



Widener University

**Equal Opportunity, Harassment,  
and Nondiscrimination Policy**

*Revised December 2021*

## TABLE OF CONTENTS

<b>POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION...</b>	<b>5</b>
1. Statement of Purpose .....	5
2. Applicable Scope .....	5
3. Glossary/Terms .....	6
4. Title IX Coordinator .....	7
5. Administrative Contact Information .....	8
6. Notice/Complaints of Discrimination, Harassment, and/or Retaliation .....	9
7. Supportive Measures/Interim Remedies .....	10
8. Emergency Removal .....	11
9. Promptness .....	12
10. Privacy .....	12
11. Jurisdiction of the University .....	13
12. Time Limits on Reporting .....	14
13. Online Harassment and Misconduct .....	14
14. Policy on Disability Discrimination and Accommodation .....	15
15. Policy on Discriminatory Harassment .....	16
A. Discriminatory Harassment .....	16
B. Sexual Harassment .....	17
Quid Pro Quo .....	17
Sexual Harassment: .....	17
Sexual assault .....	17
Dating Violence .....	18
Domestic Violence .....	19
Stalking .....	19
Quid Pro Quo Sexual Harassment/University Relationships .....	19
C. Force, Coercion, Consent, and Incapacitation .....	21
D. Other Civil Rights Offenses .....	23
Sexual Exploitation .....	23
Threatening .....	24
Discrimination .....	24
Intimidation .....	24
Hazing .....	24
Bullying .....	24

16. Retaliation .....	24
17. Required Reporting.....	25
A. Confidential Resources .....	25
B. Required Reporters and Formal Notice/Complaints .....	26
18. When a Complainant Does Not Wish to Proceed .....	27
19. Federal Timely Warning Obligations .....	28
20. False Allegations and Evidence.....	28
21. Amnesty for Student Parties and Witnesses .....	28
22. Federal Statistical Reporting Obligations .....	29

**INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY (KNOWN AS PROCESS “A”)**..... 30

1. Overview.....	30
2. Notice/Complaint.....	30
3. Initial Assessment .....	30
A. Violence Risk Assessment (VRA).....	31
B. Dismissal (Mandatory and Discretionary) .....	32
4. Counterclaims .....	33
5. Right to an Advisor.....	33
A. Who Can Serve as an Advisor .....	34
B. Advisors in Hearings/University-Appointed Advisor.....	34
C. Advisor’s Role.....	35
D. Pre-Interview Meetings.....	35
E. Advisor Violations of University Policy .....	35
F. Sharing Information with the Advisor.....	35
G. Privacy of Records Shared with Advisor .....	36
H. Expectations of an Advisor.....	36
I. Expectations of the Parties with Respect to Advisors .....	36
6. Resolution Processes.....	36
A. Informal Resolution .....	37
B. Alternate Resolution.....	37
C. Respondent Accepts Responsibility for Alleged Violations .....	38
D. Negotiated Resolution.....	38
7. Grievance Process Pool.....	38

A. Pool Member Roles .....	39
B. Pool Member Appointment.....	39
C. Pool Member Training .....	39
8. Formal Grievance Process: Notice of Investigation and Allegations .....	40
9. Resolution Timeline.....	41
10. Appointment of Investigator(s).....	42
11. Ensuring Impartiality .....	42
12. Investigation Timeline .....	42
13. Delays in the Investigation Process and Interactions with Law Enforcement.....	42
14. Steps in the Investigation Process.....	43
15. Role and Participation of Witnesses in the Investigation .....	45
16. Recording of Interviews.....	45
17. Evidentiary Considerations in the Investigation .....	45
18. Referral for Hearing.....	45
19. Hearing Decision-maker Composition .....	46
20. Evidentiary Considerations in the Hearing .....	46
21. Notice of Hearing.....	46
22. Alternative Hearing Participation Options.....	48
23. Pre-Hearing Preparation.....	48
24. Pre-Hearing Meetings .....	49
25. Hearing Procedures .....	49
26. Joint Hearings .....	50
27. Order of the Hearing/Procedures .....	50
A. Introduction and Explanation of Procedures.....	50
B. Investigator Presents the Final Investigation Report.....	50
C. Testimony and Questioning .....	50
D. Refusal to Submit to Cross-Examination and Inferences .....	51
E. Recording Hearings .....	52
F. Deliberation, Decision-making, and Standard of Proof.....	52
G. Notice of Outcome .....	53
28. Sanctions .....	53
A. Student Sanctions.....	54
B. Employee Sanctions .....	56
29. Withdrawal or Resignation While Charges Pending.....	56

A. Students .....	56
B. Employees .....	57
30. Appeals .....	57
A. Grounds for Appeal.....	57
B. Sanction(s) Status During the Appeal .....	58
C. Appeal Considerations .....	59
31. Long-Term Remedies/Other Actions.....	59
32. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions.....	60
33. Recordkeeping .....	60
34. Disabilities Accommodations in the Resolution Process.....	61
35. Revision of this Policy and Procedures .....	61
APPENDIX A - Examples of Prohibited Conduct .....	63
APPENDIX B - Statement of Rights of the Parties.....	66

## **POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION**

---

As used in this document, the term “Complainant” means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity. The term “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity.

The terms ‘report’ and ‘allegation’ are used interchangeably and denote information provided to the University regarding conduct that may have violated this Policy.

### **1. Statement of Purpose**

Widener University is committed to establishing and maintaining a safe learning, living, and working environment where healthy, respectful, and consensual conduct represents the campus cultural norm. To that end, this Policy prohibits sexual and gender-based harassment, sexual assault, sexual exploitation, relationship and interpersonal violence, stalking, and discrimination on the basis of sex, gender, pregnancy status, age, race, color, national origin or ethnicity, religion, disability (including perceived disability), status as a veteran, citizenship, sexual orientation, gender identity, gender expression, marital status, or genetic information, or any other category protected by applicable law. The Policy also protects against retaliation against an individual for making a report of conduct prohibited under this Policy.

It is the responsibility of every member of the Widener University community to foster an environment free from prohibited conduct. All members of the community are encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct.

This Policy is in compliance with applicable legal requirements, including Title IX of the Education Amendments of 1972; relevant provisions of the Violence Against Women Reauthorization Act of 2013; Title VII of the Civil Rights Act of 1964; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; and other applicable federal and Pennsylvania and Delaware state laws. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, Widener has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class. Widener values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in what often is a difficult time for those involved.

### **2. Applicable Scope**

Widener University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the University’s Equity Resolution Process (ERP), as detailed below. When the respondent is a member of the University community, the resolution process is applicable regardless of the status of the complainant who may be a member or non-member of the campus community, including,

but not limited to: students, regardless of enrollment status, student organizations, faculty, employees, guests, visitors, campers, members of the Board of Trustees, third party vendors, alumni/ae, etc. In this Policy, the term ‘employee’ includes all administrators, faculty, and staff unless the context indicates otherwise. This Policy also applies to all Widener employees working at the Widener Partnership Charter School.

### **3. Glossary/Terms**

- ***Advisor*** means a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity.
- ***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity.
- ***Parties*** include the Complainant(s) and Respondent(s), collectively.
- ***Complaint (formal)*** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- ***Confidential Resource*** means an employee who is not a Required Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status.)
- ***Day or business day*** means a day when the University is in normal operation.
- ***Education program or activity*** means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- ***Final Determination*** is a conclusion by a preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- ***Finding*** is a conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged.
- ***Formal Grievance Process*** means a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- ***Grievance Process Pool*** includes any investigators, hearing officers, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case.)

- **Hearing Decision-maker or Decision-maker** refers to the person or persons who have decision-making and sanctioning authority within the University’s Formal Grievance process.
- **Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an Investigation Report and file of directly related evidence.
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of the University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.
- **Resolution** means the result of an informal or Formal Grievance Process.
- **Required Reporter** means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- **Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this Policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See [Section 17.A](#) for greater detail.
- **Title IX Coordinator** is at least one official designated by the University to ensure compliance with Title IX and the University’s Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any Deputy Coordinators, and any member of the Grievance Process Pool.
- **University** means Widener University.

#### **4. Title IX Coordinator**

Kiara Allison, Title IX and Equity Officer, Office of Human Resources, serves as the University’s Interim Title IX Coordinator and oversees implementation of the University’s Equal Opportunity, Harassment, and Nondiscrimination Policy. The Title IX Coordinator has the primary responsibility for coordinating the University’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this Policy. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.



The Title IX Coordinator heads the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and acts to ensure that all Widener representatives act with objectivity and impartiality and are assessed with respect to conflicts of interest and/or potential bias. To raise any concern involving a conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact University President Julie E. Wollman, [presoffc@widener.edu](mailto:presoffc@widener.edu) or 610-499-4100. To raise concerns regarding a potential conflict of interest with any other administrator involved in the resolution process, please contact the Title IX Coordinator.

## 5. Administrative Contact Information

### Title IX Coordinator:

*For all students/employees on all campuses:*

#### **Kiara Allison**

Title IX and Equity Officer  
Office of Human Resources  
One University Place  
Chester, PA 19013  
610-499-4553 | [kallison@widener.edu](mailto:kallison@widener.edu)

### Deputy Title IX Coordinators:

#### *Chester Campus*

<p><b>Rhonda Bates</b> Associate Director, Advising Pineapple House 610-499-1267   <a href="mailto:rmbates@widener.edu">rmbates@widener.edu</a></p>	<p><b>Larissa Gillespie</b> Associate Director, Athletics Schwartz Center 610-499-4434   <a href="mailto:lagillespie@widener.edu">lagillespie@widener.edu</a></p>
<p><b>Kortne Smith</b> Program Coordinator, Multicultural Student Affairs University Center 610-499-4413   <a href="mailto:kasmith1@widener.edu">kasmith1@widener.edu</a></p>	<p><b>Sharmane Walker</b> Academic Advisor, Graduate Studies/ Extended Learning Kapelski Learning Center 610-499-4394   <a href="mailto:sswalker@widener.edu">sswalker@widener.edu</a></p>
<i>Delaware Law School Campus</i>	<i>Commonwealth Law School Campus</i>
<p><b>Alice Eakin</b> Interim Associate Dean, Student Services Delaware Law School 4601 Concord Pike Wilmington, DE 19803 302-477-2215   <a href="mailto:aeekin@widener.edu">aeekin@widener.edu</a></p>	<p><b>Randi Teplitz</b> Assistant Dean, Student Services 3800 Vartan Way Harrisburg, PA 17110 717-541-3962   <a href="mailto:rbteplitz@widener.edu">rbteplitz@widener.edu</a></p>
<p><i>For students/employees on all campuses:</i></p> <p><b>Kevin Raport</b> Associate Director of Campus Safety Operations Old Main, ground floor 610-499-4202   <a href="mailto:kjraport@widener.edu">kjraport@widener.edu</a></p>	

**Inquiries may be made externally to:**

**Office for Civil Rights (OCR)**

U.S. Department of Education  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
215-656-8541 | [ocr.philadelphia@ed.gov](mailto:ocr.philadelphia@ed.gov)  
Fax: 215-656-8605  
<http://www.ed.gov/ocr>

**Equal Employment Opportunity Commission (EEOC)**

EEOC Philadelphia District Office  
801 Market Street, Suite 1300  
Philadelphia, PA 19107  
800-669-4000 | [info@eeoc.gov](mailto:info@eeoc.gov)  
TTY: 800-669-6820  
ASL Video Phone: 844-234-5122  
<https://www.eeoc.gov/field-office/philadelphia/location>

**6. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Any member of the community, guest, or visitor who believes that the EOHN Policy has been violated should contact the Title IX Coordinator. It is also possible for employees to notify a supervisor or for students to notify an administrative advisor or faculty member. Any member of the community, including guests and visitors, may contact Campus Safety to make a report. These individuals will, in turn, notify the Title IX Coordinator. The University's Title IX website also includes a reporting form which may serve to initiate the Resolution Process. The reporting form is available at: [https://cm.maxient.com/reportingform.php?WidenerUniv&layout\\_id=40](https://cm.maxient.com/reportingform.php?WidenerUniv&layout_id=40).

All employees (except those whom the University has designated as confidential) receiving reports of a potential violation of this Policy are expected to promptly contact the Title IX Coordinator within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy. Specific information on any allegation(s) received by any party will be reported to the Title IX Coordinator but, subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, Widener University will give consideration to the Complainant with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a Complainant chooses not to initiate or participate in the Resolution Process.

A formal complaint is a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic means, using the contact information in the [Section 5](#) or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by e-mail or through an online portal provided

by the University for this purpose) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **7. Supportive Measures/Interim Remedies**

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a Complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing Campus Safety escorts
- Providing transportation accommodations
- Implementing contact limitations (No Contact Orders) between the parties

- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of No Contact Orders will be referred to appropriate student or employee conduct processes for enforcement.

## **8. Emergency Removal**

The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator. In cases involving student Respondents, the Title IX Coordinator may consult with the CARE Team as deemed appropriate by the Title IX Coordinator.

In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given the opportunity to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within five (5) business days, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily reassigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing

an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

## **9. Promptness**

All allegations are acted upon promptly by the University once it has received notice or a Formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

Any time the general timeframe for resolution outlined in University procedures will be delayed, the University will provide written notice to the Parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **10. Privacy**

Every effort is made by the University to preserve the privacy of reports.<sup>1</sup> The University will not share the identity of any individual who has made a report or Complaint of harassment, discrimination, or retaliation, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

---

<sup>1</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a Complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's FERPA policy. The privacy of employee records will be protected in accordance with University policy. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see [Section 17.A](#). When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

Only a small group of officials who need to know will typically be told about the report or Complaint, including, but not limited to: the Title IX Team, Office of Student Affairs, Campus Safety, and the CARE Team. Information will be shared as necessary with Investigator(s), Decision-maker(s), witnesses, and the Parties. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties' rights and privacy.

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

Confidentiality and required reporting are addressed more specifically in [Section 17](#).

## **11. Jurisdiction of the University**

This Policy applies to: the education programs and activities of the University; conduct that takes place on the campus or on property owned or controlled by the University; University-sponsored events, or in buildings owned or controlled by University's recognized student organizations. The Respondent must be a member of the University's community in order for its policies to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the University's educational programs. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address notice/Complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

- A. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- B. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- C. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- D. Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be available to the Complainant by contacting the Title IX Coordinator.

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

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employer.

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

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **12. Time Limits on Reporting**

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When Notice/Complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of Notice/Complaint.

## **13. Online Harassment and Misconduct**

The policies of the University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education programs and activities or use University networks, technology, or equipment.

While the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snapchat, Instagram, or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.



## **14. Policy on Disability Discrimination and Accommodation**

The University is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The University's ADA/504 Coordinator is responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

### **A. Students with Disabilities**

The University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the University.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Student Accessibility Services who coordinates services for students with disabilities.

The Director of Student Accessibility Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

### **B. Employees with Disabilities**

Pursuant to the ADA, the University will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 Coordinator and providing necessary documentation. The ADA/504 Coordinator will work with the employee's supervisor to identify which essential functions of the position



are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## **15. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. The University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under University policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted.

### **A. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

The University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe **and** pervasive **and** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the University may also impose sanctions on the Respondent through application of the grievance process below.

The University reserves the right to address offensive conduct and/or harassment that: (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under University policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Associate Vice President of Human Resources and students should contact the Dean of Students.

## **B. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Pennsylvania and State of Delaware regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students, as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as 'conduct on the basis of sex' that satisfies one or more of the following:

**1) Quid Pro Quo (see also Section 7 below):**

- a. An employee of the University,
- b. conditions the provision of an aid, benefit, or service of the University,
- c. on an individual's participation in unwelcome sexual conduct.

**2) Sexual Harassment:**

- a. Unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the University's education programs or activities.<sup>2</sup>

**3) Sexual assault, defined as:**

- a. Sex Offenses, Forcible:
  - i. Any sexual act directed against another person,
  - ii. without the consent of the Complainant,
  - iii. including instances in which the Complainant is incapable of giving consent.
- b. Forcible Rape:
  - i. Penetration,
  - ii. no matter how slight,
  - iii. of the vagina or anus with any body part or object, or
  - iv. oral penetration by a sex organ of another person,
  - v. without the consent of the Complainant.

---

<sup>2</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent.) Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- c. Forcible Sodomy:
  - i. Oral or anal sexual intercourse with another person,
  - ii. forcibly,
  - iii. and/or against that person's will (non-consensually), or
  - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Sexual Assault with an Object:
  - i. The use of an object or instrument to penetrate,
  - ii. however slightly,
  - iii. the genital or anal opening of the body of another person,
  - iv. forcibly,
  - v. and/or against that person's will (non-consensually),
  - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e. Forcible Fondling:
  - i. The touching of the private body parts of another person (buttocks, groin, breasts),
  - ii. for the purpose of sexual gratification,
  - iii. forcibly,
  - iv. and/or against that person's will (non-consensually),
  - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f. Sex Offenses, Non-forcible:
  - i. Incest:
    - a) Non-forcible sexual intercourse,
    - b) between persons who are related to each other,
    - c) within the degrees wherein marriage is prohibited by Pennsylvania or Delaware law.
  - ii. Statutory Rape:
    - a) Non-forcible sexual intercourse,
    - b) with a person who is under the statutory age of consent of 18.

**4) Dating Violence, defined as:**

- a. Violence,
- b. committed by a person,
- c. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

- ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- iii. Dating violence does not include acts covered under the definition of domestic violence.

**5) Domestic Violence, defined as:**

- a. Violence,
- b. committed by a current or former spouse or intimate partner of the Complainant,
- c. by a person with whom the Complainant shares a child in common, or
- d. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- e. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Pennsylvania or Delaware, or
- f. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania or Delaware.

\* To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**6) Stalking, defined as:**

- a. engaging in a course of conduct,
- b. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others, or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- a) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**7) Quid Pro Quo Sexual Harassment/University Relationships:**

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development, employment, or performance.

To avoid potential conflicts of interest, favoritism, exploitation, harassment or breaches of professional standards, the University prohibits romantic or sexual relationships where there is supervision, direction, or control between parties.

For the purposes of this policy:

- “Supervisor” shall mean any person who has the authority and/or responsibility to hire, promote, evaluate, assign, or direct faculty or employees at the University.
- “Employee” shall mean any person employed by the University in any capacity, whether faculty or staff. Solely for the purposes of this policy, graduate or teaching assistants shall be treated similar to employees when their relationship with a student entails any responsibility or authority for instructing, evaluating, assigning, or advising the student.

### **Undergraduate Students**

No employee shall pursue, have, or maintain a romantic or sexual relationship with any undergraduate student.

### **Graduate/Professional Students**

Sexual or romantic relationships between employees and graduate students are prohibited whenever both parties are pursuing the same degree or affiliated with the same program. Any employee who has, or has had, a sexual or romantic relationship with a current graduate student is prohibited from exercising academic or professional authority over that graduate student.

### **Employees**

Sexual or romantic relationships are prohibited between employees where there is a supervisory relationship or where one exercises professional authority over the other, including, but not limited to, promotion.

### **Exceptions**

Upon request, the Provost, as to the faculty, and the Associate Vice President of Human Resources, as to staff, may grant exceptions to this policy if they determine that an otherwise prohibited relationship: (1) existed prior to the professional or academic relationship between the parties at the University; and (2) does not present a likelihood of abuse of power by exploitation of either party. Exceptions are evaluated on a case-by-case basis by the Provost or the Associate Vice President of Human Resources.

### C. Force, Coercion, Consent, and Incapacitation<sup>3</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

---

<sup>3</sup> Pennsylvania does not have a statutory definition of consent applicable to criminal prosecutions for sex offenses. Delaware uses the following definition: "Without consent" means: (1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or (2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or (3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or (4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychiatrists, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or (5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>4</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction.)

---

<sup>4</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

#### **D. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- **Sexual Exploitation** is defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed.)
  - Invasion of sexual privacy.
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
  - Prostituting another person.
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections.
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
  - Knowingly soliciting a minor for sexual activity.



- Engaging in sex trafficking.
- Creation, possession, or dissemination of child pornography.
- **Threatening** or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- **Discrimination**, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity as defined further in the Hazing Policy;
- **Bullying**, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

## **16. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the University or any member of the University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **17. Required Reporting**

All University employees (faculty, staff, administrators) are required to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegation(s), reporting to any Required Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the University for a Complainant or third-party (including parents/guardians, when appropriate):

### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus athletic trainers
- Off-campus (non-employees):
  - Licensed professional counselors
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

## **B. Required Reporters and Formal Notice/Complaints**

All employees of the University (including student employees), with the exception of those who are designated as Confidential Resources, are Required Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of prohibited behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Required Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the University.

Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Required Reporter, as described in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Required Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also a Required Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Required Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **18. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process.

The Title IX Coordinator's decision should be based on the existence of a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

### **19. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **20. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

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

### **21. Amnesty for Student Parties and Witnesses**

The University community encourages the reporting of misconduct and crimes by student Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations - such as underage consumption of alcohol or the use of illicit drugs - related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty - the incentive to report serious misconduct - is rarely applicable to a Respondent with respect to a Complainant.

The University maintains a policy of amnesty for students who offer help to others in need.

## **22. Federal Statistical Reporting Obligations**

Certain campus officials - those deemed Campus Security Authorities - have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA<sup>5</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug-related law violations.

All personally identifiable information is kept private but statistical information must be passed along to Campus Safety regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: Student Affairs/Student Conduct staff, Campus Safety, coaches, athletic directors, Residence Life staff, Student Activities staff, Human Resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

---

<sup>5</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

# INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY (KNOWN AS PROCESS “A”)

---

## 1. Overview

The University will act on any Formal or Informal Notice/Complaint of a violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“the Policy”) that is received by the Title IX Coordinator<sup>6</sup> or any other Official with Authority by applying these procedures.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. While the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

## 2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the University initiates a prompt initial assessment to determine the next steps the University needs to take.

The University will initiate at least one of three responses:

- Offering supportive measures because the Complainant does not want to proceed formally; and/or
- An informal resolution; and/or
- A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## 3. Initial Assessment

Following receipt of Notice or a Complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>7</sup> engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an Initial Assessment can include:

- If Notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint and will assist them to do so, if desired.

---

<sup>6</sup> Anywhere this procedure indicates “Title IX Coordinator,” the University may substitute a trained designee.

<sup>7</sup> If circumstances require, the President will designate another person to oversee the process below should an allegation be made about the Title IX Coordinator or the Title IX Coordinator is otherwise unavailable or unable to fulfill their duties.

- If they do not wish to do so, the Title IX Coordinator determines whether to initiate a Complaint because a [Violence Risk Assessment](#) indicates a compelling threat to health and/or safety.
- If a formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation; no Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the Complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX.
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a Complaint under Title IX is just procedural and does not limit the University’s authority to address a Complaint with an appropriate process and remedies.

#### **A. Violence Risk Assessment (VRA)**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;



- Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a Complaint through informal resolution and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer university about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/No Trespass Letter is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE Team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

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

#### **B. Dismissal (Mandatory and Discretionary)<sup>8</sup>**

The University must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or

---

<sup>8</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

- 3) The conduct did not occur against a person in the United States; and/or
- 4) 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.

The University may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator, in writing, that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal, and the rationale for doing so, simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

#### **4. Counterclaims**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegation(s) in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

#### **5. Right to an Advisor**

The Parties may each have an Advisor<sup>9</sup> of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The Parties may select whomever they

---

<sup>9</sup> This could include an attorney, advocate, or support person. Any Party who requires assistance in identifying, selecting, or procuring an Advisor can consult with the Title IX Coordinator for assistance regarding same.

wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>10</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A Party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing decision-maker(s).

The University may permit Parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

#### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a Party chooses to advise, support, and/or consult with them throughout the Resolution Process. The Parties may choose advisors from inside or outside of the University community.

The Title IX Coordinator will also offer to assign a trained Advisor for any Party if the Party so chooses. If the Parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's Resolution Process.

If the Parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

#### **B. Advisors in Hearings/University-Appointed Advisor**

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the Parties' Advisors. The Parties are not permitted to directly cross-examine each other or any witnesses. If a Party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A Party may reject this appointment and choose their own Advisor but they may not proceed without an Advisor. If the Party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised Party in the hearing itself. Extensive questioning of the Parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

---

<sup>10</sup> "Available" means the Party cannot insist on an Advisor who simply does not have the inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter or a supervisor who must monitor and implement sanctions.

### **C. Advisor's Role**

The Parties may be accompanied by their Advisor in all meetings and interviews at which the Party is entitled to be present, including intake and interviews. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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

### **D. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

### **E. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions.) The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-maker(s) except during a cross-examination in a hearing proceeding.

The Parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation. Advisors must act in a respectful and non-adverse manner at all times.

Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or proceeding will be ended or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **F. Sharing Information with the Advisor**

The University expects that the Parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the Parties participate more meaningfully in the Resolution Process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The Parties must either complete and submit this form

to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

Except as provided for above, the University will, at all times, communicate directly with the Parties and not through any third party, regardless of whether the third party is an Advisor or attorney.

#### **G. Privacy of Records Shared with Advisor**

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

#### **H. Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **I. Expectations of the Parties with Respect to Advisors**

A Party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The Parties are expected to inform the investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired.)

The Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a Party changes Advisors, consent to share information with the previous Advisor is terminated and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. While there is an expectation of privacy around what investigators share with Parties during interviews, the Parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages Parties to discuss this with their Advisors before doing so.

## **A. Informal Resolution**

Informal Resolution can include three different approaches:

- When the Parties agree to resolve the matter through an alternate resolution mechanism, including mediation, restorative practices, etc.;
- When the Respondent accepts responsibility for violating policy and desires to accept a sanction and end the Resolution Process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

## **B. Alternate Resolution**

Alternate Resolution is an informal process, including mediation or restorative practices, etc., by which a mutually agreed upon resolution of an allegation is reached. All Parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate or which form of Alternate Resolution may be most successful for the Parties:

- The Parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- The Parties' motivation to participate;
- Civility of the Parties;
- Cleared Violence Risk Assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;

- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the Parties;
- Rationality of the Parties;
- Goals of the Parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached and failure to abide by the Resolution Agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in the section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all Parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

### **D. Negotiated Resolution**

The Title IX Coordinator, with the consent of the Parties, may negotiate and implement an agreement to resolve the allegations that satisfies all Parties and the University. Negotiated Resolutions are not appealable.

## **7. Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

## **A. Pool Member Roles**

Members of the Pool are trained annually and can serve in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to Complaints
- To act as an Advisor to the Parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate Complaints
- To serve as a Hearing Facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the Complaint
- To serve as an Appeal Decision-maker

The University reserves the right at all times to utilize outside parties to perform any of the roles or functions required or permitted under this Policy.

## **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Pool<sup>11</sup>, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool using others as substitutes or to provide greater depth of experience, when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

## **C. Pool Member Training**

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of the University's Equal Opportunity, Harassment, and Nondiscrimination Policy
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements

---

<sup>11</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.



- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are University employees), and Decision-makers. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: <https://www.widener.edu/title-ix-sexual-misconduct-resources>.

## **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations;
- The identity of the involved Parties (if known);

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

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent addresses of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

The University will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the Parties, as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigator(s)**

Once the decision to commence a Formal Investigation is made, the Title IX Coordinator appoints Pool member(s) or outside investigator(s) to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a Party, generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member or outside investigator(s) will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President of the University.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: (1) a request from law enforcement to temporarily delay the investigation; (2) the need for language assistance; (3) the absence of Parties and/or witnesses; (4) and/or accommodations for disabilities or health conditions.

The University will communicate, in writing, the reason and anticipated duration of the delay to the Parties and provide the Parties with status updates, if necessary. The University will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

#### **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant.
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegation(s) indicate a potential policy violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties.
- Meet with the Complainant to finalize their interview/statement, if necessary.
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations.
  - Notice should inform the Parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing, present for all meetings attended by the Party.
- Provide each interviewed Party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- Make good faith efforts to notify the Parties of any meeting or interview involving the other Party, in advance, when possible.

- When participation of a Party is expected, provide that Party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other Party and witnesses and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the Parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- The Investigator(s) gather, assess, and synthesize evidence but make no conclusions or credibility assessments, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft Investigation Report as well as an opportunity to inspect and review all of the evidence obtained as part of the Investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor.)
- The Investigator(s) may elect to respond, in writing, in the Investigation Report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses.
- The Investigator(s) will incorporate relevant elements of the Parties' written responses into the final Investigation Report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The Investigator(s) shares the report with the Title IX Coordinator for review and feedback.
- The Investigator will incorporate any relevant feedback and the final report is then shared with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

## **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the Parties) who are employees of the University are expected to cooperate with and participate in the University's Investigation and Resolution Process. Failure of such witnesses to cooperate with and/or participate in the Investigation or Resolution Process constitutes a violation of policy and may warrant discipline.

While in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, emergency closures, health emergencies) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s). If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

## **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator(s) elect to audio and/or video record interviews, all involved Parties must be made aware of audio and/or video recording.

## **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the character of the Parties; or (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged 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.

## **18. Referral for Hearing**

Provided that the Complaint is not resolved through Informal Resolution, once the final Investigation Report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation - when the final Investigation Report is transmitted to the Parties and the Decision-maker - unless all Parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

## **19. Hearing Decision-maker Composition**

The Decision-maker and Appeal Officer depend on the role of the Respondent and, for students, the campus they attend. The appropriate Decision-maker will finalize and present the findings to the Parties, without undue delay between notifications, as set forth below:

<b>Role of Respondent</b>	<b>Decision-maker</b>	<b>Appeal Officer</b>
Student on Main Campus	Assistant Dean of Students	Dean of Students
Student at Delaware Law School	Assistant Dean for Student Affairs	Dean, Delaware Law School
Student at Commonwealth Law School	TBD	Dean, Commonwealth Law School
Non-Faculty Employee, All Charter School Employees	Associate Vice President of Finance and Administration	Chief Diversity Officer
Faculty	Vice Provost	Provost

## **20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider: (1) incidents not directly related to the possible violation unless they evidence a pattern; (2) the character of the Parties; or (3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process.

The Parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence - whether it is more likely than not that the Respondent violated the Policy, as alleged.

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send a Notice of Hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the Hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker(s) and Parties to see and hear a Party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the Hearing.
- A list of all those who will attend the Hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the Hearing.
- Information on how the Hearing will be recorded and how Parties can access the recording after the Hearing.
- A statement that if any Party or witness does not appear at the scheduled Hearing, the Hearing may be held in their absence and the Party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Title IX Coordinator may reschedule the Hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the Hearing and will be required to have one present for any questions they may desire to ask. The Party must notify the Title IX Coordinator if they do not have an Advisor and the University will appoint one. Each Party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>12</sup>
- An invitation to each Party to submit to the Decision-maker a pre-Hearing impact statement that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the Hearing, at least seven (7) business days prior to the hearing.
- Cell phones shall be permitted, but must be turned off during the Hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term, will typically be held immediately after the end of the term or during the summer, as needed, to

---

<sup>12</sup> The final Investigation Report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



meet the resolution timeline followed by the University and remain within the sixty to ninety (60-90) business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeals.) A student facing charges under this Policy is not in good standing to graduate.

## **22. Alternative Hearing Participation Options**

If a Party or Parties prefer not to attend or cannot attend the Hearing in person, the Party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the Hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the Hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the Hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

The Decision-maker, after any necessary consultation with the Parties, Investigator(s) and/or the Title IX Coordinator, will provide the names of persons who will be participating in the Hearing, all pertinent documentary evidence, and the final Investigation Report to the parties at least ten (10) business days prior to the Hearing.

Unless all Parties and the Decision-maker assent to the witness's participation in the Hearing, any witness scheduled to participate in the Hearing must have first been interviewed by the Investigator(s) or have proffered a written statement or answered written questions. The same holds for any evidence that is first offered at the Hearing. If the Parties and Decision-maker do not assent to the admission of evidence newly offered at the Hearing, the Decision-maker will delay the Hearing and instruct that the investigation needs to be reopened to consider that evidence.

The Parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the Hearing. All objections to any Decision-maker must be raised, in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible but no later than two (2) business days prior to the Hearing. Decision-maker(s) will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial Hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all Parties, witnesses, and Advisors at least five (5) business days in advance of the Hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the Hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the Hearing, the Parties have the opportunity for continued review and comment on the final Investigation Report and available evidence. That review and comment can be shared with the Decision-maker(s) at the pre-Hearing meeting(s) or at the Hearing, and will be exchanged between each Party by the Decision-maker(s).

#### **24. Pre-Hearing Meetings**

The Decision-maker(s) may convene pre-Hearing meeting(s) with the Parties and/or their Advisors to invite them to submit the questions or topics they wish to ask or discuss at the Hearing. This gives the Decision-maker(s) the opportunity to rule on their relevance ahead of time to avoid any improper evidentiary introduction in the Hearing. However, this advance review opportunity does not preclude the Advisors from asking, at the Hearing, for a reconsideration based on any new information or testimony offered at the Hearing. The Decision-maker(s) must document and share their rationale for any exclusion or inclusion at this pre-Hearing meeting.

At each pre-Hearing meeting with a Party and/or their Advisor, the Decision-maker(s) will consider arguments that evidence identified in the final Investigation Report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Decision-maker(s) may rule on these arguments pre-Hearing and will exchange those rulings between the Parties prior to the Hearing to assist in preparation for the Hearing. The Decision-maker(s) may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-Hearing meeting(s).

The pre-Hearing meeting(s) will not be recorded.

#### **25. Hearing Procedures**

At the Hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the alleged discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment, and Nondiscrimination Policy.

Hearings are not public. Participants at the Hearing will include the Decision-maker(s), any additional panelists, the Hearing Facilitator (who may be the Title IX Coordinator), the Investigator(s) who conducted the investigation, the Parties (or two (2) organizational representatives when an organization is the Respondent), Advisors to the Parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Decision-maker(s) will answer all questions of procedure. Anyone appearing at the Hearing to provide information will respond to questions on their own behalf.

The Decision-maker(s), Title IX Coordinator, or Hearing Facilitator will allow witnesses who have relevant information to appear at a portion of the Hearing in order to respond to specific questions from the Decision-maker(s) and the Parties and will then be excused.

## **26. Joint Hearings**

In Hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

If there is a compelling reason to do so, the Title IX Coordinator may permit the Investigation(s) and/or Hearing(s) pertinent to each Respondent to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **27. Order of the Hearing/Procedures**

### **A. Introduction and Explanation of Procedures**

The Decision-maker or Hearing Facilitator explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Title IX Coordinator will review and decide the challenge.

The Decision-maker then conducts the Hearing according to the Hearing script. At the Hearing, recording, witness logistics, Party logistics, curation of documents, separation of the Parties, and other administrative elements of the Hearing process are managed by a non-voting Hearing Facilitator appointed by the Title IX Coordinator. The Hearing Facilitator may attend to: logistics of rooms for various Parties/witnesses as they wait; flow of Parties/witnesses in and out of the Hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate; and any other duties as assigned.

### **B. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final Investigation Report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors.) The Investigator(s) will be present during the entire Hearing process, but not during deliberations.

Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-maker(s) will direct that it be disregarded.

### **C. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the Parties and witnesses may provide relevant information, in turn, beginning with the Complainant, and then in the order determined by the Decision-maker(s). The Parties/witnesses will submit to questioning by the Decision-maker(s) and then by the Parties through their Advisors (“cross-examination”.) Advisors shall conduct cross-examination in a respectful and non-abusive manner at all times.

All questions are subject to a relevance determination by the Decision-maker(s). The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing. Orally is the default but other means of submission may be permitted by the Decision-maker(s), upon request, or agreed to by the Parties and the Decision-maker(s). The proceeding will pause to allow the Decision-maker(s) to consider it and the Decision-maker(s) will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-maker(s) may explore arguments regarding relevance with the Advisors, if the Decision-maker(s) so chooses. The Decision-maker(s) will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Decision-maker(s) will explain any decision to exclude a question as not relevant or to reframe it for relevance.

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

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the Hearing, the Decision-maker or Title IX Coordinator, as appropriate, may elect to address those issues, consult with legal counsel, and/or preserve them for appeal. If bias is not in issue at the Hearing, the Decision-maker(s) should not permit irrelevant questions that probe for bias.

#### **D. Refusal to Submit to Cross-Examination and Inferences**

If a Party or witness chooses not to submit to cross-examination at the Hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that Party or witness at the Hearing (including those contained in the Investigation Report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the Party or witness may be considered.

If the Party or witness attends the Hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the Party who is refusing to submit to cross-examination or refuses to attend the Hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker(s) may not draw any inference solely from a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same Hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all Parties through their Advisors, and may draw reasonable inferences from any decision by any Party or witness not to participate or respond to questions.

If a Party's Advisor of choice refuses to comply with the University's established rules of decorum for the Hearing, the University may require the Party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

### **E. Recording Hearings**

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

The Decision-maker(s), the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without the permission of the Title IX Coordinator.

### **F. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used. The Hearing Facilitator may be invited to consult with the Decision-maker(s), but only on issues or procedure, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted Party impact statements in determining appropriate sanction(s).

The Decision-maker(s) will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Parties. The Decision-maker(s) may, at their discretion, consider the statements but they are not binding.

The Decision-maker(s) will review the statements provided by the University and will determine the appropriate sanction(s).

The Decision-maker(s) will then prepare a written deliberation statement and deliver it to the Title IX Coordinator detailing the determination, rationale, the evidence used in support of their determination, the evidence disregarded, credibility assessments, and any sanctions.

This report typically should not exceed three to five (3-5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

### **G. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker(s) to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s), with the Parties and their Advisors, if applicable, within ten (10) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official University records, or by email to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

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

The Notice of Outcome will specify: (1) the finding on each alleged policy violation; (2) the findings of fact that support the determination; (3) conclusions regarding the application of the relevant policy to the facts at issue; (4) a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; (5) any sanctions issued which the University is permitted to share according to state or federal law; and (6) any remedies provided to the Complainant designed to ensure access to the University's educational or employment programs or activities, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent.)

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

## **28. Sanctions**

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. The sanctions will be implemented as soon as is feasible. Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)

- Previous allegations or allegations involving similar conduct.
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation.
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community.
- The impact on the Parties.
- Any other information deemed relevant by the Decision-maker(s).

#### A. Student Sanctions

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

- **No Further Action.** This sanction is interpreted to mean that although a violation has been established, discussion with the Investigator and/or Student Conduct administrator has been sufficient in and of itself and further action is not deemed necessary. However, the violation is still noted in the records of the Office of Student Conduct.
- **Written Official Warning.** In instances of minor violations, students may be warned, in writing, of the possible consequences of continuing such behavior and written conditions regarding future behavior may be attached, when appropriate.
- **Removal from living unit/eviction.** The primary effect of this sanction is to preclude continued residence in a particular living unit. This may affect a student's status.
- **Assignment to alternate housing.**
- **Limitation of access to designated University housing facilities and other campus facilities by time and location.**
- **Constructive or educational task(s).** The student is assigned a task that benefits the individual, campus, or community. This task is assigned as a condition of another sanction, such as disciplinary probation. Tasks must be reviewed by the Office of Student Conduct. Examples of tasks include: educational papers, educational classes, attendance at educational programs or relevant community meetings, substance abuse education, alcohol education programs, or community service.
- **Counseling Center referrals.** Counseling sessions are occasionally necessary for students who violate University policy. The purpose of engaging in counseling is for the student to further assess their behavior and attitude in certain areas of their life.
- **Medical/health center referrals.**
- **Psychological/psychiatric screenings, evaluations, and/or clearances.**
- **Restriction of communication with named individuals or groups within the University community.**
- **Requirement to secure advance authorization to engage in a specified activity.**

- **Removal from student organization office or athletic team.** This sanction is levied when it is thought that a student should not serve as a public representative of the University. Removal can be either temporary or permanent.
- **Rescission, withdrawal, or termination of University scholarships, grants, loans, employment, or other financial aid.**
- **Disciplinary Probation.** This sanction implies a middle status between good standing at the University and suspension or dismissal. Students are permitted to remain enrolled under certain stated conditions, depending upon the nature of the violation and the potential educational value that may be derived from such conditions. Probation usually extends over a stated period, during which it is clearly understood that further disciplinary measures (up to and including expulsion) will follow if the terms of probation are violated. Probation is a final warning to students to conduct themselves as responsible members of the University community. Students who are on disciplinary probation may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree.
- **Suspension.** This sanction is involuntary separation from the University for a specific period of time after which a return may be possible. It differs from dismissal only in that it implies a stated time when return will be possible. Suspension may extend to a semester or academic year or a designated date (e.g., when a stated condition has been met.) Students suspended for disciplinary reasons cannot transfer into Widener using any credits earned during suspension. A student who is on suspension at the time of commencement events may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not be a registered student, be present on the campus, or attend any University-sponsored event for any reason whatsoever for a specified period of time.
- **Dismissal.** This sanction is involuntary separation from the University for an indefinite period of time but, minimally, one (1) academic year, after which time the student must apply for readmission to the University. Students dismissed for disciplinary reasons cannot transfer into Widener using any credits earned during the dismissal period. A student who has been dismissed may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not be a registered student, be present on the campus, or attend any University-sponsored event for any reason whatsoever unless officially granted re-entry to the University.
- **Expulsion.** This sanction is permanent, involuntary separation from the University. A student who has been expelled may not be awarded a degree or attend commencement events, even if they have completed all requirements for a degree. The student may not ever again be a registered student, be present on campus, or attend any University-sponsored event.
- **Withholding the Degree.** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this Policy, including the completion of all sanctions imposed. All students must comply with all University policies in order to receive their degree and must resolve all outstanding charges of misconduct before being approved for graduation. The University reserves the right at



all times to withhold a degree from a student who has completed academic requirements but who is subject to disciplinary action or other sanctions.

- **Revocation of admission and/or degree.** Admission to or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining admission or a degree, or for serious violations committed by a student prior to admission or graduation. Students are advised that an offer of admission may be revoked by the University at any time without implementing the procedures or affording the rights set forth in the Student Code of Conduct, if it is deemed by the University to be in the best interests of the University, the University community, or the student to do so.

## **B. Employee Sanctions**

Responsive actions for an employee (faculty or staff) who has engaged in harassment, discrimination, and/or retaliation include:

- Warning - verbal or written
- Performance improvement/management process
- Required counseling
- Required training or education
- Probation
- Loss of annual pay increase
- Loss of oversight or supervisory responsibility
- Demotion
- Administrative leave with pay
- Administrative leave without pay
- Termination

The University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

## **29. Withdrawal or Resignation While Charges Pending**

### **A. Students**

If a student has an allegation pending for violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide not to participate in the Resolution Process, the process proceeds to a reasonable resolution, absent their participation. Should a student Respondent permanently withdraw from the University, the Resolution Process ends as the University no longer has disciplinary jurisdiction over the withdrawn student.

The University will, however, continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of the University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.

During the Resolution Process, the University may put a hold on a Respondent's transcript or place a notation on their transcript or Dean's disciplinary certification that a disciplinary matter is pending.

## **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process ends as the University no longer has disciplinary jurisdiction over the resigned employee.

The University will, however, continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University on any campus and the records retained by the Title IX Coordinator will reflect that status.

## **30. Appeals**

Any party may file a Request for Appeal, but it must be submitted, in writing, to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied and the Parties and their Advisors will be notified, in writing, of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer will notify the other Party(ies) and their Advisor(s), the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

The other Party (ies) and their Advisor(s), the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Title IX Coordinator to all parties for review and comment.

The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeals Officer and either denied or approved. If approved, it will be forwarded to the Party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses within five (5) business days, which will be circulated for review and comment by all Parties.

Neither Party may submit any new requests for appeal after this time period. The Appeal Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. The Appeal Officer will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all Parties simultaneously, including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

## **B. Sanction(s) Status During the Appeal**

Any sanctions imposed as a result of the Hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-Hearing, then emergency removal procedures (detailed in [Section 8](#), if applicable) must be permitted within forty-eight (48) hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **C. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator for clarification on questions of procedure or rationale, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new Hearing.)
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Officer may order a new Hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new Hearing can be appealed, once, on any of the three (3) appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **31. Long-Term Remedies/Other Actions**

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

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program

- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of Campus Safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

### **32. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Officer.)

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **33. Recordkeeping**

The University will maintain for a period of seven (7) years records of:

- Each sexual harassment investigation, including any determination regarding responsibility, and any audio or audiovisual recording or transcript required under federal regulations;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education programs or activities;

- Any appeal and the result therefrom;
- Any Informal Resolution and the result therefrom;
- All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website. (Note: If the University does not maintain a website, the University must make these materials available upon request for inspection by members of the public.); and
- Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - The basis for all conclusions that the response was not deliberately indifferent;
  - Any measures designed to restore or preserve equal access to the University's education programs or activities; and
  - If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

#### **34. Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Student Accessibility Services (for students) or the Office of Human Resources (for employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **35. Revision of this Policy and Procedures**

This Policy and its procedures supersede any previous policy (ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document, as necessary, and once those changes are posted online, they are in effect.

The procedures in effect at the time of the Resolution will apply to the resolution of incidents, regardless of when the incident occurred. The Policy in effect at the time of the alleged offense will apply even if the Policy is changed subsequently but prior to resolution, unless the Parties consent to be bound by the current Policy.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon

determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change - or court decisions alter - the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 14, 2020.

## APPENDIX A

### Examples of Prohibited Conduct

#### Examples of Sexual Harassment

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the University. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

#### Examples of Stalking

- Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it



was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

### **Examples of Sexual Assault**

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening and he convinces her to "jerk him off" (hand to genital contact.) Amanda would have never done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.
- Jiang is a junior, Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking but he is pretty sure it's a lot. After the party, he walks John to his apartment and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this and John says yes. They remove each other's clothes and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into

John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

**Examples of Retaliation:**

- Student-athlete A alleges sexual harassment by a coach. The coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department. The Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A. The student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B**

### **Statement of Rights of the Parties**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed, in advance, of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including Campus Safety and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the Party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University Campus Safety and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling, advocacy, health care, legal, student financial aid, visa and immigration assistance, or other services, both on campus and in the community.
- The right to a University-implemented No Contact Order or No Trespass Order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the Party or others.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from University staff in completing the relocation

- Changing an employee’s work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in or a withdrawal from a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus Safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University’s ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other Party, when possible.
  - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  - The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any Party or witness.
  - The right not to have irrelevant prior sexual history or character admitted as evidence.
  - The right to know the relevant and directly-related evidence obtained and to respond to that evidence.
  - The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy of the Investigation Report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly-related evidence available and used to produce the Investigation Report, subject to the privacy limitations imposed by state and federal law, prior to the Hearing; and, the right to have ten (10) business days to review the report prior to the Hearing.
  - The right to respond to the Investigation Report, including comments providing any additional relevant evidence after the opportunity to review the Investigation Report, and to have that response on the record.
  - The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  - The right to regular updates on the status of the Investigation and/or Resolution.
  - The right to have reports of alleged Policy violations addressed by Investigator(s), Title IX Coordinator(s), and Decision-maker(s) who have received at least eight hours of relevant annual training.

- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the Party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any Formal Grievance Hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the Resolution Process and a detailed rationale thereof (including an explanation of how credibility was assessed), delivered simultaneously, without undue delay, to the Parties.
- The right to be informed, in writing, of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.