

# **Sexual Misconduct Policy<sup>1</sup>**

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**Drew University**  
**Effective September 1, 2022**

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<sup>1</sup> This Policy was primarily drafted with guidance and permission from the SUNY SCI consortium, Ramapo College of New Jersey, Rutgers University and The College of New Jersey.

## TABLE OF CONTENTS

TABLE OF CONTENTS	2
I. POLICY STATEMENT	4
A. Purpose	4
B. Audience	6
II. POLICY	6
A. General Rules of Application	6
B. Definitions	6
C. Prohibited Conduct	10
III. OTHER IMPORTANT CONCEPTS	14
A. Role of the Title IX Coordinator	14
B. Confidentiality vs. Privacy	14
C. Reports vs. Formal Complaints	15
D. Disability Accommodations	15
IV. REPORTING PROHIBITED CONDUCT	16
A. Reporting to the Title IX Coordinator	16
B. Responsibility of University Employees to Report (Private Reporters Non-Confidential)	16
C. Confidential Resources	17
D. Reporting to Law Enforcement	17
E. Preservation of Evidence	17
F. Good Faith Reporting	18
V. NON-INVESTIGATORY MEASURES	18
A. Supportive Measures	18
B. Emergency Removal	20
C. Administrative Leave	20
VI. FORMAL GRIEVANCE PROCESS	20
A. Initial Assessment	20
B. Conflicts of Interest or Bias	22
C. Filing a Formal Complaint	22
D. Dismissal of a Formal Complaint	23
E. Notice of Allegations	25
F. Support Persons and Advisors of Choice	26
G. Investigation Procedures	28
H. Hearing	32

I. Determination Regarding Responsibility	39
J. Sanctions	42
K. Appeals	48
VII. INFORMAL RESOLUTION	<b>50</b>
VIII. AMNESTY	<b>53</b>
IX. RECORDKEEPING	<b>54</b>
X. RETALIATION	<b>54</b>
XI. REVOCATION BY OPERATION OF LAW	<b>55</b>

## **I. POLICY STATEMENT**

Sexual misconduct, including, but not limited to, sexual harassment, sexual assault, domestic violence, dating violence, stalking, and gender based harassment, is prohibited under state and federal law, as well as by Drew University's Sexual Misconduct Policy (the "Policy"). The Policy represents Drew University's (the "University") commitment to creating and maintaining a diverse and open educational community that addresses unwelcome, gender-based or sexual conduct, redresses its effects, and prevents its recurrence. It is intended to educate the community about sexual and related misconduct and to support and protect any member of the community who uses the Policy responsibly to pursue a complaint. The University will investigate, adjudicate, and remedy reports of violations of the Policy. The University encourages reporting incidents to law enforcement, when appropriate or where a criminal offense may have been committed.

Under this Policy, each member of the University community is expressly prohibited from verbal, physical, written, or any technology-based conduct that constitutes sexual, relationship and/or related misconduct. All members of the University community are required to familiarize themselves with the content of the Policy as well as with its procedures. Ongoing training and awareness programs, including written, in-person and/or on-line education and training are and will be continued to be made available to the community.

### **A. Purpose**

The purpose of the Policy is to instill a climate of mutual respect and responsibility on matters associated with gender and sex. The Policy seeks to advance shared community values and foster equal educational and employment opportunities, access, and benefits.

The University is dedicated to raising awareness about sexual and related misconduct through prevention education, supporting those who experience such misconduct, and responding promptly and fairly when members of the community are found to have violated the Policy. The University is also committed to providing support to those accused of sexual and related misconduct. The University will seek to respect the rights of each party during a resolution process and provide appropriate support, assistance, information, and/or aid from on- or off-campus resources, or the appropriate law enforcement agency. In these matters, the University is committed to working to address the effects of sexual misconduct and preventing its recurrence.

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 the University **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the University **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>

The University is committed to addressing all forms of sexual misconduct, even those not meeting the narrow definition of Sexual Harassment under the Title IX Final Rule. Through this Policy, the University will address various forms of sexual and related misconduct violations referred to as “Prohibited Conduct.” Some forms of Prohibited Conduct may also be considered violations of Title IX as defined by the Title IX Final Rule depending on the nature, scope, and jurisdiction of the alleged conduct. The University reserves the right to investigate and adjudicate all forms of Prohibited Conduct under this Policy regardless of any possible Title IX designations.

The University remains committed to addressing any violations of its policies, even those not meeting the standards defined under this Policy. 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.

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

## **B. Audience**

The Drew University Sexual Misconduct Policy applies to all members of the University community.

## **II. POLICY**

### **A. General Rules of Application**

#### **1. Effective Date**

The Title IX Final Rule became effective on August 14, 2020, and applies to incidents of sexual harassment that meet the scope and jurisdictional requirements of Title IX for alleged conduct that occurs on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred prior to August 14, 2020, will be investigated and adjudicated according to the behavior prohibited by the policy in effect at the time of the incident. All processes will follow the Formal Grievance Process below.

#### **2. 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 University's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>.

### **B. Definitions**

**Complainant:** The person who is alleged to have experienced an act(s) of Prohibited Conduct as defined within this Policy.

**Education Program or Activity:** Includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurs. This may include, but is not limited to, conduct that occurs in one of the following:

- Any on-campus facility, building, or property owned or controlled by the University.

- Any off-campus premises that the University 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 the University's programs and activities over which the University has substantial control.

**Effective Consent:** Effective consent (hereafter "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 the threat of physical force, intimidation, or threat of harm. 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 does not necessarily constitute consent to other sexual acts. A previous relationship or previous consent, including a dating relationship or previous sexual involvement, does not necessarily constitute 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.

**Formal Complaint:** 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 Prohibited Conduct against a Respondent and requesting that the University utilize a resolution process to resolve the allegation of Prohibited Conduct. A Complainant must be participating in or attempting to participate in the University's Education Program or Activity at the time of filing the Formal Complaint.

**Incapacitation:** Incapacitation means being in a state where a person lacks the capacity to appreciate the fact that the situation is sexual, or cannot appreciate (rationally and reasonably) the nature and/or extent of the situation. Incapacity can be found based on someone's physical or mental status, based on developmental disability, or based on alcohol or drug use. A person who knows or should reasonably have known that another person is incapacitated may not engage in sexual activity with that person. A person's state of incapacity is a subjective determination that is based on all of the facts available because persons reach incapacitation at different points and as a result of different stimuli.

Incapacity can result from mental disability, involuntary physical restraint, or from the ingestion of substances, including “date-rape” drugs. Administering any substance to another person, without their knowledge, for the purpose of inducing incapacity is a violation of the Sexual Misconduct Policy.

Use of alcohol or other drugs does not, in and of itself, negate a person’s ability to give consent. Alcohol-related incapacity results from a level of alcohol ingestion that is more severe than being under the influence, impairment, intoxication, inebriation, or drunkenness. Common and obvious warning signs of possible incapacitation include consistently slurred or incomprehensible speech, unsteady gait, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” A person who is not incapacitated at the beginning of sexual activity, may, by virtue of alcohol or drug ingestion prior to or during the activity, reach a state of incapacitation as the activity continues and progresses. Persons who are sleeping or completely passed out are incapacitated.

Factors that can influence a person’s state include body composition; tolerance for alcohol and other drugs; amount and type of alcohol or other drugs consumed, and the mixture taken; amount of food intake prior to consumption; genetics; and propensity for blacking out. A memory lapse regarding an incident is not, in itself, conclusive evidence of incapacitation. Alcohol-induced memory lapses, sometimes called “blackouts,” are common. Such memory lapses, or blackouts, do not involve a loss of consciousness. An individual who is unable to form long-term memories of the incident has experienced a memory lapse; that individual may have been able to walk and talk and consent to sexual activity at the time of the incident.

**Intimate Body Parts:** Includes the following: sexual organs, genital areas, anal area, inner thigh, groin, buttock, or breast of a person.

**Official with Authority:** Any University employee who has the authority to implement corrective measures on behalf of the University. When an Official with Authority receives notice or a disclosure of alleged Prohibited Conduct, this notice conveys actual knowledge to the institution and triggers the University’s response obligations under the Final Title IX Rule.

**Parties:** The Complainant and Respondent in a reported incident.

**Preponderance of the Evidence:** A standard of proof in which the totality of evidence demonstrates that it is more likely than not that one particular version of events has occurred.



This standard requires more than 50 percent certainty to determine responsibility (51% or greater).

**Prohibited Conduct:** as defined in Section II.C. of this Policy.

**Reasonable Person:** A person of reasonably sound mind and of good judgment, under similar circumstances, and with similar identities to the individual in question.

**Relevant evidence and questions:** Any question(s) and evidence that tends to make an allegation of Prohibited Conduct 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 Formal 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
  - 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.
  - 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).

**Respondent:** Any individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined under this Policy.

## C. Prohibited Conduct

In making a determination as to whether conduct violates this Policy, the University will consider the totality of the circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. The various forms of Prohibited Conduct are outlined below and those notated by an (\*) indicate behaviors that may also constitute Sexual Harassment as defined by the Title IX Final Rule.

### 1. Sexual Harassment

The Title IX Final Rule defines Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following:

- a. **Quid Pro Quo Sexual Harassment:** An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo)\*;
- b. **Hostile Environment Sexual Harassment:** 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.\*

### 2. 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.

- a. **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.\*
- b. **Fondling:** 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.\*
- c. **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.\*

- d. **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.\*
- e. Any intentional, non-consensual sexual contact with an Intimate Body Part of another, or forcing another to have sexual contact with an Intimate Body Part of oneself or another, with any object or body part, or any disrobing of another without effective consent.

### **3. Domestic Violence\***

Domestic violence (as defined in the VAWA amendments to the Clery Act) is defined as 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 law or by any other person against an adult or minor victim who is protected from that person's acts under New Jersey state laws.<sup>2</sup>

### **4. 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:

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

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<sup>2</sup> See, e.g., N.J.S.A. 2C:25-17 et seq. (Prevention of Domestic Violence Act of 1991)

## 5. 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:

- a. fear for their safety or the safety of others; or
- b. 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](#).*

## 6. Sexual Exploitation

Sexual exploitation, which refers to non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples of sexual exploitation include, but are not limited to:

- Observing another individual’s nudity or sexual activity or allowing another to observe nudity or sexual activity without the knowledge and consent of all participants;
- Taking pictures, videos, or audio recordings of sexual activity or nudity without the knowledge and consent of all participants;
- Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all participants;
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity; or
- Knowingly exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

## **7. Stealthing**

Intentionally removing, damaging, or lying about use of a prophylactic or contraceptive device (e.g. condom, female condom, other forms of birth control) when consent has only been given for protected sexual activity.

## **8. Gender-Based Discrimination or Harassment**

- a. Gender-based discrimination is adverse treatment of an individual based on gender rather than individual merit. Examples of conduct that can constitute discrimination on the basis of gender, gender identity and/or gender expression include, but are not limited to:
  - Singling out or targeting an individual for different or adverse treatment as compared to a similarly situated individual of another gender;
  - Failing or refusing to hire or allow participation by an individual in a University or recognized student organization activity, program or event on the basis of gender; or
  - Removing an individual from an educational program on the basis of gender.
  
- b. Gender-based harassment is harassment of an individual on the basis of their gender, gender identity or gender expression or for exhibiting what is perceived as a stereotypical characteristic of their gender or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must reasonably interfere with a person's education or participation in educational programs or activities, or creates an intimidating, hostile, demeaning, or offensive academic, campus, or living environment. Examples of conduct that can constitute gender-based harassment include but are not limited to:
  - Acts of aggression, intimidation, or hostility based on gender, gender identity, gender expression or gender stereotyping; or
  - Threats of or actual non-consensual disclosure of a person's gender identity (i.e. "outing")
  - Intentionally and repeatedly misgendering another person, or not using a person's self-identifying pronouns, preferred name and/or honorific.

## **9. Indecent Exposure**

Exposure of one's sexual organs, and/or the display of sexual behavior, that would be reasonably offensive to others, or with the intent to be observed by any other non-consenting persons.

## **10. Retaliation**

Any materially adverse action taken against an individual for the purpose of interfering with any right or privilege secured by Title IX or its Final Rule, or because the individual has made a report or Formal Complaint of Prohibited Conduct, been accused of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, hearing or other resolution process under this Policy.

# **III. OTHER IMPORTANT CONCEPTS**

## **A. Role of the Title IX Coordinator**

The Title IX Coordinator oversees the administration of this Policy in a neutral and equitable manner and serves as the central points of contact for all University students, faculty and staff affected by Prohibited Conduct under this Policy. The Title IX Coordinator is responsible for overseeing the University's response to all reports and complaints of Prohibited Conduct and identifying and addressing any patterns or systemic problems revealed by such reports and complaints.

## **B. Confidentiality vs. Privacy**

*Confidentiality* means that information shared by an individual to a person with a legal privilege in the course of their professional work cannot be disclosed to anyone, including law enforcement and University officials, unless there is a risk of harm or permission is granted. Confidential and legally privileged resources are commonly identified as counseling services, health services, chaplain and attorney-client privileges. Contact information for on-campus confidential resources can be located on the [Title IX website](#).

References made to *privacy* mean University 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. The University will limit disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **C. Reports vs. Formal Complaints**

Any member of the University may report instances of Prohibited Conduct in accordance with this Policy, and the University strongly encourages any individual, even those who are not considered Responsible Employees (as defined in IV.B.), who are aware of such conduct to do so. Upon receipt of a report, the Title IX Coordinator, or designee, will notify the Complainant of the availability of Supportive Measures (with or without filing a Formal Complaint) and the option of filing a Formal Complaint under this Policy to initiate the Formal Grievance Process or Informal Resolution Process, as well as any other steps deemed necessary and/or appropriate by the Title IX Coordinator.

A signed, written Formal Complaint must be submitted by a Complainant, or signed by the Title IX Coordinator, in order to initiate the Formal Grievance Process under this Policy. This means that in order for the University to investigate alleged Prohibited Conduct under this Policy, either the Complainant must submit a Formal Complaint indicating that they wish the University to do so, or a Title IX Coordinator must determine that an investigation is necessary in order to meet the University's obligations under Title IX, and submit a Formal Complaint in lieu of the Complainant doing so.

### **D. 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.

## IV. REPORTING PROHIBITED CONDUCT

The University strongly encourages students, faculty and staff to report all conduct that may be prohibited by this Policy as promptly as possible so that the University can respond effectively.

Any person may report Prohibited Conduct (whether or not the person reporting is the person alleged to be the victim of the Prohibited Conduct). Reporting parties may simultaneously pursue a criminal investigation and the University Grievance Process.

### A. Reporting to the Title IX Coordinator

Reports can be made to the Title IX Coordinator via multiple methods including through an online [Private Reporting Form](#), 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.

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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.

### B. Responsibility of University Employees to Report (Private Reporters Non-Confidential)

All employees of the University, except those working in their legally-privileged capacity as a Confidential Resource, are considered "Responsible Employees" and are required to report incidents of alleged Prohibited Conduct to the Title IX Coordinator.

These private resources will respect and protect an individual's privacy to the greatest extent possible and share information only on a need-to-know basis; however, they cannot serve as a confidential resource.

For a list of Deputy Title IX Coordinators, please visit the [Title IX website](#).



## **C. Confidential Resources**

Information shared by an individual with a designated confidential resource, as outlined in this Policy, will not be disclosed to any other individual without express permission of the individual. These resources are prohibited from sharing confidential information except in cases that involve imminent threat of harm to self or others, child abuse, or a court order.

On-Campus confidential resources are as follows:

- **On-Campus Confidential Reporting for Students**
  - The McClintock Center for Counseling and Psychological Services, Holloway Annex, [counseling@drew.edu](mailto:counseling@drew.edu), (973) 408-3398
  - Health Services, Holloway Annex, [health@drew.edu](mailto:health@drew.edu), (973) 408-3414
  - University Chaplain, Seminary Hall, (973) 408-3718
  
- **On-Campus Confidential Reporting for Employees**
  - University Chaplain, Seminary Hall, (973) 408-3718

For a list of off-campus confidential resources, please visit the [Title IX website](#).

## **D. Reporting to Law Enforcement**

Students and employees may always report to Law Enforcement. The University strongly encourages persons exposed to sexual and/or relationship violence to report those offenses to the Madison Police Department at (973) 593-3000, or the Morris County Prosecutor's Office at (973) 625-6200. University 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 a criminal investigation or 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.

## **E. Preservation of Evidence**

The University recognizes that the decision to report an incident of sexual and/or relationship violence may take time. Pending this decision, parties are encouraged to take steps to preserve evidence that may be helpful when investigating a possible future report.

After an incident of sexual assault occurs, it is strongly advised that a person who has been assaulted seek medical attention as soon as possible at a local emergency room to have forensic evidence collected and preserved, in case that person decides to file a police report or pursue criminal charges in the future. A forensic sexual assault examination must be completed within five (5) days of an assault. The person does not have to make a criminal complaint or file charges in order to have a forensic examination completed. In addition to, or in lieu of, a forensic sexual assault examination, health care providers can treat a person for injuries, sexually transmitted infections, and address pregnancy-related concerns. Additional information and support is available by contacting the Morris County Sexual Assault Center Hotline at 973-829-0587.

A person who has been sexually assaulted should not bathe, douche, smoke, or launder clothing, bedding or other materials. Items containing bodily fluids should be stored in cardboard boxes or paper bags. Although the use of soaps, detergents, or other factors may affect the validity of the collected samples, a forensic examination can still be performed within five days of the assault.

Individuals who have experienced any form of sexual harassment, sexual assault, domestic violence, dating violence and/or stalking, are encouraged to preserve any evidence that the person may deem useful to an investigation including, but not limited to, photographs, videos, text messages, emails, instant messages, social networking pages, and any other communications, documents or tangible objects, if any exist.

## **F. Good Faith Reporting**

Complaints made in good faith, even if found to be unsubstantiated, shall not be considered a false accusation. Any student, faculty or staff member, who knowingly makes a false accusation under this Policy or knowingly provides false information in the course of an investigation of a complaint may be subjected to administrative and/or disciplinary action depending on 1) the circumstances presented, and 2) the severity of the impact on the investigation.

## **V. NON-INVESTIGATORY MEASURES**

### **A. Supportive Measures**

Supportive measures are non-disciplinary and non-punitive individualized services offered as appropriate, and as reasonably available, regardless of whether a Formal Complaint is filed. Supportive measures are designed to restore or preserve equal access to the

University's programs and activities without unreasonably burdening the other party, eliminate the Prohibited Conduct and prevent its recurrence. 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 are not be limited to, the following to the extent reasonably available and appropriate:

**For Students:**

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Restrictions on contact between the Parties (“mutual no contact orders”);
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; and
- Any other measures that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of a Student and/or the community.

**For Employees:**

- Temporary reassignment;
- Increased security and monitoring of certain areas of campus;
- Arranging a meeting to discuss safety planning;
- Assistance in setting up initial appointments via the University's Employee Assistance Program;
- Parking accommodations; and
- Any other measures that may be arranged by the University (to the extent reasonably available) to ensure the safety and well-being of an Employee and/or the community.

Decisions regarding supportive measures shall be made by the Title IX Coordinator, or designee, in consultation with relevant University administrators and the Party requesting supportive measures. It is not necessary to file a Formal Complaint under this Policy, participate in the adjudicative process or file a criminal complaint in order to request supportive measures from the University. Complainants may request supportive measures even in instances where the Complainant has requested to not proceed with a formal or informal process, or the Complainant and Respondent has declined to participate in University disciplinary proceedings or the criminal process.

## **B. Emergency Removal**

The University retains the authority to remove a Respondent from the University's program or activity on an emergency basis, where the University (1) undertakes an individualized safety and risk analysis, and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies a removal.

If the University 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.

## **C. Administrative Leave**

The University retains the authority to place a non-student employee Respondent on administrative leave during the Formal Grievance Process, consistent with the University's [Employee Handbook](#).

# **VI. FORMAL GRIEVANCE PROCESS**

## **A. Initial Assessment**

A formal report or complaint of alleged Prohibited Conduct will be initially evaluated by the Title IX Coordinator or designee. The Title IX Coordinator will explain to the Complainant the process for filing a Formal Complaint and available resolution processes. The Title IX Coordinator will first determine whether the reported conduct falls within the scope and jurisdiction of the Policy, and more specifically, within the jurisdiction of the Title IX Final Rule.

Based upon the reasonably available information at the time of intake, the Title IX Coordinator will assess whether:

- 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 the University’s Education Program or Activity; and
- The alleged conduct, if true, would constitute a violation of Prohibited Conduct, under this Policy, based upon the facts and circumstances of the information.

The assessment will also aid with identifying what Policies and procedures are most appropriate to use in response to the reported allegations. The specific procedures for assessing, reviewing and resolving Prohibited Conduct are dependent upon the nature of the Respondent’s relationship to the University, and when a Respondent is an employee, the type of Prohibited Conduct alleged.

1. **Respondent is a Student:** If the reported allegations would constitute Prohibited Conduct as defined by this Policy, the University will follow the procedures outlined in this Policy, regardless of jurisdiction.
2. **Respondent is an Employee:** If the reported allegations are made against a non-Student employee, the Title IX Coordinator will assess whether the allegations fall within the jurisdiction of the Title IX Final Rule. If it is determined that the alleged conduct falls within the jurisdiction of the Title IX Final Rule, and a Formal Complaint is filed, the University will follow the procedures outlined within this Policy. If it is determined that the alleged conduct does not fall within the jurisdiction of the Title IX Final Rule, the University will dismiss the allegations in the Formal Complaint related to Sexual Harassment as defined in the Title IX Final Rule. If there are multiple allegations, the Title IX Coordinator will evaluate each violation individually to determine whether the procedures in the Policy are followed or the allegation(s) are dismissed. Any dismissal shall be for purposes of Title IX only and the University will not be precluded from addressing the allegations of Prohibited Conduct under the Employee Handbook.
3. **Respondent is *both* a Student and an Employee:** The Title IX Coordinator will determine whether student or employee procedures apply based upon the facts and circumstances, and whether those circumstances relate more closely to the Respondent’s status as a student or employee.
4. **Respondent is a Third Party:** The University will take steps to eliminate the harassment, address the behavior, and remedy its effect by providing Supportive Measures to students or employees who have been impacted by the alleged behavior.

A continuation in the process, or referral to another process, does not constitute a determination that a policy has been violated.

Additionally, a Complainant who files a Formal Complaint may elect, at any time, to address the matter through the University's Informal Resolution Process. (See Section VII. below).

## **B. Conflicts of Interest or Bias**

The University requires any University personnel participating in the investigation, hearing process, sanctioning, or appeal determinations to disclose to the Title IX Coordinator any potential or actual conflict of interest or bias. If a party believes that any individual involved in the process has a conflict of interest or bias, they may make a request to the Title IX Coordinator that the individual not participate. This request must be submitted in writing to the Title IX Coordinator within three (3) business days after notification of that person's involvement in the process. Any request must include a description of the conflict or bias. If the Title IX Coordinator determines that a conflict or interest or bias may exist, the University will take steps to address the conflict or bias in order to ensure an impartial process. A Party who believes that the Title IX Coordinator has a conflict of interest or bias may make a request to the Vice President for Enrollment Management and Campus Life that the Title IX Coordinator not participate.

## **C. Filing a Formal Complaint**

The timeframe for the Formal Grievance Process begins with the filing of a Formal Complaint. To file a Formal Complaint, a Complainant must provide the Title IX Coordinator with a written, signed Formal Complaint describing the facts alleged. When filing a Formal Complaint under this Policy, Complainants must be currently participating in, or attempting to participate in, the education programs or activities of the University 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 is responsible for determining whether it is necessary to initiate a complaint in order for the University to respond to the reported conduct of which it has actual notice in a way that is not deliberately indifferent. The Title IX Coordinator will consider various factors in this assessment, such as the availability of independent evidence of the allegations, the nature

of the allegations, and/or whether there have been other similar complaints about the same Respondent. If the Title IX Coordinator initiates a Formal Complaint, the University 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.

The University may consolidate Formal Complaints alleging Prohibited Conduct 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 Prohibited Conduct arise out of the same facts or circumstances.

Nothing in the Formal Grievance Policy, or any University policy, prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### **D. Dismissal of a Formal Complaint**

At any time during the handling of a Formal Complaint, the Title IX Coordinator may dismiss the complaint, in whole or in part, for the purposes of Title IX or at their discretion. Upon receipt of a Formal Complaint, the information gathered will be continuously assessed to determine whether a Mandatory or Discretionary dismissal is warranted.

##### **1. Mandatory Dismissal**

The Title IX Coordinator will determine whether the conduct alleged in the Formal Complaint falls within the scope of this Policy and the associated definitions of Prohibited Conduct. The Title IX Final Rule requires the Title IX Coordinator to dismiss some or all of the allegations in the Formal Complaint if the conduct alleged in the Formal Complaint:

- a. Would not constitute Sexual Harassment as defined in Section II.B. of this Policy, even if proved;
- b. Did not occur in the University's Education Program or Activity;
- c. Did not occur against a person in the United States; or
- d. If at the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the Education Program or Activity of the University with which the Formal Complaint is filed.

If any of the above criteria are met, the University must dismiss the Formal Complaint with regard to that conduct for purposes of Sexual Harassment under Title IX. However, where the allegations in the Formal Complaint include other forms of Prohibited Conduct within this Policy, the conduct occurs outside of the United States, or the conduct is not within the University's Education Program or Activity (but still within the scope of conduct regulated by the University), these procedures will still apply and the remaining allegations may proceed through the University resolution process set forth below. Either party may appeal this dismissal using the process outlined in Section VI. K. below.

## **2. Discretionary Dismissal**

The Title IX Final Rule grants the Title IX Coordinator discretion to dismiss a Formal Complaint brought under this Policy, or any specific allegations therein, at any time during the investigation or hearing, if:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- b. The Complainant is no longer enrolled or employed by the University; or
- c. specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations therein.

Either party may appeal the dismissal using the process outlined in Section VI. K. below

## **3. Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the Title IX Coordinator, or designee, 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 Drew email accounts. It is the responsibility of the Parties to maintain and regularly check their email accounts.

Upon dismissal for the purposes of Title IX, the University retains discretion to utilize the [Student Code of Conduct](#) and/or Employee Handbook to determine if a violation has occurred. If so, the University will promptly send written notice of the dismissal of the Formal Complaint under the Formal Grievance Process and removal of the allegations to the appropriate process.



## **E. Notice of Allegations**

If a Formal Complaint is filed, the Title IX Coordinator will draft and provide the Notice of Allegations set forth in the Formal Complaint to the Complainant and Respondent. Such notice will occur as soon as practicable, but not more than five (5) business days after the University receives a Formal Complaint of the allegations, absent extenuating circumstances or if the University needs more time to gather all required information for the Notice of Allegations.

The Parties will be notified via their Drew email accounts if they are a student or employee, and by other reasonable means if they are neither. It is the responsibility of the Parties to maintain and regularly check their Drew email accounts.

The University 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:

- A copy of this Policy, either electronic or hardcopy as appropriate.
- The allegations potentially constituting Prohibited Conduct, including sufficient details of the allegations known at the time the Notice is issued. Sufficient details includes the identities of the Parties involved in the incident (including, but not limited to, the Complainant), the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, to the extent such information is known at the time the Notice of Allegations is issued.
- 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 Formal Grievance Process.

- A statement that the Parties may have a Support Person present throughout the investigation and hearing processes.
- A statement that the Parties may have an Advisor of their choice to conduct cross-examination at the hearing who may be, but is not required to be, an attorney.
- 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 University does not intend to rely in reaching a determination regarding responsibility, and evidence that either tends to prove or disprove the allegations, whether obtained from a Party or other source.
- A statement that University Policies prohibit making false statements or knowingly submitting false information during the Formal Grievance Process. Such conduct may result in additional disciplinary actions.

## **2. Ongoing Notice**

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations and are otherwise covered Prohibited Conduct falling within this Policy, the Title IX Coordinator, or designee, will issue an updated Notice of Allegations to notify the Parties of the additional allegations being investigated, via their Drew 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.

## **F. Support Persons and Advisors of Choice**

The University will provide the parties equal access to information about Advisors and Support Persons. Any restrictions on Advisor participation will be applied equally.

### **1. Support Persons**

The Parties have the right to select a Support Person to provide support and assistance throughout the process. A Party may be accompanied by a Support Person to any meeting or hearing to which they are required or are eligible to attend. A Support Person cannot

represent the Party during any investigatory meeting/interview or proceeding and cannot address an investigator/Decision-maker unless they are designated as an Advisor for the hearing process, or are otherwise granted permission by the investigator/Decision-maker.

## **2. Advisors**

The Parties have the right to select an Advisor of their choosing to conduct cross-examination at the hearing. The Party's Advisor of choice may be, but does not need to be, an attorney. 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 of or against the Parties to a particular case. The Advisor is also not prohibited from being a witness in the matter. The Parties can choose to have their Support Person fulfill this function or may select an additional individual to serve as the Advisor at the hearing. While the Advisor may attend any investigatory meeting/interview, the Advisor cannot represent the Party during any such meeting/interview.

As discussed in Section VI.H.10. below, the Party's Advisor will conduct any cross-examination during the hearing. If a Party does not select an Advisor for this purpose, or the chosen Advisor does not attend the hearing, the University will provide the Party with an Advisor for the sole purpose of conducting cross-examination at the hearing.

## **3. Advisor and Support Person Availability**

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

The University'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 the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor or Support Person. The determination of what is reasonable shall be made by the Title IX Coordinator, or designee.

The University 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 or Support Person, and may offer the party the opportunity to obtain a different Advisor or utilize one provided by the University.

## **G. Investigation Procedures**

### **1. Time Frames**

The University does not limit the time for submitting a report of conduct prohibited by this Policy. However, the University's ability to investigate and respond effectively may be reduced with the passage of time.

The time frame for the Formal Grievance Process begins with the filing of a Formal Complaint. The Formal Grievance Process will be concluded within a reasonably prompt manner, generally no longer than ninety (90) business days after the filing of the Formal Complaint, excluding all appeals processes. The University will endeavor to resolve every complaint in a fair, impartial, and timely manner. The University recognizes that each case has its own unique circumstances, and that time frames for each stage of the process may vary depending on the details of a case and at certain times of the academic year (for example, during breaks, study periods, or final exams). Time frames may be extended for good cause as necessary to ensure the integrity and completeness of this process. Other reasons for an extension of time frames include, but are not limited to: the Parties mutual voluntary decision to commence or resume an Informal Resolution, compliance with a request by law enforcement; accommodation of the availability of witnesses; accounting for exam periods, school breaks or vacations; and/or accounting for complexities of a specific case, including the number of witnesses and volume of information provided by the Parties. The University will notify the Parties in writing of any extensions of time frames and the reason for the extension.

The University's process for responding to, investigating, and adjudicating Formal Complaints under this Policy will continue during any law enforcement proceeding or civil proceeding. The investigation may need to be temporarily delayed at the request of law enforcement, but will resume as soon as possible and generally will not wait for the conclusion of any related criminal proceeding.

### **2. Time Frame Extensions**

Either Party may request an extension during the Formal Grievance Process for good cause provided that the requestor provides reasonable notice and the delay does not overly inconvenience other Parties. The Title IX Coordinator, or designee, has sole judgment to grant or deny all extensions, and establish timelines for extensions in the Process.

### **3. General Principles of Investigations**

#### a. Roles of the Investigator and Title IX Coordinator

After the Notice of Allegations has been issued, trained investigators will be assigned to investigate the alleged Prohibited Conduct. The investigation will include interviewing the Complainant, Respondent, and witnesses, and gathering relevant evidence directly related to the complaint. The Title IX Coordinator will communicate with the investigators regularly to ensure that the investigation is thorough, impartial and fair. The Title IX Coordinator will also ensure that the Parties are updated throughout the investigative process, including with timely notice of meetings where either or both Parties may be present.

#### b. Burden of Proof and Collection of Evidence

The University, 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 the University and does not indicate responsibility.

The University uses the preponderance of the evidence standard for investigations of Formal Complaints under this Policy. This means that the investigation determines whether it is more likely than not that a violation of the Policy occurred.

#### c. Restrictions on University's Access to Medical Records

The University 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.

### **4. Notice of Interviews and Meetings**

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

The investigator(s) will provide an equal opportunity for the Parties to identify witnesses including fact and expert witnesses, as part of the investigation process.

## **5. Collection and Review of Evidence**

The investigator(s) will give the Complainant, Respondent, and witnesses an opportunity to submit any evidence, including but not limited to, photographs, videos, audio recordings, text messages, and social media posts that relate to the alleged Prohibited Conduct.

Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation that directly relates to the allegations in the Formal Complaint. 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:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility; and
- 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.

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, and will be added to an appendices of the Investigation Report.

All Parties must submit any evidence they would like the investigator to consider before the Parties' time to inspect and review evidence begins.

Prior to obtaining access to any evidence, the Parties and their Advisors must sign an agreement not to disseminate, photograph or otherwise copy any of the evidence obtained during the investigation or hearing process, and/or any of the testimony heard during the

hearing for any purpose unrelated to the Formal Grievance Process. Once signed, this agreement may not be withdrawn.

The investigators 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. The University 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(s). If the Parties do not provide the investigator(s) with a response within ten (10) business days, it will be assumed they reviewed all of the evidence and choose not to respond. If a Party provides additional evidence within the ten (10) business day period, the University may, within its discretion, provide the other Party with an additional five (5) business days to inspect, review, and respond to the additional evidence through a written response to the investigator(s). The investigator(s) will provide copies of the Parties' written responses to all other Parties and their Advisors, if any, and will consider the Parties' written responses before completing the Investigation Report.

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

## **6. Investigation Report**

At the conclusion of the investigation, the investigator(s) will prepare an Investigation Report that fairly summarizes relevant evidence. The Investigation Report is not intended to catalog all evidence obtained by the investigator(s), 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 Investigation Report. The Investigation Report may detail a timeline of the case and summarize relevant supporting documentation. Any information or evidence deemed irrelevant will be kept as part of the case file but will not appear in the Investigation Report.

The investigator(s) may redact irrelevant information from the Investigation Report when that information is contained in documents or evidence that is/are otherwise relevant.

The investigator(s) will send (through an electronic format or hard copy) the Report to the Parties and their respective Advisors, and allow them an equal opportunity to review and

respond to the Report within ten (10) business days. If the Parties do not provide the investigator(s) with a response within ten (10) business days, it will be assumed they reviewed the Investigation Report and chose not to respond. Upon receipt of a response to the Report from either Party, the investigator(s) may, but are not required to, amend the Investigation Report, if deemed necessary. The investigator(s) will then provide the Final Investigation Report, including each Party's responses, to the Complainant, Respondent, their Advisors and the Decision-maker, at least ten (10) business days prior to the scheduled hearing.

## **7. Additional Considerations**

If at the conclusion of an investigation it is determined that a dismissal is warranted but there may be violations of the Student Code of Conduct, the Investigator(s) may transfer the case to the Student Conduct Office for further investigation and/or adjudication. If the Title IX Coordinator determines that there are potential violations of the Student Code of Conduct that directly relate to a violation of this Policy, the Title IX Coordinator in consultation with the Director of Residence Life & Student Conduct may decide to adjudicate all charges through this Policy's grievance process.

## **H. Hearing**

Absent a Notice of Dismissal issued by the Title IX Coordinator, or the Parties' mutual decision to reach an informal resolution agreement (if applicable), the Parties will be afforded a live hearing for all Formal Complaints, as outlined in this Policy. The University will not issue a disciplinary sanction arising from an allegation of Prohibited Conduct without holding a live hearing. The Parties cannot waive the right to a live hearing.

### **1. Notice of Hearing**

The Title IX Coordinator will provide simultaneous written notice of the hearing to the Parties (and the Parties' advisor, if any) no less than ten (10) business days prior to the hearing. Such notice will include:

- the specific allegations;
- the name of the Decision-Maker;
- the date, time and location of the hearing;
- information on requesting accommodations;
- A statement that each Party may raise any objections regarding the Decision-maker's actual or perceived conflicts of interest or bias;



- A statement that the party is entitled to have an Advisor of choice conduct cross-examination on their behalf during the hearing, and a request that the Party notify the Title IX Coordinator at least five (5) business days prior to the hearing if the party does not intend to select their own Advisor and will require that an Advisor be provided for them; and
- a copy of or a hyperlink to the Rules of Decorum, and a statement that a participant's failure to abide by the Rules may result in their removal from the hearing.

Either Party may challenge the fairness, impartiality or objectivity of a Decision-maker selected by the Title IX Coordinator. The challenge must be submitted in writing to the Title IX Coordinator within three (3) business days after receiving the Notice of Hearing, and must include a statement as to why the Party believes that the Decision-maker has a conflict of interest or bias that would impact their ability to objectively evaluate the relevant information and make a decision regarding responsibility. The Title IX Coordinator will make decisions regarding such objections and the appointment of an alternate Decision-maker, as necessary. If a potential conflict of interest is discovered outside of the three (3) days, it is within the discretion of the Title IX Coordinator to appoint an alternate Decision-maker.

## **2. Pre-Hearing Meeting**

The Title IX Coordinator will convene a separate pre-hearing meeting with each of the Parties and the Decision-maker. The purpose of the pre-hearing meeting is to review information which may include, but not be limited to: the identity and role of their Advisor (who may also attend the pre-hearing meeting); procedures to be followed at the hearing; the Rules of Decorum; to identify the names of the witnesses that will be asked to appear; and to ask any other questions or share information prior to the hearing. The University expects that both Parties will attend separate pre-hearing meetings, but neither Party is required to participate in the pre-hearing meeting.

## **3. Participation and Attendance at the Hearing**

Live hearings are not public. The only individuals permitted to participate in the hearing are the Parties; the Decision-maker; the Parties' Advisors; the Parties' Support Persons; witnesses; and a staff member(s) to manage logistical and technical aspects of the hearing.

Participation in the hearing is voluntary. The University will proceed with the live hearing in the absence of any party and may reach a determination of responsibility in their

absence, including through any evidence gathered that does not constitute a “statement” by that party. (See Section VI.H.10. below). The University will not threaten, coerce, intimidate, discriminate, or retaliate against any Party or witness in an attempt to secure that individual’s participation. The Decision-maker 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.

All participants at the hearing, including the Parties, witnesses, Support Persons, and Advisors are expected to behave in a civil and appropriate manner. All participants are required to comply with the [Rules of Decorum](#). A participant’s failure to abide by the Rules may result in their removal from the hearing.

#### **4. Witnesses**

The Title IX Coordinator will notify individuals who are identified as witnesses that their appearance is requested. It is generally expected that witnesses will appear in person to give testimony, however, witnesses cannot be compelled to participate in the live hearing. Witnesses have the right to be free from retaliation, regardless of whether they do or do not participate in the hearing.

Witnesses are excluded from the hearing during testimony of other witnesses.

#### **5. Decision-maker**

The hearing body will consist of a single Decision-maker. The role of the Decision-maker shall be filled by appropriate University personnel and/or an independent third party. The Decision-maker will not have served as the Title IX Coordinator, investigator, or Party’s Advisor in the same case, nor may the Decision-maker serve as the Appeal Officer in the same case. The Decision-maker will not have any conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties in a particular case. The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, maintaining respect for decorum, and any technology to be used at the hearing.

The Decision-maker will be informed of the identities of the Parties so that they can identify any conflict of interest to the Title IX Coordinator. At the discretion of the Title IX Coordinator, an alternate Decision-maker may be assigned.

## **6. Hearing Logistics**

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

The Decision-maker may set reasonable time limits for any part of the hearing.

Cell phones and recording devices may not be used in the hearing room(s) unless approved by the Decision-maker(s) in advance and must be turned off before the hearing convenes.

## **7. Hearing Procedures**

All formal administrative hearings conducted under this grievance process will be conducted as follows, and specific details regarding these procedural components are further outlined in sections below:

- a. The Decision-maker will open and establish rules and expectations for the hearing;
- b. The Parties will each be given the opportunity to provide opening statements;
- c. The Decision-maker will ask questions of the Parties and Witnesses;
- d. 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 their own follow up questions and any time necessary in order to enforce the established Rules of Decorum;
- e. After examination of all Parties and witnesses is complete, the Parties will each be given the opportunity to provide closing statements and the Decision-maker may ask any final questions of Parties at the Decision-maker's discretion;

- f. The hearing will adjourn, and the Decision-maker will objectively evaluate the relevant information and independently make a decision regarding responsibility of the Respondent;
- g. The hearing will reconvene once the Decision-maker has made their decision, and the Decision-maker will notify the Parties of the outcome;
- h. If the Decision-maker finds the Respondent in-violation of the Prohibited Conduct outlined in this Policy, the Complainant will have the opportunity to present an impact statement and the Respondent will have the opportunity to share a character statement on their own behalf and have character witnesses present statements either in writing or in-person at the hearing. Both Parties will also have the opportunity to make recommendations for sanctioning. If the Decision-maker finds the Respondent not in-violation of Prohibited Conduct outlined in this Policy, the hearing concludes after the Decision-maker has announced their decision;
- i. Upon conclusion of the hearing, Parties will be notified that they will receive a written decision letter from the Decision-maker via their Drew email account, outlining the decision, any sanctions imposed on the Respondent (if found in-violation), and the rationale for the decision and any sanctions imposed (if applicable).

## **8. Procedural Questions**

All procedural questions are subject to the final decision of the Decision-maker.

## **9. Advisors**

Each party may have an Advisor of their choice present at the hearing. The Advisor does not participate in the hearing except for the limited purpose of conducting cross-examination on behalf of the Complainant or Respondent. Advisors may be, but are not required to be, attorneys. Parties must inform the Title IX Coordinator of any Advisor of choice who will accompany them to the hearing within five (5) business days of receiving notice of the hearing, so that it is known whether or not there is a need to arrange for the presence of a University-provided Advisor. If a Party does not have an Advisor of their choice present at the hearing, the University will, without fee or charge to the Party, provide an Advisor of the University's choice, for the sole and limited purpose of conducting cross-examination on behalf of that Party. During an administrative hearing, a Party may request to consult with their Advisor at any point in a non-disruptive manner.

However, the Advisor may not represent or otherwise speak for the Party they are supporting except during the cross-examination portion of the hearing.

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 of a particular case. The Advisor is not prohibited from being a witness in the matter. All Parties and their Advisors shall be subject to the University's Rules of Decorum, and may be removed from a hearing or other proceeding upon violation of those Rules.

#### **10. Cross-Examination by Party's Advisor**

Cross-examination is designed to test the credibility and trustworthiness of the information presented at the hearing. 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. A Party's Advisor may appear and conduct cross-examination on their behalf even if the Party does not attend the live hearing.

Before any cross-examination question is answered, the Decision-maker will determine if the question is relevant. 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.

Prior statements (written or oral) by Parties and or witnesses cannot be considered by the Decision-maker unless that individual participates in the hearing and agrees to be cross-examined by the other Party's Advisor. This restriction does not apply to information or evidence (such as text messages, emails, videos, and social media postings) that constitute all or part of the Prohibited Conduct itself.

Questions regarding the Complainant's sexual predisposition or prior sexual behavior are prohibited (though there may be a limited exception made in regard to questions and evidence about the Complainant's prior sexual behavior which are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent).

A Party may affirmatively waive the right to have their Advisor conduct 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.

## **11. Absence or Refusal to Submit to Cross-Examination**

The University may proceed with the live hearing in the absence of a Party or witness or on a Party's refusal to answer cross-examination or other questions. In addition, the Decision-maker may reach a determination in a Party or witness' absence. However, a Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's refusal to answer cross-examination or other questions, or absence from the live hearing.

If a Party does not attend the hearing, the Party's advisor may appear and conduct cross-examination on their behalf. If neither a Party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing Party.

## **12. Continuance or Extensions**

The Decision-maker 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, the Decision-maker or Title IX Coordinator will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

## **13. 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.

## **14. Recording of the Hearing**

In the absence of any extenuating circumstances, the recording of the hearing will be available to the Parties for their review upon written request, within five (5) business days of the hearing. The recording of the hearing will not be provided to Parties or Advisors of choice.

### **I. Determination Regarding Responsibility**

#### **1. Standard of Proof**

The University uses the preponderance of the evidence standard to determine responsibility of Formal Complaints covered under this Policy. This means that the hearing determines whether it is more likely than not that a violation of the Policy occurred.

#### **2. General Considerations for Evaluating Testimony and Evidence**

##### **a. Credibility**

A Decision-maker 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.

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on written, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker. 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's or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

## b. Weighing Testimony

1. *First-Hand Testimony*: 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 this Policy, 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. Other forms of testimony, such as expert testimony and character testimony, will be afforded lower weight relative to the testimony of fact witnesses.

2. *Expert Witnesses*: The University will allow Parties to call "expert witnesses" for direct and cross examination. The University 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.
3. *Character Witnesses*: The University will allow Parties to call character witnesses to testify. The University does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be cross-examined, the Decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.
4. *Polygraph Tests*: The University will 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 cross-examined, the Decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.



5. *Retaliation*: 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 Drew email account, or other reasonable means as necessary. The Determination will include:

- a. Identification of the allegations potentially constituting covered Prohibited Conduct;
- 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 Policy, or the Student Code of Conduct, 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 University imposes on the Respondent; and
  - iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- f. The procedures and permitted reasons for appeal (described below in "Appeals"), including the Appeal Officer's information.

#### **4. Timeline of Determination Regarding Responsibility**

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

#### **5. Finality of the Determination Regarding Responsibility**

The determination regarding responsibility becomes final either on the date that the University 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 Section VI.K. below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **J. Sanctions**

All hearings that result in a finding of responsible for a violation of the Policy will result in the imposition of outcomes, or sanctions. The Decision-maker will determine the appropriate sanctions to impose. The Decision-maker will consider relevant factors, including, if applicable: (1) facts and circumstances surrounding the event at issue; (2) the nature of the Prohibited Conduct at issue; (3) the circumstances concerning the issue of consent; (4) state of mind; (5) the impact of the offense on the Complainant; (6) the Respondent's prior disciplinary history; (7) the safety of the University community; and (8) precedent established by previous sanctions.

The various sanctions listed below, alone or in any combination, may be imposed upon any Student or employee specifically noted in the section below found to have violated this Policy. If a Student-employee is found to have engaged in Prohibited Conduct, the Student-employee may be subject to sanctions both in connection with their employment (outside the scope of the Title IX Office and this Policy) and in connection with their student status, as appropriate under this Policy and other applicable processes.

#### **1. Possible Sanctions for Student-Respondents**

The potential sanctions designated for Student Respondents related to a violation of the Policy are:

- a. **Revocation of Admission:** Admission to the University may be revoked for fraud, misrepresentation or a violation of the University policies.

- b. **Warning:** Written notification to the student that any repetition of the behavior will result in more severe disciplinary action.
- c. **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.
- d. **Residence Hall Relocation:** Room reassignment to another residence hall or floor.
- e. **Discretionary Sanctions:** Educational assignments, essays, trainings, assessments and completion of any recommendations, service to the community with a specified length of time, or other related discretionary assignments.
- f. **Restitution:** Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- g. **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 additional 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.
- h. **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 re-entry 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 their time of suspension, and will be treated as a trespasser if found in or around campus housing during their period of separation.
- i. **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 re-entry 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 their time of suspension, and will be treated as a trespasser if found on campus during their period of separation.

- j. **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.
- k. **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.
- l. **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.
- m. **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.
- n. **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.

## **2. Possible Sanctions for Employee Respondents**

Any employee of the University found in violation of the Policy may be subject to disciplinary action, from a warning up to and including termination of employment.

In addition to any sanction, the University may also recommend counseling or other support services for the Respondent.

### 3. Sanctions for Third-Party Respondents

In cases in which the Respondent is not a University student or employee, the Decision-maker will determine an appropriate sanction within the scope of the University’s authority.

### 4. Designated Sanction Ranges

In accordance with the Title IX Final Rule and the federal Jeanne Clery Act, the University is required to disclose the range of possible sanctions that may be imposed following an institutional disciplinary procedure addressing Prohibited Conduct. See below for the table containing details regarding specific sanction ranges designated for Student Respondents, and subsequent information pertaining to employee Respondents. The majority of incidents will fall into the ranges indicated; however, various mitigating or aggravating factors may warrant a sanction outside of these ranges.

#### a. Designated Sanction Ranges for Student Respondents

Prohibited Conduct	Sanction Range
<b>Sexual Harassment</b>	
<ol style="list-style-type: none"> <li data-bbox="201 1213 1052 1325">1. <b><i>Quid Pro Quo Sexual Harassment:</i></b> <i>An employee conditioning educational benefits on participation in unwelcome sexual conduct.</i></li> <li data-bbox="201 1367 1078 1549">2. <b><i>Hostile Environment Sexual Harassment:</i></b> <i>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.</i></li> </ol>	<p data-bbox="1127 1213 1406 1251">Warning to Expulsion</p> <p data-bbox="1127 1367 1406 1404">Warning to Expulsion</p>
<b>Sexual Assault</b>	
<ol style="list-style-type: none"> <li data-bbox="201 1726 1073 1877">1. <b><i>Non-Consensual Sexual Intercourse:</i></b> <i>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.</i></li> </ol>	<p data-bbox="1127 1726 1443 1764">Suspension to Expulsion</p>

<p>2. <b>Non-Consensual Sexual Contact:</b> <i>The touching of the private body parts of another person for the purpose of sexual gratification, without that person’s effective consent.</i></p> <p>3. <b>Incest:</b> <i>Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.</i></p> <p>4. <b>Statutory Rape:</b> <i>Sexual intercourse with a person who is under the statutory age of consent.</i></p> <p>5. <i>Any intentional, non-consensual sexual contact with an Intimate Body Part of another, or forcing another to have sexual contact with an Intimate Body Part of oneself or another, with any object or body part, or any disrobing of another without Effective Consent.</i></p>	<p>Probation to Expulsion</p> <p>Suspension to Expulsion</p> <p>Suspension to Expulsion</p> <p>Probation to Expulsion</p>
<p><b>Relationship Violence</b></p>	
<p>1. <i>Domestic Violence</i></p> <p>2. <i>Dating Violence</i></p>	<p>Warning to Expulsion</p> <p>Warning to Expulsion</p>
<p><b>Stalking</b></p>	
<p>1. <i>Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or safety of others; or, suffer substantial emotional distress.</i></p>	<p>Warning to Expulsion</p>
<p><b>Sexual Exploitation</b></p>	
<p>1. <i>Observing another individual’s nudity or sexual activity or allowing another to observe nudity or sexual activity without the knowledge and consent of all participants.</i></p> <p>2. <i>Taking pictures, videos, or audio recordings of sexual activity or nudity without the knowledge and consent of all participants.</i></p> <p>3. <i>Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all participants.</i></p> <p>4. <i>Inducing incapacitation for the purpose of making another person</i></p>	<p>Probation to Expulsion</p> <p>Probation to Expulsion</p> <p>Probation to Expulsion</p> <p>Probation to Expulsion</p>

<i>vulnerable to non-consensual sexual activity.</i>	
5. <i>Knowingly exposing another person to a sexually transmitted infection or virus without the other's knowledge.</i>	Probation to Expulsion
<b>Stealthing</b>	
1. <i>Intentionally removing, damaging, or lying about use of a prophylactic or contraceptive device (e.g. condom, female condom, other forms of birth control) when consent has only been given for protected sexual activity.</i>	Probation to Expulsion
<b>Gender-Based Discrimination or Harassment</b>	
1. <i>Gender-Based Discrimination</i>	Warning to Expulsion
2. <i>Gender-Based Harassment</i>	Warning to Expulsion
<b>Indecent Exposure</b>	
1. <i>Exposure of one's sexual organs, and/or the display of sexual behavior, that would be reasonably offensive to others, or with the intent to be observed by any other non-consenting persons.</i>	Probation to Expulsion
<b>Retaliation</b>	
1. <i>Any materially adverse action taken against an individual for the purpose of interfering with any right or privilege secured by Title IX or its Final Rule, or because the individual has made a report or Formal Complaint of Prohibited Conduct, been accused of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, hearing or other resolution process under this Policy.</i>	Probation to Expulsion

### **b. Designated Sanction Ranges for Employees**

An employee found in violation of any form of Title IX Sexual Harassment will be issued sanctions ranging from from a warning up to and including termination of employment.

### **5. Confidentiality of Sanctions**

Under federal law, a student's sanction or discipline is part of the educational record of a respondent who is a student and is protected from disclosure with certain exceptions. In

those cases, this information may be released to the complainant, but only when consistent with the requirements of federal law.

In matters involving faculty and or/staff only, both parties will be advised of the outcome and sanction of a disciplinary proceeding. Otherwise, as a general rule, an employee's specific sanction will not be disclosed to persons other than supervisors.

## **K. Appeals**

Each Party may appeal, as applicable, the dismissal of a Formal Complaint and any decision and/or outcome(s) rendered by a Decision-maker during the Formal Grievance Process. The circumstances available to appeal, the specific grounds to which parties can appeal on, and the procedures associated with submitting and evaluating appeals are outlined below.

### **1. Appeal Procedures**

If either Party chooses to submit an appeal, the appeal must be submitted to the Appeal Officer in writing within five (5) business days of receiving the written notice (of dismissal or hearing outcome), and include any supporting documentation that the Party wishes to be considered. Failure to submit a written appeal within this five (5) business day period forfeits the right to appeal under this Policy, and the decision is final.

Upon receipt of the appeal, the Appeal Officer will notify the Title IX Coordinator. The Title IX Coordinator will, as soon as practicable, notify the other Party, in writing, that an appeal has been filed, and provide a copy of the appeal and any supporting documents to the non-appealing Party. The non-appealing Party may submit a written response within five (5) business days after notice of an appeal. If both the Complainant and Respondent appeal, the appeals will be considered concurrently.

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.

Deference is given to the Title IX Coordinator's rationale for dismissal of the Formal Complaint or the Decision-maker'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, provided however that 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.

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

## **2. Grounds for Appeal**

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

- a. ***Process Review.*** Procedural irregularity that materially affected the outcome of the matter (i.e. The University failed to follow its prescribed procedures).
- b. ***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;
- c. ***Conflict of Interest or Bias.*** The Title IX Coordinator, investigator(s), or Decision-maker(s) (as applicable) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that materially affected the outcome of the matter; and/or
- d. ***Disproportionate Sanction.*** The designated sanction(s) are clearly disproportionate to the Prohibited Conduct for which the Respondent was found in violation.

Disagreement with the finding or sanctions is not, by itself, grounds for appeal. The fact that any criminal charges based on the same conduct were dismissed, reduced, or resolved in favor of the Respondent does not require, and will not necessarily result in, a change in the disciplinary decisions and/or sanctions.

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

### **3. Appeal Decision**

Following the Appeal Officer's review of the appeal, they will:

- a. Affirm the finding and sanction originally determined; or
- b. Affirm the finding and modify the sanction; or
- c. Remand the case for a new hearing.

The imposition of sanctions may be deferred during the appeal process and the status of the Party shall not change until the Appeal Officer issues a final decision, except that a hold may be placed on a student's transcript and no degree will be awarded to a student Respondent pending completion of the appeals process. Supportive measures may also be taken or continued while the case is going through the appeals process.

### **4. Timeframe**

Barring any extenuating and/or unforeseen circumstances, the Appeal Officer will notify the Complainant and Respondent in writing simultaneously of the final decision on appeal, including the rationale for the decision. Appeal decisions will be rendered within ten (10) business days after the receipt of the written appeal. All appeal decisions are final and not subject to further review. Once the appeal process is completed, it shall be the responsibility of the Director of Residence Life and Student Conduct, Title IX Coordinator, or the appropriate Dean or Supervisor of an employee to oversee the implementation of imposed sanctions.

## **VII. INFORMAL RESOLUTION**

When appropriate, certain complaints may be resolved by the Title IX Coordinator or Deputy Coordinator without a full investigation or hearing. Informal resolution is a voluntary process, offered in various forms, but is generally designed to allow a Respondent to acknowledge harm and accept responsibility for repairing harm (to the extent possible) experienced by the Complainant and/or University Community. Informal Resolution is a procedure designed to eliminate the conduct at issue, prevent its recurrence, and remedy its effects in a manner that meets the expressed preference of the Complainant and the safety and welfare of the campus community. For example, a Complainant and Respondent may agree with the Title IX Coordinator that education and training for the Respondent are an appropriate and sufficient response in a particular case, or that a Mutual No Contact Order between the Parties provides remediation. Informal Resolution may NOT be used: 1) to resolve a complaint that an employee engaged in sexual

misconduct against a student; or 2) if a Respondent has previously engaged in an Informal Resolution process.

A Formal Complaint must be filed in order to proceed with an Informal Resolution. A Complainant may request an Informal Resolution at the time of filing a Formal Complaint. Alternatively, either Party may request to proceed with an Informal Resolution at any point in the Formal Grievance Process, prior to reaching a determination regarding responsibility. When a Party requests Informal Resolution, the Title IX Coordinator will review the matter to confirm that Informal Resolution is appropriate. Several factors will be considered when determining if the Informal Resolution process is appropriate including, but not limited to:

- The gravity of the allegations;
- Whether there is an ongoing threat of harm or safety to the campus;
- Whether the Respondent is a repeat offender; and
- Whether the Parties are participating in good faith.

At any time after the commencement of the Informal Resolution, the Title IX Coordinator, or designee, may determine that the Informal Resolution is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Formal Grievance Process. This determination is not subject to appeal.

If a Complainant requests Informal Resolution, and the Title IX Coordinator concludes that Informal Resolution is appropriate, the Title IX Coordinator will offer Informal Resolution as an option to both Parties. Both the Complainant and Respondent have the option to: 1) agree to participate; or 2) not agree to participate in the Informal Resolution. The Parties may change their minds at any time prior to reaching a determination regarding responsibility. Prior to engaging in Informal Resolution, the Respondent must be made aware of the sanctions that could be employed during the Formal Grievance Process. The time frame for completion of Informal Resolution may vary, but the University will seek to complete the process within sixty (60) business days of the Complainant's request.

The Informal Resolution Process does not conclude with a finding. The Respondent is not charged with a Policy violation and is not found to be "responsible" or "not responsible" of a Policy violation. Further, if the Parties agree to an Informal Resolution Process, sanctions will not be imposed on either Party, rather, the Parties may agree to appropriate remedies. An admission of responsibility made by the Respondent in an Informal Resolution is not an indication that the University would have found the Respondent "responsible" for a violation of this Policy.

Informal resolution may include: establishing supportive measures; issuance of an impact statement; conducting targeted or broad-based educational programming or training for relevant individuals or groups (i.e., sexual harassment training, consent workshop, healthy relationships workshop, alcohol education classes); a verbal or written apology; providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; facilitating a meeting with the Respondent with the Complainant present; a letter of warning to the Respondent; a No Contact Order; restriction from participation in specific clubs and/or organizations; restriction from participation in particular events (e.g., Holiday Ball) and any other remedy that can be tailored to the involved individuals to achieve the goals of the Policy. The terms of the Informal Resolution will be set forth in a written Resolution Agreement.

Both Parties must provide voluntary, written consent to the Title IX Coordinator to participate in the Informal Resolution Process. The Title IX Coordinator, or designee, will send a written notice to the Parties inviting them to participate in the Informal Resolution. Both Parties will have ten (10) calendar days to reply in writing. The written notice will include:

- the allegations;
- an explanation of rights through the Informal Resolution Process;
- the requirements of the Informal Resolution Process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations);
- any consequences resulting from participating in the Informal Resolution Process (including the records that will be maintained or could be shared).

If a Respondent does not reply or refuses to participate in Informal Resolution, the Title IX Coordinator, or designee, will notify the Complainant and discuss other procedural options of resolution.

Either Party can request to cease Informal Resolution and commence, or resume, a Formal Grievance Process at any time prior to agreeing to, and signing, a written Resolution Agreement. Similarly, the Parties can request to end a Formal Grievance Process and pursue Informal Resolution at any time prior to the issuance of a determination regarding responsibility..

If both Complainant and Respondent are satisfied with the proposed resolution and the Title IX Coordinator believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment, both Parties will be provided with a written Resolution Agreement to review and sign. The Resolution Agreement is binding. Once signed by both Parties, the Resolution Agreement will be implemented and the matter will be closed. Failure to comply

with a Resolution Agreement may result in disciplinary action under the Student Code of Conduct and/or other applicable University policies.

Both the Complainant and Respondent may be accompanied by an Advisor and/or Support Person at any meeting with the Title IX staff during the Informal Resolution Process.

In entering the Informal Resolution Process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the Informal Resolution Process concerning the allegations of the Formal Complaint is confidential while the Parties are participating in the Informal Resolution Process. No evidence concerning the allegations obtained within the Informal Resolution Process may be disseminated to any person, provided that any party to the Informal Resolution Process may generally discuss the allegations under investigation with a parent, friend, Advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the Informal Resolution Process, information disclosed or obtained for purposes of the Informal Resolution Process may be incorporated into the formal investigation and live hearing, provided that this information is disclosed and reviewed by the parties under the investigatory and hearing procedures described in the Policy.

Any final resolution pursuant to Informal Resolution will be documented and kept for seven (7) years. No recording of the Informal Resolution Process will be made.

## **VIII. AMNESTY**

The University's highest priority is the health, safety and well-being of its community, and encourages the reporting of sexual misconduct. 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, the University may not pursue drug and/or alcohol charges against students reporting offenses involving sexual misconduct 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 the University's "Good Samaritan" Medical Amnesty policy outside of the Title IX capacity, please see the [Alcohol, Marijuana and Other Drug Policy](#).

## **IX. RECORDKEEPING**

The University will maintain sexual misconduct records under this Policy for seven (7) years from the date of report (or the Determination Regarding Responsibility, if applicable) regardless of case outcome. 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 University will maintain documents, for a period of seven (7) years, relating to any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University will 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 University's educational program or activity.

## **X. RETALIATION**

Retaliation, as defined in Section II.B., occurs when any materially adverse action is taken because of a person's participation in a protected activity, such as reporting an incident that may implicate this Policy. It is important to note that impermissible retaliation can occur even in those circumstances where it is determined that the underlying report could not be substantiated.

Any allegations of retaliation will result in an investigation and appropriate action consistent with the University's policies and procedures, whether through this or another policy. Acts of retaliation may include, but are not limited to:

- Pressuring or enlisting the aid of third parties to have a complainant to withdraw the complaint;
- Bullying, harassment, slut-shaming or blackballing a participant in a complaint through social media or the internet;
- Lowering a grade;
- Stalking or threatening;
- Removal from classes, teams, activities;

- Employment actions such as termination, demotion, or change in schedule without cause;
- Other actions affecting a person's employment or academic or school-related activities such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and
- Any other action such as an assault or unfounded (i.e. baseless or falsely reported) civil or criminal charges that are likely to deter reasonable people from pursuing their rights.

*NOTE: Adverse actions do not include petty slights and annoyances, such as stray negative comments in an otherwise positive or neutral evaluation, "snubbing", not talking to a student, or negative comments that are justified by a student or employee's poor academic or work performance or history.*

It is a violation of University Policy to retaliate against an individual who reports sexual misconduct, is a Complainant in an investigation, serves as a witness, or is a third party involved in the investigation of such a report. The University considers acts of retaliation in response to such disclosures or participation to constitute a serious violation of University policy, which may result in disciplinary action, up to and including dismissal, against the retaliator.

If you believe that you are being retaliated against because of making a report or assisting in an investigation in violation of this Policy, you should promptly report your concerns to the Title IX Coordinator.

## **XI. REVOCATION BY OPERATION OF LAW**

Should any portion of the Title IX Final Rule 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 portions of the Sexual Misconduct Policy be revoked in this manner, any conduct covered under the Title IX Final Rules shall be investigated and adjudicated under the appropriate University policies.