

**MARQUETTE UNIVERSITY  
INTERIM SEXUAL HARASSMENT AND SEX DISCRIMINATION POLICY**

**I. INTRODUCTION**

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

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

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

While most Faculty and Staff (collectively, “Employees”) are required to report all incidents of Prohibited Conduct to the Title IX Coordinator or other Official with Authority, Students are strongly encouraged to do so. Reporting helps preserve the safety and dignity of the University’s campus and community members. A report of Prohibited Conduct to the Title IX Coordinator or other Official with Authority will result in a coordinated response as set forth in this Policy.

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

**II. SCOPE OF THIS POLICY**

This Policy was drafted considering the University’s own commitment to addressing Prohibited Conduct and considering Title IX of the Higher Education Act of 1972, Title IX’s Final Regulations issued on May 6, 2020,<sup>1</sup> and all associated laws and regulations, including the Violence Against

<sup>1</sup> See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (hereinafter 2020 Title IX Regulations), 34 C.F.R. § 106.30 (2020).

Women Act (“VAWA”)<sup>2</sup> and the Clery Act.<sup>3</sup> Title IX is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education program or activities. Title IX prohibits the University from discriminating on the basis of sex in its Education Program or Activity, including admissions and employment.<sup>4</sup>

This Policy applies to all Students; Employees (all Faculty and Staff); visitors; guests; and associations, clubs, organizations and their members affiliated with and using the benefits and services provided by or connected with the University.

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

Student and Employee inquiries concerning Title IX may be referred to:

Kristen Kreple, J.D.  
Title IX Coordinator  
AMU 437  
P.O. Box 1881  
Milwaukee, WI 53201-1881  
(414) 288-3151  
[kristen.kreple@marquette.edu](mailto:kristen.kreple@marquette.edu)

In addition, inquiries about the application of Title IX and the 2020 Title IX Final Regulations may be referred to:

Assistant Secretary for Civil Rights  
United States Department of Education  
Office for Civil Rights  
400 Maryland Ave., SW  
Washington, D.C. 20202  
(202) 453-5900

Further, the University does not discriminate on the basis of race, color, gender, age, sexual orientation, transgender status, religion, disability, veteran’s status, or national origin in its Education Program or Activity, including admissions and employment.<sup>5</sup> Such discrimination is not only counter to the University’s values but also is prohibited by federal law.

<sup>2</sup> Section 304 of the Violence Against Women Reauthorization Act of 2013 requires that universities have procedures in place to respond to matters of sexual assault, relationship (dating and domestic) violence, and stalking. See Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 304, 127 Stat. 89 (2013).

<sup>3</sup> The Clery Act requires universities that participate in federal [financial aid](#) programs to keep and disclose information about crime on and near their campuses. See 20 U.S.C. § 1092 (1990).

<sup>4</sup> Title IX preempts state and local law. See 2020 Title IX Regulations, 34 C.F.R. § 106.6(h).

<sup>5</sup> The University complies with Titles VI, VII, and IX; the Age Discrimination Act in Employment of 1967 as amended, the Rehabilitation Act of 1973 as amended, the Veteran’s Readjustment Assistance Act of 1974, and the Americans With Disabilities Act of 1990.

Nothing in this Policy denies any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. or any regulations promulgated thereunder. Further, this Policy respects and upholds individual's rights under Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act, as applicable.

Employee inquiries concerning Section 503 of the Rehabilitation Act of 1973<sup>6</sup> and Title III of the Americans with Disabilities Act of 1990<sup>7</sup> may be referred to:

Department of Human Resources  
Straz Tower  
P.O. Box 1881  
Milwaukee, WI 53201-1881  
(414) 288-7305  
[humanresources@marquette.edu](mailto:humanresources@marquette.edu)

Students and Employee inquiries concerning Title VI,<sup>8</sup> Title VII,<sup>9</sup> the Age Discrimination in Employment Act of 1967, as amended,<sup>10</sup> and Executive Order 11246, as amended,<sup>11</sup> may be referred to:

Elizabeth (Liz) Sides  
Director of Employment and Employee Relations  
Straz Tower 185  
P.O. Box 1881  
Milwaukee, WI 53201-1881  
(414) 288-0830  
[elizabeth.sides@marquette.edu](mailto:elizabeth.sides@marquette.edu)

All University community members (Employees, Students, contract personnel, agents, visitors, guests, volunteers, and other individuals associated with the University) are prohibited from engaging in acts of discrimination based on the above-referenced bases.

<sup>6</sup> Section 503 of the Rehabilitation Act of 1973 is a law that prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires employers take affirmative action to recruit, hire, promote, and retain these individuals. *See* 41 C.F.R. § 60.741.

<sup>7</sup> Title III of the Americans with Disabilities Act prohibits discrimination on the basis of disability in public accommodations and requires newly constructed or altered places of public accommodation to comply with the ADA Standards. *See* 42 U.S.C. § 12182.

<sup>8</sup> Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. *See* 42 U.S.C. § 2000d.

<sup>9</sup> Title VII of the Civil Rights Act of 1964 protects employees against discrimination based on race, color, national origin, sex, and religion. *See* 42 U.S.C. § 2000e.

<sup>10</sup> The Age Discrimination in Employment Act of 1967 prohibits employment discrimination against anyone at least 40 years of age in the United States. *See* 29 U.S.C. §§ 621–634.

<sup>11</sup> Executive Order 11246 requires non-discriminatory practices in hiring and employment on the part of U.S. government contractors. *See* 41 C.F.R. §§ 60-1.1-60-2.35.

University Students and Employees are responsible for knowing the information and procedures outlined in this Policy in addition to knowing the University's other antidiscrimination policies. Other University policies and procedures may be referred to or referenced in this Policy. To the extent other University policies conflict with the rights, processes, and procedures under this Policy, this Policy shall govern. These rights apply irrespective of Federal Education Rights and Privacy Act ("FERPA")<sup>12</sup> provisions to the contrary.

### III. THE TITLE IX OFFICE

The individuals listed below make up the University's Title IX Office. The Title IX Coordinator is the designated agent of the University responsible for overseeing the application of this Policy and compliance with Title IX legislation, regulations, and applicable case law.

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

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

Title IX Coordinator:

Kristen Kreple, J.D.  
Title IX Office  
AMU 437  
(414) 288-3151  
[kristen.kreple@marquette.edu](mailto:kristen.kreple@marquette.edu)

Title IX Deputy Coordinators:

Cara Hardin, J.D.  
Title IX Office  
AMU 437  
(414) 288-1742  
[cara.hardin@marquette.edu](mailto:cara.hardin@marquette.edu)

Sarah Bobert – Intercollegiate Athletics  
Senior Associate Athletics Director

<sup>12</sup> Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

Senior Women's Administrator  
Al McGuire Center 223G  
(414) 288-5253  
[sarah.bobert@marquette.edu](mailto:sarah.bobert@marquette.edu)

Elizabeth (Liz) Sides – Employees  
Director of Employment and Employee Relations  
Human Resources  
Straz Tower 185  
(414) 288-0830  
[elizabeth.sides@marquette.edu](mailto:elizabeth.sides@marquette.edu)

The Title IX Office also includes Investigators (who are not Title IX Deputy Coordinators) and decision-makers for the Resolution Processes and the Appeal Process. All individuals who participate in the Grievance Procedure receive ongoing training, including anti-bias training, to effectively and objectively fulfill their roles under this Policy.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Dr. William Welburn, Vice President for Inclusive Excellence, at (414) 288-8028 or [william.welburn@marquette.edu](mailto:william.welburn@marquette.edu). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to Dr. William Welburn, Vice President for Inclusive Excellence, at (414) 288-8028 or [william.welburn@marquette.edu](mailto:william.welburn@marquette.edu). Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

#### **IV. KEY CONCEPTS AND DEFINITION OF TERMS**

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

**ACTUAL KNOWLEDGE:** Actual Knowledge means notice of Prohibited Conduct or allegations of Prohibited Conduct to the Title IX Coordinator or any Official with Authority to Institute Corrective Measures on behalf of the University. Actual Knowledge occurs when the Title IX Coordinator or an Official with Authority witnesses Prohibited Conduct, learns about it from a Complainant or third party, receives a written or verbal complaint about it, or learns about it by any other means.

**ADVISOR:** Both the Complainant and the Respondent have the right to an Advisor of their choice (who may be, but need not be, an attorney) relating to any report of Prohibited Conduct to support the Party and assist the Party in navigating the Grievance Procedure. Although the Parties have a right to an Advisor, Parties are not required to have an Advisor if the allegations

are Sex Discrimination or Retaliation. However, if the allegations are Sexual Harassment, each Party must choose an Advisor for the Hearing Process. If a Party does not choose an Advisor, the University will provide an Advisor for the Party, to assist them in navigating the Hearing Process and to conduct Cross-Examination. The role of the Advisor is limited within the Grievance Procedure. See Section X.6 and Section XX.6.f.

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

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

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

**COERCION:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain Consent. When someone makes clear that they do not want sexual contact, that they want to stop, or that they do not want to go past a certain point of sexual activity, verbal or physical pressure beyond that point can be coercive. Consent obtained as a result of coercion is invalid.

**COMPLAINANT:** Complainant refers to an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment<sup>13</sup> or Sex Discrimination<sup>14</sup> or Retaliation.<sup>15</sup> A Complainant is a Party to a Formal Complaint filed under this Policy.

**CONFIDENTIAL/CONFIDENTIALITY:** For the purposes of this Policy, “confidentiality” and “privacy” have different and distinct meanings. Confidentiality refers to the privilege the law creates between medical and clinical care providers, mental health care providers, and counselors and their patients; attorneys and their clients; ordained clergy and their parishioners; and spouses. It also refers to the privilege the University has designated exists between certain individuals who can have privileged communications. The persons whose specific relationships are protected by law or by University designation are called Confidential Resources in this Policy. This means that when a Party shares information with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except

<sup>13</sup> 2020 Title IX Regulations, 34 C.F.R. § 106.30(a).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the Clery Act.

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

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

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

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

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

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

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

**CROSS-EXAMINATION:** Cross-Examination is a form of questioning (sometimes referred to as “questioning” within this Policy) performed by a Party’s Advisor during the Hearing Process designed to challenge the credibility, plausibility, and reliability of statements asserted by the other Party and Witnesses. The Parties, through their Advisors, pose questions intended to challenge credibility, plausibility, and reliability of statements by the other Party and Witnesses, to promote the Party’s perspective with respect to the allegations at issue, and to bring out additional facts and details about the alleged incident. The purpose of Cross-Examination is to ask questions that probe an individual’s narrative in order to give the Hearing Panel the fullest view of the evidence related to the allegations at issue. The University does not allow Cross-Examination to embarrass, humiliate, blame, or emotionally berate a Party or Witness.

**DISMISSAL:** The conclusion of a report or Formal Complaint of Prohibited Conduct outside the other Resolution Processes. See Section XVIII.

**EDUCATION PROGRAM OR ACTIVITY:** Locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the alleged Prohibited Conduct occurs. Education Program or Activity also includes any building owned or controlled by a Student organization that is officially recognized by the University.

**EMERGENCY REMOVAL:** An Emergency Removal occurs when the Title IX Coordinator removes the Respondent from University housing, the University campus/facilities/events, including classes, and/or all other University activities or privileges for which the Respondent might otherwise be eligible. See Section XII.5.

**EMPLOYEE:** Refers collectively to University Faculty and Staff.

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

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

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



**FORMAL COMPLAINT:** A document filed by a Complainant<sup>16</sup> or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent(s) and requesting that the University investigate the allegation of Prohibited Conduct. A Formal Complaint may be filed with the Title IX Coordinator or an Official with Authority in person, by mail, by email, by telephone, or by virtual communication platform.<sup>17</sup>

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

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

**GOOD CAUSE:** Good Cause is the adequate grounds to take an action, including but not limited to: (1) the complexity of the case; (2) the number of Parties or Witnesses involved; (3) the amount of evidence available to obtain and consider; (4) the unavailability of Parties, Witnesses, or Advisors due to extenuating circumstances; (5) University closure or academic breaks; (6) concurrent law enforcement activity, (7) the need for language assistance or accommodation of disabilities, and (8) any other extenuating circumstances articulated by the Title IX Coordinator or Investigator.<sup>18</sup>

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

**HEARING:** A Hearing is a live proceeding managed by the Hearing Chair during which the Hearing Panel questions the Parties and Witnesses, and the Parties' Advisors question the opposing Parties and Witnesses, to determine whether a Respondent is Responsible or Not Responsible for violating this Policy.

**HEARING PROCESS:** Hearing Process refers to the Resolution Process that follows the filing of a Formal Complaint of Sexual Harassment and that complies with the requirements of the 2020 Title IX Final Regulations. See Section XX.

<sup>16</sup> A "Document filed by a Complainant" is a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. See 2020 Title IX Regulations, 34 C.F.R. § 106.30.

<sup>17</sup> See *id.* § 106.30(a).

<sup>18</sup> See *id.* § 106.45(b)(v).

**HEARING CHAIR:** The Hearing Chair oversees the Hearing Process as described in Section XX. The Hearing Chair serves as one of the Hearing Panelists, attending the Hearing and voting during Hearing Panel deliberations.

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

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

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

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

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

**INFORMAL RESOLUTION PROCESS:** A voluntary resolution option that allows Parties to resolve disputes in a forum that is separate and distinct from the University’s Hearing Process or Prompt and Equitable Resolution Process. The Informal Resolution Process is applicable when the Parties voluntarily agree to resolve the matter through Alternative Resolution or when the Respondent accepts Responsibility for violating this Policy.

**INVESTIGATIVE FILE:** A compilation of all the documents, files, electronic communication, photographs, video footage, and any other evidence directly related to the allegations of Prohibited Conduct raised in a Formal Complaint. The Investigative File includes the interview transcripts or summaries of the testimonies of the Complainant, the Respondent, and

Witnesses, and the Parties' written responses, if any, to their review of the Investigative File and draft Investigative Report.

**INVESTIGATIVE PROCESS:** The part of the Grievance Procedure where the Investigator gathers evidence related to the Prohibited Conduct, compiles the Investigative File, and writes the Investigative Report. See Section XVI.

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

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

**MANDATORY REPORTER EMPLOYEE:** University Employees who are obligated under this Policy to report actual or suspected Prohibited Conduct to the Title IX Coordinator. Except for those listed as Confidential Resources, all University Employees (including Student employees) are Mandatory Reporter Employees. See Section X.1.

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

**OFFICIAL WITH AUTHORITY (TO INSTITUTE CORRECTIVE MEASURES):** Designated University Employees whose knowledge of alleged Prohibited Conduct triggers the University's duty to respond in accordance with this Policy. Those individuals are as follows: [University Leadership Council](#), [Director of Residence Life](#), [Dean of Students](#), [Associate Dean of Students](#), [Director of Student Conduct](#), Associate Deans, Department Chairs, and Title IX Deputy Coordinators.

**PARTIES/PARTY:** Parties means both the Complainant and the Respondent, collectively, and Party refers to either the Complainant or the Respondent, individually.

**PAST SEXUAL HISTORY:** Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant and cannot be presented during the Hearing Process unless (1) the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) the evidence

concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove Consent.<sup>19</sup>

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

**PRIVATE/PRIVACY:** For purposes of this Policy, "privacy" and "confidentiality" have different and distinct meanings. Privacy means that information related to a report of Prohibited Conduct will be shared with a limited number of University Employees who need to know to assist in the assessment, investigation, and resolution of the report. All Employees who are involved in implementing this Policy receive specific training and guidance about sharing and safeguarding Private information in accordance with state and federal law. The Privacy of Student education records will be protected in accordance with FERPA. The Privacy of Employee records will be protected in accordance with Human Resources policies. Thus, although the words "confidential/confidentiality" and "private/privacy" are frequently used interchangeably, this Policy will use Private and Privacy unless referring to the duties of Confidential Resources.

**PROHIBITED CONDUCT:** Prohibited Conduct refers collectively to Sexual Harassment, Sex Discrimination, and Retaliation, as defined in Sections V, VI, and VII. When made to the Title IX Coordinator or to an Official with Authority, allegations of Prohibited Conduct trigger the application of this Policy.

**PROMPT AND EQUITABLE RESOLUTION PROCESS:** The Resolution Process that follows Formal Complaints of Sex Discrimination and/or Retaliation and that does not include a Hearing. See Section XXI.

**RELEVANT EVIDENCE:** Evidence is relevant if it has the tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.

**REMEDIES:** Post-outcome actions following a finding of Responsibility directed to the Complainant and/or University community to address safety, prevent recurrence of Prohibited Conduct, and preserve or restore equal access to the University's Education Program or Activity.

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

<sup>19</sup> *Id.* § 106.45(b)(6).

**RESOLUTION PROCESSES:** Refers to the Informal Resolution Process, the Hearing Process, and the Prompt and Equitable Resolution Process, collectively. The Resolution Processes apply equally to both Parties and comply with the 2020 Title IX Final Regulations.

**RESPONDENT:** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment,<sup>20</sup> Sex Discrimination,<sup>21</sup> or Retaliation.<sup>22</sup> A Respondent is a Party within this Policy's Grievance Procedure.

**RESPONSIBLE/NOT RESPONSIBLE:** Because the Resolution Processes under this Policy are not criminal processes, the University does not use the terms "innocent" or "guilty" to assess a Respondent's conduct. Rather, the Policy refers to determinations or findings of Responsibility. A Respondent is considered Responsible when the Hearing Panel or Investigator determines that it is more likely than not that the alleged behavior did occur, and that the behavior violated this Policy. A Respondent is considered "Not Responsible" when the Hearing Panel or Investigator determines that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred did not violate this Policy.

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

**SANCTION:** A Sanction is a consequence imposed on a Respondent who is found by a Preponderance of the Evidence to have violated this Policy. See Section XXII.

**SEX DISCRIMINATION:** Sex Discrimination is a broad term that encompasses behaviors based on sex, including (1) non-sexual harassment sex discrimination, (2) sexual exploitation, (3) non-physical intimate partner abuse, (4) discrimination on the basis of Sexual Orientation, Gender Identity, or Gender Expression, and (5) discrimination against pregnant or parenting Students. Acts of Sex Discrimination may be committed by any person upon any other person, regardless of the sex, Sexual Orientation, and/or Gender Identity of those involved. Allegations of Sex Discrimination are handled under the Prompt and Equitable Resolution Process. See Section VI.

**SEXUAL ORIENTATION:** Sexual Orientation refers to a person's emotional, romantic, or sexual attraction to other people. Sexual orientations include heterosexual (attracted to the opposite

<sup>20</sup> *Id.* § 106.30(a). See Section V.

<sup>21</sup> See Section VI.

<sup>22</sup> *Id.* § 106.71. See Section VII.

sex), homosexual (attracted to the same sex), bisexual (attracted to members of both sexes) and asexual (attracted to no one).

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

**STUDENT:** A Student is any individual who is registered or enrolled in coursework at the University or who is participating in an approved study-away or study abroad program during or between any academic session (fall, spring, or summer terms).

**SEXUAL HARASSMENT:** Sexual Harassment is a broad term encompassing behaviors based on sex, including (1) quid pro quo harassment, (2) hostile environment sexual harassment, (3) sexual assault, (4) dating violence, (5) domestic violence and (6) stalking, as those terms are defined by the Clery Act and VAWA.<sup>23</sup> Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, Sexual Orientation, and/or Gender Identity of those involved. See Section V. The term "Sexual Harassment" refers to both Title IX Sexual Harassment and Non-Title IX Sexual Harassment. Allegations of Sexual Harassment are handled under the Hearing Process explained in Section XX.

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

Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of the Parties or the University's education environment or to deter Prohibited Conduct. The Title IX Coordinator is responsible for coordinating the implementation of Supportive Measures and will keep them as Private as possible.<sup>24</sup>

**TITLE IX COORDINATOR:** The Title IX Coordinator is the designated agent of the University responsible for overseeing this Policy and for complying with Title IX, its regulations, and case law. The Title IX Coordinator reports directly to the Vice President for Inclusive Excellence, Office of the Provost. When the Title IX Coordinator is made aware of Prohibited Conduct, or an allegation thereof, the University is deemed to have Actual Knowledge (in other words, notice) and must respond in accordance with this Policy. The Title IX Coordinator coordinates the intake, investigation, resolution, and implementation of Supportive Measures to stop, remediate, and prevent Prohibited Conduct. It may be necessary for the Title IX Coordinator to

<sup>23</sup> *Id.* § 106.30(a) (2020); "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

<sup>24</sup> See 34 C.F.R. § 106.30.

name a designee in certain situations. Throughout this Policy, the use of the term “Title IX Coordinator” includes “Title IX Coordinator or Designee.”

**TITLE IX SEXUAL HARASSMENT:** Refers to the conduct alleged in a Formal Complaint that constitutes Sexual Harassment as defined in Section V when that alleged conduct took place within a University Education Program or Activity, inside the United States, by a Student or Employee, and against a person participating in or attempting to participate in a University Education Program or Activity at the time the Formal Complaint was filed. Allegations of Title IX Sexual Harassment are resolved under the Hearing Process explained in Section XX.

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

## V. SEXUAL HARASSMENT

Sexual Harassment is a broad term encompassing conduct based on sex as defined below. Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the sex, Sexual Orientation, and/or Gender Identity of those involved.<sup>25</sup>

Allegations of Sexual Harassment will be handled through the Hearing Process described in Section XX.

Sexual Harassment includes actual or attempted conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo Harassment. Quid pro quo harassment occurs when an Employee of the University implicitly or explicitly conditions the provision of aid, benefit, or service of the University on the Complainant’s participation in unwelcome sexual conduct.<sup>26</sup>
2. Hostile Environment Sexual Harassment. Hostile environment sexual harassment is unwelcome conduct determined by a reasonable person in the Complainant’s position to be so severe, pervasive, and objectively offensive that it effectively denies a Complainant equal access to the University’s Education Program or Activity.<sup>27</sup>
  - a. A determination of a hostile environment is based on the totality of the circumstances in which the conduct occurs.
  - b. Hostile environment sexual harassment occurs without regard to the Respondent’s intent to cause harm.<sup>28</sup>

<sup>25</sup> See *id.* § 106.30(a).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

- c. Factors used to evaluate hostile environment harassment include:<sup>29</sup>
    - i. The degree to which the conduct affected one or more Students' education.
    - ii. The type, frequency, and duration of the conduct.
    - iii. The identity of and relationship between the alleged harasser and the subject or subjects of the harassment.
    - iv. The number of individuals involved.
    - v. The age and sex of the alleged harasser and the subject or subjects of the harassment.
    - vi. The size of the school, location of the incidents, and context in which they occurred.
    - vii. Other incidents at the school.
    - viii. Incidents of sex-based but nonsexual harassment.
3. Sexual Assault.<sup>30</sup> Sexual Assault means one of the following sexual offenses, whether forcible or nonforcible, when directed at another person without that person's Consent, including instances where the person is Incapacitated:
- a. *Rape* – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.<sup>31</sup>
    - i. "An object" is anything used by the perpetrator other than the perpetrator's genitalia and includes, among other things, breasts, fingers, mouth, and tongue.
  - b. *Fondling* – The touching of the private body parts of Complainant (buttocks, groin, breasts) for the purpose of sexual gratification, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.
  - c. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Wisconsin law.
  - d. *Statutory Rape* – Nonforcible sexual intercourse with a person who is under the age of 18, the statutory age of consent in Wisconsin.
4. Dating Violence.<sup>32</sup> Defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence

<sup>29</sup> U.S. Department of Education Office for Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties*, pp. 6-7 (2001).

<sup>30</sup> 20 U.S.C. § 1092(f)(6)(A)(v).

<sup>31</sup> The Clery Act defines sexual assault as an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation. The FBI UCR consists of two crime reporting systems: The Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). The definitions for sexual assault defined in this Policy (including rape, fondling, incest, and statutory rape) align with and encompass all behaviors that may constitute sexual assault under either the SRS or NIBRS.

<sup>32</sup> Violence Against Women Act (VAWA), 34 U.S.C. § 12291(a)(10) (2013).



of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, Dating Violence includes but is not limited to sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

5. Domestic Violence.<sup>33</sup> Defined as a felony or misdemeanor crime of violence committed—
  - a. By a current or former spouse or intimate partner of the Complainant;
  - b. By a person with whom the Complainant shares a child in common;
  - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - d. By a person similarly situated to a spouse of the Complainant under the Wisconsin domestic or family violence laws;
  - e. By any other person against an adult or youth Complainant who is protected from that person's acts under the Wisconsin domestic or family violence laws.
  
6. Stalking.<sup>34</sup> Defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - a. Fear for the person's safety or the safety of others; or
  - b. Suffer substantial emotional distress.

For the purposes of this definition—

- i. "Course of conduct" means two or more acts, including but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- ii. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii. "Substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## **VI. SEX DISCRIMINATION**

Like the term Sexual Harassment, Sex Discrimination is a broad term encompassing conduct based on sex as defined below. Acts of Sex Discrimination may be committed by any person upon any other person, regardless of the sex, Sexual Orientation, and/or Gender Identity of those involved.<sup>35</sup>

<sup>33</sup> *Id.* § 12291(a)(8).

<sup>34</sup> *Id.* § 12291(a)(30).

<sup>35</sup> *See* 34 C.F.R. § 106.30.

Allegations of Sex Discrimination will be handled through the Prompt and Equitable Resolution Process described in Section XXI.

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

## **VII. RETALIATION<sup>36</sup>**

It is a violation of University Policy to engage in Retaliation against a Reporting Party, a Complainant, a Respondent, a Witness, or anyone else who testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, process, or hearing under this Policy.

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

Intimidation, threats, coercion, bullying, or discrimination, including charges against an individual for Code of Conduct violations that do not involve Sex Discrimination or Sexual Harassment but arise out of the same facts or circumstances as a report of Sex Discrimination

<sup>36</sup> See *id.* § 106.71.

or Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes Retaliation.

The University will act to prevent Retaliation and will respond if it occurs, even if a Formal Complaint is not pursued. The University will keep Private the identity of any Reporting Party, Complainant, Respondent, and Witness, except as required to comply with this Policy, with FERPA,<sup>37</sup> or as otherwise required by law.

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

### **VIII. APPLICATION OF THIS POLICY**

This Policy applies to allegations of Sexual Harassment, Sex Discrimination, and/or Retaliation. The University's duty and commitment to respond to those allegations are described below.

1. Duty to Respond to Allegations of Sexual Harassment. The University's duty under Title IX to respond to reports of Sexual Harassment arises when the Title IX Coordinator or any Official with Authority has Actual Knowledge of Sexual Harassment, or allegations thereof, when the Sexual Harassment occurred within a University Education Program or Activity and against a person in the United States ("Title IX Sexual Harassment").<sup>38</sup>

The University acknowledges that Sexual Harassment that occurs off-campus or online, within study abroad programs, or otherwise outside of the University's Education Program or Activity can and often do have continuing effects on campus. For this reason, the application of this Policy extends to allegations of Sexual Harassment when the conduct occurs outside the University's Education Program or Activity and when the alleged perpetrator is a Student or Employee ("Non-Title IX Sexual Harassment").

Formal Complaints of Title IX Sexual Harassment and Non-Title IX Sexual Harassment will be resolved using the Hearing Process. See Section XX.

2. Duty to Respond to Allegations of Sex Discrimination or Retaliation. The University's duty under Title IX to respond to reports of Sex Discrimination or Retaliation arises when the Title IX Coordinator or any Official with Authority has Actual Knowledge of Sexual Discrimination or Retaliation, or allegations thereof, when the Sex Discrimination or Retaliation occurred within the University's Education Program or Activity.<sup>39</sup>

<sup>37</sup> Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

<sup>38</sup> See 2020 Title IX Regulations, 34 C.F.R. § 106.30.

<sup>39</sup> *Id.*

Formal Complaints of Sex Discrimination and Retaliation will be resolved using the Prompt and Equitable Resolution Process. See Section XXI.

3. Duty to Respond to Allegations of Online Prohibited Conduct. This Policy is written and interpreted broadly to include online manifestations of any Prohibited Conduct when that conduct occurs in or affects the University's Education Program or Activity or when University networks, technology, or equipment are used.

Although the University may not control websites, social media, and other venues in which harassing communications or communications based on sex are made, and it does not intend to impede on free speech, when such communications are reported to University and affect a substantial University interest, the University will engage in a variety of means to address and mitigate the effects of those communications.

Members of the University community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, posting unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaching another's privacy, doxing, or otherwise using the ease of transmission and/or anonymity of the internet or other technology to harm another member of the University community. Online misconduct can constitute Prohibited Conduct<sup>40</sup> and may be handled under this Policy.

Off-campus sexually harassing or sex-based speech by Employees, whether online or in person, may be addressed by the University when such speech is made in an Employee's official or work-related capacity.

4. Time Limit for Reporting. There is no deadline for reporting Prohibited Conduct under this Policy, although delayed reporting may compromise the ability of the University to investigate and remedy the alleged Prohibited Conduct.
5. Delayed Reports. When a report of alleged misconduct is delayed, the University may apply the policy in place at the time of the alleged Prohibited Conduct and the procedures in place at the time of Formal Complaint.
6. Unknown Respondents/Non-University Respondents. If the Respondent is unknown or is not a Student or Employee of the University, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the Complainant would like to file a police report.

<sup>40</sup> For example, distributing revenge pornography or posting unwelcome sexual or sex-based messaging and/or images could violate this Policy.

Further, even when the Respondent is not a Student or Employee, the Complainant may be able to access Supportive Measures and resources by contacting the Title IX Coordinator or Advocacy Services.

In addition, the University may take other actions as appropriate to protect the Complainant or the University community against third parties, such as barring individuals from University property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant, with permission, in contacting the appropriate individual at that institution because it may be possible for Complainant to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support, with permission, a Student or Employee Complainant who experiences Prohibited Conduct in an externship, study abroad program, or other environment external to the University where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **IX. DIFFERENCES BETWEEN UNIVERSITY AND LEGAL PROCESSES**

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

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

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

The definition of Sexual Harassment under this Policy and the related definitions under criminal statutes may differ. Likewise, the burden of proof for a finding of Responsibility under this Policy—a Preponderance of the Evidence—is lower than the burden of proof for a finding of

guilt under criminal law—beyond a reasonable doubt. For these reasons, the outcome of any criminal investigation will not determine the outcome of any proceedings or processes under this Policy or vice versa.

## **X. THE GRIEVANCE PROCEDURE: OVERALL**

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

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

1. The Duties of Mandatory Reporter Employees. All University Employees (except those listed as Confidential Resources) are required to report incidents or suspected incidents of Prohibited Conduct of which they become aware to the Title IX Coordinator.
  - a. *When and What to Report.* Mandatory Reporter Employees become aware of Prohibited Conduct when they observe it or have knowledge of it from a Complainant or third party. A Mandatory Reporter Employee who observes or receives a report of Prohibited Conduct must promptly report to the Title IX Coordinator all known details about the alleged misconduct, including the date, time, location, and the names of those involved.
  - b. *Privacy.* In addition to the responsibility to promptly report the foregoing information to the Title IX Coordinator, Mandatory Reporter Employees must also keep Private the names of Complainants, Respondents, or others involved in an incident falling under this Policy.
  - c. *Failure to Report.* Failure of a Mandatory Reporter Employee to report alleged Prohibited Conduct of which they become aware violates University policy and can subject the Mandatory Reporter Employee to disciplinary action for failure to comply.
  - d. *When the Mandatory Reporter Employee is a Target of Prohibited Conduct.* A Mandatory Reporter Employee who is themselves a target of Prohibited Conduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.
  - e. *Reporting a Risk of Harm.* Mandatory Reporter Employees who have reason to believe a Student, colleague, or the campus community is at risk of harm should contact MUPD immediately.

Marquette University Police Department (Open 24/7)  
749 N. 16th Street  
Milwaukee, WI 53233

Emergency Phone: (414) 288-1911

2. Confidential Resources. The following are Confidential Resources:<sup>41</sup>
- a. *Advocacy Services.* A Marquette University victim advocate is available to provide support and assistance to those affected by Prohibited Conduct. Services are free and Confidential to the extent allowed by law and University policy. Victim advocates do not provide legal or other advice relating to this Policy. They will assist a Complainant in making a report to the Title IX Office and/or MUPD, if the Complainant desires. A victim advocate is available 24 hours a day, 7 days a week by telephone at (414) 288-5244 or by email at [advocacy@marquette.edu](mailto:advocacy@marquette.edu).
  - b. *Advisors.* An Advisor may be (but need not be) an attorney. A Mandated Reporter Employee or non-Confidential Resource serving as an Advisor is Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.
  - c. *Ordained Clergy.* Ordained clergy are considered to be a Confidential reporting option when they are serving in the role of providing pastoral counseling.
  - d. *Off-Campus Confidential Reporting Options:*
    - i. Aurora Healing and Advocacy Services  
Aurora Sinai Medical Center  
945 N. 12th Street  
Milwaukee, WI 53233  
(414) 219-5555  
*\*Provides medical, counseling, and advocacy services to sexual assault survivors*
    - ii. Sojourner Family Peace Center  
619 W. Walnut Street  
Milwaukee, WI 53212  
(414) 933-2722  
*\*Provides support and advocacy to relationship violence survivors*
    - iii. Milwaukee LGBT Community Center  
1110 N. Market Street, 2nd Floor  
Milwaukee, WI 53202  
(414) 271-2656  
*\*Provides support and counseling to LGBTQ survivors of violence*
    - iv. Aurora Employee Assistance Program  
(800) 236-3231  
*\*For Marquette Employees*
  - e. *On-Campus Confidential Reporting Options:*
    - i. Counseling Center  
Holthusen Hall 204  
(414) 288-7172

<sup>41</sup> All listed Confidential Resources will maintain Confidentiality except in extreme cases of immediate threat or danger or abuse of a minor.

- ii. [Marquette University Medical Clinic](#)  
Schroeder Complex, Lower Level (414) 288-718
    - iii. [Center for Psychological Services](#)  
Cramer Hall 307  
(414) 288-3487
  - f. *Respondent Support Persons.* The University has designated support persons for Respondents. The Title IX Office will offer a Respondent support person to a Respondent upon initial contact. Respondent support persons, like victim advocates, do not provide legal or other advice relating to the Policy. Rather, they provide support resources to the Respondent, including all those available to Complainants (except for Advocacy Services, unless the Respondent is also a counterclaimant alleging Prohibited Conduct).
3. Considerations for Complainants Before They Report Prohibited Conduct. Pursuant to 2020 Title IX Final Regulations and this Policy, when the University has Actual Knowledge of possible Prohibited Conduct, the Title IX Coordinator *must* respond promptly by contacting the Complainant to discuss the availability of Supportive Measures and to explain to the Complainant the process for filing a Formal Complaint. Complainants who do not wish to make a Formal Complaint may still receive Supportive Measures.

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

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

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

4. Reporting Options. Anyone who wishes to make a report of Prohibited Conduct under this Policy has the following reporting options:
- a. Make a Formal Complaint to the Title IX Coordinator or an Official with Authority and engage in the Grievance Procedure..



- b. Report to MUPD or other police agency with jurisdiction over the conduct and pursue a criminal investigation. Reports may be made to MUPD in person or via telephone:
    - Marquette University Police Department (Open 24/7)
    - 749 N. 16th Street
    - Milwaukee, WI 53233
    - Emergency Phone: (414) 288-1911
    - Non-Emergency Phone: (414) 288-6800
  - c. Make a Formal Complaint to the Title IX Coordinator and report to the police, thereby engaging in both the Grievance Procedure and a criminal investigation.
  - d. Report to the U.S. Department of Education Office for Civil Rights in addition to, or in lieu of making a Formal Complaint to the Title IX Coordinator and/or filing a police report.
  - e. Report to the Title IX Coordinator and receive Supportive Measures but not file a Formal Complaint.
5. Time Frame for Grievance Procedure. The Grievance Procedure, beginning with the Formal Complaint, will be completed within a reasonably prompt time, typically within 90 business days after the filing of a Formal Complaint.

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

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

6. Role of and Rules for Advisors. The Complainant and the Respondent both have a right to an Advisor of their choosing throughout the Grievance Procedure. This section explains (a) who can serve as an Advisor, (b) the role of the Advisor in the Grievance Procedure, generally, and (c) the role of the Advisor in the Hearing Process, specifically.
- a. *Who Can Serve as an Advisor.* The Advisor may be a friend, Employee, family member, or an attorney. Further, the University has designated a pool of persons to serve in this capacity. University-designated Advisors may be trained Employees or may be non-University persons hired by the University. University-designated Advisors may or may not be attorneys. No Party is required to have an Advisor, except if the Party will participate in the Hearing Process.
    - i. *Confidentiality.* All Advisors have been deemed Confidential Resources (see Section X.2), meaning that they will maintain Confidentiality throughout the Grievance Procedure; however, a Mandatory Reporter Employee or non-Confidential Resource serving as an Advisor is

Confidential only *after* the filing of a Formal Complaint and a Notice of Formal Complaint and Allegations.

- ii. *Parties' Consent to Share Information with Advisor.* Each Party must consent to the University sharing information related to the report of Prohibited Conduct directly with the Party's Advisor before information can be shared. The University may require Advisors to sign a non-disclosure agreement to ensure the Confidentiality of the information shared with them by the University.
- b. *Role of the Advisor in the Grievance Procedure, Generally.* Advisors support the Parties and assist them through the Grievance Procedure. The Parties are expected to ask and respond to questions on their own behalf throughout the Investigative and Resolution Processes (except for the Hearing Process, as described in Section X.6.c. and XX.6.f.). Although the Advisor may not speak on behalf of a Party, the Advisor may consult with the Party, either privately as needed, or by conferring or passing notes during any meeting or interview (except in the Hearing Process). For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.
- c. *The Advisor's Role in the Hearing Process.* The Parties are required to have an Advisor during the Hearing Process. This section explains (i) a Party's options for choosing an Advisor, (ii) the Advisor's limited role, and (iii) the consequences for Advisors who overstep their role.
  - i. *Options for Choosing an Advisor.* A Party may, of course, use the Advisor they initially selected at the start of the Grievance Procedure. If that Advisor is unable or unwilling to serve as an Advisor for the Hearing Process, the Party may select a new Advisor. If a Party does not choose an Advisor for the Hearing Process, the University will provide an Advisor for them to conduct Cross-Examination of the other Party and Witnesses. The University cannot guarantee equal advisory rights, meaning that if one Party selects or hires an Advisor who is an attorney, but the other Party does not hire or cannot afford an attorney, the University is not obligated to provide an attorney Advisor. Advisors appointed by the University may not be dismissed by the Party, unless the appointed Advisor refuses to conduct relevant Cross-Examination on behalf of the Party.
  - ii. *The Advisor's Limited Role.* The Advisor's role in the Hearing Process is limited to Cross-Examination of the other Party and of any Witnesses. An Advisor may not make a presentation on behalf of or represent the Party during any meeting or proceeding in the Hearing Process and may not speak on behalf of the Party to the Investigator(s) or Hearing Panel, except during Cross-Examination. Advisors may ask process-related questions of the Title IX Coordinator, Investigator(s), Hearing Chair, or Hearing Panel.

The Parties are expected to respond to questions on their own behalf throughout Hearing Process, though the Party may consult with their Advisor as explained in Section XX.6.f.

- iii. Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fail to respect the limits of the Advisor role, the meeting, interview, or Hearing will be suspended, or other appropriate measures implemented, which may include requiring the Party to select a new Advisor.

## XI. THE GRIEVANCE PROCEDURE: REPORTING PROHIBITED CONDUCT

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

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

platform. Please note that the University's ability to respond to anonymous reports may be limited.

## **XII. THE GRIEVANCE PROCEDURE: THE UNIVERSITY'S RESPONSE TO A REPORT OF PROHIBITED CONDUCT**

This section explains the second part of the Grievance Procedure: the University's response to a report of Prohibited Conduct. When the Title IX Coordinator or an Official with Authority becomes aware of an allegation of Prohibited Conduct, the Title IX Coordinator will coordinate a prompt response, treat the Complainant and the Respondent equitably, and follow the Grievance Procedure before imposing any Sanctions or other actions that are not Supportive Measures against a Respondent.<sup>42</sup>

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

1. University's Initial Response to the Complainant. The University's initial response to the Complainant includes promptly contacting the Complainant to offer Supportive Measures, to explain the process for filing a Formal Complaint, and/or to request additional information.
  - a. *Supportive Measures.* The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (which are available with or without the filing a Formal Complaint), including access to a Confidential University victim advocate.<sup>43</sup>
  - b. *Process for Filing a Formal Complaint.* The Title IX Coordinator will also explain the process for filing a Formal Complaint,<sup>44</sup> if the Complainant so wishes. See Section XIII.
  - c. *Request for Additional Information.* The Title IX Coordinator may solicit from the Complainant additional information about the alleged Prohibited Conduct to determine the appropriate Supportive Measures or to complete an initial assessment of the allegations to determine if the alleged conduct falls under this Policy.
  
2. Initial Assessment of Report of Prohibited Conduct. The Title IX Coordinator will assess the alleged conduct in the report to determine whether the alleged conduct, if it were proven true, constitutes Prohibited Conduct.
  - a. *Alleged Conduct That Does Not Constitute Prohibited Conduct.* If the Title IX Coordinator determines after an initial assessment that based on the totality of

<sup>42</sup> 2020 Title IX Regulations, 34 C.F.R § 106.44(a).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

the circumstance the alleged conduct is not Prohibited Conduct and therefore does not trigger the Grievance Procedure, the Title IX Coordinator will inform the Complainant of other resolution options outside of the Title IX Office (e.g., Student Code of Conduct, Employee Handbook, Faculty Handbook, MUPD, etc.)

- b. *Alleged Conduct That Does Constitute Prohibited Conduct.* If the alleged conduct presented constitutes Prohibited Conduct, the Title IX Coordinator will work with the Complainant to determine how the Complainant wishes to proceed under this Policy: (i) to forego filing a Formal Complaint; (ii) to request a supportive and remedial response; (iii) to file a Formal Complaint and pursue the Informal Resolution Process; or (iv) to File a Formal Complaint and pursue the Hearing Process or the Prompt and Equitable Resolution Process.
  - i. *Foregoing the Filing a Formal Complaint.* The Complainant may wish to forego the filing of a Formal Complaint. However, if the allegations constitute Prohibited Conduct, if proven true, the Title IX Coordinator, at the request of the Complainant, may have an educational conversation with the Respondent or provide educational awareness training to a larger audience within the University. Where warranted, the Title IX Coordinator may file a Formal Complaint even though the Complainant chose not to. See Section XIII.2.
  - ii. *Requesting a Supportive and Remedial Response.* A supportive and remedial response is available for allegations of any Prohibited Conduct. If the Complainant prefers a supportive and remedial response, the Title IX Coordinator will work with the Complainant to identify their wishes, assess the request, and implement accordingly. No Resolution Processes are initiated, though the Complainant can elect to initiate them later, if desired.
  - iii. *Pursuing Informal Resolution Process.* The Informal Resolution Process is available for allegations of any Prohibited Conduct after the filing of a Formal Complaint. If the Complainant prefers the Informal Resolution Process, the Title IX Coordinator will assess whether the report of Prohibited Conduct is suitable for that process, which informal mechanism may serve the situation best or is available, and will seek to determine if the Respondent is also willing to engage in the Informal Resolution Process. See Section XIX.
  - iv. *Pursuing the Hearing Process or the Prompt and Equitable Resolution Process.* If the Complainant prefers the Hearing Process or the Prompt and Equitable Resolution Process, the Title IX Coordinator will initiate the Grievance Procedure and the appropriate process. Allegations of Sexual Harassment must use the Hearing Process. Allegations of Sex Discrimination or Retaliation must use the Prompt and Equitable Resolution Process. Allegations of Sexual Harassment and Sex Discrimination or Retaliation arising out of the same facts and circumstances, may be consolidated by the Title IX Coordinator for resolution under the Hearing Process.

3. University's Response to Respondent. The Title IX Office will notify a Respondent when it takes action that impacts the Respondent directly, such as instituting Supportive Measures to the Complainant that restrict the Respondent's privileges or access to campus or upon the filing of a Formal Complaint. However, depending on the circumstances and the Complainant's wishes, the Respondent may not be notified of a report of Prohibited Conduct or the outcome of the Title IX Coordinator's initial assessment of the allegations.

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

4. Supportive Measures.<sup>45</sup> The Title IX Coordinator will treat the Complainant and the Respondent equitably by offering Supportive Measures to both Parties.
  - a. *Supportive Measures Defined.* Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate in response to a report of Prohibited Conduct as reasonably available and without fee or charge to the Complainant or Respondent. Supportive Measures are available to the Complainant or Respondent before and/or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of the Parties or the University's education environment or to deter Prohibited Conduct.

Supportive measures may include, but are not limited to:

- i. Counseling, medical, and/or mental health services, on- and off- campus;
- ii. Victim advocacy;
- iii. Respondent support person;
- iv. Extensions of deadlines or other course-related adjustments;
- v. Modifications of work or class schedules;
- vi. Campus escort or other transportation services;
- vii. Mutual or one-way restrictions on contact between the Parties;<sup>46</sup>
- viii. Changes in work or housing locations;
- ix. Leaves of absence;
- x. Increased security and monitoring of certain areas of the campus;
- xi. Student financial aid;

<sup>45</sup> *Id.* § 106.30.

<sup>46</sup> Violations of no-contact orders will be referred to the appropriate Student, Faculty, or Employee conduct processes for enforcement.

- xii. Emergency Removal; and
  - xiii. Any other actions deemed appropriate by the Title IX Coordinator.
- b. *Privacy Related to Supportive Measures.* Supportive Measures used by either the Complainant or the Respondent are kept Private to the extent that maintaining such Privacy does not impair the ability of the University to provide the Supportive Measures.
  - c. *Considerations.* The Title IX Coordinator coordinates the implementation of Supportive Measures, determining what is appropriate on a case-by-case basis. The Title IX Coordinator considers, among other factors: the specific requests of the Complainant or the Respondent; any continuing burdens on the Complainant or Respondent; and whether the Complainant and the Respondent share the same residence hall, classes, athletic team, on-campus job location, etc.
  - d. *Protective Measures.* The Title IX Coordinator reserves the right to take protective measures to ensure a safe and nondiscriminatory environment even when the Parties do not specifically request the measures.
  - e. *Duration and Alteration of Supportive Measures.* Supportive Measures may remain in place or be altered even after a finding of non-Responsibility following the resolution of a Formal Complaint. If there is a finding of Responsibility after the Resolution Processes, the Supportive Measures imposed for a Complainant may become Remedies. See Section XXV.
5. Emergency Removals. When the University determines that a Respondent poses an immediate threat to the physical health or safety of the Complainant or anyone else arising from the allegations of Prohibited Conduct, the Title IX Coordinator may, prior to the initiation or conclusion of the Grievance Procedure,<sup>47</sup> institute an Emergency Removal.
- a. *Within Sole Discretion of Title IX Coordinator.* The Title IX Coordinator has sole discretion to implement, revise, or invoke an Emergency Removal.
  - b. *May Be Pursued Throughout Grievance Procedure.* Emergency Removals may be pursued at any time throughout the Grievance Procedure if circumstances warrant it.
  - c. *Notice to the Respondent.* Prior to the Emergency Removal or as soon thereafter as reasonably possible, the Title IX Coordinator will provide to the Respondent written notice of the Emergency Removal.
  - d. *Challenging an Emergency Removal.* Respondents will have an opportunity to challenge an Emergency Removal in writing before the Title IX Coordinator.<sup>48</sup> A challenge of the Emergency Removal is not a hearing on the merits of the allegation(s) but rather is an administrative process intended to determine solely

<sup>47</sup> 2020 Title IX Regulations, 34 C.F.R. § 106.44(c), 106.44(d).

<sup>48</sup> The University will respect all rights under the Individuals with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.

whether the Emergency Removal is appropriate.<sup>49</sup> There is no appeal process for Emergency Removal decisions.

- e. *Violation of an Emergency Removal.* Violation of an Emergency Removal under this Policy may be grounds for expulsion or termination.
6. Privacy Issues. The University makes every effort to preserve the Privacy of reports of Prohibited Conduct. The University will not share the identity of any Reporting Party, Complainant, individual who has been reported to be the perpetrator of Prohibited Conduct, Respondent, or Witness, except as permitted by FERPA,<sup>50</sup> as required by law, or to carry out the purposes of the 2020 Title IX Final Regulations,<sup>51</sup> including conducting the Grievance Procedure.

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

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

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

7. Requests for Privacy and/or No University Action.
- a. *Requests for Privacy and/or No University Action.* The University will honor a Complainant's request that their report or identity be kept Private and/or that no formal action be taken under this Policy, unless the University determines that it must take formal action to mitigate a risk of harm to the Complainant or others, or it identifies similar important reasons to take formal action under this Policy that is not clearly unreasonable in light of the known circumstances.<sup>52</sup>
  - b. *Determining Requests for Privacy.* The University will weigh the Complainant's request for Privacy against the University's obligation to provide a safe, nondiscriminatory environment for the entire University community. The University will consider a range of factors when determining whether to grant a

<sup>49</sup> The opportunity for a Respondent to challenge an Emergency Removal does not prescribe cross-examination as a necessary procedure within the challenge.

<sup>50</sup> 20 U.S.C. § 1232g.

<sup>51</sup> 34 C.F.R. Part 106.

<sup>52</sup> The Title IX Coordinator has the authority to file a Formal Complaint on behalf of the University. See Section XIII.2. Should this occur, the University must disclose the name of the Complainant to the Respondent to allow the Respondent to appropriately respond to the allegations within the Grievance Procedure.



Complainant's request for Privacy and/or no University action, including but not limited to:

- i. Whether the Respondent has a history of violent behavior or whether Respondent is alleged to have engaged in a pattern of Prohibited Conduct;
  - ii. Whether the allegation suggests escalation from the Respondent's previously noted behavior;
    - i. Whether there is information that indicates predatory conduct;
    - ii. Whether the Respondent is alleged to have used a weapon or Force in the perpetration of the alleged conduct;
  - iii. Whether the allegation suggests an identifiable and tangible risk to the University community;
  - iv. Whether the Complainant is a minor;
  - v. Whether the Complainant is a Student and the Respondent is an Employee;
  - vi. Whether the University possesses other means to obtain evidence;
  - vii. Whether the allegation suggests a pattern of conduct at a given location or by a particular group; and/or
  - viii. Whether the Title IX Coordinator otherwise determines that the allegation warrants resolution through the Grievance Procedure.
- c. *Effects of Maintaining Privacy.* Honoring a Complainant's request for Privacy may limit the University's ability to meaningfully address the alleged Prohibited Conduct. The University may nevertheless take steps to limit the effects of the alleged Prohibited Conduct and prevent its recurrence without undermining the Complainant's request for Privacy by, for example, increasing monitoring, supervision and/or security at locations or activities where the Prohibited Conduct is alleged to have occurred, and by providing training and education for Students and Employees. The University will continue to offer the Complainant Supportive Measures as appropriate.
- d. *Inability to Honor Request for Privacy and/or No University Action.* If the University cannot honor a Complainant's request for Privacy and/or no University action, the Title IX Coordinator will inform the Complainant and put in place Supportive Measures as necessary to protect the Complainant and the University community. The University will disclose information only to individuals who are responsible for handling the University's response and to those needed to conduct an effective investigation.
- e. *No Gag Orders for Parties.* The University may not prohibit a Complainant or a Respondent from discussing or soliciting information relating to the alleged Prohibited Conduct. However, the University urges Parties and Witnesses to use discretion in discussing the alleged conduct or the identities of those involved. Public discussion of alleged Prohibited Conduct other than for the purpose of participating in the Grievance Procedure can not only cause harm and deter others from reporting or responding to such conduct, but it may also constitute Retaliation.

### XIII. THE GRIEVANCE PROCEDURE: FILING THE FORMAL COMPLAINT

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

1. The Formal Complaint, Generally. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator that alleges that a Respondent engaged in Prohibited Conduct and that requests that the University investigate the allegation(s).<sup>53</sup>
  - a. A “document filed by a Complainant” is a document or electronic submission that contains the Complainant’s physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint.<sup>54</sup>
  - b. For allegations of Title IX Sexual Harassment, a Complainant must be participating in or attempting to participate in a University Education Program or Activity at the time of filing a Formal Complaint for Sexual Harassment.<sup>55</sup>
  - c. Formal Complaints will be deemed to be made in good faith unless proven otherwise. See Section XXVI.
2. Formal Complaint Filed by the Title IX Coordinator. The Title IX Coordinator may file a Formal Complaint in situations where the Complainant does not wish to do so. In these cases, the Complainant maintains the “Complainant” designation and becomes a Party throughout the Grievance Procedure, regardless of whether the Complainant chooses to participate in it. When the Title IX Coordinator files a Formal Complaint, the Complainant will receive written Notice of Formal Complaint and Allegations, a copy of the Investigative File for inspection and review, written notice of interviews requested, a copy of the Investigative Report, written notice of any Resolution Processes, and a copy of the written determination regarding Responsibility.
3. Possible Consolidation of Formal Complaints. The Title IX Coordinator has authority to consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances or allege a pattern of

<sup>53</sup> 2020 Title IX Regulations, 34 C.F.R. § 106.30(a).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* § 106.30.

conduct that individually would not rise to the level of Prohibited Conduct, but collectively, if proven, would constitute Prohibited Conduct.<sup>56</sup>

4. Formal Complaints Against Graduating Students. If a Respondent is a graduating Student and the resolution of a Formal Complaint cannot be completed prior to the Respondent's graduation, the University may withhold a Respondent's diploma, degree, and/or official transcripts until the matter is fully resolved, which means awaiting the resolution of an appeal, if applicable.

#### **XIV. THE GRIEVANCE PROCEDURE: NOTIFYING THE PARTIES OF A FORMAL COMPLAINT**

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

1. Notice of Formal Complaint and Allegations. Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to both Parties in the form of a Notice of Formal Complaint and Allegations. The Notice of Formal Complaint and Allegations will, to extent possible at the time of the written notice:<sup>57</sup>
  - a. Identify the Complainant(s) and the Respondent(s);
  - b. Inform the Parties of the Privacy of the Grievance Procedure;
  - c. Request the Parties preserve any evidence directly related to the allegations;
  - d. Notify the Parties of the allegations potentially constituting Prohibited Conduct, including sufficient details known to the Title IX Coordinator at the time (e.g., date, time, and location);
  - e. Explain the specific offenses implicated under this Policy;
  - f. Inform the Parties that they may have an Advisor of their choice to accompany them throughout the Grievance Procedure, including the Resolution Processes;
  - g. Explain the Grievance Procedure and the applicable Resolution Processes, including that the Parties will have an opportunity to inspect, review, and respond to the evidence collected;
  - h. Identify the Investigator and provide the Parties 24 hours to notify the Title IX Coordinator if a Party believes the Investigator has a conflict of interest;
  - i. Inform the Parties that the Respondent is presumed to be Not Responsible for the alleged Prohibited Conduct and that determinations about Responsibility are made during the Hearing Process or Prompt and Equitable Resolution Process;
  - j. Inform the Parties that the Respondent will have sufficient time to prepare a response to the allegations before an initial interview;
  - k. Inform the parties that the Student Conduct Code prohibits knowingly furnishing false information to the University by specifically misrepresenting information

<sup>56</sup> *Id.* § 106.45(b)(4).

<sup>57</sup> *Id.* § 106.30(b)(2).

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

- l. Explain the rights of the Parties, including the right to present Witnesses (including fact and expert witnesses) to present other evidence both Inculpatory and Exculpatory, and to review all evidence collected;
  - m. Explain the University's policy on Retaliation;
  - n. Detail how the Parties may acquire disability accommodations during the Grievance Procedure; and
  - o. Inform the Parties that the Title IX Coordinator reserves the right to amend the allegations and charged offenses within the Notice of Formal Complaint and Allegations as more information becomes available throughout the Investigative Process.
2. Request for Conflicts. Within two business days of sending the Notice of Formal Complaint and Allegations, the Title IX Office will contact the Parties to ask them to identify any academic or other conflicts that would affect the timing of the Investigative Process and the Resolution Processes.

#### **XV. THE GRIEVANCE PROCEDURE: THE INVESTIGATIVE PROCESS, GENERALLY**

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

1. Timeline to Complete the Investigative Process. The University will make a good faith effort to complete the Investigative Process as promptly as circumstances permit. Investigations are completed expeditiously, though some may take longer than others, depending on the nature, extent, and complexity of the allegations, availability of Witnesses, police involvement, etc.
2. University's Commitment to Update Parties. During the investigative process, the Title IX Coordinator and/or Investigator will communicate regularly with the Parties to update them on the progress and timing of the Investigative Process.
3. Activities Undertaken During the Investigative Process. During the Investigative Process, the Investigator will attempt to interview all Parties and Witnesses; obtain available Relevant Evidence; and identify sources of expert information, as necessary. The Parties have a full and fair opportunity through the Investigative Process to suggest Witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence.

4. Burden of Proof. Throughout the Grievance Procedure, the University—not the Parties—bears the burden of gathering evidence sufficient to reach a determination regarding Responsibility and has the burden of proof during the Formal Resolution Processes.<sup>58</sup>
5. Presumption of Non-Responsibility. The Respondent is presumed Not Responsible for the alleged conduct throughout the Grievance Procedure, until a determination regarding Responsibility is made at the end of the Formal Resolution Processes.<sup>59</sup>

## **XVI. THE GRIEVANCE PROCEDURE: THE INVESTIGATIVE PROCESS**

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

1. Assignment of Investigator. The Title IX Coordinator will assign a Title IX Deputy Coordinator or other Investigator from within or outside of the University to investigate the allegations in the Formal Complaint.
  - a. *Challenging Investigator for Perceived Bias or Conflict of Interest.* The Title IX Coordinator will ensure the assigned Investigator has no conflicts of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.<sup>60</sup> However, either Party may assert to the Title IX Coordinator that the Investigator has a conflict of interest or perceived bias. This assertion must be made in writing within 24 hours of the Parties receiving notice of the identity of Investigator. If the Title IX Coordinator determines that such a conflict or bias exists, the Title IX Coordinator will replace the Investigator. The Title IX Coordinator’s determination is final.
  - b. *Title IX Coordinator as Investigator.* The Title IX Coordinator may also serve as an Investigator. When the Title IX Coordinator serves as the Investigator, the Title IX Coordinator will designate a Title IX Deputy Coordinator to serve as acting Title IX Coordinator for that case only.
2. Scope of Investigation. The Investigator will undertake a thorough search for relevant facts and evidence pertaining to the Formal Complaint. This search includes but is not limited to interviewing the Parties and Witnesses and collecting both Inculpatory and Exculpatory Evidence, such as documents, files, electronic communications,

<sup>58</sup> *Id.* § 106.45(b)(5)(i).

<sup>59</sup> *Id.* § 106.45(b)(1)(iv). The purpose of the presumption of non-Responsibility is not to favor Respondents at the expense of Complainants or to demonstrate animus or hostility toward Complainants. Rather, such a presumption is mandated by the 2020 Title IX Final Regulations as a measure of fairness in the same way that Formal Complaints are deemed to be made in good faith unless proven otherwise. This Policy establishes a fair Grievance Procedure for all Parties, and the presumption of non-Responsibility does not affect or diminish the strong procedural rights granted to both Complainants and Respondents throughout the Grievance Procedure.

<sup>60</sup> *Id.* § 106.46(b)(1)(iii).

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

3. Interviews. The Investigator will interview the Complainant, the Respondent, and Witnesses.
  - a. *Written Notice of Interviews.* In order for the Parties to prepare for and meaningfully participate in interviews, the Investigator will provide advance written notice to the person the Investigator plans to interview. The written notice will include the date, time, location, participants in, and purpose of the investigative interview or other meeting.
  - b. *Virtual Interviews.* Interviews may be conducted virtually with technology enabling the Investigator and interviewees to simultaneously see and hear each other.
  - c. *Written Statements Instead of or in Addition to Interview.* The Parties and Witnesses may provide a written signed statement instead of or in addition to an interview.
  - d. *Multiple Interviews.* The Investigator may request to interview the Complainant, Respondent, or any Witness more than once during the Investigative Process. The Investigator's request to interview one Party more times than the other bears no correlation with the potential outcome of the matter and is not indicative of Investigator bias or unfairness.
  - e. *Audio Recording of Interviews.* The Investigator will audio record all interviews they conduct and will prepare an interview transcript or summary. The Parties and Witnesses may request their own audio recorded interview but may not request or access the recorded interviews of others.
  - f. *Advisors.* The Complainant and the Respondent may have their Advisor present during their interview(s) with the Investigator. See Section X.2.
4. Parties' Participation in the Investigative Process. The Complainant and the Respondent have an equal opportunity to discuss the allegations under investigation, present Witnesses for the Investigator to interview (including fact and expert witnesses), and provide evidence, including Inculpatory and Exculpatory Evidence.
5. Investigator Discretion. The Investigator may decline to interview Witnesses that the Investigator deems unlikely to yield Relevant Evidence. Such Witnesses include but are not limited to character witnesses who have no relevant information about the incident under investigation.
6. Gathering of Evidence. The Investigator will identify and request from any available source evidence such as documents, files, electronic communications, photographs, and video footage. The Investigator will seek, but not require, a voluntary waiver of legal privilege if evidence protected under a legally recognized privilege is provided by or

sought from the Parties.<sup>61</sup> The Investigator and/or Hearing Panel may not rely on any evidence protected by legal privilege unless the privilege is voluntarily waived. Additionally, the Investigator may independently identify and interview Witnesses and obtain Relevant Evidence other than what has been presented by the Parties.

7. Evidence About Complainant's Past Sexual History. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant unless (a) such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.<sup>62</sup>
8. The Investigative File. When the Investigator finishes gathering the available evidence, the Investigator will compile in the Investigative File all the evidence *directly related* to the allegations raised in the Formal Complaint. The Investigative File will include:
  - a. The interview transcripts or summaries of the testimonies of the Complainant, the Respondent, and Witnesses;
  - b. The questions posed in writing by the Parties and the Parties' answers to those questions; and
  - c. All Inculpatory and Exculpatory evidence collected by the Investigator, such as documents, files, electronic communications, photographs, video footage, and other forms of evidence.
9. Parties' Review of the Investigative File and Draft Investigative Report. The Investigator will draft an Investigative Report and provide both the Investigative File and the draft Investigative Report to the Complainant and the Respondent and their Advisors. The Parties will have 10 business days to inspect the Investigative File and draft Investigative Report and to provide a written response.<sup>63</sup> Each Party's written response will be provided to the other Party. No other responses are permitted.
10. Parties' Responses to the Investigative File and Draft Investigative Report. A Party is not required to submit a response to the Investigative File and draft Investigative Report; however, any response a Party wants to make must be submitted in writing.
  - a. *Content of Written Responses.* A Party's written response to the Investigative File and draft Investigative Report may do any of the following:
    - i. Further address the allegations;
    - ii. Identify perceived factual errors or omissions in the Investigative File and the draft Investigative Report;
    - iii. Offer any additional evidence not previously disclosed;

<sup>61</sup> *Id.* § 106.45(b)(1)(x).

<sup>62</sup> *Id.* § 106.45(b)(6)(i).

<sup>63</sup> *Id.* § 106.45(b)(5)(vi).

- iv. Submit in writing to the Investigator relevant questions that the Party wishes the Investigator to ask the other Party or any Witnesses. Should a Party propose a question that the Investigator deems not relevant, the Investigator will explain to the Party their decision to exclude a question as not relevant.
  - b. *Additional Evidence for the Investigator.* The Parties must submit any evidence that they would like the Investigator to consider prior to the close of the evidence-gathering phase of the Investigative Process.
  - c. *Written Responses Included in Investigative File.* The Parties' written responses to the Investigative File and draft Investigative Report will be appended to the Investigative File whether or not the Investigator revises the draft Investigative Report to include the Parties' suggested revisions or desired clarifications.
- 11. Closing the Evidence-Gathering Phase. The Investigator has sole discretion to determine when to close the evidence-gathering phase of the investigation and finalize the Investigative Report. Generally, the evidence-gathering phase of the Investigative Process concludes after the Parties provide written responses to the Investigative File and draft Investigative Report, unless additional evidence is provided in the written responses. If additional evidence is provided in the written responses, the Investigator will provide the additional evidence to the Parties and provide them a brief opportunity to respond in writing.
- 12. Finalizing the Investigative File and Investigative Report. After the Investigator closes the evidence-gathering phase of the investigation, the Investigator will incorporate relevant elements of the Parties' written responses into the final Investigative Report, include any additional Relevant Evidence, make any necessary revisions, and finalize the Investigative Report. The Relevant Evidence summarized in the Investigative Report is the evidence intended to be relied upon in reaching a determination on Responsibility. Contents of the Final Investigative Report will generally include:
  - a. A jurisdictional statement relating to the applicability of this Policy,
  - b. An explanation of the alleged Prohibited Conduct,
  - c. The applicable offenses,
  - d. A description of procedural steps taken during the Investigative Process,
  - e. The evidence obtained by the Investigator and the Witnesses interviewed,
  - f. Whether Supportive Measures were provided, and
  - g. A summary of the Relevant Evidence, including identification of undisputed facts, corroborated facts, and/or disputed facts.
- 13. Final Investigative Report Sent to Parties. The Investigator will send the final Investigative Report to the Parties and their Advisors for the Parties' review and written response 10 days prior to a Hearing. The Parties will receive one another's written response to the final Investigative Report and may respond to additional evidence, if applicable. The Parties' written responses will be appended to the Investigative Report.



14. Title IX Coordinator Review of Investigative Report. After the Parties have reviewed and responded to the final Investigative Report, the Title IX Coordinator will review the Investigative Report and written responses and determine next steps.
- a. *Next Steps for Formal Complaints Alleging Sexual Harassment*. Formal Complaints of Sexual Harassment may (i) be dismissed, (ii) be resolved through the Informal Resolution Process, or (iii) proceed to the Hearing Process.
    - i. The Title IX Coordinator will determine whether the Investigative Process reveals facts requiring or permitting Dismissal of the Formal Complaint.<sup>64</sup> See Section XVIII.
    - ii. The Title IX Coordinator may gauge the Parties' interest in the Informal Resolution Process. See Section XIX.
    - iii. If the Formal Complaint is not dismissed pursuant to Section XVIII or is not appropriate for or resolved through the Informal Resolution Process in Section XIX, the Formal Complaint will proceed to the Hearing Process pursuant to Section XX.
  - b. *Next Steps for Formal Complaints Alleging Sex Discrimination or Retaliation*. Formal Complaints of Sex Discrimination or Retaliation may be (i) be dismissed, (ii) be resolved through the Informal Resolution Process, or (iii) proceed to the Prompt and Equitable Resolution Process.
    - i. The Title IX Coordinator will determine whether the Investigative Process reveals facts requiring or permitting Dismissal of the Formal Complaint.<sup>65</sup> See Section XVIII.
    - ii. The Title IX Coordinator may gauge the Parties' interest in the Informal Resolution Process. See Section XIX.
    - iii. If the Formal Complaint is not dismissed pursuant to Section XVIII or is not appropriate for or resolved through the Informal Resolution Process, the Formal Complaint will proceed to the Prompt and Equitable Resolution Process pursuant to Section XXI.

## **XVII. THE RESOLUTION PROCESSES: GENERALLY**

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

1. Dismissals. Dismissals as described in Section XVIII apply to Formal Complaints of Prohibited Conduct.

<sup>64</sup> *Id.* § 106.45(b)(3).

<sup>65</sup> *Id.* § 106.45(b)(3).

2. Informal Resolution Process. The Informal Resolution Process may be available after the filing of a Formal Complaint of Prohibited Conduct. See Section XIX.
3. Hearing Process. The Hearing Process as described in Section XX applies only to Formal Complaints of Sexual Harassment and to Formal Complaints that allege both Sexual Harassment and Sex Discrimination or Retaliation.
4. Prompt and Equitable Resolution Process. The Prompt and Equitable Resolution Process as described in Section XXI applies only to Formal Complaints of Sex Discrimination or Retaliation.

### **XVIII. THE RESOLUTION PROCESSES: DISMISSALS**

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

1. Mandatory Dismissal of Formal Complaints of Title IX Sexual Harassment. The University must dismiss Formal Complaints alleging Title IX Sexual Harassment in the following circumstances:<sup>66</sup>
  - a. The allegations raised in the Formal Complaint (or certain allegations within the Formal Complaint), even if proved, do not fall under the definition of Sexual Harassment,
  - b. The alleged Sexual Harassment did not take place in the United States,
  - c. The alleged Sexual Harassment did not take place within a University Program or Activity, or
  - d. The Complainant was not participating or attempting to participate in a University Program or Activity at the time the Formal Complaint was filed.

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

2. Mandatory Dismissal of Formal Complaints of Other Prohibited Conduct. The University must dismiss Formal Complaints alleging Prohibited Conduct when the allegations raised in the Formal Complaint (or certain allegations within the Formal Complaint), even if proved, do not fall under the definition of Prohibited Conduct.

<sup>66</sup> *Id.* § 106.45(b)(3)(i).

3. Discretionary Dismissals. The University may dismiss Formal Complaints alleging both Title IX and Non-Title IX Sexual Harassment<sup>67</sup> and Formal Complaints alleging Sex Discrimination or Retaliation when:
  - a. The Complainant asks the Title IX Coordinator in writing to withdraw the Formal Complaint or any allegations therein,<sup>68</sup>
  - b. The Respondent is no longer enrolled at or employed by the University, or
  - c. Specific circumstances exist that prevent the Investigator from gathering evidence sufficient to reach a determination as to the allegations contained in the Formal Complaint.
4. Notice of Dismissal. The Title IX Coordinator will promptly notify the Parties in writing of a Dismissal decision and the reasons for the Dismissal. The Parties will have 24 hours to appeal the Dismissal decision in writing to the Title IX Coordinator. See Section XXIV.
5. Availability of Supportive Measures. Parties to a dismissed Formal Complaint still have access to Supportive Measures at the Title IX Coordinator's discretion.
6. Options to Pursue Dismissed Formal Complaints. For Formal Complaints that are dismissed because the alleged conduct does not constitute Sexual Harassment, Sexual Discrimination, or Retaliation, even if proven, the Complainant may still have the conduct addressed through the Conduct Code, Employee Handbook, or Faculty Handbook.
7. Finality of Dismissal Decision. The Dismissal decision becomes final either:
  - a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
  - b. On the date on which an appeal would no longer be considered timely.

## **XIX. THE RESOLUTION PROCESSES: INFORMAL RESOLUTION PROCESS**

The Informal Resolution Process is applicable when (1) the Parties voluntarily agree to resolve the matter through Alternative Resolution or (2) the Respondent accepts Responsibility for violating the Policy.

Any Party participating in the Informal Resolution Process can stop the process at any time and request the matter be resolved through the Hearing Process (Section XX) or the Prompt and Equitable Resolution Process (Section XXI), whichever applies.

Discussions that occur during the Informal Resolution Process are kept Private and are not used as evidence in any other Resolution Process, should the Informal Resolution Process fail.

<sup>67</sup> *Id.* § 106.45(b)(3)(ii).

<sup>68</sup> A Complainant who withdraws a Formal Complaint may reinstitute it later.

Further, the Title IX Coordinator has discretion to reject any proposed outcomes that are the result of the Informal Resolution Process.

1. Alternative Resolution. Alternative Resolution is an informal process by which the Parties, with the help of a third party, agree upon a resolution of an allegation(s).
  - a. *Determination of Applicability*. The Title IX Coordinator will determine whether Alternative Resolution is appropriate based on the willingness of the Parties to participate and the nature of the conduct at issue. Both Parties must consent to the use of Alternative Resolution.
  - b. *How it Works*. In an Alternative Resolution meeting, an administrator will facilitate a dialogue with the Parties to a mutually agreeable outcome, if possible. Institutionally imposed Sanctions are not possible as the result of an Alternative Resolution process.
  - c. *Records*. The Title IX Coordinator will maintain records of any outcome reached through Alternative Resolution. See Section XXX.
  - d. *Non-Appealable*. The results of Alternative Resolution are not appealable.
  
2. Respondent Accepts Responsibility for Alleged Violations. The Respondent may accept Responsibility for some or all of the alleged Policy violations at any point during the Informal Resolution Process. If the Respondent accepts Responsibility, the Title IX Coordinator will determine that Respondent has violated this Policy with respect to the conduct for which Respondent has accepted Responsibility.

The Title IX Coordinator will then determine appropriate responsive actions, which are promptly implemented in order to effectively stop the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant and on the University community.

- a. *Accepting Responsibility for Some of Alleged Conduct*. If the Respondent accepts Responsibility for some of the alleged Policy violations and the Title IX Coordinator has determined and implemented the appropriate responsive actions, then the remaining allegations will continue to be investigated and resolved under the applicable Resolution Processes. The Complainant will be informed of this outcome. The Parties are still able to seek Alternative Resolution on the remaining allegations, subject to the provisions in Section XIX.1.
- b. *Accepting Responsibility for All of Alleged Conduct*. If the Respondent accepts Responsibility for all alleged Policy violations and the Title IX Coordinator has determined and implemented the appropriate responsive actions, the process is over. Responsive actions are not appealable. The Complainant will be informed of this outcome.
- c. *Records*. The Title IX Coordinator will maintain records of any outcome reached due to the Respondent accepting Responsibility. See Section XXX.
- d. *Non-Appealable*. The responsive actions implemented due to the Respondent accepting Responsibility are not appealable.

## XX. THE RESOLUTION PROCESSES: THE HEARING PROCESS

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

1. The Appointment of a Hearing Panel. The Title IX Coordinator will appoint a Hearing Panel to hear the case and determine the outcome.
  - a. The Title IX Coordinator may serve as an administrative facilitator of the Hearing for procedural efficiency.
  - b. The Title IX Coordinator will coordinate with the Hearing Panel and the Parties to schedule a date and time for the Hearing.
2. Scope of the Hearing. The Hearing Panel has the authority to hear and make determinations on all allegations of Sexual Harassment and may also hear and make determinations on any additional alleged violations of this Policy that would otherwise be subject to the Prompt and Equitable Resolution Process when those alleged violations occurred in concert with the Sexual Harassment.
3. The Notice of Hearing to the Parties. At least 10 days before the Hearing, the Parties will receive a Notice of Hearing that will inform them of date, time, location, and the participants (including the Witnesses who will be made available to testify) in the Hearing. The Notice of Hearing will also include names of the members of the Hearing Panel, the Hearing Rules and Procedures, potential Sanctions, and the purpose of the Hearing, which is to adjudicate the allegations, determine Responsibility, and issue an appropriate Sanction, if applicable.
  - a. *Challenging Members of Hearing Panel for Perceived Bias or Conflict of Interest.* Within 24 hours of receipt of the Notice of Hearing, either Party may assert to the Title IX Coordinator, in writing, that a member of the Hearing Panel has a perceived bias or conflict of interest. If the Title IX Coordinator determines that such a bias or conflict exists, the Title IX Coordinator will replace that member of the Hearing Panel with an alternate. The Title IX Coordinator's determination is final.
  - b. *Party Not Attending the In-Person Hearing.* If either or both Parties prefer not to attend or cannot attend the Hearing in person, they should request alternative arrangements from the Title IX Coordinator or the Hearing Chair at least five business days prior to the Hearing.

4. Before the Hearing.
  - a. *Hearing Panel to Review Investigative Report and Relevant Evidence.* The Hearing Panel will review the Investigative Report and the Relevant Evidence relied upon in the Investigative Report before the Hearing. The Hearing Panel will review evidence determined not relevant by the Investigator only if the parties wish to challenge that determination at the Hearing.
  - b. *Notice to Witnesses.* Because the Hearing Panel will call all relevant Witnesses to testify, the Title IX Coordinator will notify each Witness in writing of the request to participate in the Hearing.
  - c. *Unavailability of Witnesses.* Any Witness who cannot attend Hearing must let the Title IX Coordinator know at least five business days prior to the Hearing so that appropriate arrangements can be made.
  
5. The Pre-Hearing Conference. The Title IX Coordinator may coordinate an in-person or virtual pre-Hearing conference for the Parties and their Advisors. The pre-Hearing conference will be run by the Hearing Chair and will be audio recorded. The purposes of the pre-Hearing conference are to:
  - a. Have the Hearing Chair hear and rule on any evidentiary challenges raised by the Parties;<sup>69</sup>
  - b. Provide the opportunity for the Parties and their Advisors to seek a pre-determination of relevance for questions the Advisors intend to ask the other Party and Witnesses (optional);
  - c. Conduct an overview of the Hearing Rules and Procedures;
  - d. Answer Hearing Process-related questions;
  - e. Test the technology to be used at the Hearing; and
  - f. Address any other pre-Hearing matter.
  
6. The Logistics of the Hearing. This section covers the logistics of the Hearing, including how the Parties will be physically separated for in-person Hearings, the use of technology in Hearings, rules for Advisors, handling of Witnesses (including the Investigator as a Witness), and what will happen if Parties or Witnesses fail to appear at the Hearing.
  - a. *Location of In-Person Hearing.* If held in person, the Hearing will typically be held in the Alumni Memorial Union.
  - b. *Separation of Parties and Witnesses During an In-Person Hearing and Use of Technology.* If the Hearing is in person, the Parties and Witnesses are not permitted to be in the same room; video of the Hearing will be streamed in real time. The technology will enable each Party and the Hearing Panel to simultaneously see and hear the Party or Witness answering questions. The use of technology does not compromise the fairness of the Hearing.

<sup>69</sup> For example, the Hearing Chair will consider arguments that evidence identified as relevant in the final Investigative Report is, in fact, not relevant. Similarly, evidence identified by the Investigator as directly related but not relevant may be argued to be relevant.

- c. *Virtual Hearings.* Hearings may be conducted with all Parties physically present in the same geographic location or, at the University’s discretion, any or all Parties, Witnesses, and other participants may appear at the Hearing virtually with technology enabling the participants to simultaneously see and hear each other.
- d. *Closed to Public.* Hearings are closed to the public.
- e. *Audio Recording.* Hearings are audio recorded and will be made available to either Party by request. The Hearing Panel’s deliberations are not recorded.
- f. *Rules for Advisors.* The Parties *must* have an Advisor accompany them to the Hearing or to appear on their behalf if they do not attend the Hearing. See Section X.6.c. The Complainant and the Respondent are prohibited from questioning each other and Witnesses directly; rather, they must do so through their Advisors. An Advisor’s role in the Hearing Process is limited as follows:
  - i. The Advisor’s role is solely to question to the other Party and Witnesses.
  - ii. The Advisor cannot respond to questions from the Hearing Panel or the other Advisor that are directed at their Party.
    - 1. Complainants and Respondents are expected to respond to questions from the Hearing Panel and from the other Party’s Advisor on their own behalf.
  - iii. The Advisor may consult with their Party in private during the Hearing but not while a question is pending.
  - iv. Advisors may not raise objections to questions posed by the other Party’s Advisor, argue in support of their Party’s position, or otherwise represent their Party at the Hearing.
- g. *Witnesses.* The Hearing Panel will call the relevant Witnesses named in the Investigative Report. The Investigator may also serve as a Witness. Witnesses (other than the Investigator) are not allowed to be present to hear the testimony of the Parties or of other Witnesses.
  - i. *“New” Witnesses.* If, at the Hearing, the name of a Witness arises, and that Witness was not previously disclosed during the Investigative Process, or if a Witness who was identified during the Investigative Process but who chose not to participate now desires to participate, the Hearing Chair may:
    - 1. Temporarily adjourn the Hearing and request that the Investigator interview the Witness and provide the interview transcript or summary to the Parties before reconvening the Hearing, or
    - 2. Continue the Hearing and invite the Witness to appear and submit to questions from the Hearing Panel and the Parties’ Advisors.
- h. *No-Show Parties or Witnesses.* If the Complainant, the Respondent, or Witnesses fail to appear and/or participate, the Hearing will continue as scheduled unless the Hearing Chair determines there is Good Cause to suspend the Hearing.
- i. *The Investigator.* The Investigator will be present for the entire Hearing but not present during the Hearing Panel deliberations.

7. The Hearing. The Hearing Rules and Procedures will be provided to the Parties in advance of the Hearing and will provide more specifics. In general, though, the Hearing will proceed as follows.
- a. To begin the Hearing, the Hearing Chair will provide to the Parties and their Advisors a brief overview of the Hearing process and the expectations for participants' conduct. The Parties and their Advisors must agree to abide by those expectations or risk removal from the Hearing. If an Advisor is removed for failure to abide by the Hearing rules, the Hearing will continue after a new Advisor is selected by the Party or appointed by the University.
  - b. The Hearing Chair shall:
    - i. Exclude non-relevant questions and testimony;<sup>70</sup>
    - ii. Observe recognized legal privileges, and
    - iii. Take reasonable steps to maintain order and decorum.
  - c. The Hearing Panel will question the Complainant, the Respondent, and Witnesses directly.
  - d. The Hearing Panel and the Advisors may question the Investigator as a Witness. However, questions directed to the Investigator requesting the Investigator's opinions on credibility, recommended findings, or determinations will not be permitted.
  - e. Advisors must ask questions in the following manner:
    - i. Advisors will pose each question verbally to the Hearing Chair, who will determine whether the question is relevant.
    - ii. If the Hearing Chair deems the question relevant, the Hearing Chair will instruct the Party or Witness to answer the question.
    - iii. If the Hearing Chair deems the question not relevant, the Hearing Chair will explain the rationale for the determination and instruct the Party or Witness not to answer.
    - iv. The Hearing Chair may ask Advisors to frame why, from the Advisor's perspective, a question is or is not relevant, but the Hearing Chair will not entertain argument from the Advisors on relevance once the Hearing Chair has ruled on a question.
    - v. The Hearing Chair's decision on whether a question is relevant is final.
  - f. For allegations of Title IX Sexual Harassment, the Hearing Panel must not rely on the statement of a Party or Witness who does not submit to questioning from a Party's Advisor (i.e., fails to answer relevant questions).<sup>71</sup>
  - g. Additionally, the Hearing Panel may not draw an inference about the decision regarding Responsibility based solely on a Party's or a Witness's absence from the Hearing or a Party or a Witness's refusal to answer questions.<sup>72</sup>

<sup>70</sup> Examples may include immaterial, extraneous, or unduly repetitious questioning or testimony, prior bad acts unrelated to the alleged incident(s), information regarding a Party's character.

<sup>71</sup> 2020 Title IX Regulations, 34 C.F.R. § 106.45(b)(6)(i).

<sup>72</sup> *Id.*



- h. If allegations of Prohibited Conduct under this Policy other than Title IX Sexual Harassment are considered at the Hearing, the Hearing Panel may consider all evidence it deems relevant and may rely on any relevant statement as long as the Parties had an opportunity to question the opposing Party and Witnesses through their Advisors and to be questioned about the evidence, even if the Parties did not take that opportunity.
  - i. Typically, the questioning at the Hearing proceeds as follows:
    - i. The Hearing Panel will first question the Complainant.
    - ii. Respondent's Advisor may then question the Complainant.
    - iii. The Hearing Panel will question each Witness.
      - 1. After the Hearing Panel questions a Witness, the Complainant's Advisor, then the Respondent's Advisor, may question that Witness.
    - iv. The Hearing Panel will next question the Respondent.
    - v. The Complainant's Advisor may then question the Respondent.
  - j. If necessary, the Hearing Chair may re-call the Complainant, the Respondent, or any Witness for further questioning. If any Party or Witnesses are re-called, the Parties' Advisors may ask follow-up questions.
  - k. Each Party, speaking on their own behalf, is permitted to share a closing statement no longer than five minutes.
8. After the Hearing. Following the close of the Hearing, the Hearing Panel will deliberate to determine Responsibility. Following those deliberations and as soon as practicable the Hearing Chair will draft a written determination, including Sanctions and Remedies if the Respondent is found Responsible, and the Title IX Coordinator will contemporaneously inform the Parties of the outcome.
- a. *Determination of Responsibility.* The Hearing Panel will determine whether the Respondent is either Not Responsible or Responsible.
    - i. *Not Responsible.* The Respondent will be found Not Responsible when the Hearing Panel determines either that it is more likely than not that the alleged behavior did not occur, that the evidence was inconclusive to determine whether it is more likely than not that the alleged behavior occurred, or that the alleged behavior occurred but did not violate this Policy.
    - ii. *Responsible.* The Respondent will be found Responsible when the Hearing Panel determines that it is more likely than not that the alleged behavior did occur and that the behavior violated this Policy.
  - b. *Written Determination.* The Hearing Chair will draft a written determination ("Notice of Outcome Following Hearing") that will include:
    - i. Identification of the allegations potentially constituting Sexual Harassment;
    - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination of Responsibility, including

any notices to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather evidence, and hearings held;

- iii. Findings of fact supporting the determination;
- iv. Conclusions regarding the application of this Policy to the facts;
- v. A statement of, and rationale for, the result as to each allegation; and
  - 1. Where credibility of the Parties is an issue in determining Preponderance of the Evidence, the rationale will include an explanation of how the Hearing Panel resolved questions of credibility. Credibility determinations will not be based upon a person's status as Complainant or Respondent.

vi. The procedures and permissible bases for appeal.

- c. *Sanctions and Remedies.* If the Respondent is found Responsible, the Hearing Chair will include an appropriate Sanction within the Notice of Outcome Following Hearing. The Hearing Panel will also issue Remedies for the Complainant to preserve or restore the Complainant's equal education access.
- d. *Notice of Outcome to Parties.* The Title IX Coordinator will contemporaneously inform the Complainant and the Respondent of the Hearing Panel's determination by issuing a Decision Notification Letter, attaching the Hearing Panel's Notice of Outcome Following Hearing.

9. Finality of Outcome. The Hearing Panel's determination regarding Responsibility becomes final either:

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

## **XXI. THE RESOLUTION PROCESSES: PROMPT AND EQUITABLE RESOLUTION PROCESS**

Formal Complaints alleging Sex Discrimination or Retaliation are adjudicated through the Prompt and Equitable Resolution Process. If a Formal Complaint alleges Sex Discrimination or Retaliation and Sexual Harassment, the Title IX Coordinator may combine all the allegations and have them adjudicated simultaneously through the Hearing Process in Section XX, or separate the Sexual Harassment allegations from Sex Discrimination or Retaliation allegations and have the matter proceed separately under the Hearing Process in Section XX (for the allegations of Sexual Harassment) and under the Prompt and Equitable Resolution Process (for the allegations of Sex Discrimination or Retaliation).

- 1. Incorporates the Investigative Process. The Prompt and Equitable Resolution Process incorporates the Investigative Process described in Section XVI, which includes the right of the parties to have an Advisor.
- 2. Investigator Determines Responsibility. Following the Parties' review and written responses to the Investigative File and Investigative Report (as explained in Section XVI.10, the Investigator will objectively evaluate all Relevant Evidence—both Inculpatory

Evidence and Exculpatory Evidence—and determine Responsibility. The Investigator will determine whether the Respondent is Not Responsible or Responsible.

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

Notification Letter, attaching the Investigator's Notice of Outcome Following the Prompt and Equitable Resolution Process.

7. Finality of Outcome. The Investigator's determination regarding Responsibility becomes final either:
  - a. On the date that the Title IX Coordinator provides the Parties with the Appeal Decision, if an appeal was filed, or
  - b. On the date on which an appeal would no longer be considered timely.

## **XXII. DISCIPLINARY SANCTIONS**

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

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

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

### 1. Student Sanctions.

- a. Warning
- b. Probation
- c. Suspension
- d. Expulsion
- e. Withholding Diploma
- f. Withholding Degree
- g. Transcript Notation
- h. Organizational Sanctions
- i. Other Actions, including limitations on residential or co-curricular engagement, such as removal from or limitations on access to a specific or all residence halls, or a co-curricular program.

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

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

### **XXIII. REMEDIES**

If a finding of Responsibility occurs under any of the Resolution Processes, the Complainant is entitled to Remedies designed to preserve or restore equal access to the University's Education Program or Activity.<sup>73</sup>

<sup>73</sup> *Id.* § 106.45(b)(1)(i).

The range of Remedies available to a Complainant include but are not limited to the Supportive Measures listed in Section XII.4, but Remedies are not required to be non-disciplinary or non-punitive and may burden a Respondent.<sup>74</sup>

#### **XXIV. APPEAL PROCESS**

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

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

<sup>74</sup> *Id.*

Outcome Following Hearing or the Notice of Outcome Following Prompt and Equitable Resolution Process.

A Notice of Dismissal or Decision Notification Letter is considered “delivered” when provided in-person or sent via email.

5. Advisors During Appeal. The Parties may continue to use their Advisor or select a different Advisor for the Appeal Process.
6. Upon Receipt of Appeal. Upon receipt of an appeal, the Title IX Coordinator will simultaneously issue a Notice of Appeal to both parties. The Notice of Appeal will:
  - a. Inform the Party that an appeal has been filed by the Complainant and/or the Respondent;
  - b. Indicate whether the appeal is timely;
  - c. If the appeal is timely, contain a copy of the appeal appended to the Notice of Appeal and disclose the name of the Appeal Officer assigned by the Title IX Coordinator.
7. Appeal Officer. The Appeal Officer is independent of the previous processes, including independent from any appeal of a Dismissal that may have been heard earlier in the process. The Title IX Coordinator will ensure the Appeal Officer does not have a conflict of interest or bias against complainants and respondents in general or the individual Complainant and Respondent in the appeal.
  - a. *Challenging Appeal Officer for Perceived Bias or Conflict of Interest.* Within 24 hours of receipt of the Notice of Appeal, either Party may assert in writing to the Title IX Coordinator that the Appeal Officer has a perceived bias or conflict of interest. If the Title IX Coordinator determines that such a bias or conflict exists, the Title IX Coordinator will replace the Appeal Officer. The Title IX Coordinator’s determination is final.
  - b. When the selection of the Appeal Officer is final, the Title IX Coordinator will provide the materials for the appeal to the Appeal Officer.
  - c. *Non-Appealing Party’s Response to Appeal.* The non-appealing party will have two business days to submit to the Appeal Officer a written response to the appeal, which response will be provided to the appealing party.
  - d. *Other Responses to Appeal.* The Appeal Officer may invite the Investigator or Hearing Chair to submit a response to the appeal, which written responses will be provided to the Parties. No further submissions are permitted.
8. Cross-Appeals. If both Parties submit appeals (i.e., cross-appeals or counter-appeals<sup>75</sup>), the same Appeal Officer will decide both appeals individually but contemporaneously.

<sup>75</sup> A cross-appeal results when both Parties appeal the determination in a Formal Complaint. Counter-appeals arise from two separate Formal Complaints that were adjudicated contemporaneously because they arose from the same set of facts and circumstances and involved the same Parties.

The same Appeal Officer will decide any appeals arising from the same facts and circumstances.

9. Supportive Measures During Appeal Process. Supportive Measures may be continued or modified during the Appeal Process, as appropriate.
10. Postponing of Sanctions During Appeal Process. If an appeal was timely filed, any Sanctions that had been imposed on Respondent are postponed during the Appeal Process. However, the University may place a hold on a Respondent's official transcript, diploma, graduation, and/or course registration pending the outcome of an appeal when the original Sanction calls for separation from the University (i.e., suspension, expulsion or termination).
11. Scope of the Appeal Process. The Appeal Process is not a review of the entire matter; rather, it is an objective review of the written record of the Prompt and Equitable Resolution Process or of the record (written and audio recorded) of the Hearing Process, along with the appeal-related submissions described in this section. Accordingly, the Appeal Officer will not interview, question, or meet with the Parties or their Advisors. The Appeal Officer will defer to the original findings and determination regarding Responsibility, remanding only when there is clear reason to do so, and modifying the outcome and Sanction(s) only when there is a compelling justification to do so.

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

12. The Outcome of the Appeal Process. The Appeal Officer may take one of following possible actions on appeal:
  - a. Dismiss the appeal for failure to meet the grounds of appeal, therefore upholding the initial outcome and Sanction(s), if applicable.
  - b. Remand to the original Investigator or Hearing Panel with specific instructions on the remanded issue(s).
  - c. Modify the outcome and/or Sanction with a rationale supporting the modification.
  - d. In rare cases where a procedural or substantive error cannot be cured by the original Investigator or Hearing Panel, the Appeal Officer may order a new Hearing with a new Investigator and/or Hearing Panel or new Resolution through the Prompt and Equitable Resolution Process with a new Investigator.
13. Written Decision. The Appeal Officer will generally render to the Title IX Coordinator a written decision on the appeal ("Appeal Decision") as to each ground raised and provide the rationale for the decision.



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

## **XXV. LONG-TERM SUPPORTIVE MEASURES OR OTHER ACTIONS**

Following the conclusion of any of the Resolution Processes, including the Appeal Process, and in addition to any Sanctions implemented, the Title IX Coordinator may implement additional long-term Supportive Measures or other actions with respect to the Parties and/or the University community that are intended to stop the Prohibited Conduct, remedy its effects, and prevent its reoccurrence. This section describes (1) the Supportive Measures or other actions that may be taken, (2) requests for long-term adjustments, (3) the Title IX Coordinator's discretion to implement Supportive Measures in absence of a Policy violation, and (4) Privacy matters.

- 1. Supportive Measures or Other Actions Available. Supportive Measures or other actions that may be taken may include but are not limited to:
  - a. Referral to counseling and health services;
  - b. Referral to the Employee Assistance Program;
  - c. Education to the individual and/or the University community;
  - d. Provision of campus safety escorts;
  - e. Climate surveys;
  - f. Policy modification and/or training;
  - g. Provision of transportation accommodations;

- h. Implementation of long-term contact limitations between the parties.
2. Requests for Long-Term Adjustments. If a Party requests the implementation of long-term adjustments to academic deadlines, course schedules, etc., such requests will be transferred to the Office of Disability Services. “Long-term” means an adjustment that would last longer than six months after completion of the applicable Resolution Process and the Appeal Process.
  3. Title IX Coordinator’s Discretion to Implement Supportive Measures in Absence of Policy Violation. At the discretion of the Title IX Coordinator, certain long-term Supportive Measures or other actions may also be provided to the Parties even if no Policy violation is found. When no Policy violation is found, the Title IX Coordinator will address and coordinate any Supportive Measures owed by the University to the Complainant to ensure equal education access is accomplished.
  4. Privacy Matters. The University will maintain the Privacy of any long-term Remedies, Supportive Measures, or other actions, provided that maintaining Privacy does not impair the University’s ability to provide these such Remedies, Supportive Measures, or other actions.

#### **XXVI. FALSE REPORTS AND STATEMENTS**

The University will not tolerate false reports of Prohibited Conduct or intentional misrepresentations of oneself or others relating to Prohibited Conduct. Knowingly furnishing false information to a University official acting in performance of their duties violates the Student Conduct Code and expectations for professional conduct of Employees, and it may also violate state criminal and civil laws.

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

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

## **XXVII. AMNESTY OR GOOD SAMARITAN EXCEPTION FOR REPORTING PROHIBITED CONDUCT**

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

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

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

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

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

## **XXVIII. RESPONDENT'S WITHDRAWAL OR RESIGNATION DURING THE FOLLOWING THE FILING OF A FORMAL COMPLAINT**

If a Student Respondent withdraws from the University or an Employee Respondent resigns while a Formal Complaint is pending, the applicable Resolution Process ends because the University no longer has jurisdiction over the Respondent. The Respondent may be barred from University property and/or events and deemed ineligible for re-enrollment or rehire.

The University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Prohibited Conduct.

## **XXIX. FEDERAL STATISTICAL REPORTING OBLIGATIONS (THE CLERY ACT)**

Certain campus officials must report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes in compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"). They must report the date, general location of the incident (e.g., on- or off-campus, but no addresses are given or

reported), and type of incident.<sup>76</sup> All personally identifiable information is kept confidential, but statistical information must be reported to MUPD for publication in the University's Annual Security and Fire Safety Report. This report informs the University community about the extent and nature of campus crimes to ensure greater community safety.

Complainants, Witnesses, or Confidential Resources (with legal privilege) with information about incidents of sexual assault, domestic violence, dating violence or stalking may report crimes to MUPD on a voluntary, confidential basis for inclusion in the Clery Act annual disclosure of crime statistics.<sup>77</sup>

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

### **XXX. RECORDKEEPING**

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

1. Each Sexual Harassment investigation, including any determination regarding Responsibility, and any audio or audiovisual recording or transcript required under the 2020 Title IX Final Regulations;
2. Any Sanctions imposed on a Respondent;
3. Any Remedies provided to a Complainant designed to restore or preserve equal access to the University's Education Program or Activity;
4. Any appeal and the result thereof;
5. Any Informal Resolution and the result thereof;
6. All materials used to train Title IX Coordinators, Investigators, Hearing Panelists, Appeal Officers, and any person who facilitates an Informal Resolution Process. These materials are made publicly available on the University's website.

<sup>76</sup> Reports of crimes required under the Clery Act include murder/non-negligent manslaughter, negligent manslaughter, forcible and non-forcible sex offenses, domestic violence, dating violence, stalking, robbery, aggravated assault, burglary, motor vehicle theft, arson, and hate crimes.

<sup>77</sup> The University encourages accurate and prompt reporting of all crimes to MUPD when the victim of a crime elects not to, or is unable to, make such a report. "Unable" includes physical and mental incapacitation.

7. Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's Education Program or Activity; and
  - c. If no Supportive Measures were provided to the Complainant or Respondent, or certain requested Supportive Measures were denied, the documented reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain all records in accordance with state and federal laws.

#### **XXXI. AMENDMENTS TO OR TERMINATION OF THIS POLICY**

The University reserves the right to modify, amend, or terminate this Policy at any time. Students and Employees are encouraged to check online for the most current version of all policies and procedures. Should a court strike down, either temporarily or permanently, any terms or provisions of this Policy or procedures herein, the University reserves the right to immediately modify the Policy and procedures to take effect upon publication on its website.

Further, should any court strike any portion of the 2020 Title IX Final Regulations, or should an administrative order suspend or withdraw them, the University reserves the right to withdraw this Policy and procedures and immediately reinstate previous policies and/or procedures or revise them accordingly. This Policy is effective as of August 14, 2020 and supersedes all previous University policies with respect to Sexual Harassment and Sex Discrimination.

Revised: August 14, 2020

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

## **APPENDIX A RIGHTS OF THE PARTIES**

The following rights are guaranteed to Complainants and Respondents throughout the Grievance Procedure:

1. Complainants are entitled to a prompt response to reports of Prohibited Conduct to the Title IX Coordinator or an Official with Authority by having the opportunity to talk with the Title IX Coordinator about the availability of Supportive Measures and the process for filing a Formal Complaint.
2. Both Parties have the right to discuss Supportive Measures with the Title IX Coordinator, to request implementation of Supportive Measures designed to restore or preserve equal access to the University's Education Program or Activity, and to have any Support Measures kept Private to the extent that maintaining such Privacy would not impair the ability of the University to provide Supportive Measures. No Formal Complaint needs to occur before this option is available.
3. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of Prohibited Conduct, if such changes are reasonably available.
4. The right to be treated equitably throughout the Grievance Procedure.
5. The right to the names of the Complainant and Respondent to be kept Private except as may be permitted by law.
6. The right to an Advisor, who may but is not required to be an attorney, throughout the Grievance Procedure.
7. The right to file a Formal Complaint alleging Sexual Harassment or Sex Discrimination.
8. The right to receive a written Notice of Allegations following the filing of a Formal Complaint that provides sufficient detail about the allegations and the applicable Policy provisions for the Respondent to be able to respond and for both parties to understand the scope of the Investigative Process.
9. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, any consolidation thereof, additional Complainants, Respondents, etc.).
10. The right to petition that the Title IX Coordinator, Investigator, Hearing Panelist, Appeal Officer, or facilitator of an Informal Resolution Process be recused based on disqualifying bias and/or conflict of interest.
11. The Complainant has a right not to be questioned about or have evidence presented about a Complainant's sexual predisposition or prior sexual behavior, unless (1) the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or (2) the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove Consent.
12. The right to be informed by of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by the University in

notifying such authorities, if the Party so chooses. This also includes the right not to be pressured to report.

13. The right not to be pressured to file, not file, or informally resolve a Formal Complaint.
14. The right of a Respondent to challenge an Emergency Removal.
15. The right not to be retaliated against for pursuing a right or privilege secured by Title IX and this Policy.
16. The right to fair opportunity to provide the Investigator with their account of the alleged Prohibited Conduct.
17. The right to offer Relevant Evidence—both Exculpatory or Inculpatory—to be considered and to provide Witnesses (both fact and expert witnesses) to be interviewed.
18. The right to a written notice including the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare and participate.
19. The right to review and provide a written response to the Investigative File prior to the finalization of the Investigative Report.
20. The right to review and provide a written response to the final Investigative Report at least 10 days prior to a Hearing.
21. The right not to be restricted from discussing the allegations under investigation.
22. The right not to have legally privileged information disclosed or relied upon without a voluntary waiver of the privilege.
23. The right to decline to give a statement about the allegations or participate in any part of the Grievance Procedure.
24. The Respondent has the right to the presumption of non-Responsibility unless proven otherwise after the conclusion of the applicable Resolution Process.
25. The right to have the burden of proof and burden of gathering evidence rest on University—not the Parties.
26. The right to be present, virtually via remote technology, during all testimony given and evidence presented during any Hearing.
27. The right to have the University appoint an Advisor (who may be but is not required to be an attorney) free of charge, to conduct Cross-Examination at a Hearing, if the Party does not have an Advisor present at the Hearing.
28. For allegations of Title IX Sexual Harassment, the right to have the Hearing Panel not rely on any statement of a Party or Witness in reaching a determination regarding responsibility if the Party or Witness does not submit to Cross-Examination at the Hearing; provided however, that the Hearing Panel cannot draw an inference about the determination regarding Responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions
29. The right to have the Hearing Panel or the Investigator during the Prompt and Equitable Resolution Process use the Preponderance of the Evidence standard of proof to make a determination of Responsibility after an objective evaluation of all Relevant Evidence.
30. The right to be informed in a written Notice of Outcome letter that includes a determination of Responsibility, a detailed rationale for the determination, and any Sanctions and Remedies imposed.

31. The right to be informed in writing of when a decision by the University is considered final and to be notified of changes to any Sanction(s) imposed before the decision is finalized.
32. The right to be informed of the opportunity to appeal a Dismissal or a determination of Responsibility and the procedures for doing so in accordance with the Appeal Process
33. The right to a fundamentally fair resolution as defined in this Policy.