

Title IX Grievance Policy

Drew University Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations¹ Effective August 14, 2020

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¹ This policy is based upon the SUNY SCI policy. Primary drafting of this policy was created by the SUNY SCI consortium in response to the Title IX regulation updates in May 2020. Major parts are copied as authorized by Drew's membership in the SUNY SCI consortium.

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I. Introduction

A. What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, Drew University ("Drew") will implement the following Title IX Grievance Policy, effective August 14, 2020.

B. How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. Under the Final Rule, Drew must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. Incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

Drew remains committed to addressing any violations of its policies, even those not meeting the standards defined under the Title IX Final Rule.

Specifically, our campus has a [Student Code of Conduct](#) for students, and an **Employee Handbook** for employees that defines certain behavior as a violation of campus policy. For students, any behavior listed in this policy, but falling outside of the TIX grievance jurisdiction, may be adjudicated as a violation of the Student Code of Conduct through the student conduct process. For employees, please refer to the employee disciplinary process and the following sections in the Employee Handbook: Relationships at Work §III.F., Non-Discrimination and Anti-Harassment §III.L. and Workplace Violence §III.N.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the [Student Code of Conduct](#) and/or Employee Handbook through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other Drew policy for any violation of the [Student Code of Conduct](#), employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of Drew and may not be cited for or against any right or aspect of any other policy or process.

C. How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

II. The Title IX Grievance Policy

A. General Rules of Application

1. Effective Date

The Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be

investigated and adjudicated according to the process in place at the time the incident allegedly occurred.²

2. Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Student Code of Conduct and/or Employee Handbook.

3. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

B. Definitions

1. Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

a. Sexual Harassment

² According to the Department of Education Office for Civil Rights Blog Post of August 5, 2020, "the Rule does not apply to schools' responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school's Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020."

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;

b. Sexual Assault*

Sexual assault (as defined in the Clery Act) includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

1. Non-Consensual Sexual Intercourse is defined as completed or attempted, sexual penetration, no matter how slight, of a person's vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without that person's effective consent.
2. Non-Consensual Sexual Contact is defined as the touching of the private body parts of another person for the purpose of sexual gratification, without that person's effective consent.
3. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
4. Sexual intercourse with a person who is under the statutory age of consent.

c. Domestic Violence*

Domestic violence (as defined in the VAWA amendments to the Clery Act) includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New Jersey state laws or by any other person against an adult or minor victim who is protected from that person's acts under New Jersey state laws. [NJ Domestic Violence definition](#)

d. Dating Violence*

Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act) includes any violence, or threatened act of violence, committed by a person:

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

e. Stalking*

Stalking (as defined in the VAWA amendments to the Clery Act) is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. fear for their safety or the safety of others; or
2. suffer substantial emotional distress.

“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.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the [Student Code of Conduct](#) and/or Employee Handbook.

*Alleged conduct which constitutes a violation of University policy but does not fall within the definition of sexual harassment under the Final Rule will be referred to the appropriate process for investigation and adjudication and, if appropriate, may be processed through the Title IX Grievance Policy below.

2. Consent

For the purposes of this Title IX Grievance Policy, “consent” is clear, informed, and freely given. It is communicated by mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon sexual activity by persons of legal age.

Consent cannot be effective when it results from threat of physical force, intimidation, or coercion. Those who are incapacitated as a result of alcohol or other drug consumption (voluntary or involuntary), or those who are unconscious, unaware or otherwise physically helpless or mentally disabled are unable to provide consent. Effective consent to one form of sexual activity cannot imply consent to other sexual acts. A previous relationship or previous consent, including a dating relationship or previous sexual involvement, does not imply consent to future sexual acts. Consent may be withdrawn by either party at any time by an outward demonstration through words or actions effectively indicating intent to end sexual activity. In New Jersey, a person must be 16 years of age to legally consent to sexual activity. A person cannot give consent to sexual activity with someone who has "the duty to care" for them unless they are over the age of 18. Individuals that fall into "the duty to care" category would include parents or guardians, and those in any type of formal supervisory role.

3. Incapacity

Incapacity means an individual, who for any reason, is not capable of making a rational, reasonable decision because he or she lacks the ability to understand the who, what, when, where, why or how of their sexual interaction. Incapacity may result from involuntary physical restraint. Incapacity can arise from voluntary or involuntary alcohol or drug use, or from ingestion of any other substances sometimes referred to as date rape drugs.

The addition of drugs, including but not limited to, prescription drugs, high-proof alcohol, or over the counter medication, to anything that can be ingested, is prohibited under this policy. A person who engages in sexual activity with someone who is mentally or physically incapacitated as a result of alcohol or other drug use, or is unconscious, is in violation of this policy.

Sexual interaction while incapacitated as a result of drugs or alcohol represents a threat to the well-being of persons engaging in sexual acts and can result in charges of sexual misconduct, including claims that a party was unable to provide effective consent to sexual acts. Use of alcohol or other drugs by the person complained against will not excuse behavior that violates this Policy or diminish his/her responsibility.

Possession of date rape drugs or other incapacitating substances is a serious criminal offense under the laws of the State of New Jersey and violates University standards and policies. Administering alcohol or any drug to another person for the purpose of inducing incapacity, in order to engage in sexual misconduct, is in violation of this Policy. Such conduct, whether alone, or in concert with others, is a crime, and represents a serious breach of community norms and standards and, if a person is found responsible, may result in expulsion.

4. Education Program or Activity

For the purposes of this Title IX Grievance Policy, Drew’s education program or activity” includes:

- Any on-campus premises.
- Any off-campus premises that Drew has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Drew’s programs and activities over which Drew has substantial control.

5. Formal Complaint

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Drew’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

6. Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

7. Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or

- o They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
 - o Confidential and legally privileged resources are commonly identified as counseling services, health services and the chaplain. You can find their contact information on our [website](#).
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

8. Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

9. Confidentiality vs. Privacy

Consistent with the Student Code of Conduct and/or Employee Handbook, communications made in confidence to a person with a legal privilege in the course of their professional work means that person cannot disclose the matter to anyone, including law enforcement and university officials, unless there is a risk of harm or permission is granted. As stated above, confidential and legally privileged resources are commonly identified as counseling services, health services, chaplain and attorney-client privileges. You can find their contact information on our [website](#).

References made to *privacy* mean Drew offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Drew will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

10. Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the

Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

C. Making a Report Regarding Covered Sexual Harassment to the Institution

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Cynthia L. Garrett
Title IX Coordinator & Lead Investigator
Ehinger Center 147
cgarrett@drew.edu or titleixofficer@drew.edu
(973) 408-3635

Reports may also be submitted online through a [private form](#). Reports, no matter how submitted, may be made at any time (including during non-business hours) by using the [reporting form](#), telephone number or [electronic mail address](#), or by mail to the office address listed for the Title IX Coordinator.

The following additional Officials will provide *privacy*, but not confidentiality:

- **Deputy Title IX Coordinators:** All individuals are able to obtain resources or report an alleged violation of this policy to the Title IX Coordinator, or any Deputy Coordinator. You can find them on our [website](#).

The following Officials may provide *confidentiality*:

- **On-Campus Confidential Reporting for Students**
 - The McClintock Center for Counseling and Psychological Services, Holloway Annex, (973) 408-398
 - Health Services, Holloway Annex, (973) 408-3414
 - University Chaplain, Seminary Hall, (973) 408-3718

- **On-Campus Confidential Reporting for Employees**
 - University Chaplain, Seminary Hall, (973) 408-3718

Students and employees may always report to Law Enforcement. Drew University strongly encourages persons exposed to sexual or relationship violence to report those offenses to the Madison Police Department (973) 593-3000 or the Morris County Prosecutor's Office (973) 625-6200. Drew staff can provide assistance in making such reports or contacts. In most circumstances, excluding domestic violence, which can include dating violence, law enforcement will not pursue criminal charges without a complainant's consent or cooperation. If you choose to solely report to off-campus Law Enforcement, Law Enforcement will not typically notify the Title IX Coordinator.

D. Non-Investigatory Measures Available Under the Title IX Grievance Policy

1. Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Drew regardless of whether they desire to file a complaint. Supportive measures are non-disciplinary and non-punitive, and a request for reconsideration of an imposed supportive measure should be addressed to the person who imposed the measure. As appropriate, supportive measures may include, but not be limited to:

- counseling
- education
- extensions of deadlines or other course-related adjustments
- modifications of work, class or other set or self established schedules³ or situations
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations, with or without conditional restrictions including check in/out requirements
- leaves of absence
- increased security and monitoring of certain areas of the campus

2. Emergency Removal

Drew retains the authority to remove a respondent from Drew's program or activity on an emergency basis, where Drew (1) undertakes an individualized safety and risk analysis

³ Changes or modifications to academic, curricular, and other school activities, including changes to class schedules, the award of incompletes, a drop/add of courses without penalty, extension of deadlines, and alternative methods of attending class,

and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Drew determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. This challenge should be submitted in writing, via email and include any information relevant to challenging the initial finding for removal. The challenge will be heard by an individual designated by the Title IX Coordinator at the time of removal, with the relevant expertise.

3. Administrative Leave

Drew retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with Drew's Employee Handbook.

III. The Title IX Grievance Process

A formal report or complaint of sexual harassment will be initially evaluated by the Title IX Coordinator or designee, through the steps outlined below. A continuation in the process, or referral to another process, does not constitute a determination that a policy has been violated.

In lieu of seeking a formal complaint and resolution, parties may be able to receive a remedy through an alternative resolution process. Additionally, a complainant who files a Formal Complaint may elect, at any time, to address the matter through the Institution's Informal Resolution Process.

A. Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Drew, including as an employee.

For complainants who do not meet this criteria, the University will utilize existing policy in the [Student Code of Conduct](#) and/or the Employee Handbook.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Drew will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy, or any Drew policy prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

1. Multi-Party Situations

Drew may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

B. Determining Jurisdiction

The Title IX Coordinator, or designee, will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred in the United States*;
- The conduct is alleged to have occurred in Drew's Education Program or Activity*; and
- The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Drew will investigate the allegations according to the Grievance Process.

**Please note:* In situations where the alleged conduct falls within the definition of "sexual harassment" under the Final Rule, yet does not meet the jurisdictional requirements to be considered a Title IX violation such conduct will be investigated and, if appropriate, may be processed through the Title IX Grievance Policy below.

1. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

2. Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator, or designee, will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

3. Discretionary Dismissal

The Title IX Coordinator, or designee, may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Drew; or,
- If specific circumstances prevent Drew from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

4. Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

5. Notice of Removal

Upon dismissal for the purposes of Title IX, Drew retains discretion to utilize the [Student Code of Conduct](#) and/or Employee Handbook to determine if a violation has occurred. If

so, Drew will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

C. Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations.

The parties will be notified via their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator, or designee, may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

1. Contents of Notice

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process including any informal resolution process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the

allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);

- This policy shall not be used to bring frivolous or malicious charges against students, faculty or staff members. In addition, all parties are expected to provide truthful and accurate statements during the process. Knowingly submitting false statements or information during the process may result in additional disciplinary actions brought by the university.

2. Ongoing Notice

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

D. Advisor of Choice and Participation of Advisor of Choice

Drew will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process, with the exception of cross-examination, as per standard policy and practice of Drew.

Drew will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Drew's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and Drew cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Drew will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice, and

may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Drew.

1. Notice of Meetings and Interviews

Drew will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

2. Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) business days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, or designee, shall have sole judgment to grant further pauses in the Process.

E. Investigation

1. General Rules of Investigations

Investigator(s) designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Drew, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Drew and does not indicate responsibility.

Drew cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records

include information. Drew will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

a. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- i. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
- ii. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Drew will send the evidence made available to each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. Drew is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

The institution will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Following the initial inspection and review of evidence, and before the investigator completes their Investigative Report, if either party has additional evidence that they would like to submit for consideration, Drew may provide the parties an additional five (5) business days to provide such additional evidence, previously not included, that is in response to their inspection and review of the evidence. Drew may then provide the parties another five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses may be disclosed to the parties. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review, or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

b. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

2. Investigative Report

Investigator(s) designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior to the hearing (in an electronic format or a hard copy) for each party's review and written response. Parties are afforded 10 business days to respond to the report.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

F. Hearing

1. General Rules of Hearings

Drew will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Drew's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video conference software while located in a private room with their Advisor. This technology will enable participants simultaneously to see and hear each other. At its discretion, Drew may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be audio recorded. The recording will be made available to the parties for inspection and review, as described below.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

2. Continuances or Granting Extensions

Drew may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, Drew will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

3. Newly-discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered in the live hearing.

The decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the decision-maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

4. Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

a. Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- Drew will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).
- The parties shall be subject to Drew's [Rules of Decorum](#).

b. The Decision-Maker

- The hearing body will consist of a single decision-maker.
- The decision-maker will not have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor serve on the appeals body in the case.
- The decision-maker is prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.

- The decision-maker is trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

c. Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- In addition to selecting an advisor to conduct cross-examination, the parties may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, Drew will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to Drew's [Rules of Decorum](#), and may be removed upon violation of those Rules.

d. Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- Witnesses shall be subject to the Drew's [Rules of Decorum](#).

5. Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the decision-maker conducts its initial round of questioning. During the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the decision-maker to use statements made by the Party.

6. Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. The relevance policy is found on our [website](#).

Cross-examination questions that are duplicative of those already asked, including by the decision-maker may be deemed irrelevant if they have been asked and answered.

All relevant information and evidence provided by the parties and witnesses will be weighed and evaluated by the decision-maker in their determination regarding responsibility regardless of an individual's ability and/or choice to participate in the live hearing.⁴

⁴ On July 28, 2021, the provision of the Title IX Final Rules regarding a decision-makers inability to rely on any statements made by a witness who fails to submit to cross-examination was vacated. *Victims Rights Law Center v. Cardona*, No. CV 20-11104-WGY, 2021 WL 3185743, at *1 (D. Mass. July 28, 2021). Therefore, Drew will follow the stated procedure unless and until further guidance is issued by the Department of Education.

7. Review of Recording

The recording of the hearing will be available for review only by the Complainant(s) and Respondent(s) within five (5) business days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

G. Determination Regarding Responsibility

1. Standard of Proof

Drew uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred to a neutral decision-maker.

2. General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be

accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Drew allow parties to call “expert witnesses” for direct and cross examination. Drew does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Drew allow parties to call character witnesses to testify. Drew does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Drew admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness’ credibility.

3. Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

- a. Identification of the allegations potentially constituting covered sexual harassment;
- b. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;

- d. Conclusions regarding which section of the Student Code of Conduct or Employee Handbook, if any, the respondent has or has not violated.
- e. For each allegation:
 - i. A statement of, and rationale for, a determination regarding responsibility;
 - ii. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- f. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

4. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Drew within ten (10) business days of the completion of the hearing.

5. Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

H. Sanctions

All hearings that result in a finding of responsible for a violation of the Title IX policy will result in the imposition of outcomes, or sanctions. These sanctions are designed to hold accountable and educate any individual who has violated University policy. Each are considered on an individual basis, considering the nature of the offense, the impact of the offense, and the conduct related history of the responsible individual. Any finding may include one or more sanction. The potential sanctions designated for Student Respondents related to a violation of the Title IX policy are:

- **Warning:** Written notification to the student that any repetition of the behavior will result in more severe disciplinary action.
- **Probation:** The student is placed under a status whereby any further violation of University regulations is considered in the context of the original violation and with prejudice. Additionally, the student is more likely to be suspended or expelled from Housing or the University during the time of probation status if found responsible of further student conduct violations. The period of probation lasts for a specified period of time. Probationary status may impact a student's

ability to study abroad and/or to hold leadership positions in student organizations. The timeframes for probation are as follows:

- 1. Remainder of semester (fall or spring) probation.**
 - 2. One (1) full semester (fall or spring) probation.** If issued after the add/drop period of a semester, the full term would be the following semester (e.g. after add drop in the spring, the probation would continue through the end of the fall semester).
 - 3. One (1) year probation.** The student would not be off probation till the end of the semester (fall, spring or summer) the following calendar year.
 - 4. Two (2) year probation.** The student would not be off probation till the end of the semester (fall, spring or summer) after two calendar years.
 - 5. Three (3) year probation.** The student would not be off probation till the end of the semester (fall, spring or summer) after three calendar years.
 - 6. Permanent probation.** For the remainder of the time the student is associated with Drew, probationary status will be active.
- **Suspension from the Residence Halls:** The student is required to move out of the residence hall and may not reside in, be around, participate in activities within, or visit the residence halls for a specified period of time with the privilege of applying for reentry as a residential student after the period of suspension. In making a determination on the re-entry application as a residential student, the University will evaluate the documented (as appropriate) progress the student has made and any positive indication that the student is ready to return to the residence halls. The student will need to obtain clearance from the Dean of Students, or designee, in order to return to the residence halls. The student will be barred from being in or around campus housing during his/her time of suspension, and will be treated as a trespasser if found in or around campus housing during their period of separation. Suspensions are issued with the following time frames:
 - 1. Remainder of semester (fall or spring) suspension.**
 - 2. One (1) full semester (fall or spring) suspension.** If issued after the add/drop period of a semester, the full term would be the following semester (e.g. after add drop in the spring, the suspension would continue through the end of the fall semester).
 - 3. One (1) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) the following calendar year.
 - 4. Two (2) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) after two calendar years.
 - 5. Three (3) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) after three calendar years.

- **Suspension from the University:** The student is separated from the University for a specified period of time with the privilege of applying for re-entry after the period of suspension. In making a determination on the reentry application, the University will evaluate the documented (as appropriate) progress the student has made and/or any positive indication that the student is ready for re-entry. The student will need to obtain clearance from the Dean of Students, or designee, in order to return to academic work. The student will be barred from campus during his/her time of suspension, and will be treated as a trespasser if found on campus during their period of separation. Suspensions are issued with the following timeframes:
 1. **Remainder of semester (fall or spring) suspension.**
 2. **One (1) full semester (fall or spring) suspension.** If issued after the add/drop period of a semester, the full term would be the following semester (e.g. after add drop in the spring, the suspension would continue through the end of the fall semester).
 3. **One (1) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) the following calendar year.
 4. **Two (2) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) after two calendar years.
 5. **Three (3) year suspension.** The student would not become eligible till the end of the semester (fall, spring or summer) after three calendar years.
- **Expulsion from the Residence Halls:** Unconditional and permanent separation of the student from residing in, being around, participating in activities within or visiting the residence halls.
- **Expulsion from the University:** Unconditional and permanent separation from the University. The expelled student shall be barred from the University campus and all University sponsored activities.
- **Revocation of Admission:** Admission to the University may be revoked for fraud, misrepresentation or a violation of the University policies.
- **Withholding Degree:** The University may withhold the awarding of a degree otherwise earned until the completion of the process set forth in the Student Conduct Policy, including the completion of all sanctions imposed, if any.
- **Revocation of Degree:** A degree awarded to a student by the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree.
- **Restriction:** The student is restricted from facilities, programming, participating in certain University events and activities, holding leadership positions at any level in campus organizations, or from remaining a resident on campus.
- **Residence Hall Relocation:** Room re-assignment to another residence hall or floor.

- **Restitution:** Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- **Disclosure:** In certain cases deemed appropriate by the proper authorities, information on an offense may be disclosed to individuals or the entire University community, including parents or guardians.
- **Discretionary Sanctions:** Educational assignments, essays, trainings, assessments, service to the community with a specified length of time, or other related discretionary assignments.

Any employee or agent of the University found in violation of the Title IX Policy may be subject to disciplinary action, up to and including termination of employment.

I. Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility.

1. Appeal Procedures

All appeals must be submitted in writing within five (5) business days of being notified of the Hearing Officer's decision, indicating the grounds for the appeal. Appeal reviews may focus and place deference to the Title IX Coordinator's rationale for dismissal of the Formal Complaint or the Hearing Administrator's findings of fact and decision regarding responsibility and/or any sanctions. Therefore, the burden of proof is on the party filing an appeal to sufficiently demonstrate cause to alter procedures, the original decision, or any sanctions. An appeal will generally be limited to a review of the written appeal, investigation report and supporting documents for one or more of the purposes below, provided however the Appeal Officer may request additional information or clarification from the Complainant, Respondent, witnesses, Investigator(s), Title IX Coordinator, and/or other relevant administrators for purposes of this review.

2. Grounds for Appeal

The dismissal of a Formal Complaint or the determination of responsibility (hearing decision) may be appealed on the following grounds as applicable:

- Process Review.** Procedural irregularity that materially affected the outcome of the matter;
- New Information.** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- Conflict of Interest or Bias.** The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an

individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

3. Review of Appeal

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than 5 pages (excluding attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by an Appeal Decision-Maker, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

4. Appeal Decision

The Appeal Officer responsible for reviewing the appeal may make one of the following decisions:

- a. **Affirm.** The Appeal Officer may decide to affirm the decision of the Title IX Coordinator (to dismiss the Formal Complaint, all or in part) or the Hearing Administrator, and the decision becomes final.
- b. **New Hearing.** The Appeal Officer may determine that a new hearing by a different Hearing Administrator is warranted to correct procedural irregularity or to consider new information. Both parties may also appeal the decision rendered by the new Hearing Administrator.
- c. **Remand.** The Appeal Officer may direct the Title IX Coordinator or Hearing Administrator (as applicable) to review their original decision subject to any instruction from the Appeal Officer. The Title IX Coordinator or Hearing Administrator (as applicable) may then affirm their original decision or render a new decision consistent with the instructions provided by the Appeal Officer. Both parties may appeal a decision made by the Title IX Coordinator or Hearing Administrator if there are any changes after the review.

5. Timeframe

Barring any extenuating and/or unforeseen circumstances, the Appeal Officer will issue a determination within ten (10) business days of receiving the written appeal documentation. In the event where a delay may be present, good faith efforts will be made to ensure a decision is rendered and updates are communicated to both parties in a reasonably timely manner.

The outcome of appeal will be provided in writing simultaneously to both parties, and will include the Appeal Officer's rationale for the decision.

6. Additional Considerations

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

J. Amnesty

Drew's highest priority is the health, safety and well-being of its community, and encourages the reporting of sexual harassment. In attempt to remove potential barriers that deter students from seeking medical and/or law enforcement attention, reporting incidents of sexual harassment, or pursuing any other necessary assistance, Drew may not pursue drug and/or alcohol charges against students reporting offenses involving sexual harassment based on their personal consumption of drugs and/or alcohol at or near the time of the incident. Amnesty is only provided for the personal use of alcohol or drugs to the extent that the use is relevant to the case and does not extend to acts of violence perpetrated through the use of substances (e.g. possession and use of date rape drugs). Amnesty does not preclude the University from pursuing educational measures, including discussion of the drug and/or alcohol offense regarding the risks and consequences of such activity.

For more information regarding Drew's "Good Samaritan" Medical Amnesty policy outside of the Title IX capacity, please see the [Alcohol, Marijuana and Other Drug Policy](#).

K. Retaliation

Drew will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex

discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for student code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. Drew encourages the reporting of sexual harassment and misconduct. As a result, Drew may not pursue drug or alcohol charges against students reporting offenses involving sexual harassment and misconduct based on their personal consumption of drugs or alcohol at or near the time of the incident. However, any such violation cannot have imperiled the health or safety of any other person. Amnesty does not preclude the University from pursuing educational measures, including discussion of the drug or alcohol offense regarding the risks and consequences of such activity.

L. Recordkeeping

According to Section 106.45(b)(10) of the Final Rule, institutions are required to maintain records for seven years. These records include:

1. Any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, any remedies provided to the complainant and any sanction that may have been imposed on the respondent;
2. Any appeal and its result;
3. Any informal resolution and its results; and
4. All materials used to train Title IX Coordinators, investigators and adjudicators with respect to sexual harassment.

In addition, the institution must also maintain documents, for a period of seven years, relating to any actions, including supportive measures, taken in response to a report or

formal complaint of sexual harassment. In each instance, the institution must document the basis for its conclusion that the response was not deliberately indifferent and document that it has taken measures designed to preserve equal access to the institution's educational program or activity.