Sanctions

In the event the respondent is found responsible, the Title IX Coordinator will take any submitted written impact statement and consult with either the Human Resources Manager or either the Assistant Dean of Students or Associate Vice President for Student Affairs regarding sanctions.

A. Sanctioning Factors

The University will consider the following factors regarding sanctions:

- The nature, severity of, and circumstances surrounding the violation(s)
- The respondent's disciplinary history
- previous allegations or allegations involving similar conduct
- the need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- the need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- the need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- the impact on the parties
- any other information deemed relevant by the Title IX Coordinator in consultation with the Human Resources Manager or Student Affairs official.

B. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations individually or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions.
- *Required Counseling:* A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the University.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events.
- *Withholding Diploma:* The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* The University reserves the right to revoke a degree

previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

C. Employee Sanctions

Sanctions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

D. Timing of Sanctions

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

E. Notice of Outcome

The Title IX Coordinator will incorporate the deliberation statement and the sanction into a Notice of Outcome document. The Title IX Coordinator will send the Notice of Outcome to the parties, simultaneously, within five (5) business days of receiving the deliberation statement using the notification process in this Policy.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law.

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

F. Compliance with Sanctions

All respondents are expected to comply with the assigned sanctions within the timeframe specified in the Notice of Outcome. Failure to abide by the sanction(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s), including suspension, expulsion, and/or termination from the University.

115. Remedies

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties

- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the respondent to ensure no effective denial of educational access. The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

116. Appeals

Any party may file a Request for Appeal in writing to the Title IX Coordinator within 5 days of delivery of the Notice of Outcome. The Title IX Coordinator will assign a single Appeal Officer, who had no other interaction with the report and forward the Request for Appeal to the Appeal Officer to determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

A. Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, Investigator(s), and/or Hearing Board had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter; or
4. The Title IX Coordinator's decision to dismiss a formal complaint may be appealed immediately by either party using the process. If a party believes a formal complaint should have been dismissed but it was not, either party may appeal the Title IX Coordinator's decision to retain jurisdiction at the conclusion of the formal grievance process.

B. Determination on Request to Appeal

1. If the appeal is not timely or does not state a ground for appeal, the Title IX Coordinator will notify the parties of the Appeal Officer's determination using the notice provisions of this Policy. This decision is final, and there will be no further appeal.
2. If the appeal is accepted, the Title IX Coordinator will notify the parties of the Appeal Officer's determination using the notice provisions of this Policy and provide information regarding the next step of the process.

C. Substantive Appeal

The appealing party will submit any written argument and relevant evidence to the Appeal Officer within three (3) days after delivery of the notification accepting

appeal. That information will be shared with the non-appealing party for written response within three (3) days. The Appeal Officer will collect any additional information needed from parties, witnesses, investigators, and/or the Hearing Board as necessary. These individuals will be given three (3) days to provide the additional information requested. Upon receipt of all written responses, the Appeal Officer will review the documents and render a decision within seven (7) business days.

In considering the substantive grounds of the appeal, the Appeal Officer shall abide by the following:

- Decisions on appeal are to be deferential to the original decision.
- An appeal is not a full rehearing of the allegations. The scope is limited to a review of the written documentation, record of the original hearing, and/or pertinent documentation regarding the specific grounds for appeal.
- An Appeal Officer may not substitute their judgment for that of the original Hearing Board merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Board for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator.
- In rare cases where a procedural error cannot be cured by the original Hearing Board (as in cases of bias), the appeal may order a new hearing with a new Hearing Board.
- All appeals are final. If a matter is remanded, the decision will be final, unless the remand included an entirely new hearing. A decision from a new hearing may be appealed.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

D. Notice of Appeal Outcome

The Appeal Officer will prepare a written Notice of Appeal Outcome, which will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The Appeal Officer will not conduct a new hearing. Possible outcomes for appeal are identified below:

1. Regarding an alleged procedural irregularity that affected the outcome of the matter, the Appeal Officer may find:
 - a. that there was no procedural irregularity that affected the outcome of the matter and deny the appeal.

- b. that there was procedural irregularity that affected the outcome of the matter and grant the appeal.
- 2. Regarding new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, the Appeal Officer may find:
 - a. that the new evidence was reasonably available at the time of the determination of responsibility/dismissal or that the new evidence would not affect the outcome of the matter and deny the appeal.
 - b. that the new evidence was not reasonably available at the time of the determination of responsibility/dismissal or that the new evidence would have affected the outcome of the matter, and the appeal is granted.
- 3. Regarding an allegation that the Title IX Coordinator, investigator(s), and/or Hearing Board had a conflict of interest or bias for or against complainants or respondents generally or the specific complainant or respondent that affected the outcome of the matter, the Appeal Officer may find:
 - a. that the identified individual(s) did not have a conflict or bias as alleged and deny the appeal.
 - b. that the identified individual(s) did have a conflict or bias as alleged and grant the appeal.
- 4. Regarding the Title IX Coordinator's decision regarding the dismissal of or failure to dismiss a formal complaint, the appeal officer may find:
 - a. That the Title IX Coordinator's decision was correct and deny the appeal.
 - b. That the Title IX Coordinator's decision was incorrect and grant the appeal. The matter will be remanded with instructions to either dismiss the formal complaint or proceed with the formal grievance process, as appropriate.

D. Sanctions Status During Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or reinstated for either or both parties.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures, under Section 109(C)(6) of this Policy, will apply within 48 hours of implementation.

If the sanction included separation from the University, the University may place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal.

117. Supportive Measures

Upon receipt of a report of sexual harassment and/or retaliation, the University will implement supportive measures, as may be reasonable and appropriate for the individuals

involved and for the University community. The University will determine the necessity and scope of any supportive measures based on the individualized needs of the parties. Supportive measures and campus resources are always available to support a complainant regardless of the course of action chosen or the complainant's level of participation in University proceedings.

When implementing supportive measures, consistent with available information to support the reasonableness of the request, the University will seek to minimize the burden on the individuals seeking support. The Title IX Coordinator will collaborate with relevant campus administrators in imposing and coordinating supportive measures, which may be kept in place until the end of any resolution and/or until further notice from the University.

Even when a complainant or respondent does not specifically request supportive measures, the University may choose to implement a supportive measure at its discretion to ensure the safety of any individual or the University community. Supportive measures may be modified by the University as circumstances change or new information is available.

The University offers a range of supportive measures, including, but not limited to:

- separation of or modification to academic, employment, extra-curricular, and/or living situations;
- academic accommodations or modifications, including access to tutoring, rescheduling of exams or assignments, and the ability to drop a course without penalty;
- assistance setting up initial appointments for counseling and/or medical services;
- providing an escort;
- assistance in evaluating implications for financial aid, immigration or visa status;
- assistance in obtaining a civil order of protection; and
- other supportive measures tailored to the involved parties.

The University will maintain the party's privacy in providing supportive measures under this Policy, to the extent practicable. Documentation of supportive measures shall be maintained in the Title IX Coordinator's records.

118. Miscellaneous Provisions

A. Notice to Parties

When notice is required to be sent to parties, the University will send notice to the individual's University-issued email address or other email address on file. The University may send notice to the individual's mailing address on record, or may send notice via personal delivery. Personal delivery will be effectuated when the person receives the notice. Email and mail notification are effective when they are sent. The Title IX Coordinator will note the method of delivery for each notice sent.

B. Disabilities Accommodations in the Resolution Process

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access

to the University's resolution process.

Anyone needing such accommodations or support should contact the Title IX Coordinator. The Title IX Coordinator will collaborate with the Disability Resource Office or the Human Resources Manager, as appropriate, to review the request and determine reasonable accommodations with the requestor.

C. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing sexual harassment, retaliation, or any other form of gender-based or sexual misconduct under Title IX. This policy will be reviewed annually, or as needed, by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

This Policy will be construed to comply with the most recent statutory modifications, regulatory changes, and binding court decisions.

D. Limited English Proficiency or Hearing Impaired

The University will take reasonable steps to make this Policy, any supporting documentation, and the procedures used herein, available and accessible to those who may have limited English proficiency or who are hearing impaired.