

# UNIVERSITY OF DETROIT MERCY INTERIM SEXUAL AND GENDER-BASED HARASSMENT POLICY AND RESOLUTION PROCESS

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL

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## INTERIM POLICY PROHIBITING SEXUAL AND GENDER-BASED HARASSMENT

### 1. POLICY DEFINITIONS

- *Advisor*: a person chosen by a Party, or appointed by the University, to accompany the Party to meetings related to the grievance process, to advise the party on that process, and to conduct cross-examination for the Party at the hearing, if any.
- *Complainant*: A Person who is alleging sexual or gender-based harassment or discrimination based on a protected class; or alleging retaliation for engaging in a protected activity, or a person on whose behalf the University is alleging sexual or gender-based harassment or discrimination.
- *Complaint*: a document submitted or signed by the Complainant, or signed by the Title IX Coordinator, alleging sexual or gender-based harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University conduct an investigation based on the alleged conduct.
- *Confidential Employee*: an employee of the University who is not a Mandatory Reporter. A confidential employee is licensed by a state medical licensing and regulatory board and hired by the University specifically to work in a job position which cannot be held without appropriate state medical or health licensure to perform their job duties.
- *Day*: a business day when the University is in normal operation.
- *Directly Related Evidence*: evidence connected to the complaint but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the Investigator when writing an investigation report.
- *Education program or activity*: locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which alleged sexual or gender-based harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University. Education programs and activities are not restricted to on campus only.

- *Final Determination*: A conclusion by preponderance of the evidence that the alleged conduct did or did not violate this University Policy.
- *Finding*: A conclusion by preponderance of the evidence that the conduct did or did not occur as in a finding of fact.
- *Formal Resolution Process*: the methods of formal resolution designated by the University to address sexual or gender-based harassment. This includes conduct described in the Title IX Regulations, 34 CFR 106.45, as consisting of any of the following five types of misconduct: sexual harassment that meets the standard of severe, pervasive, and objectively offensive; sexual assault; stalking; dating violence; and domestic violence. The University employs a separate process to address other types of sex or gender-based discrimination not listed above that include but are not limited to the following examples: sexual harassment that is either severe or pervasive; sexual exploitation; sex-based hazing, and retaliation as well as other forms of sexual violence or sexual misconduct that are not governed by 34 CFR Part 106.30. This separate process is conducted by the Dean of Students or designee at the McNichols campus; by the Associate Dean of Students or designee at the Riverfront campus; by the Associate Dean of Students or designee at the Corktown campus; and by the Associate Vice President of Human Resources or designee for allegations of sexual or gender-based harassment made against employee respondents.
- *Hearing officer and decision-maker*: individual with decision-making and sanctioning authority within the University's Grievance Resolution process.
- *Informal Resolution Process*: the method of informal resolution through mediation conducted by the University at the request of the Parties which may not be utilized to resolve any sexual or gender-based harassment discrimination complaints involving an employee of the University.
- *Investigator*: person or persons on the University Title IX Team, or hired by the University, to gather facts about an alleged violation of this Policy; assess relevance of evidence and credibility of witnesses in synthesizing the evidence; and compile this information into an investigation report and file of directly related evidence.
- *Mandatory Reporter*: an employee of the University who is obligated by this Policy to share knowledge, notice, and/or reports of sexual or gender-based harassment to the Title IX Coordinator or any Deputy Title IX Coordinator.
- *Notice*: Occurs when an employee, student, or third-party informs any member of the Title IX Team of the alleged occurrence of sexual or gender-based harassment and/or retaliation for a protected activity.
- *Parties*: Complainant(s) and the Respondent(s) are referred to as the Parties.
- *Relevant Evidence*: evidence that tends to prove or disprove an issue.
- *Remedies*: post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence of sexual or gender-based harassment, and restore access to the University's educational program.
- *Respondent*: an individual who has been reported to have engaged in conduct that could constitute sexual or gender-based harassment or discrimination based on a protected class and/or retaliation for engaging in a protected activity.
- *Resolution*: the result or outcome of this University Resolution Process.

- *Sanction*: a consequence imposed by the University on a Respondent who is found to have violated this policy, or imposed on a Complainant found to have violated this policy based on a counterclaim made in good-faith response to Complainant's allegation.
- *Sexual Harassment*: unwelcome conduct that is severe, pervasive and objectively offensive and effectively denies a person access to the school's education programs or activities as well as the following terms: sexual assault; stalking; domestic violence; and dating violence.
- *Gender-based harassment*: verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.
- *Title IX Coordinator*: The University Title IX Coordinator and/or any University Deputy Title IX Coordinator designated by the University to ensure compliance with Title IX and the University's Title IX program.
- *Title IX Team*: The University Title IX Coordinator and/or any University Deputy Title IX Coordinator.
- *University Community*: refers to Students; Employees; and Third Parties.

## **2. Rationale for Policy**

The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation including sexual and gender-based harassment or discrimination based on a protected class. 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 program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual or gender-based harassment or discrimination on the basis of protected class status, and for allegations of retaliation. The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Non-Discrimination Statement**

University of Detroit Mercy adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in private institutions of higher education. The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Sex,
- Sexual orientation,
- Gender identity,
- Gender expression,
- Pregnancy,
- Family Responsibilities,
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on

campus, with the Equal Employment Opportunity Commission, or other human/civil rights agencies.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the University's non-discrimination statement.

When brought to the attention of the University, any such discrimination will be promptly and fairly addressed and remedied by the University according to the Resolution Process described below.

The University Title IX Coordinator may be contacted at [titleix@udmercy.edu](mailto:titleix@udmercy.edu) or 313.993.1802.

### **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of sexual and gender-based harassment which may involve exclusion from, or different treatment in, activities such as admission, athletics, or employment. This includes sexual harassment, sexual assault, stalking, dating violence and/or domestic violence, and retaliation.

3.a.) When an alleged violation of this Policy is reported, the Resolution Process is used to formally resolve any of the following types of alleged misconduct: sexual harassment that is severe, pervasive, and objectively offensive; sexual assault; stalking; domestic violence and/or dating violence, and retaliation.

3.b.) When an alleged violation of this Policy is reported that involves sexual harassment that is not severe, pervasive, and/or objectively offensive, but may be either severe or pervasive or involves other reported types of misconduct including but not limited to the following: sexual exploitation or sex-based hazing, the allegations are analyzed and resolved using the University Sexual Harassment Prevention Policy for employee-employee grievances; or the applicable Student Code of Conduct or Community Standards Conduct for undergraduate, graduate, law, and/or dental students, respectively.

When the Respondent is a member of the University community, a grievance or resolution process may be available regardless of the status of the Complainant who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

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

The Title IX Coordinator and Equity and Compliance Specialist serves as the Title IX Coordinator for the University and 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 sexual or gender-based harassment or discrimination based on protected class or retaliation.

### **5. Independence and Avoidance of Bias or Conflict-of-Interest**

The Title IX Coordinator manages 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 these procedures. 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.

5.a.) To raise any concern involving bias or conflict of interest by the Title IX Coordinator, the University Legal Counsel should be contacted. Any other concerns of bias or potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

5.b.) Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the University Legal Counsel. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures may be made to:

Office of Title IX  
Fisher Academic Building, 5<sup>th</sup> floor  
4001 W. McNichols Rd. Detroit, MI, 48221  
Phone: 313.993.1802  
Email: [titleix@udmercy.edu](mailto:titleix@udmercy.edu)

<https://www.udmercy.edu/academics/academic-affairs/titleix/>

McNichols campus  
Lanae Gill, Deputy Title IX Coordinator, Director of Residence Life  
Shiple Hall, Room 110  
4001 W. McNichols Rd., Detroit, MI 48221  
Phone: 313.993.1231  
Email: [lanae.gill@udmercy.edu](mailto:lanae.gill@udmercy.edu)

Adam Hollman, Deputy Title IX Coordinator, Assistant Director of Student Life-Programming  
Student Union, First floor  
Phone: 313.993.1154  
Email: [hollmaap@udmercy.edu](mailto:hollmaap@udmercy.edu)

Megan Novell, Interim Title IX Coordinator  
McNichols Campus Library  
Phone: 313.993.1802  
Email: [novellme@udmercy.edu](mailto:novellme@udmercy.edu)

Corktown campus

Juliette Daniels, Deputy Title IX Coordinator, Associate Dean of Student Services and Enrollment  
Classroom Building, Room 470

Phone: 313.494.6850

Email: [danieljc@udmercy.edu](mailto:danieljc@udmercy.edu)

Adrianna Moreno, Deputy Title IX Coordinator, Associate Director of Student Services  
Classroom Building, Room 457

Phone: 313.464.6966

Email: [katsiman@udmercy.edu](mailto:katsiman@udmercy.edu)

Riverfront campus

Jordan Hall, Deputy Title IX Coordinator, Director of Student Affairs, Campus Equity & Inclusion  
Dowling Hall, First floor

Phone: 313.596.9848

Email: [halljg@udmercy.edu](mailto:halljg@udmercy.edu)

Megan Jennings, Deputy Title IX Coordinator, Associate Dean, Student Affairs  
Dowling Hall, Room 125

Phone: 313.596.0209

Email: [jenninmf@udmercy.edu](mailto:jenninmf@udmercy.edu)

#### **EXTERNAL INQUIRIES - NATIONALLY**

Inquiries may be made nationally to:

#### **U.S. Department of Education Office for Civil Rights (OCR)**

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov/ocr>

#### **U.S. Department of Health & Human Services Office for Civil Rights**

200 Independence Avenue, S.W.

Washington, D.C. 20201

Toll Free Call Center: 1-800-368-1019

TTD Number: 1-800-537-7697

#### **U.S. Department of Justice Civil Rights Division**

950 Pennsylvania Avenue, NW

Washington, D.C. 20530-0001

Phone (202) 514-3847

Toll-free Phone 1-855-856-1247

Telephone Device for the Deaf (TTY) (202) 514-0716

## **EXTERNAL INQUIRIES - REGIONAL**

### **U.S. Department of Education Office for Civil Rights**

1350 Euclid Avenue

Suite 325

Cleveland, OH 44115

Telephone: (216) 522-4970

Facsimile: (216) 522-2573

Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

### **U.S. Equal Employment Opportunity Commission**

Patrick V. McNamara Building

477 Michigan Avenue

Room 865

Detroit, MI 48226

United States

#### **Phone**

[1-800-669-4000](tel:1-800-669-4000)

#### **Fax**

[313-226-4610](tel:313-226-4610)

#### **TTY**

[1-800-669-6820](tel:1-800-669-6820)

### **7. Notice/Complaints of Sexual or Gender-based Harassment or Discrimination based on Protected Class**

Notice or complaints of sexual or gender-based harassment or discrimination based on protected class and/or retaliation may be made using either of the following options:

1) File a complaint with, or give verbal notice to, the University Title IX Coordinator, or any University Deputy Title IX Coordinator, using the contact information provided in 6. above.

2.) Report online using the University Complaint form provided on the Office of Title IX webpage, <https://www.udmercy.edu/academics/academic-affairs/titleix/>

A Formal Complaint is a document filed and signed by the Complainant, or signed by the Title IX Coordinator, alleging a sexual or gender-based policy violation by a Respondent that requests that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail by using the contact information provided in 6. above.

### **8. Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged sexual or gender-based harassment or discrimination based on protected class and/or retaliation. Supportive measures are typically offered first to a Complainant and then to a Respondent as the Complainant usually makes the first contact with the Title IX team for this purpose. Supportive measures are offered to a Respondent as quickly as possible upon notification of a Respondent's name and/or contact information.

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 sexual or gender-based harassment or discrimination based on protected class.

The Title IX Coordinator promptly offers available supportive measures to the Parties upon receiving notice of a concern or receipt of a complaint. The University will make every effort to maintain the confidentiality of the supportive measures provided that confidentiality does not impair the University's ability to provide the supportive measures. The University will also seek to ensure as minimal an academic impact on the Parties as possible. The University will endeavor to implement measures in a way that does not unreasonably burden either Party.

Supportive measures may include but are not limited to any of the following:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program for employees
- Referral to community-based service providers including crisis lines or shelters
- Student financial aid counseling
- Changes to campus housing assignment(s)
- Changes to work arrangements for employees or student-employees
- Safety planning
- Implementing contact limitations or no contact orders between the Parties
- Academic support, extensions of deadlines, or other program modifications
- Changes to class schedules; facilitation of withdrawals or leaves of absence
- Trespass or Persona Non Grata (PNG) orders
- Timely warnings
- Any other actions deemed appropriate and feasible by the Title IX Coordinator

Violations of no contact orders are referred to the appropriate department including but not limited to Student Affairs, Human Resources, or Public Safety.

### **9. Emergency Removal**

The University may act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis after completion of an individualized safety and risk analysis resulting in a determination that the Respondent poses an immediate threat to a Complainant or other members of the University community. The Student Concern and Care Team chair will communicate the result and basis of the behavioral and threat assessment to the Title IX Coordinator, or the referring Deputy Title IX Coordinator as soon as reasonably possible after receiving a request for completion of behavioral and threat assessment. The University will implement the least restrictive emergency actions possible which may include alternative coursework options.

A Respondent may request a meeting with the Title IX Coordinator to show cause why emergency removal should not take place. In all cases in which emergency removal is imposed, the student will receive notice of the action and information providing the option to show cause to the Title IX Coordinator as soon as reasonably possible why the action/removal should not be implemented or should be modified. Violation of emergency removal under this Policy will constitute grounds for discipline up to and including non-academic dismissal for a student. There is no appeal process of an emergency removal decision.

### **10. Promptness**

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints may take 90-120 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer and the University will avoid all undue delays within its control.

If the general time frame for resolution is delayed, the University Title IX Coordinator, or Deputy Title IX Coordinator, 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.

### **11. Privacy and Confidentiality**

Alleged misconduct should be reported to the Title IX Coordinator or a Deputy Title IX Coordinator. Either the University Title IX Coordinator or a Deputy Title IX Coordinator will then assist a Complainant in understanding reporting options and will advise a Complainant of appropriate supportive measures.

Every effort is made by the University to preserve the privacy of mandatory reports and complaints. Information concerning Complainant, any named Respondent, or any witness, may not be communicated 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 determine 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).

### **12. Jurisdiction of the University**

This policy applies to the education program and activities of the University as well as conduct that takes place on the campus; or on property owned or controlled by the University; at University-sponsored events; or in buildings owned or controlled by the University's registered student organizations. The Respondent must be a member of the University community in order for this Policy to apply.

Regardless of whether the Respondent is a member of the University's community, Complainant may obtain supportive measures from the University determined and arranged by the Title IX Coordinator or a Deputy Title IX Coordinator. 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 employers.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator or a Deputy 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 or a Deputy Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination while enrolled in or working for the University 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.

### **13. Time Limits on Reporting**

There is no time limitation for disclosure or report of a potential violation of this Policy to the University Title IX Coordinator or any deputy Title IX Coordinator. If the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed since the alleged conduct, the ability of the University to investigate, respond, and provide remedies may be limited or impossible. Any such limitation will not impede the ability of the University to offer supportive measures and/or remedies to a Complainant.

When disclosure or notice 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 or disclosure.

**14. Online Harassment and Misconduct Relating to Sexual and Gender-based Harassment** The policies of the University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited and described below when those behaviors occur in, or have an effect on, the University's education program and activities, or use the University's networks, technology, or equipment.

Prohibited online harassment and misconduct may include but is not limited to the following: sharing of inappropriate content via social media, sexual or sex-based messaging including unwelcome sexting, distributing or threatening to distribute revenge pornography, 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. This may also include threats of stalking, domestic violence, or domestic violence.

Although alleged online harassment and misconduct relating to sexual or gender-based harassment is reported as having been made on social media, blogs, or other digital forms of media that cannot be controlled by the University, the University will engage in a variety of means to address and mitigate the effect of such communications. This includes application of the University ITS Acceptable Use & Security Policy linked here: <https://www.udmercy.edu/about/its/policies/files/its-0028.pdf>

## **15. Policy on Discriminatory Sexual and Gender-based Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This 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. All policies accompany actual or attempted offenses.

### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by this Policy. The University does not tolerate discriminatory harassment of any employee, student, visitor, or guest and 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 or 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 University Sexual Harassment Prevention Policy for allegations concerning employees.

### **b. Sexual Harassment**

Sexual Harassment includes sexual harassment, sexual assault, stalking, domestic violence and dating defined below:

Conduct or attempted conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

1. Quid Pro Quo: this type of sexual harassment may only be engaged in by
  - a. an employee of the University, and,
  - b. explicitly or implicitly conditions the provision of an aid, benefit, or service
  - c. on an individual’s participation in unwelcome sexual conduct; and/or,
2. Sexual harassment which is defined as:
  - 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 program or activity.
  - 3. Sexual assault is defined as:
    - a. Any attempted or actual sexual act directed against another person without their consent including instances where the party is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes.
    - b. Forcible Sex Offenses are defined as:
      - 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.
      - iv. Rape: the carnal knowledge of a person obtained without their consent including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
      - v. Sodomy: Oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
      - vi. Sexual assault with an object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent or physical incapacity;
      - vii. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
      - viii. Incest:
        - i. Non-forcible sexual intercourse,
        - ii. between persons who are related to each other,
        - iii. within the degrees wherein marriage is prohibited by Michigan law.
      - ix. Statutory Rape:
        - iv. Non-forcible sexual intercourse,
        - v. with a person who is under the statutory age of consent of 16 in Michigan.
4. Dating Violence is defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the person subjected to this type of violence,
    - 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 is defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the person subjected to this type of violence, or
  - d. by a person with whom a child is shared in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse under the domestic or family violence laws of Michigan, or
  - g. by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of Michigan.
  - h. An intimate partner is defined as an individual with whom one has or had a short- or long-term relationships that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include, but are not limited to, marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends", and relationships between individuals with a child in common.
6. Stalking is defined as:
- a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. 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—

- iv. 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.
- v. Reasonable person means a reasonable person under similar circumstances and with similar identifies to the Complainant.
- vi. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

### **c. Consensual Relationships**

The *University Sexual Harassment Prevention Policy* includes the following Consensual Relationship language incorporated within this Policy:

A. In General. There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. In the University context, such positions include but are not limited to teacher and student, supervisor and employee, senior faculty and junior faculty, mentor and trainee, teaching assistant and student, coach and athlete, preceptor and student, staff and student, and the individuals who supervise the day-to-day student living environment and student residents. These relationships may, moreover, be less consensual than the individual whose position confers power believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect. The asymmetry of the relationship can lead to a potentially exploitive relationship. Where such a relationship exists, the University will in general be unsympathetic to a defense based upon consent when the facts establish that a professional staff-student, supervisor-employee, senior faculty-junior faculty, mentor-trainee, teaching assistant-student, preceptor-student, or supervisor-student resident power differential existed within the relationship.

B. With Students. Romantic and/or sexual relationships between faculty and student, even mutually consenting ones, are a basic violation of professional ethics and responsibility when the faculty member has any responsibility for the student's academic performance or professional development. For the foregoing reasons, all romantic and/or sexual relationships between faculty and students in the instructional context are prohibited. No faculty member shall have a romantic and/or sexual relationship, consensual or otherwise, with a student who is enrolled in a course being taught by the faculty member or whose academic work is being supervised, directly or indirectly, by the faculty member. Romantic and/or sexual relationships between faculty and students that occur outside of the instructional or supervisory context may also lead to difficulties. The asymmetry of the faculty-student relationship can lead to a potentially exploitive relationship. Where such a relationship exists, the University will in general be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student, staff, student, or coach-student power differential existed within the relationship.

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.

#### **d. Force, Coercion, Consent, and Incapacitation**

- Force: the use or threat of physical violence to overcome an individual's freedom of will to choose whether to participate in sexual activity.
- Coercion: 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. Coercion can include a wide range of behaviors including manipulation, pressuring, and cajoling. Words or conduct may constitute coercion if they impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. 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 constitute coercion.
- Consent: communication that is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent may be given by words or actions, as long as those words or actions create mutually understandable

clear permission regarding willingness to engage in, and the conditions of, sexual activity. Consent to some sexual contact such as kissing or fondling cannot be presumed to be consent for other sexual activity such as intercourse. The existence of a current or previous intimate relationship is not sufficient to constitute consent.

- Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because that individual lacks conscious knowledge of the nature of the act sufficient to understand the who, what, where, when, why or how of the sexual interaction, and/or is physically helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware or uncertain that sexual activity is occurring. Incapacitation may also result from the use of alcohol and/or other drugs. Being intoxicated or impaired by drugs or alcohol is never an excuse and does not diminish the responsibility to obtain consent.

**e. Other Types of Sexual or Gender-based Harassment or Misconduct Governed by Other University of Detroit Mercy Policies; Codes of Conduct; or Codes of Community Standards.**

In addition to the forms of sexual harassment described under **b., Sexual Harassment**, above, which are covered by Title IX, the University also prohibits the following offenses as forms of sex and gender-based harassment that may be within or outside of Title IX and may include actions based upon an individual's actual or perceived membership in a protected class. They include but are not limited to the following:

1. 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:

1a. Sexual voyeurism is defined by conduct including 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;

1b. Invasion of sexual privacy;

1c. Taking photos, 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, and/or 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;

1d. Prostituting another person;

1e. 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;

1f. 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;

1g. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;

1h. Emotionally blackmailing or 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;

1i. Knowingly soliciting a minor for sexual activity;

1j. Engaging in sex trafficking;

1k. Knowingly possessing, or disseminating child pornography;

1l. 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;

1m. Discriminatory harassment that is sex or gender-based and is not categorized or listed above, but may consist of actions that deprive, limit, or deny educational or employment access, benefits, or opportunities to students or employees or potential students or employees.

1n. Bullying that is repeated and/or severe and involves aggressive behavior that is likely to intimidate or to intentionally hurt, control, or diminish another person physically and/or mentally;

1o. Intimidation that consists of explicit or implicit threats or acts that cause an unreasonable fear of harm in another.

2. Hazing includes sex-based 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.

3. Violation of any other University policies may also constitute sex or gender-based discrimination 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 prohibited conduct may range from reprimand through expulsion/termination.

#### **f. Retaliation**

No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy or because an individual has made a report or formal complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Retaliation can be committed by or against any individual or group of individuals and not just a Respondent or Complainant.

The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Suspected retaliation should be reported immediately to a member of the Title IX Team. The University will take all and appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

### **16. Mandatory Reporters**

With the exception of licensed psychotherapists and nurse practitioners acting in the capacity for which they were hired by the University, all University employees (faculty, staff, administrators) are expected to report actual or suspected sexual or gender-based harassment or discrimination based on protected class to the Title IX Coordinator or a Deputy Title IX Coordinator. Mandatory Reporters include University Resident Advisors and the University Multicultural Peer Advisor.

Mandatory Reporters must promptly contact the Title IX Coordinator or a Deputy Title IX Coordinator to share all known details of a disclosure shared with them in the course of their employment.

Generally, disclosures made in classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” 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 a seek a specific response from the University.

The failure of a Mandatory Reporter to report an incident of sexual or gender-based harassment or discrimination based on protected class of which they become aware constitutes a violation of University policy and can result in disciplinary action for failure to comply.

### **17. Confidential Resources: On Campus and Off Campus**

A complainant may contact a Confidential Resource on or off campus as listed below:

#### **On-campus resources**

On-campus confidential resources consist of licensed psychotherapists and nurse practitioners working at the Wellness Center or Dental School’s Office of Health and Wellness.

Wellness Center:

Wellness Center Director: Dr. Annamaria Silveri, 313.993.1459, [silveran@udmercy.edu](mailto:silveran@udmercy.edu)

Dental School, Office of Health and Wellness, Bailey Andersen, 313.494.6938, [anderstb@udmercy.edu](mailto:anderstb@udmercy.edu)

#### **Off-campus**

Off-campus confidential resources include licensed health care and medical professionals and include but are not limited to the following southeastern Michigan resources:

Common Ground – 800.231. 1127 ([www.commonground.org](http://www.commonground.org))

HAVEN, 801 Vanguard Drive, Pontiac, MI 48343 877.922. 1274 (<https://www.haven-oakland.org/>)

Victim Assistance Services, Oakland County Prosecutor's Office - (248) 858-0707

End Violent Encounters (EVE) 24-hour Hotline: 517.372.5572 EVE is a confidential community-based program providing supportive services to survivors of domestic abuse and sexual violence.

Wayne County SAFE, 2727 Second Avenue, Detroit, MI 48201, 313.964.9701

Health care professionals are required to 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.

### **18. When a Complainant Does Not Wish to Proceed with the Resolution Process**

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 or a Deputy Title IX Coordinator who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with federal and state laws.

The Title IX Coordinator or a Deputy Title IX Coordinator will determine whether the University will proceed if the Complainant does not wish to do so. In such instance, the Title IX Coordinator may not sign a Formal Complaint to initiate the Formal Resolution Process until receipt of the conclusion of a violence and threat risk assessment completed by the Student Concern and Care Team.

If the Title IX Coordinator prepares and signs a Formal Complaint, the Title IX Coordinator does not become the Complainant as the Title IX Coordinator is not the individual who is alleged to have experienced the conduct that could constitute a violation of this Policy. 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 Resolution Process fairly and effectively.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show 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.

### **19. Federal Timely Warning Obligation**

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 of allegations made under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are

made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Parties or witnesses knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation are subject to discipline under University policy.

### **21. Amnesty for Good Faith Reporting by Complainants and Witnesses**

The University will not pursue disciplinary action against student Complainants or witnesses for disclosure of personal consumption of alcohol or other drugs whether underage or illegal if the disclosure is made in connection with a disclosure of a potential violation of this Policy. The University strongly encourages the reporting of prohibited conduct under this Policy. It is in the best interest of this community that Complainants report to university officials and that participants in the grievance process are forthright in sharing information.

To guard against discouraging reporting or participation, a student who reports or participates in the grievance process, either as a Complainant, Respondent, or a witness, will not be subject to disciplinary action by the University for personal consumption of alcohol or drugs or violations of other University policies in effect at the time of the incident provided that any such violations did not and do not place the health or safety of any other person at risk and do not involve plagiarism, cheating, or academic dishonesty. The University may, however, initiate an educational discussion or pursue other educational remedies with the student regarding alcohol or other drugs. Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.

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

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

University of Detroit Mercy and all higher education institutions that receive federal funding are obligated to publicly issue an Annual Security Report ("ASR") which identifies the number of particular reported crimes on campus or campus property, or adjacent to campus. The ASR does not include identifying information about the Complainant or Respondent.

Crime Log All higher education institutions that have campus police forces or security departments must maintain a daily crime log that includes entries for all crimes that occur within both the Clery geography and the campus police force's regular patrol route. The crime log does not include identifying information about the Complainant or Respondent.

### **23. Preservation of Evidence**

The preservation of evidence related to sexual assault is necessary for potential criminal prosecution and to obtaining restraining orders and is time-sensitive. The University will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at a local hospital or contact Wayne County SAFE at 313.413.8000, their crisis pager line, or call the general line at Wayne County SAFE at 313.964.9701 within 120 hours of assault, or less time if possible.

2. Avoid showering, bathing, washing hands or face, or douching if possible but evidence may still be collected even if this occurs.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag and not a plastic bag which destroys evidence or secure evidence container.
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

## **INTERIM RESOLUTION PROCESS: FORMAL AND INFORMAL RESOLUTION (PROCESS A AND PROCESS B, RESPECTIVELY)**

### **1. Overview**

1. The University provides a formal resolution process known as Process A which is described below in 1a. Based on U.S. CFR 106.30, certain types of alleged sexual or gender-based harassment or discrimination of a member of a protected class are not included in this Formal Resolution Process and are instead regulated by separate formal resolution processes at the University that apply on the McNichols campus for undergraduate and graduate students; on the Riverfront campus for law students; and on the Corktown campus for dental students. Links to separate formal resolution processes are described below in 1b. Additionally, based on U.S. CFR 106.30, certain types of alleged sex and gender-based harassment involving employees are not regulated by Process A. Links to employee formal resolution processes are described below in 1b.
  - a. The University will act on any formal or informal notice or complaint made under this Policy alleging sexual harassment; sexual assault; stalking; domestic violence or dating violence that is governed by U.S. Code of Federal Regulation, CFR 106.30 by application of this formal resolution process known as Process A.
  - b. For allegations of sex or gender-based harassment that are not governed by U.S. Code of Federal Regulation, CFR 106.30, the University will utilize separate University processes that apply to the types of sexual harassment and/or other conduct not governed by U.S. Code of Federal Regulation, CFR 106.30 and CFR 106.45. The University processes are listed below:
    1. For complaints involving employee respondents, the University Sexual Harassment Prevention Policy applies: [https://www.udmercy.edu/faculty-staff/hr/files/Sexual\\_Harassment\\_Policy.pdf](https://www.udmercy.edu/faculty-staff/hr/files/Sexual_Harassment_Policy.pdf)
    2. For complaints involving undergraduate or graduate student respondents, the Student Code of Conduct found in the Student Handbook applies: [https://www.udmercy.edu/life/policies/files/Student\\_Handbook.pdf](https://www.udmercy.edu/life/policies/files/Student_Handbook.pdf)
    3. For complaints involving law school student respondents, the Detroit Mercy School of Law Community Standards Code applies: <https://lawschool.udmercy.edu/files/pdf/students/Community%20Standards%20Code.pdf>

4. For complaints involving dental student respondents, the Dental Mercy School of Dentistry Academic Policy Handbook applies:

[https://dental.udmercy.edu/files/pdf/Academic\\_Policies\\_Handbook.pdf](https://dental.udmercy.edu/files/pdf/Academic_Policies_Handbook.pdf)

- c. Each of the applicable University Codes listed above also may be used to resolve allegations of collateral misconduct such as vandalism or physical abuse of another as two non-exhaustive examples of conduct or a pattern of behavior that may occur in conjunction with resolution of alleged sexual or gender-based harassment or discrimination of a member of a protected class.
- d. Complainants and Respondents who desire the assistance of the University in facilitating informal resolution of an allegation of sexual or gender-based harassment or discrimination of a member of a protected class may elect to proceed under Process B, Informal Resolution, with one exception. Process B may not be utilized to resolve sexual or gender-based harassment or discrimination of a member of a protected class alleged against an employee respondent by a student complainant.

## **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the University will conduct a prompt initial assessment to determine the next steps that the University will need to take. The University will initiate at least one of three responses:

- a. Offering supportive measures because the Complainant does not want to file a Formal Complaint;
- b. Implementation of Formal Resolution Process including an investigation and a hearing (Process A) upon submission of a Formal Complaint;
- c. Implementation of Informal Resolution Process Through Mediation (Process B) upon submission of a Formal Complaint.

The University uses the Formal Resolution Process (Process A) to 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 sexual or gender-based harassment or discrimination of a member of a protected class, 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, or a Deputy Title IX Coordinator, will engage in an initial assessment within seven business days of receipt of notice or complaint typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator, or a Deputy 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.
  - If they do not wish to do so, the Title IX Coordinator, or a Deputy Title IX Coordinator, determines whether to initiate a complaint in such cases where a violence and threat risk assessment indicates a compelling threat to health and/or safety of the Complainant or University community.

- If a formal complaint is received, the Title IX Coordinator, or a Deputy Title IX Coordinator, works with the Complainant to make sure that the complaint is completed and then assesses its sufficiency as required by CFR 106.30.
- The Title IX Coordinator, or a Deputy Title IX Coordinator, reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator, or a Deputy Title IX Coordinator, works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator, or a Deputy 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, or a Deputy Title IX Coordinator, works with the Complainant to identify their wishes, then assesses the request and facilitates implementation of requested measures.
  - If the Complainant prefers informal resolution as an option for resolving an allegation of potential sexual or gender-based harassment or discrimination of a member of a protected class, the Title IX Coordinator, or a Deputy Title IX Coordinator, assesses whether the complaint may be resolved informally and contacts the Respondent to discuss Process B, Informal Resolution, and determine if the Respondent is interested in engaging in informal resolution facilitated by the University.
  - If a Formal Resolution Process is preferred by the Complainant, the Title IX Coordinator, or a Deputy Title IX Coordinator, determines if the alleged misconduct falls within the scope of Title IX:
    - If it does, the Title IX Coordinator, or a Deputy 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, or a Deputy Title IX Coordinator, determines that the 2020 Title IX regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and will refer the Complainant for resolution under other applicable University processes available to undergraduate and graduate students; law students; dental students; and employees.
    - Dismissal of a complaint under the 2020 Title IX regulations does not limit the University’s authority to address a complaint of sexual or gender-based harassment or discrimination of a member of a protected class as described above in 1b. Dismissal of a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

#### **4. Mandatory Dismissal**

Based upon 34 CFR Part 106, the University must dismiss a formal complaint or any allegations contained within the complaint after intake meeting with the Complainant, it is determined that the

conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy even if proved; and/or

- a. 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
- b. The conduct did not occur against a person in the United States; and/or
- c. At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in the education program or activity of the University.

## **5. Discretionary Dismissal**

The University may dismiss a formal complaint or any allegations contained within the complaint if at any time after intake meeting with the Complainant, any of the following occurs:

- a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint including any or all of the allegations included in the complaint; or
- b. The Respondent is no longer enrolled in or employed by the University;
- c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination of the allegations contained in the Formal Complaint.

Upon dismissal for mandatory or permissive grounds, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties at their University email addresses.

Either a mandatory or discretionary dismissal decision is appealable by any Party under the procedures for appeal below. If a Complainant decides to withdraw a complaint, they may later request to reinstate or refile it.

## **6. Counterclaims**

The University is obligated to ensure that the resolution process is not used for retaliatory purposes. The University permits filing of counterclaims after completing an initial assessment to determine whether the allegations in the counterclaim appear to be made in good faith. Counterclaims by a Respondent may be made in good faith but also may instead be made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined by the Title IX Coordinator, or a Deputy Title IX Coordinator, to have been reported in good faith may be processed with the underlying allegation, or after resolution of the underlying initial allegation.

## **7. Right to an Advisor During Formal Resolution Process and Necessity for an Advisor at Hearing**

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

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 officer and may result in the need for a different Advisor to conduct cross-examination at the hearing.

The University may permit parties to have more than one Advisor upon special request made to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator, or Deputy 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, or Deputy Title IX Coordinator, will also offer to assign a trained Advisor if a Party has not selected and obtained an Advisor on their own by the time of the hearing or scheduling of the hearing.

**b. Advisor's Role in Meetings and Interviews**

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

If one Party selects an Advisor who is an attorney, but the other Party opts not to do so or cannot afford an attorney, the University will appoint a trained internal Advisor, an employee of the University, and typically a member of the Title IX Team. The General Counsel of the University cannot serve as an Advisor for any party.

**c. Advisors in Hearings/University-Appointed Advisor**

Cross-examination is permitted during the hearing and must be conducted by a Party's Advisor. The parties are not permitted to conduct cross-examination of each other or any witnesses. If a Party does not have an Advisor for a hearing, the University will appoint a trained Advisor, typically a member of the Title IX Team, strictly for the purpose of conducting cross-examination at the hearing. A brief adjournment may take place to allow time for an Advisor to be contacted by the Party, or alternatively, by the Title IX Coordinator, or a Deputy Title IX Coordinator, if the Party refrains from contacting an advisor. An adjournment for this purpose should not exceed more than two business days to allow time to obtain an Advisor for either Party.

A Party may reject this appointment and choose their own Advisor but may not proceed at the hearing without an Advisor. If the Party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will conduct cross-examination of the other Party and the other Party's witnesses.

**d. Advisor Professionalism**

An Advisor who oversteps their role as defined by this Policy will receive a warning and instruction from the hearing officer to refrain from engaging in any objectionable or unprofessional behavior. If an Advisor disrupts or continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or hearing will be ended and rescheduled until such time as the Advisor agrees to meet required standards of professionalism.

#### **e. 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, as doing so may help the parties to readily participate in the resolution process.

The University will provide a consent form that authorizes the University to share information directly with a Party's Advisor. The parties must complete and submit this form to the Title IX Coordinator

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

Advisors are expected to maintain the privacy of the records shared with them. Shared records may not be shared with third parties, disclosed publicly, or used for purposes not consistent with this resolution process.

#### **g. Expectations of an Advisor**

The University expects an Advisor to attend 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.

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

A party may elect to change Advisors during the grievance process. The parties are expected to provide timely notice to the Title IX Coordinator, or Deputy Title IX Coordinator, if they change Advisors at any time. If a Party changes Advisors, consent to share information with the previous Advisor is terminated, and a release and confidentiality agreement for the new Advisor must be signed by the new Advisor. Parties are expected to inform the Title IX Coordinator of the identity of a new Advisor at least two calendar days before their scheduled hearing date.

### **8. Resolution Processes: Formal Resolution (Process A) and Informal Resolution (Process B)**

An expectation of confidentiality is core to resolution processes under this Policy. Resolution proceedings are not open to members of the University community or individuals outside the University who are not serving as an Advisor or providing testimony as a witness. Parties have discretion to share their own knowledge and evidence with others if they so choose with the exception of information the Parties agree not to disclose related to Informal Resolution or Process B which is first described below.

#### **a. Procedure for Informal Resolution through Mediation**

A Complainant must first submit a Formal Complaint to the Office of Title IX to express interest in resolving an allegation of sexual or gender-based harassment or discrimination of a member of a protected class using mediation facilitated by the Title IX Coordinator or designee. A Respondent may also contact the Title IX Coordinator, or respond to the Title IX Coordinator's contact, to express interest in Informal Resolution and may do so by emailing the Title IX Coordinator.

Informal Resolution may include Complainant's preference and request for Supportive Measures only to remedy the situation.

1. Prior to commencing Informal Resolution through Mediation, the University will provide the Parties with written notice of the reported misconduct alleged by either Complainant or Respondent.
2. Informal Resolution through Mediation may not be commenced without voluntary, signed written confirmation provided by the Parties to the Title IX Coordinator, or Deputy Title IX Coordinator, indicating that they wish to resolve the matter through Informal Resolution.
3. Informal Resolution through Mediation will not be scheduled for a minimum of three business days after the Title IX Coordinator, or Deputy Title IX Coordinator, receives and reviews signed Consent to Informal Resolution through Mediation.
4. Informal Resolution through Mediation may not be used for resolution of a student complainant allegation made against an employee respondent.
5. In some instances, a Respondent may wish to accept responsibility for alleged violation(s) of this Policy and may propose sanctions and/or remedies. In these instances, the Title IX Coordinator, or Deputy Title IX Coordinator, will review the Respondent's proposed sanctions and/or remedies to determine the suitability of Informal Resolution through Mediation and will send Respondent's proposed sanctions and/or remedies to Complainant to review to consider before scheduling Mediation.
6. Mediation will typically consist of 1-3 meetings facilitated by the Title IX Coordinator or designee and held with the Parties to discuss the alleged violations and to explore potential sanctions and/or remedies.
7. If Mediation results in agreement by the Parties as to responsibility and/or proposed sanctions and/or remedies, the Title IX Coordinator, or Deputy Title IX Coordinator, will prepare Informal Resolution Mutual Agreement (IRMA) for review and signature by Parties.
8. The Informal Resolution Mutual Agreement may be reviewed and signed by the Parties during a Mediation meeting or within five business days after the final Mediation meeting.
9. If all Parties do not sign the Informal Resolution Mutual Agreement and return it by email to the Title IX Coordinator within five business days after the final Mediation meeting, the Formal Resolution Process will either commence or resume at the stage of process where it was paused.
10. Sanctions stemming from a signed Informal Resolution Mutual Agreement (IRMA) are promptly implemented by the Title IX Coordinator, or Deputy Title IX Coordinator, to stop the alleged discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct on the complainant and University community.
11. Informal Resolution through Mediation is not subject to appeal by either Party.

**b. Formal Resolution Process: Notice of Investigation and Allegations (NOIA)**

The Title IX Coordinator or designee will provide written notice of the investigation and allegations (the "NOIA") to the Respondent to commence the Formal Resolution Process (Process A). This facilitates the Respondent's ability to identify and choose an Advisor; prepare for intake meeting with the Title IX Coordinator and prepare for subsequent investigation interview(s). The Title IX Coordinator will email Notice of Investigation and Allegations (NOIA) to the Respondent and will copy the Complainant on the NOIAA email.

The NOIA sent to Respondent will include:

- A meaningful summary of all 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;
- List of available support measures described in 8. of Interim Policy;
- 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 policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each party to select 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 and knowingly submitting false information during the resolution process;
- Detail on how either Party may request disability accommodations during the interview process;
- The name(s) of the assigned Investigator(s);
- 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 allegations.

#### **9. Resolution Timeline**

The University will make a good faith effort to complete the Formal Resolution Process within 90-120 calendar days including appeal which can be extended as necessary for appropriate cause by the Title IX Coordinator, or Deputy 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 is needed to complete the process.

#### **10. Appointment of Investigators**

Once the decision to commence a Formal Resolution Process is made, the Title IX Coordinator, or Deputy Title IX Coordinator, will select an appropriate Investigator from the Title IX Team, or external to the University, and will notify the Parties of the Investigator at the time the NOIA is emailed to them. The Title IX Coordinator, or Deputy Title IX Coordinator, may serve as default investigator if no other investigator is readily available to commence prompt formal grievance resolution.

#### **11. Conflict of Interest or Bias**

Any individual materially involved in the administration of this Formal 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, or Deputy 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 Formal Resolution Process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator, or Deputy Title IX Coordinator, will determine whether the concern is reasonable and supportable.

Any concerns of conflict of interest or bias by the Title IX Coordinator should be raised with the University Legal Counsel.

The Formal Resolution Process involves an objective evaluation of all relevant evidence. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University presumes 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, or potential police involvement or concurrent police investigations.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and the Title IX Coordinator, or other member of the Title IX Team, if the Title IX Coordinator serves as the Investigator, will communicate regularly with the Parties to update them on the progress and timing of the investigation.

### **13. Unavoidable delays in the Investigation Process**

The University may undertake a short delay in its investigation from several days to a few weeks if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of available parties and/or witnesses, and/or accommodations for disabilities or health conditions. The University will implement, or continue to implement, supportive measures as deemed appropriate during any delay of the Investigation Process included within the Formal Resolution Process. The University will email the Parties regarding any anticipated duration and provide them reason for such duration.

### **14. Formal Resolution Procedure – Investigation Stage**

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.

As part of an investigation, the Investigator completes the following:

- Allow each Party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses'
- Document in the investigation report which questions were asked with a rationale for any changes or omissions;
- Endeavor to complete the investigation within 30 business days and provide regular status updates to the Parties every two weeks during the investigation;
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence including appendices referring to or including relevant physical or documentary evidence;
- Prior to the conclusion of the investigation, first provide the Parties the evidence relied upon during the investigation and next provide 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 permitted to review the evidence and may also elect to waive the full ten days to review and comment on the investigation report. Each copy of shared materials 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) may share the investigation report with the Title IX Coordinator and/or with University legal counsel for their review and feedback if the investigation is completed by the Title IX Coordinator;
- The Investigator will incorporate any relevant feedback, and the final report is then shared with the Parties through secure electronic transmission or hard copy at least ten (10) business days prior to the scheduled hearing. The Parties are also provided with a file or appendix of any directly related evidence that was not included in the report.

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

Witnesses who are employees of the University are expected to cooperate with and participate in the University Formal Resolution Process. Failure of such witnesses to cooperate with and/or participate in the Formal Resolution Process constitutes a violation of policy and may warrant discipline.

Investigation interviews may be conducted virtually or in-person and notice of either interview format will be communicated to Complainant and Respondent when Notice of Investigation and Allegations (NOIA) is sent. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Occasionally, a Witness may ask the investigator if they can provide a written statement in lieu of an investigation interview and, if this occurs, the Witness may choose to respond to written questions if deemed appropriate by the Investigator(s). This is not preferred as CFR 106.45 does not allow a written statement prepared by a witness to be used as evidence at a hearing as it eliminates the opportunity and requirement for cross-examination unless the witness appears at the hearing and cooperates with cross-examination.

#### **16. Recording of investigation Interviews**

No unauthorized audio or video recording of any kind by a Party, Witness, or Advisor is permitted during investigation meetings. The investigator(s) must first instruct Parties of intent to record an in-person investigation interview before starting the interview. Investigation interviews conducted in person will not be automatically recorded and are only likely to be recorded if a second investigator/note-taker is not available. The investigator will record all virtually conducted interviews.

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

As required by CFR 106.45, an investigator may not consider: 1) incidents not directly related to the possible violation unless they evidence a pattern; or 2) 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. Notice of Hearing (NOH)**

##### **a. Title IX Coordinator Notification to Hearing Officer and Parties**

After the investigation is completed and investigation report prepared, the Title IX Coordinator, or Deputy Title IX Coordinator, will send Notice of Hearing to the Parties.

Barring request for expedited timeline communicated in writing by all Parties, a hearing cannot be scheduled and cannot take place fewer than 10 calendar days from the date the final investigation report is transmitted to the parties and their Advisors.

The Title IX Coordinator, or a Deputy Title IX Coordinator, will select an appropriate Hearing Officer and Decision-maker from the Title IX Team, or external to the University, and will notify the Parties of the Hearing Officer at the time the Notice of Hearing is emailed to them.

Any objection to the assigned or selected Hearing Officer must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator within five business days of sending of the Notice of Hearing by the Title IX Coordinator. The Hearing Officer will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest may preclude an impartial hearing of the allegation(s) for either or both Parties.

The Title IX Coordinator will provide the Hearing Officer a list of the names of all Parties, Witnesses, and Advisors at least five business days in advance of the hearing so that the Hearing Officer will have the

option to decline to serve as Hearing Officer if they believe that it may not be possible to make an objective determination of responsibility.

Allegations involving student-employees for conduct alleged to have occurred in the context of their employment will be directed to the appropriate Hearing Officer depending on the context and nature of the alleged misconduct.

b. **Content of Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the Parties. Once emailed, notice is presumed delivered.

The notice will contain:

- Alleged conduct violations: 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;
- Date and location: the time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities;
- Technology: any technology that will be used to facilitate the hearing, and ability of the Parties to access the recording after the hearing;
- Separate rooms option: information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Officer and parties to see and hear a Party or Witness answering questions. Such a request must be emailed to the Title IX Coordinator at least five (5) calendar days prior to the hearing;
- Witness List: A list of all those who will attend the hearing, along with an invitation to object to the Hearing Officer on the basis of demonstrated bias. Such an objection must be emailed to the Title IX Coordinator at least two (2) calendar days prior to the hearing;
- Lack of availability: 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 Hearing Officer who may reschedule the hearing for compelling reasons.
- Advisor: Parties are notified that they must have an Advisor at the hearing and that if they do not have an Advisor or no longer have an Advisor, the University will obtain an advisor for them from the Title IX Team.
- Accommodations: Contact the Title IX Coordinator at least seven (7) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing.

**19. Role of Title IX Coordinator at Hearing**

The Title IX Coordinator, or a Deputy Title IX Coordinator not serving as investigator, may serve as an administrative facilitator of the hearing if the Parties agree that it does not pose a conflict of interest.

**20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. At both investigation and hearing stage, the Formal Resolution Process does not allow consideration of the

following: 1) incidents not directly related to the possible violation unless they evidence a pattern; or 2) 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.

The Parties may each submit a written impact statement to the Hearing Officer at the time of the hearing.

Previous University disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. Information regarding previous University disciplinary action of a student or employee is only considered at the sanction process and should not be shared before that time.

After the hearing, the Decision-maker prepares a written decision stating whether the Respondent violated the Policy as alleged by the Complainant and does so using the preponderance of evidence standard that requires that it is more likely than not that the Respondent violated one or more terms of this Policy.

### **21. Preparation for Hearing**

At least seven business days prior to the Hearing, the Hearing Officer, after any necessary consultation with the Parties, Investigator(s), and/or Title IX Coordinator, will provide the names of persons who will participate in the hearing as well as a list of all relevant documentary evidence and the final investigation report to the Parties.

Any Witness scheduled to participate in the hearing must first be interviewed by the Investigator(s). If the Parties and Hearing Officer do not agree to the admission of evidence newly offered at the hearing, the Hearing Officer will delay the hearing and require that reopening of the investigation.

After receiving the notice of hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence.

### **22. Pre-Hearing Meeting Requested by Hearing Officer**

- a. Reasons to request: The Hearing Officer may ask the Title IX Coordinator, or a Deputy Title IX Coordinator, to schedule a pre-hearing meeting with the Parties to invite them to submit questions or topics that the Parties or their Advisors may wish to ask, or have asked by the Hearing Officer, at the hearing. Additionally, the Title IX Coordinator, or a Deputy Title IX Coordinator, may schedule an in-person or virtual pre-hearing if the Title IX Coordinator anticipates that questions of evidentiary relevance may be resolved in advance of the Hearing.
- b. Determining relevance: If a pre-hearing meeting is scheduled by the Title IX Coordinator, the Hearing Officer 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 Hearing Officer 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.

- c. Who attends: In addition to the Parties and their Advisors, the Hearing Officer may request participation of either or both the Title IX Coordinator and University General Counsel.
- d. Recording: Pre-hearing meetings are recorded using audio and/or video.

### **23. Joint or Individual Hearings**

In hearings involving more than one Respondent, or more than one Complainant who has alleged that the Respondent(s) engaged in the same or substantially similar conduct, the Title IX Coordinator, or Deputy Title IX Coordinator, will determine whether allegations should be heard in one joint hearing or separate hearings.

The Title IX Coordinator, or Deputy Title IX Coordinator, may permit the Hearing pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. The Hearing Officer will make separate determinations of responsibility for each Respondent for each alleged policy violation.

### **24. Procedure for the Hearing itself: order of witnesses and evidentiary rulings**

The Hearing Officer explains the procedures and introduces the participants including the Investigator who will present and summarize the investigation report at the beginning of the hearing. The Investigator will present a summary of the final investigation reporting including contested and uncontested evidence and will be subjected to questioning by the Hearing Officer and the Parties through their Advisors regarding the investigation and investigation report. The investigator will remain present during the entire Hearing. Neither the parties nor the Hearing Officer should ask the Investigator for their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments.

The Hearing Officer will allow a Witness who has relevant information to appear at a portion of the hearing to respond to specific questions from the Hearing Officer before being excused.

At the hearing, the Hearing Officer has the authority to hear and make determinations on all allegations contained in the NOIA and NOH. The Hearing Officer may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the alleged Policy violations even though those collateral allegations may not specifically fall within the Policy.

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 Chair. The Parties and Witnesses will be questioned by the Decision-maker(s) and then by the Parties through their Advisors.

All questions are subject to a relevance determination by the Hearing Officer. The Advisor, who will remain seated during questioning, will pose the proposed question and the proceeding will pause to allow the Hearing Officer to consider it and determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may discuss relevance with the Advisors if the Hearing Officer would like to do so in determining whether a question is relevant. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious and irrelevant as a result, or abusive. The Hearing Officer has the final say on all questions and determinations of relevance subject to any appeal. The Hearing Officer may consult with University legal counsel on any questions of admissibility. The Hearing Officer may also ask Advisors to frame why a question is or is not relevant from their perspective but will not engage in discussion from the Advisors on relevance once the Chair has ruled on a question.

If any Party raises an issue of bias or conflict of interest on the part of the Investigator or Hearing Officer, the Chair may elect to address those issues by consulting with legal counsel or referring them to the Title IX Coordinator or preserve them for appeal. If bias is not raised as an issue at the hearing, the Hearing Officer should not permit irrelevant questions that probe for bias.

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

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 at the hearing.

If alleged policy violations other than sexual harassment are considered at the same hearing, the Hearing Officer 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.

#### **26. Recording Hearings**

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

The Hearing Officer, the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording but not record it as determined by the Title IX Coordinator. No

person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **27. Finding, Final Determination and Standard of Proof**

The Hearing Officer and Decision-maker will determine whether the Respondent is responsible, or not responsible, for the policy violation(s) in question using preponderance of evidence as the standard of proof.

When there is a Finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider any previously submitted impact statements by either Party in determining appropriate sanction(s). The Hearing Officer and Decision-maker will ensure that each of the Parties has an opportunity to review any impact statement submitted by the other Party. The Decision-maker(s) may consider impact statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate University administrator and will determine the appropriate sanctions after consultation with other appropriate University administrators including the Dean of Students; Provost and Vice-President for Academic Affairs; and/or Human Resources Associate Vice President.

The Hearing Officer will then prepare a written deliberation statement typically not exceeding three (3) to five (5) pages in length and email it to the Title IX Coordinator within three (3) to five (5) business days of conclusion of the hearing detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and sanctions if a finding of responsibility has been made.

### **28. Notice of Outcome**

The Title IX Coordinator, or Deputy Title IX Coordinator, will work with the Hearing Officer to prepare a Notice of Outcome based on the Deliberation Statement which the Title IX Coordinator will email simultaneously to the Parties within three (3) to five (5) business days of receiving the Hearing Officer's Deliberation Statement. The Notice of Outcome will include the final determination, rationale, and any applicable sanction(s). It will also provide statement of grounds for appeal and time within which an appeal may be sought by either Party.

### **29. Sanctions**

Factors considered when determining a sanction may include but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history, if any;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the conduct;
- The need for sanctions/responsive actions to prevent future recurrence;
- The need to remedy the effects of the discrimination;
- The impact on the Parties;
- Any other information deemed relevant by the Decision-maker(s)

Sanctions are implemented as soon as feasible and upon expiration of time within which appeal may be sought or upon the outcome of an appeal granted and decided by the Appeals Officer.

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.

### **Student Sanctions**

Sanctions that may be imposed upon students or organizations singly or in combination may include but

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at University.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events.
- *Withholding Diploma*: The University may withhold a student's diploma or degree for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **30. Withdrawal or Resignation During Formal Resolution Process**

If a Respondent withdraws from the University before the Formal Resolution Process has been concluded, a notice will be sent to the student stating that he or she is alleged to have violated University policy, that the resolution process will continue. A letter will also be sent to the University Registrar, and also to the registrar or academic dean of the school/college in which the student was enrolled indicating that such proceedings are pending. If the student attempts to re-enroll before the matter is resolved, the Registrar will notify the Title IX Coordinator or a Deputy Title IX Coordinator. The matter must be fully resolved before the student may re-enroll at the University.

### **31. Appeals**

Any Party may file a request for appeal in writing and email it to the Title IX Coordinator within seven (7) business days of delivery of the Notice of Outcome. The Title IX Coordinator, or Deputy Title IX Coordinator, will forward Request for Appeal to the Appeal Chair for the University campus where the student or employee is enrolled, or principally work, if the request meets the grounds for appeal.

#### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; and
- C. 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.

The Appeals Officer will deny any other grounds for appeal and will notify the Parties and their Advisors in writing of the denial and the rationale.

If any of the grounds contained in the Request for Appeal meet the criteria listed in A., B., and/or C. above, the Appeal Chair will notify Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer of *Appeals Officer Decision Granting Request and Grounds for Appeal*. Similarly, if none of the grounds contained in the Request for Appeal meet the criteria listed in A., B., and/or C. above, the Appeal Chair will notify Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer of *Appeals Officer Decision Denying Request and Ground for Appeal*.

When grounds for an appeal are granted, The Appeals Officer will send the other Party and their Advisor, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) determination of any approved ground(s) for appeal. If the appeal involves the Title IX Coordinator, Investigator, or Hearing Officer, as necessary, any or each will submit their written responses to the Appeals Officer within seven (7) business days concerning the portion of the appeal that was approved and involves them.

The non-appealing Party (if any) may also choose to raise a new ground for appeal at this time which will be reviewed to determine if it meets one of the grounds in this Policy. If approved, the appeal will be forwarded to the Party who initially requested an appeal, the Investigator(s) and/or original Hearing Officer, as necessary, and any or each will submit their written responses to the Appeals Officer within seven (7) business days who will then circulate them for review and comment by all Parties.

Neither Party may submit any new requests for appeal after this time period. The Appeals Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven (7) business days barring exigent circumstances. The decision of the Appeals Officer is based on preponderance of the evidence.

A Notice of Appeal Outcome will be emailed simultaneously to all Parties and will provide reason for each approved ground for appeal 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.

#### **b. Sanctions 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.

#### **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) 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, or Deputy Title IX Coordinator, on questions of procedure or rationale for clarification 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 and further appeals are not permitted
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s), the Appeals Officer may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed once on any of the three available 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.

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

Following the conclusion of the Formal Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual or gender-based harassment or discrimination of a member of a protected class, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services for students;
- Referral to the Employee Assistance Program for employees;
- 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 and course schedules.

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

### **33. Failure to Comply with Sanctions and/or Long-term Remedies**

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) or 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.

### **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 Assistant Director of Student Disability & Accessibility Support Services, who will then 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 Resolution Process.

### **35. Recordkeeping**

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

- a. Each investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;

- c. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- d. Any appeal and the result;
- e. Any Informal Resolution and the result of the Informal Resolution
- f. 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.
- g. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual or gender-based harassment or discrimination against a member of a protected class including:
  - i. The basis for all conclusions that the response was not deliberately indifferent;
  - j. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - k. 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.

### **36. Training**

The University will provide appropriate training to University officials with responsibilities under this policy, including the Title IX Coordinator and Deputy Title IX Coordinators, Investigators, Hearing Officers, and Appeals Officers and any individual who facilitates the informal resolution process. Such training will cover the definition of Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and resolution process including hearings, appeals, and informal resolution processes under this policy, as applicable, and how to serve impartially, including by avoiding conflicts of interest and bias. The University will ensure that Hearing Officers receive training on any technology to be used at a hearing and on issues of relevance of questions and evidence, including questions and evidence about the irrelevancy of complainant's sexual predisposition or prior sexual behavior. The University will ensure that Investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant evidence. Training materials will be available on the Office of Title IX webpage and will be made available for in-person review upon request.

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

This policy and resolution procedures supersede any previous policies under Title IX. This Policy 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.

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 and 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 policy and its procedures 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 Federal and State of Michigan laws which frame such policies and codes generally.

This policy and its procedures are effective August 14, 2020.

Updated October 13, 2020.