

**UNIVERSITY OF BRIDGEPORT
POLICY ON DISCRIMINATION, HARASSMENT,
SEXUAL MISCONDUCT, AND RETALIATION**

I. Non-discrimination statement

The University of Bridgeport (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. Consistent with the University’s commitment to equal opportunity and non-discrimination, and in compliance with federal and state civil rights laws and regulations, the University strictly prohibits discrimination and harassment. Prohibited conduct includes discrimination and harassment based on race, color, sex, pregnancy, religion, creed, ethnicity, national origin, disability, age, sexual orientation, gender identity, veteran or military status, predisposing genetic characteristics, victim status¹ or any other protected category under applicable local, state or federal law. Prohibited conduct also includes retaliation against a person for the good faith reporting of these forms of conduct or participation in an investigation or proceeding under this Policy.

Any member of the campus community who acts to deny, deprive or limit the educational, employment, residential, or social access, benefits, or opportunities of any member of the campus community, including guests or visitors, based on their protected class, is subject to sanctions under this Policy. Upon notice, the University will appropriately address and remedy all allegations per the resolution procedures described herein. Vendors, guests, visitors, and other non-campus members who engage in discriminatory actions within University of Bridgeport programs, activities, or on University of Bridgeport property are not subject to the Grievance Processes under this Policy. However, they may be subject to actions that limit their access and involvement with UB programs as the result of such misconduct.

The University is committed to stopping, preventing, and remedying discrimination, harassment, sexual misconduct, and retaliation and addressing any violations of this Policy. Accordingly, the University has created two grievance processes to accomplish this task; the **Title IX Grievance² Process** and the **Discrimination, Harassment, Sexual Misconduct, and Retaliation (DHSMR) Grievance Process**. The Title IX Grievance Process is designed to address conduct that falls under the Title IX Regulation’s definition of sexual harassment. In contrast, the **DHSMR Grievance Process** provides a process for the resolution of all complaints of violations of this Policy that fall outside Title IX covered conduct. For more on the Grievance Processes, see below.

¹ The University prohibits discrimination based on an individual’s status as a victim of domestic violence, stalking, or sex offenses.

² Title IX is a federal civil rights law that protects individuals from discrimination based on sex.

II. Policy rationale

The University adopts these policies and procedures in furtherance of:

- A. preventing, eliminating and addressing discrimination, harassment, sexual misconduct, retaliation, and other civil rights offenses;
- B. fostering a climate where all individuals are well-informed and supported in preventing and reporting discrimination, harassment, sexual misconduct, retaliation, and other civil rights offenses; and
- C. providing clear standards and a fair, prompt, and impartial process for all parties by which violations of this Policy will be addressed.

The University will take prompt and effective action to eliminate discrimination, harassment, sexual misconduct, retaliation, and other civil rights offenses; prevent their reoccurrence, and remedy their effects.

III. Scope

The purpose of this Policy is the prohibition of all forms of discrimination, including but not limited to: exclusion from, or limitation of equal access to, activities such as admission, athletics, or employment based on a protected status, and sex-based discrimination encompassing sexual harassment, sexual assault, stalking, sexual exploitation, dating or domestic violence, and other civil rights offenses. This Policy applies to all academic and administrative units of the University, and all members of the University community, including students, staff, faculty, visitors, contractors, applicants for admission to or employment with the University, and participants in the University's programs or activities. In accordance with federal, state, and local laws, the grievance process may differ depending on the type of discrimination alleged. See the grievance processes below for more information.

IV. Jurisdiction

For a full statement of the University's jurisdiction over students with respect to this Policy, see Key to UB, Chapter 5, "Jurisdiction," which is fully incorporated by reference herein. The University's jurisdiction over employees extends to any acts committed within the workplace or which negatively impact students, other employees, or the working or educational environment.

The University will address notice and complaints to determine whether the alleged conduct occurred in the context of its employment or educational program or activity, has continuing effects on campus, occurred in an off-campus sponsored program or activity, or affects a substantial University interest. A substantial University interest includes, but is not limited to: actions that constitute a criminal offense as defined by law; situations in which it is determined that the Respondent poses an immediate threat to the physical health or safety of a member of the University community; and situations that are detrimental to the educational interests or mission of the University.

While the University may not control the websites, social media platforms, and other venues in which harassing communications are made, it will address and attempt to mitigate the effects of discriminatory, harassing, or retaliatory communications. Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and anonymity of the Internet or other technology to harm another member of the University community.

V. Revocation by Operation of Law

If any portion of the Final Title IX Rule³ is stayed or held invalid by a court of law, or if the Final Title IX Rule is withdrawn or modified not to require elements of this Policy, the invalidated portions will be revoked or modified as required, as of the publication date of the opinion or order. If the Title IX Grievance Process is revoked, any conduct covered under that Process will be investigated and adjudicated under the DHSMR Grievance Process, described below.

VI. Definitions:

For purposes of this Policy, words and phrases used in this Policy are listed below.

- **Advisor:** a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, advise the party on the resolution process, and conduct cross-examination for the party at Title IX hearings, if any. The Advisor may also be an advocate chosen by the party to offer emotional support, information, and resources.
- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Confidential Resource:** an employee who is not an Official with Authority or a Mandated Reporter of notice of harassment, discrimination, and retaliation. Confidential Resources at the University are:
 - Counseling Services, (Student)
Carstensen Hall, University of Bridgeport 174 University Avenue Bridgeport, CT 06604 Phone: (203) 576-4454; Fax: (203) 576-4794; Email: counselingservices@bridgeport.edu
 - Health Services, (Student)
60 Lafayette Street, Room 119 Bridgeport, CT 06604 Phone: (203) 576-4712; Fax: (203) 576-4715; Email: healthservices@bridgeport.edu
 - Employee Assistance Program (EAP), (Faculty and Staff)

³ See 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

<https://www.theeap.com/higher-education-eap>
(800) 252-4555

- The Center for Family Justice, (Students, Faculty, and Staff)
753 Fairfield Ave, Bridgeport, CT 06604; Phone: (203) 334-6154; Domestic Abuse Hotline (203) 384-9559; Sexual Assault Hotline: (203) 333-2233
- **Day:** a calendar day
- **Discrimination:** actions based on a protected class that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.
- **Discriminatory harassment:** unwelcome conduct by any member or group of the University community against a member of the University community based on that member's actual or perceived membership in a class protected by policy or law.
- **Education program or activity:** locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- **Final Determination:** The decision-makers' written determination regarding responsibility based on a preponderance of the evidence. The determination shall include:
 - An identification of allegations,
 - A description of procedural steps,
 - Findings of facts,
 - An application of the Policy to the facts,
 - A determination of responsibility and the decision-makers' rationale,
 - Disciplinary sanctions and remedies, and
 - Procedures and bases for appeal.
- **Finding:** a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- **Formal Complaint:** a document filed by a Complainant⁴ or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class against a Respondent or alleging retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- **Formal Grievance Process:** A method of formal resolution designated by the University to address allegations of discrimination, harassment, sexual misconduct, and retaliation.

⁴ "Document filed by a complainant" refers to a document or electronic submission (such as an email or through an online portal provided for this purpose by the University) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the Formal Complaint.

- **Formal Title IX Grievance Process:** A method of formal resolution designated by the University to address conduct that falls within the policies included below and that complies with the requirements of 34 CFR §106.45.
- **Grievance Process Pool:** A pool of internal and/or external investigators, decision-makers, appeal officers, and advisors, who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Hearing Officer:** refers to a person who has decision-making and sanctioning authority within the University’s Formal Grievance processes.
- **Informal Resolution:** A process employed after the filing of a Formal Complaint with the written voluntary consent of the parties. An Informal Resolution does not involve a full investigation and adjudication of the complaint. This process may include mediation and other forms of alternative conflict resolution.
- **Investigator:** the person charged by the University with: gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Mandated Reporter:** an employee of the University who is obligated under this Policy to share knowledge, notice, and reports of discrimination, harassment, sexual misconduct, and retaliation with the Title IX Coordinator [and their supervisor].⁵
- **Notice:** information received by the Title IX Coordinator or other Official with Authority of the alleged occurrence of discrimination, harassment, sexual misconduct, or retaliation.
- **Official with Authority (OWA):** an employee of the University explicitly vested, under this Policy, with the responsibility to implement corrective measures for discrimination, harassment, sexual misconduct, or retaliation on behalf of the University.
- **Parties:** the Complainant(s) and Respondent(s), collectively.
- **Protected Class:** Individuals legally protected from discrimination due to their race, color, sex, pregnancy, religion, creed, ethnicity, national origin, disability, age, sexual orientation, gender identity, veteran or military status, predisposing genetic characteristics, domestic victim status or any other protected category under applicable local, state or federal law.
- **Remedies:** post-determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University’s educational program.
- **Respondent:** an individual reported to be the perpetrator of conduct that could constitute discrimination, harassment, sexual misconduct, or retaliation.
- **Resolution:** the result of an informal or formal grievance process.

⁵ Mandated Reporter, as defined here, is distinguished from the term described in CGS § 17a-101, requiring professionals who regularly work with children to report child abuse or neglect.

- **Sanction:** a consequence imposed by the University on a Respondent who is found to have violated this Policy.
- **Sexual Harassment:** an umbrella category including, but not limited to, the offenses of sexual harassment, sexual assault, stalking, and dating violence, and domestic violence as defined by the U.S. Department of Education’s Final Rule under Title IX of the Education Amendments of 1972.
- **Title IX:** Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs and activities that receive federal financial assistance.
- **Title IX Coordinator:** an official designated by the University to ensure compliance with Title IX and the University’s Title IX program. References to the Coordinator throughout this Policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Covered Conduct:** Discrimination and Sexual Harassment as defined in the U.S. Department of Education’s Final Rule under Title IX of the Education Amendments of 1972⁶
- **Title IX Team:** the Title IX Coordinator, deputy coordinators, and any member of the Grievance Process Pool.

VII. Disability and Accommodation

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

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA protects individuals who have a record of a substantially limiting impairment. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Kim Pacelli (kpacelli@bridgeport.edu) has been designated as the University’s ADA and 504 Coordinator on an interim basis and is responsible for responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed under the DHSMR Grievance Process below.

⁶ See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

A. Students with Disabilities

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

All accommodations are made on an individualized basis. A student requesting any accommodation on the basis of a disability should contact Student Accessibility Services with any questions or concerns at (203) 576-4454 or accessibilityservices@bridgeport.edu.

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

B. Employees with Disabilities

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

An employee with a disability is responsible for submitting a request for accommodation, along with the necessary documentation, to the Human Resources Director. The Human Resources Director will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties. The Human Resources Director, Cheryl Nyarady, may be reached via email at cnyarady@bridgeport.edu or via phone at (203) 576-4731.

VIII. Prohibited Conduct

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

A. Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an educational and employment environment free of discriminatory harassment. Discriminatory

harassment, defined above, is prohibited by University 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.

When discriminatory harassment rises to the level of creating a hostile environment⁷, the University may impose sanctions on the Respondent through the application of the appropriate grievance process below.

The University reserves the right to address offensive conduct or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Such conduct may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, or other Informal Resolution mechanisms. For assistance with Informal Resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Dean of Students.

B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Connecticut regard Sexual Harassment as an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

In this Policy, Sexual Harassment, as an umbrella category, includes Title IX Covered Sexual Harassment as defined by the Final Title IX Rule as well as Sexual Harassment that falls outside the Final Title IX Rule.

⁷ 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.

1. Title IX Covered Sexual Harassment

- a) *Quid Pro Quo*:
 - (1) an employee of the University,
 - (2) conditions the provision of an aid, benefit, or service of the University,
 - (3) on an individual's participation in unwelcome sexual conduct; and/or
- a) *Sexual Harassment*⁸:
 - (1) unwelcome conduct,
 - (2) determined by a reasonable person,
 - (3) to be so severe, and
 - (4) pervasive, and,
 - (5) objectively offensive,
 - (6) that it effectively denies a person equal access to the University's education program or activity.
- c) *Sexual assault, defined as*:
 - (1) Sex Offenses, Forcible:
 - (a) Any sexual act directed against another person,
 - (b) without the consent of the Complainant,
 - (c) including instances in which the Complainant is incapable of giving consent.
 - (2) Forcible Rape:
 - (a) Penetration,
 - (b) no matter how slight,
 - (c) of the vagina or anus with any body part or object, or
 - (d) oral penetration by a sex organ of another person,
 - (a) without the consent of the Complainant.

⁸ Note: There is a distinction between Title IX Covered Sexual Harassment and Sexual Harassment that falls outside of Title IX. Title IX Covered Sexual Harassment is defined, in part, as unwelcome conduct, determined by a reasonable person, to be severe **and** pervasive **and** objectively offensive. The University's standard for addressing Sexual Harassment complaints that fall outside of Title IX, is whether the conduct is severe **or** pervasive enough to create an abusive or hostile work environment. Non-Title IX Sexual Harassment is discussed more thoroughly in the DHSMR Grievance Process below.

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

(ii) with a person who is under the statutory age of consent of 16.

d) *Dating Violence, defined as:*

- (1) violence,
- (2) on the basis of sex,
- (3) committed by a person
- (4) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - 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—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

e) *Domestic Violence, defined as:*

- (1) Violence
- (2) On the basis of sex,
- (3) Committed by a current or former spouse or intimate partner of the Complainant,
- (4) By a person with whom the Complainant shares a child in common, or
- (5) By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- (6) By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Connecticut, or
- (7) By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state of Connecticut.

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

f) *Stalking, defined as:*

- (1) engaging in a course of conduct,⁹
- (2) on the basis of sex,
- (3) directed at a specific person, that
 - (a) would cause a reasonable person¹⁰ to fear for the person's safety, or
 - (b) the safety of others; or
 - (c) suffer substantial emotional distress.¹¹

2. Sexual Harassment Other than Title IX Covered Conduct

The standard for evaluating an alleged violation of sexual harassment when the conduct falls outside of Title IX Covered Sexual Harassment will be as follows:

- a) *Includes verbal or physical conduct,*
- b) *of a sexual nature,*
- c) *either Quid Pro Quo and Hostile Environment Harassment.*
 - (1) Quid Pro Quo Harassment
 - (a) harassment by a person who has power or authority over another,
 - (b) explicitly or implicitly request to submit to sexual conduct,
 - (c) submission to such conduct is made a term or condition of a person's academic standing or employment or receiving any other benefit or privilege to which the person is entitled.
 - (2) Hostile Environment Harassment
 - (a) unwelcome conduct,
 - (b) determined by a reasonable person,
 - (c) to be so severe, or
 - (d) pervasive, and
 - (e) objectively offensive,
 - (f) that it effectively denies a person equal access to the University's education program or activity.

⁹ For purposes of this definition, 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.

¹⁰ For purposes of this definition, Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

¹¹ For purposes of this definition, Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

3. Consensual Relationships between employees and students

Consistent with the University's commitment to comply with the spirit of these laws, all employees must avoid and refrain from romantic or sexual relationships, even if consensual, with students whom they teach, advise or supervise (or whom they may teach or supervise in the future). The relationship between teacher, Advisor, or mentor and student must be protected from influences or activities that can interfere with learning and personal development. In addition to creating the potential for coercion, any such relationship jeopardizes the integrity of the educational process by creating an actual or potential conflict of interest and may impair the educational environment for other students. Employees or students with questions about this policy are advised to consult with the University's Title IX Coordinator.

II. Concepts and definitions applicable to Title IX and Non-Title IX covered conduct

a) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

b) Coercion

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

c) Consent

Consent is:

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

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

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

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

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

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

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

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

d) Incapacitation

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason. This policy covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs.

C. Other Civil Rights Offenses

In addition to the Harassment described above, this Policy prohibits the following

offenses when the conduct is based upon the Complainant's actual or perceived membership in a protected class.¹² Alleged violations that fall under this section will be resolved under the University's DHSMR Grievance Process, described below.

1. Sexual Exploitation, defined as:

Taking non-consensual or abusive sexual advantage of another for one's 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:

- a) *Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)*
- b) *Invasion of sexual privacy*
- c) *Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent, including the making or posting of revenge pornography*
- d) *Prostituting another person*
- e) *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*
- f) *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*
- g) *Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections*
- h) *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*
- i) *Knowingly soliciting a minor for sexual activity*
- j) *Engaging in sex trafficking*
- k) *Creation, possession, or dissemination of child pornography*

¹² Conduct not based upon actual or perceived membership in a protected class may be adjudicated under the University's Code of Conduct.

2. 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;
3. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
4. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
5. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
6. Bullying, defined as:
 - a) *Repeated and/or severe*
 - b) *Aggressive behavior*
 - c) *Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally*
 - d) *That is not speech or conduct otherwise protected by the First Amendment.*

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

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

D. Retaliation

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

It is prohibited for any member of the University's community to take materially

adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

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

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

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation.

IX. Reporting, Responsibilities, and Options

A. Filing a Complaint

1. Notice or complaints of discrimination, harassment, and retaliation may be made using any of the following options:

- a) *File a complaint with, or give verbal notice to, the Title IX Coordinator, Deputy Title IX Coordinators, or Officials with Authority listed above. Such a report may be made by anyone at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office address listed above.*
- b) *Report online, using the reporting form linked [here](#). While anonymous reports are accepted, the University's ability to investigate or respond may be limited. Additionally, the University endeavors to provide supportive measures to Complainants and may be limited in its ability to do so when a report is anonymous. Finally, an anonymous report may result in an investigation that reveals the identity of the reporter.*

Reporting carries no obligation to initiate a formal response. The University respects Complainants' requests to dismiss complaints where there is no compelling threat to health or safety. Barring a threat to health or safety, the Complainant maintains autonomy and should not fear a loss of privacy by making a report that allows the University to discuss and provide supportive measures.

Report to any non-confidential employee. All non-confidential employees are Mandated Reporters and required to report discrimination, harassment, or retaliation to the Title IX Coordinator.

2. Formal Complaint

A Formal Complaint is a document that alleges a policy violation by a Respondent and requests that the University investigate the allegation(s). The document must be filed and signed by the Complainant or may be signed by the Title IX Coordinator. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature.

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

a) *The Title IX Coordinator May Sign the Complaint*

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so and may sign a Formal Complaint to initiate a grievance process when there is a compelling risk to health or safety that requires the University to pursue formal action to protect the community. A compelling risk to health or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

The Title IX Coordinator does not become the Complainant when they execute a Formal Complaint. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

3. Promptness

The University will promptly address all allegations upon receipt of notice or Formal Complaint. Resolution of complaints will not exceed ninety (90) calendar days; however, the time frame may be extended for good cause, including, but not limited to, requests by external law enforcement to delay, unavailability of key witnesses, and University break periods. The Title IX Coordinator will notify the Parties in writing of any extension, the reason for the extension, and an estimate of the additional time needed to resolve the matter.

4. Privacy and Confidentiality

Every effort is made by the University to preserve the privacy of reports. The University will only share information related to allegations of prohibited conduct with University employees who require the information for the purpose of assessment, investigation, and resolution of the report.

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

5. Amnesty

The University encourages the reporting of misconduct and crimes and maintains a policy of offering parties and witnesses amnesty from minor policy violations related to the incident. Amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution. The University may, at its discretion, provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

6. Time Limits on Reporting

There is no time limit on providing notice or complaints of discrimination, harassment, or retaliation to the Title IX Coordinator. If the Respondent is no longer subject to the University's jurisdiction or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or impossible. The University will provide appropriate supportive measures.

7. False Allegations

Deliberately false or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a

serious offense and will be subject to appropriate disciplinary action.

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

B. Mandated Reporting¹³

All employees, except confidential employees and student workers, are deemed “Mandated Reporters.” Mandated Reporters must notify the Title IX Coordinator, immediately, of any knowledge they have that a member of the community is experiencing discrimination, harassment, sexual misconduct, or retaliation.

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

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

Failure of a Mandated Reporter, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action.

Mandated Reporters are encouraged to report their own misconduct as well as misconduct perpetrated against them.

On campus, confidential resources, listed below, are not considered Mandated Reporters. They maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

Complainants who expect formal action in response to their allegations should report to any Mandated Reporter. The Mandated Reporter will immediately notify the Title IX Coordinator who will share resources, rights, and options.

Generally, disclosures in climate surveys and at campus events such as “Take

¹³ Mandated Reporter, as defined here, is distinguished from the term described in CGS § 17a-101, requiring professionals who regularly work with children to report child abuse or neglect.

Back the Night” marches, speak-outs, and Sexual Assault Awareness Month Programs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates a desire to report or seeks a specific response from the University.

1. Clery Reporting Obligations and Timely Warnings

The University has a duty to report various forms of sexual misconduct and gender-based violence in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). No personally identifiable information is disclosed, but statistical information, including date, location, and crime category, is disclosed as part of the University’s annual Campus Security Policy & Campus Crime Statistics Report.

Parties reporting sexual assault, domestic violence, dating violence, 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.

C. Confidential Resources

Confidential Resources are UB employees who are not mandated to report notice of discrimination, harassment, sexual misconduct, and retaliation. Confidential resources maintain confidentiality when acting under the scope of their licensure, professional ethics, and professional credentials, except in extreme cases of immediate threat, danger, or abuse to a minor, elder, or individual with a disability, or when required to disclose by law or court order.

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

Confidential Resources at the University are:

- Counseling Services, (Student)
Carstensen Hall, University of Bridgeport 174 University Avenue
Bridgeport, CT 06604 Phone: (203) 576-4454; Fax: (203) 576-4794;

Email: counselingservices@bridgeport.edu

- Health Services, (Student)
60 Lafayette Street, Room 119 Bridgeport, CT 06604 Phone: (203) 576-4712; Fax: (203) 576-4715; Email: healthservices@bridgeport.edu
- Employee Assistance Program (EAP), (Faculty and Staff)
<https://www.theeap.com/higher-education-eap>
(800) 252-4555
- The Center for Family Justice, (Students, Faculty, and Staff)
753 Fairfield Ave, Bridgeport, CT 06604; Phone: (203) 334-6154;
Domestic Abuse Hotline (203) 384-9559; Sexual Assault Hotline: (203) 333-2233

X. Non-Confidential Resources

- A. Complaints or notice of alleged policy violations, or inquiries about this Policy, may be made to:

Kim Pacelli

Interim Title IX Coordinator

Office of Title IX Compliance and Equity

University of Bridgeport

Carstensen Hall, Room 115

174 University Avenue

Bridgeport, CT 06604

Office: (203) 576-4454

Fax: (203) 576-4794

Email: titleix@bridgeport.edu or kpacelli@bridgeport.edu

Website: <https://www.bridgeport.edu/student-life/title-ix>

Administrators in the following roles are Officials with Authority (OWA) to institute corrective measures on behalf of the University. In addition to the Title IX Coordinator and Deputies listed above, an OWA, and other members of the President's cabinet, may also accept notice or complaints of discrimination, harassment, sexual misconduct, and retaliation on behalf of the University:

- President, (203) 576-4665
- Provost and Vice President for Academic Affairs, (203) 576-4234
- Vice President and Chief Administrative Officer, (203) 576-4665
- Vice President of Athletics, (203) 576-4000
- Dean of the College of Engineering, Business, and Education, (203) 576-4703

- Dean of the College of Health Sciences, (203) 576-4546
- Dean of the College of Arts and Sciences, (203) 576-4135
- Assistant Provost, (203) 576-4183
- Dean of Students, (203) 576-4273
- Chief Operating Officer, (203) 576-4792
- Director of Housing and Residential Life, (203) 576-4227
- Director of Campus Security, (203) 576-4911

B. Title IX Coordinator

The University's Title IX Coordinator oversees the University's Policy on Discrimination, Harassment, Sexual Misconduct, and Retaliation. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent conduct prohibited under this Policy.

1. Independence and Conflict-of-Interest

The Title IX Coordinator acts with independence, and is free from bias and conflicts of interest. The Title IX Coordinator oversees the grievance processes under this Policy and manages the Title IX team. The Title IX team may include deputy Title IX Coordinators and members of the Title IX Grievance Process Pool, which comprises faculty and staff members who may be called upon to serve in the role of Advisors and Hearing Officers during grievance hearings. 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 or Respondents, generally.

Concerns of bias, conflict of interest, or misconduct on the part of the Title IX Coordinator, should be directed to the University President at president@bridgeport.edu. Concerns of bias, a potential conflict of interest, or misconduct by any other Title IX Team member should be raised with the Title IX Coordinator.

C. Supportive Measures

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged discrimination, harassment, sexual misconduct, or retaliation. Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate and as reasonably available. They are without fee or charge to the parties and are provided to restore or preserve access to the University's education program or activity. Supportive

measures are designed to protect the safety of the parties and the University's educational environment and to deter harassment, discrimination, and retaliation.

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

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

Supportive Measures include, but are not limited to:

- Referral to counseling, medical, or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course or program-related adjustments
- Trespass, Persona Non-Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

D. Emergency Removal

The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the CARE Team using its standard objective violence risk assessment procedures.

In all cases of emergency removal, the Respondent will be given notice including a written summary of the basis for the emergency removal and the opportunity to challenge the removal decision within three (3) days of that notice. In the event of a challenge to the removal decision, a meeting will be arranged by the Title IX Coordinator. The Respondent may be accompanied by an Advisor of their choice at this meeting, and a Complainant and their Advisor may be permitted to participate if the Title IX Coordinator determines it is equitable to do so. The purpose of this meeting is to allow the Respondent to show why the Respondent should not be removed; this meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. Meetings that are not requested within three (3) days of notice of removal are deemed waived. Beyond the opportunity to challenge the removal actions described here, there is no appeal process for emergency removal decisions.

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

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily reassigning an employee with their consent, restricting a student's or employee's access to, or use of, facilities or equipment, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to reduce negative academic impacts on the parties.

X. PREVENTION AND AWARENESS OF SEXUAL ASSAULT, OTHER FORMS OF

VIOLENCE AND HATE CRIMES

All members of the University community play a role in fostering an environment free of unlawful discrimination. The University community is encouraged to take reasonable and prudent actions to prevent and respond to sexual assault, intimate partner violence, and misconduct based upon gender, gender identity or expression, race, ethnicity, and other discriminatory bases.

The University engages in ongoing prevention and awareness campaigns for students, faculty, and staff. The University's Sexual Assault Response and Prevention Team (SARPT) works to provide the campus community with a collaborative and trauma-informed response to sexual assault and other forms of gender-based violence. SARPT members coordinate resources available to survivors and offer individualized support as needed.

The University's Campus Resource Team (CRT) is a broader community coalition that includes members of the UB community, the Center for Family Justice, local police, and prosecutors. The Team meets twice per year to review the University's sexual assault policies and to coordinate the resources available to Complainants and Respondents on and off campus.

Educational programs and workshops to promote awareness about various types of sexual misconduct and related issues are coordinated by the Title IX Coordinator, the Dean of Students, Residential Life, and Human Resources. Programs include, but are not limited to, new student and employee courses on sexual assault prevention, bystander intervention, annual faculty and staff sexual harassment training, and campus-wide awareness events such as the "One Love Escalation Workshop series" and "Take Back the Night."

- XI. Concerns about the University's application of Title IX, Title VII, VAWA or other non-discrimination statutes may also be addressed to:

The Connecticut Commission on Human Rights and Opportunities (CT CHRO)
450 Columbus Boulevard
Hartford, CT 06103-1835
Phone: 860-541-3400
Connecticut Toll Free: 1-800-477-5737
TDD: 860-541-3400
Fax: 860-241-4869

The Equal Employment Opportunity Commission (EEOC)
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203

Phone: (800) 669-4000
Fax: (617) 565-3196
TTY: (800) 669-6820
Web: <https://www.eeoc.gov/>

The Office for Civil Rights (OCR)
U.S. Department of Education
8th Floor, Five Post Office Square
Boston, MA 02109-3921
Customer Service Hotline #: (617) 289-0111
Fax: (617) 289-0150
TDD: (800) 877-8339
Email: ocr.boston@ed.gov
Web: <http://www.ed.gov/ocr>

GRIEVANCE PROCESSES FOR VIOLATION OF THE UNIVERSITY'S POLICY ON DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT AND RETALIATION

TITLE IX GRIEVANCE PROCESS AND DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, AND RETALIATION (DHSMR) GRIEVANCE PROCESS

I. INTRODUCTION: THE UNIVERSITY'S TWO-PROCESS SYSTEM

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

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 (hereafter, the "Final TIX Rule" or "Final Rule"), that:

- Defines the meaning of "sexual harassment"
- Addresses how this University must respond to reports of conduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this University must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.¹⁴

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

The University remains committed to addressing any violations of its policies, even those that do not meet the narrow standards defined under the Final Title IX Rule. Accordingly, in addition to the **Title IX Grievance Process**, prescribed by the U.S. Department of Education, the University has provided a **Discrimination, Harassment, Sexual**

¹⁴ See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Misconduct, and Retaliation (DHSMR) Grievance Process. The **DHSMR Grievance Process** provides a process for the resolution of complaints of violations of the University’s Policy on Discrimination, Harassment, Sexual Misconduct, and Retaliation that fall outside Title IX covered conduct.¹⁵

During the Title IX Grievance Process, the University retains the right to initiate a separate grievance proceeding, under its DHSMR Grievance Process, for misconduct that it discovers falls outside of Title IX covered conduct.

The elements established in the Title IX Grievance Process under the Final Rule do not affect and are not transferable to any other process of the University except as narrowly defined in this process. This process does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process.

Effective Date

The Title IX Grievance Process became effective on August 14, 2020, and applies to Formal Complaints brought on or after that date.

Non-Discrimination in Application

The requirements and protections of these processes apply equally regardless of sex, sexual orientation, gender identity, race, color, religion, disability, age, or other protected classes covered by federal or state law. Additionally, all requirements and protections are equitably provided to individuals regardless of status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the University’s policy or process may contact the Department of Education’s Office for Civil Rights at <https://ocrcas.ed.gov/contact-ocr>, the Equal Employment Opportunity Commission at <https://www.eeoc.gov/>, or the Connecticut Commission on Human Rights and Opportunities at <https://portal.ct.gov/CHRO>.

Unionized Employees

Unionized or other categorized employees will be subject to the terms of their respective collective bargaining agreements to the extent those agreements do not conflict with federal or state compliance obligations.

¹⁵ Title IX Covered Conduct is discrimination and sexual harassment as defined in the U.S. Department of Education’s Final Rule under Title IX of the Education Amendments of 1972.

II. TITLE IX GRIEVANCE PROCESS

A. Filing a Formal Complaint

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

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator with a written, signed complaint describing the facts alleged. A Formal Complaint includes a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature.

Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee. For Complainants who do not meet these criteria, the University will utilize its DHSMR Grievance Process.

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

Nothing in the University's Policy or Process prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the University's Informal Resolution Process, described below.

B. Multi-Party Situations

The University may consolidate Formal Complaints alleging Title IX Covered Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Covered Conduct arise out of the same facts or circumstances.

C. Threat Assessment

The Title IX Coordinator will consult, as appropriate, with Campus Security and other

campus administrators and determine whether the report poses a threat to the Reporting Party or the University community. Factors to be considered include, but are not limited to, whether alleged Prohibited Conduct included physical violence or threats of violence; whether any weapon or force was allegedly used or threatened; whether multiple Responding Parties were involved; whether Responding Party has a prior history of violent behavior; whether the Prohibited Conduct was facilitated by “date-rape” drugs or similar intoxicants, or allegedly occurred when Reporting Party was unconscious or physically helpless; whether Reporting Party is a minor under the age of 18; and whether any aggravating circumstances or indications of violent or predatory behavior were reported.

The Title IX Coordinator will retain documentation reflecting that the above threat assessment was completed. If the conclusion is that there is a minimal threat to the University community, the Title IX Coordinator may in their discretion respect a Reporting Party’s request for no action and will investigate only so far as necessary to determine appropriate remedies. However, if the Title IX Coordinator concludes that there is a substantial threat to the community, the University reserves the right to initiate this grievance process and file a Formal Complaint without a formal report or participation by a Complainant.

D. Determining Jurisdiction

This Process applies to conduct that occurs in locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the alleged prohibited conduct occurs, and in any building owned or controlled by a student organization that is officially recognized by the University.

The Title IX Coordinator will determine if the Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when the Title IX Coordinator determines that all of the following elements are met:

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in the University’s education program or activity;
- At the time of filing a Formal Complaint, the Reporting Party is participating in or attempting to participate in the University’s education program or activity; and
- The alleged conduct, if true, would constitute Title IX Covered Conduct as defined in this policy.

E. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute Title IX Covered

Conduct and conduct that would not constitute Title IX Covered Conduct, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

F. Mandatory Dismissal

If anyone of these elements is not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy.¹⁶ Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

G. Discretionary Dismissal

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

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

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

H. Notice of Dismissal

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

I. Informal Resolution

If an Informal Resolution, i.e., supportive and remedial response, is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Formal Resolution process is not initiated, though the Complainant can elect to initiate it later if desired.

¹⁶ Complaints dismissed under the Title IX Grievance Process may be resolved under the DHSMR Grievance Process.

The Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution. Statements made during the Informal Resolution process are not evidence; they are made for settlement purposes, not for the truth of the matter asserted. Therefore, if Informal Resolution fails, and the matter moves to Formal Resolution, such statements may not be raised and questions relating to these statements are not allowed.

J. Notice of Investigation and Allegations (NOIA)

The Title IX Coordinator will draft and provide the NOIA to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, but no more than ten (10) calendar days after the University receives a Formal Complaint of the allegations, barring extenuating circumstances.

The parties will be notified via their University email accounts. If a party is not a student or employee of the University, they will be notified by other reasonable means.

The University will provide sufficient time, no less than three (3) calendar days, for the parties to review the NOIA and prepare a response before any initial interview.

1. Contents of Notice

The Notice of Allegations will include the following:

- Notice of the University's Title IX Grievance Process, including the Informal Resolution process and possible sanctions that may result.
- Notice of the allegations potentially constituting Title IX Covered Conduct, and sufficient details, known at the time the Notice is issued, such as the identities of the parties involved in the incident; the conduct allegedly constituting Title IX Covered Conduct; and the date and location of the alleged incident.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, as required by the Final Title IX Rule.¹⁷
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence as required by the Final Title IX Rule,¹⁸ including:

¹⁷ See 34 C.F.R. § 106.45(b)(5)(iv)

¹⁸ See 34 C.F.R. § 106.45(b)(5)(vi).

- Evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint,
- Evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and
- Evidence that both tend to prove or disprove the allegations, whether obtained from a party or other source.
- A statement about the University’s policy on retaliation.
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- Details on the process for requesting disability accommodations during the interview process.
- A link to the University’s Resources, Rights, and Options document.
- The name(s) of the Investigator(s) and the process for identifying any conflict of interest that the Investigator(s) may have, in advance of the interview process.
- An instruction to preserve any evidence that is related directly to the allegations.

2. Ongoing Notice

If in the course of an investigation, cause arises for the University to investigate allegations about the Complainant or Respondent not included in the NOIA and that otherwise fall within the Title IX Grievance Process, the University will notify the parties whose identities are known of the additional allegations. Notification will be sent via the parties’ University email accounts.

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

K. Standard of Proof

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

L. Advisors

1. Advisors and Their Role

The parties may have an Advisor of their choice present with them for all meetings and interviews during the grievance process. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with

integrity, and in good faith. Advisors are required to follow the University's Rules of Decorum.

The Advisor may be a friend, mentor, family member, attorney¹⁹, 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 campus community.²⁰

For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative serve as an Advisor during the grievance proceedings, if requested by the party, as well as an additional Advisor of their choice. To uphold the principles of equity, the other party, regardless of union membership, will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

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

The Title IX Coordinator will assign a trained Advisor from the Title IX Grievance Process Pool for any party who elects this option or does not have an Advisor. If the parties choose an Advisor from outside the pool, they should note that the Advisor may not be trained and familiar with the University's policies and procedures.

2. Advisors in Hearings and University-Appointed Advisors

Under the Final Title IX Rule, cross-examination is required during a live hearing and must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses.

If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor.

¹⁹ The University does not guarantee equal Advisory rights; if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

²⁰ 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 or Panel.

If the party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the Party in the hearing.

3. Scheduling Advisors

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

The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the University to avoid delay.

M. Notice of Meetings and Interviews

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

N. Delays

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

O. Investigation

1. General Rules of Investigations

The Title IX Coordinator, Deputy Title IX Coordinators, or an Investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute Title IX Covered Conduct after issuing the Notice of Allegations.

The University, and not the parties, has the burden of proof and the burden of gathering evidence²¹. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof

²¹ The responsibility of showing a violation of this Policy occurred rests upon the University.

away from the University and does not indicate responsibility.

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information.

The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses²², and inculpatory and exculpatory evidence,²³ as described below.

2. Relevant evidence and questions

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

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

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.²⁴

3. Inspection and Review of Investigative Report and Evidence

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

Evidence that will be available for inspection and review by the parties will be

²² At the parties own expense.

²³ Inculpatory evidence tends to prove allegations while exculpatory evidence tend to excuse, justify or absolve conduct.

²⁴ See, 85 Fed. Reg. 30026, 30294 (May 19, 2020).

any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

- a) *Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility;*
- b) *inculpatory or exculpatory evidence that is directly related to the allegations, whether obtained from a party or other source.*

All parties must submit any evidence they would like the Investigator to consider during the course of the investigation prior to when the parties are scheduled to inspect and review evidence.²⁵

4. *The Investigative Report*

The Title IX Coordinator, Deputy Title IX Coordinators, or an Investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence and will provide that Report and evidence to the parties at least fifteen (15) calendar days prior the hearing for the parties' review and written response.

The purpose of the Investigative Report is to provide a fair summary of that evidence and not intended to catalog all evidence obtained by the Investigator.

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

The Investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that are otherwise relevant.

The University will provide a draft investigative report and all evidence, in the form of exhibits, via email, to the parties and their Advisors. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining the format and any restrictions or limitations on access.

²⁵ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The parties will have ten (10) calendar days to inspect and review the draft Investigation Report and the evidence and submit a written response by email to the Investigator. The Investigator will consider the parties' written responses before completing the Investigative Report. The University will provide copies of the parties' written responses to the Investigator to all parties and their Advisors if any.²⁶

If there is no response within the 10-day period, the Investigator will immediately generate the final Investigative Report and evidence and distribute simultaneously, via email, to the parties. When the parties submit a written response to the Investigator, the Investigator has ten (10) calendar days after receipt of the responses to generate the Final Investigative Report. Alternatively, if necessary, the Investigator may provide the parties with written notice extending the investigation and explaining the reason for the extension.

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

The parties and their Advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. Additionally, the parties and their Advisors agree not to photograph or otherwise copy the evidence.²⁷

5. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their Advisors, if any.²⁸

P. Hearings

General Rules of Hearings

The University will not issue a disciplinary sanction arising from an allegation of Title IX Covered Conduct without holding a live hearing unless otherwise resolved through an Informal Resolution process.

²⁶ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

²⁷ See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

²⁸ See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

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

All proceedings will be recorded through audiovisual recording. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their Advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.²⁹

1. Notice of Hearing The Hearing Officer or Panel will send a Notice of Hearing to the Parties at least seven (7) calendar days before the scheduled hearing date. Accelerated hearing dates may be scheduled with the consent of the Parties, and Hearing Officer or Panel. The Notice once sent, is presumed to have been delivered.

2. Continuances or Granting Extensions

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

3. Participants in the live hearing

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

a) *Complainant and Respondent (The Parties)*

(1) The parties cannot waive the right to a live hearing.

(2) The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered during the investigation.

(3) The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.³⁰

(4) [Any party may choose not to answer questions at the](#)

²⁹ See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

³⁰ See, 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).

hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions. The parties shall be subject to the University's Rules of Decorum.

b) *The Hearing Officer or Panel*

(1) One to three Hearing Officer (s) may preside over the hearings.

(1) No Hearing Officer will also have served as the Title IX Coordinator, Title IX Investigator, or Advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.

(2) No Hearing Officer will have a conflict of interest or bias in favor of or against Complainants or Respondents generally or in favor of or against the parties to the particular case.

(3) The Hearing Officers will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.

(4) The parties will have an opportunity to raise any objections regarding a Hearing Officer's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

c) *Advisor of choice*

(1) The parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney.

(2) The Advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.

(3) In addition to selecting an Advisor to conduct cross-examination, the parties may select an Advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.

(4) The parties are not permitted to conduct cross-examination themselves. Cross-examinations must be conducted by the Advisor. If a party does not select an Advisor, the University will select an Advisor to serve in this role for the limited purpose of

conducting the cross-examination at no fee or charge to the party.

(5) The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the parties to the particular case.

(6) The Advisor is not prohibited from being a witness in the matter.

(7) If a party does not attend the live hearing, the party's Advisor may appear and conduct cross-examination on their behalf.³¹

(8) If neither a party nor their Advisor appears at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing party.³²

(9) Advisors shall be subject to the University's Rules of Decorum and may be removed upon violation of those Rules.

d) *Witnesses*

*Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.*³³

Any witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

Witnesses shall be subject to the University's Rules of Decorum.

4. Hearing Procedures

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

a) *The Hearing Officer or Panel Chair will open and establish rules and expectations for the hearing;*

b) *The Parties will each be given the opportunity to provide opening statements;*

³¹ See, 85 Fed. Reg. 30026, 30340 (May 19, 2020).

³² See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

³³ See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).

c) *The Hearing Officer or Panel will ask questions of the Parties and Witnesses;*

d) *Parties will be given the opportunity for live cross-examination after the Hearing Officer or Panel conduct their initial round of questioning; During the Parties' cross-examination, the Hearing Officer or Panel will have the authority to pause cross-examination at any time for the purposes of asking follow up questions; and to enforce the established rules of decorum.*

e) *Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer or Panel. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Officer or Panel to use statements made by the Party.*

5. Live Cross-Examination Procedure

Each party's Advisor will conduct live cross-examination of the other party(ies) and witnesses. During this live cross-examination, the Advisor will ask the other party(ies) and witnesses relevant questions and follow-up questions, including those challenging credibility. These questions will be asked directly, orally, and in real time.

Before any cross-examination question is answered, the Hearing Officer or Panel will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Officer or Panel, may be deemed irrelevant if they have been asked and answered.

6. Review of Recording

The recording of the hearing will be available for review by the parties within five (5) calendar days, unless there are any extenuating circumstances.

7. General Considerations for Evaluating Testimony and Evidence

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

The Hearing Officer or Panel shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

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

Except where specifically barred by the Final Title IX Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Title IX Rule requires that the University allow parties to call "expert witnesses"³⁴ for direct and cross-examination. The University does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Title IX Rule, the Hearing Officer or Panel will afford lower weight to non-factual testimony of the expert relative to fact witnesses. Any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross-examination and regardless of whether all parties present experts as witnesses.

The Final Title IX Rule requires that the University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer or Panel will afford very low weight to any non-factual character testimony of any witness.

The Final Title IX Rule requires that the University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While testimony about them will be allowed and cross-examination, as required by the Final Title IX Rule, will be allowed, the Hearing Officer or Panel will afford lower weight to such processes relative to the testimony of fact witnesses.

³⁴ Expert witnesses may be called at the parties' expense.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer or Panel may draw an adverse inference as to that party or witness' credibility.

8. Components of the Determination Regarding Responsibility

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

- a) *Identification of the allegations potentially constituting Title IX Covered Conduct;*
- b) *A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;*
- c) *Findings of fact supporting the determination;*
- d) *Conclusions regarding which section of the [Code of Conduct], if any, the Respondent has or has not violated.*
- e) *For each allegation:*
 - (1) A statement of, and rationale for, a determination regarding responsibility;
 - (2) A statement of, and rationale for, any disciplinary sanctions the University imposes on the Respondent; and
 - (3) A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
 - (4) The University's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeals").

Q. Timeline of Determination Regarding Responsibility

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

R. Finality

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal,

if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

S. Appeals

Each party may appeal (1) the dismissal of a Formal Complaint or any included allegations and/or (2) a determination regarding responsibility. A party must submit their written appeal within five (5) calendar days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- i. Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the University’s own procedures);
- ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter;
- iii. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.

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

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

Appeals may be no longer than three (3) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by Appeals Officers as follows:

- If the Respondent is a student: the Dean of Students, or their designee.
- If the Respondent is a faculty or staff member: The Provost, or their designee.

Appeals Officers will be free of conflict of interest and bias, and will not have served as Investigator, Title IX Coordinator, or Hearing Officer in the same matter.

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

T. Confidentiality

The University will keep the following identities confidential except as permitted by the FERPA statute and regulations, the Final Title IX Rule, or as required by law:

- Any individual who has made a report or complaint of sex discrimination,
- Any individual who has made a report or filed a Formal Complaint of sexual harassment under this Policy, any Complainant,
- Any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and
- Any witness.

U. Retaliation

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

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

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed according to the DHSMR Grievance Process, described below.

DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, AND RETALIATION (DHSMR) GRIEVANCE PROCESS

A. Application of Process

This Process is applicable to cases of discrimination, harassment, sexual misconduct or retaliation when the Title IX Coordinator determines that the Title IX Grievance Process above, is inapplicable because the alleged conduct falls outside of Title IX Covered Sexual Harassment, or when offenses subject to Title IX Grievance Process have been dismissed. The Title IX Grievance Process must be applied when applicable. This Process applies to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties.

B. Initial Assessment

Following receipt of any formal or informal notice of allegation of violation of the Policy, the Title IX Coordinator engages in an initial assessment, one (1) to five (5) calendar days in duration. The steps in an initial assessment may include:

1. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.³⁵
2. The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
3. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers an Informal or Formal Resolution. The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

Based on the initial assessment, the University will initiate either the Informal Resolution Process or the Formal Resolution Process.

a) If an Informal Resolution, i.e., supportive and remedial response, is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Formal Resolution process is not initiated, though the Complainant can elect to initiate it later if desired.

³⁵ Supportive Measures may include, but are not limited to, referral to counseling and health services, referral to the Employee Assistance Program, education to the community, permanent alteration of housing assignments, permanent alteration of work arrangements, as limited by law, provision of campus safety escorts, climate surveys, policy modification, provision of transportation accommodations, implementation of long-term contact limitations between the parties, and implementation of adjustments to academic deadlines, course schedules.

b) *The Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.*

c) *Statements made during the Informal Resolution process are not evidence; they are made for settlement purposes, not for the truth of the matter asserted. Therefore, if Informal Resolution fails, and the matter moves to Formal Resolution, such statements may not be raised and questions relating to these statements are not allowed.*

d) *If Formal Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:*

- (1) Incident, and/or
- (2) A potential pattern of misconduct and/or
- (3) A culture/climate issue.

C. Threat Assessment

The Title IX Coordinator will consult, as appropriate, with Campus Security and other campus administrators and determine whether the report poses a threat to the Reporting Party or the University community. Factors to be considered include, but are not limited to, whether alleged Prohibited Conduct included physical violence or threats of violence; whether any weapon or force was allegedly used or threatened; whether multiple Responding Parties were involved; whether Responding Party has a prior history of violent behavior; whether the Prohibited Conduct was facilitated by “date-rape” drugs or similar intoxicants, or allegedly occurred when Reporting Party was unconscious or physically helpless; whether Reporting Party is a minor under the age of 18; and whether any aggravating circumstances or indications of violent or predatory behavior were reported.

The Title IX Coordinator will retain documentation reflecting that the above threat assessment was completed. If the conclusion is that there is a minimal threat to the University community, the Title IX Coordinator may in their discretion respect a Reporting Party’s request for no action and will investigate only so far as necessary to determine appropriate remedies. However, if the Title IX Coordinator concludes that there is a substantial threat to the community, the University reserves the right to initiate this grievance process and file a Formal Complaint without a formal report or participation by a Complainant.

D. Grievance Process Pool

The Formal Resolution process relies on a Grievance Process Pool (“GPP”) of internal and/or external members who, at the direction of the Title IX Coordinator, may serve as Advisors, Investigators, and/or Hearing Officers.

The Title IX Coordinator, in consultation with the President, carefully vets internal Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.

Internal Pool members receive annual training organized by the Title IX Coordinator, including a review of the University’s policies, processes, and procedures, as well as applicable federal and state laws and regulations.³⁶

External Pool members are trained and experienced consultants who are free of conflicts-of-interest and are familiar with the University’s discrimination, harassment, sexual misconduct, and retaliation grievance processes.

E. Counterclaims

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. The University is obligated to ensure that any process is not abused for retaliatory purposes. Counterclaims made in bad faith will be considered retaliatory and may constitute a violation of this Policy.

The University permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. Counterclaims made in good faith are processed using this Process after the underlying allegation has been resolved. Allegations and counterclaims may be resolved through the same investigation at the discretion of the Title IX Coordinator.

F. Advisors

1. Expectations of an Advisor

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

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or

³⁶ Grievance Process Pool members also receive training that includes, but is not limited to: conducting impartial and thorough investigations, checking implicit bias, reporting, confidentiality, and privacy requirements, weighing evidence, assessing credibility, evidence, and relevance.

other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by University policies and rules of decorum may face the loss of that Advisor and possible Policy violations.

Advisors are expected to consult with their advisees without disrupting University meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

2. Expectations of the Parties with Respect to Advisors

Each party may choose an Advisor who is eligible and available to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s).

The parties are expected to provide timely notice to the Investigator(s) and the Title IX Coordinator if they change Advisors at any time.

Upon written request of a party, the University will copy the Advisor on all communications between the University and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative, if requested by the party, as well as an Advisor of their choice, present for all grievance proceedings. To uphold the principles of equity, the other party, regardless of union membership, will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

At the discretion of the Title IX Coordinator, the parties may each have more than one Advisor. If one party is allowed an additional Advisor, the other party must be allowed an additional one as well.

3. Assistance in Securing an Advisor

While the Parties may select an Advisor of their choice, the University can assist with providing an Advisor at the Party's request. Please see the Resources, Rights, and Options document for a list of support.

G. Resolution Options

Grievance Proceedings are private; all individuals present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University Policy. While there is an expectation of privacy around what is discussed during interviews, the parties have the discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

1. Informal Resolution

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution (i.e., mediation, restorative practices, etc.), or when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

Any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process. Further, if an Informal Resolution fails, Formal Resolution may be pursued.

a) *Alternate Resolution*

Alternate Resolution is an informal process, such as mediation or restorative practices, by which a mutually agreed-upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Formal Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. The parties may agree to accepted sanctions or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Formal Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

*b) Respondent Accepts Responsibility for Alleged Violations
The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of University Policy.*

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are implemented promptly in order to effectively stop the discrimination, harassment, sexual misconduct, or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

*The process ends when the Respondent accepts responsibility for **all** of the alleged policy violations, and the Title IX Coordinator determines and promptly implements appropriate sanction(s) or responsive actions. The Title IX Coordinator will inform the Complainant of this outcome.*

*When the Respondent accepts responsibility for **some** of the alleged policy violations, the Title IX Coordinator will determine and promptly implement appropriate sanction(s) or responsive actions, for those violations. The remaining allegations will continue to be investigated and resolved. The Title IX Coordinator will inform the Complainant of this outcome. The parties are able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.*

*c) Negotiated Resolution
The Title IX Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and the University.*

2. Formal Resolution

Formal Resolution can be pursued for any alleged violation of this Policy for which the Respondent has not accepted responsibility. Formal Resolution starts

with a thorough, reliable, and impartial investigation.

H. Investigation

The investigation will be a neutral, fact-finding process, and Respondent is presumed at the outset not to be responsible. This presumption may be overcome where the Investigator and Hearing Officer or Panel determine that there is sufficient evidence supporting responsibility. The Parties are encouraged but are not required to cooperate with the investigation and hearing. The Parties will have an equal opportunity to be heard, to submit information, to identify witnesses, and to suggest questions.

The Investigator will interview the Parties and any third party witnesses separately, and gather all available evidence, including email, text messages, social media communication, etc., as well as any photographs or medical records.

If a Formal Resolution is initiated, the Title IX Coordinator will provide written Notice of Investigation and Allegations to the parties. Typically, notice is given at least two (2) days in advance of an interview.

1. Notice of Investigation and Allegations (NOIA)

The Title IX Coordinator or Investigator will draft and provide the NOIA to the parties. Such notice will occur as soon as practicable, but no more than ten (10) calendar days after the University receives a Formal Complaint of the allegations, barring extenuating circumstances.

The parties will be notified via their University email accounts. Once emailed, notice is presumptively delivered. If a party is not a student or employee of the University, they will be notified by other reasonable means.

The University will provide sufficient time, no less than three (3) calendar days, for the parties to review the NOIA and prepare a response before any initial interview.

The Notice will include the University's Policy; a meaningful summary of the allegations and policy provision alleged to be violated; a statement of potential sanctions; a statement that the parties may have an Advisor of their choice; a statement about the University's policy on retaliation; a statement that the University prohibits knowingly making false statements; details on the process for requesting disability accommodations during the interview process; an instruction to the parties to preserve any evidence that is directly related to the allegations, and a link to the University's Resources, Rights, and Options document.

Investigators will update the NOIA as necessary and provide it to the parties.

2. Other Misconduct

With the agreement of the Student Conduct Officer, Human Resources Director, or Provost, as applicable, allegations of misconduct that fall outside this policy but involves common facts as the alleged Prohibited Conduct, will be investigated together under this Process.

3. Timeframes

The timeframe for completion of this Grievance Process, from the receipt of notice or complaint until final determination, will be concluded promptly, and will not exceed ninety (90) calendar days. The Process may be extended for a good reason.

Investigations are completed expeditiously, normally within 10-20 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

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

The University may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the University's Grievance Process are being investigated by law enforcement. The University will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete. University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

4. Investigators

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) days of determining that an investigation should proceed.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

During the Formal Resolution Process, the parties may raise a concern regarding bias or conflict of interest at any time. The Title IX Coordinator will determine whether the concern is reasonable and supportable and, if so, will assign another Investigator to remedy the impact of the bias or conflict. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the President of the University.

5. Investigation Process

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 to fully review and respond to all evidence, on the record.

The Investigators commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses

6. Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

7. Remote processes

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Hearing Officer or Panel determines that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, the University makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

8. Recording

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to record interviews, all involved parties must be made aware of the recording.

9. Evidence

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility, or that is improperly prejudicial.

10. Sexual history/patterns

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

11. Previous allegations/violations

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s) if the University uses a progressive discipline system.

12. Character witnesses

Neither the Title IX Coordinator nor the Investigator(s) meets with character witnesses, but the Investigator(s) may accept up to two (2) letters supporting the character of each of the parties. Such letters must be provided to the Investigator(s) prior to the report being finalized; otherwise, the parties have waived their right to provide such letters.

13. Investigative Report

At the completion of the investigation, the Investigator will draft a comprehensive investigative report fully summarizing the investigation and all evidence. The Investigator will share the report with the Title IX Coordinator or legal counsel for review and feedback and provide parties with a copy of the draft report,

including all relevant evidence, analysis, credibility assessments, and recommended finding(s) via email.

The parties will have ten (10) calendar days to inspect and review the draft Investigation Report and the evidence and submit a written response by email to the Investigator. The Investigator will consider the parties' written responses before completing the Investigative Report. The University will provide copies of the parties' written responses to the Investigator to all parties and their Advisors if any.

If there is no response within the 10-day period, the Investigator will immediately generate the Final Investigative Report and evidence and distribute simultaneously, via email, to the parties. When the parties submit a written response to the Investigator, the Investigator has ten (10) calendar days after receipt of the responses to generate the Final Investigative Report. Alternatively, if necessary, the Investigator may provide the parties with written notice extending the investigation and explaining the reason for the extension.

I. Hearing

1. General Rules of Hearings

After a Formal Resolution Investigation, the Investigative Report is sent to the Hearing Officer or Panel. Within two to three days of receiving the Investigative Report, the Hearing Officer or Panel will review the report and all responses, if any, and arrange a hearing to allow the parties an opportunity to present. The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation in the hearing. The Parties may opt to waive the hearing. If all parties opt to waive the hearing, the process will divert directly to the Hearing Officer or Panel for determination.

Live hearings may be conducted with all parties physically present in the same geographic location, or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors, not within a party's control. All proceedings will be recorded through audiovisual recording. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their Advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the

Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

The parties shall be subject to the University's Rules of Decorum.

The Hearing Officer or Panel shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

2. Continuances or Granting Extensions

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

3. Participants in the live hearing

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

a) *Complainant and Respondent (The Parties);*

b) *The parties Advisors of Choice, if any; and*

(1) The parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney.

(2) The Advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.

(3) The parties may select an Advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.

(4) The Advisor is not prohibited from being a witness in the matter.

c) *The Hearing Officer or Panel*

The Hearing Officer or Panel may be comprised of internal or external members. All members are trained in the adjudication process for offenses under this Policy. The Hearing Officer or Panel are selected by the Title IX Coordinator. The Hearing Officer or Panel will review all relevant material and determine, using the "preponderance of the evidence" standard, whether Respondent committed the alleged Prohibited Conduct.

(1) One to three Hearing Officer (s) may preside over the hearings.

(2) No Hearing Officer will also have served as the Title IX Coordinator, Title IX Investigator, or Advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.

(3) No Hearing Officer will have a conflict of interest or bias in favor of or against Complainants or Respondents generally or in favor of or against the parties to the particular case.

(4) The parties will have an opportunity to raise any objections regarding a Hearing Officer's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

d) Witnesses

Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

4. Notice of Hearing

The Hearing Officer or Panel will send a Notice of Hearing to the Parties at least seven (7) calendar days before the scheduled hearing date. Accelerated hearing dates may be scheduled with the consent of the Parties, Chair, and Hearing Officer or Panel. The Notice once sent, is presumed to have been delivered.

The Notice will contain:

- a) a list of the policies alleged to have been violated,*
- b) a summary of the hearing procedures,*
- c) a list of potential sanctions,*
- d) the date, time, and location of the hearing,*
- e) a notice that the hearing will commence in the absence of the parties, and*
- f) additional information at the Chair's discretion.*

5. Hearing Procedures

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

- a) The Hearing Officer or Panel Chair will open and establish rules and expectations for the hearing;*
- b) The Parties will each be given the opportunity to provide opening statements;*
- c) The Hearing Officer or Panel will ask questions of the Parties and Witnesses;*
- d) The Hearing Officer or Panel shall determine by majority vote whether the Responding Party shall be found responsible for the alleged Prohibited Conduct;*

- e) *The Review Panel determination shall be based on the “preponderance of the evidence” standard.*

The Hearing Officer or Panel will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred.

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

6. Review of Recording

The recording of the hearing will be available for review, upon request, by the parties within five (5) calendar days, unless there are any extenuating circumstances.

7. The Determination Regarding Responsibility

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Officer or Panel.

The written Determination Regarding Responsibility will be issued simultaneously to all parties and the Title IX Coordinator through their University email account, or other reasonable means as necessary. The Determination will include:

- a) *Identification of the allegations;*
- b) *A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;*
- c) *Findings of fact supporting the determination;*
- d) *Conclusions regarding which section of the Policy, if any, the Respondent has or has not violated.*
- e) *For each allegation:*
 - (1) A statement of, and rationale for, a determination regarding responsibility;
 - (2) A statement of, and rationale for, any disciplinary sanctions the University imposes on the Respondent; and
 - (3) A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant; and

f) *The University's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeals").*

J. Sanctions

1. Possible Student Sanctions

- Expulsion – Permanent separation from the University.
- Suspension – Separation from the University for up to two years.
- Deferred Suspension – Separation of from the University held in abeyance for a definite period, to be enforced if future misconduct.
- Residence Hall Separation or Relocation – The student may be barred from the residence halls or a specific residence hall, for a definite period.
- Restitution – Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.
- Written reprimand—a written censure for violation of Policy placed in the student's record.
- Written warning – a written warning placed in student's file what repetition of conduct found wrongful will result in disciplinary action.

In determining the appropriate sanctions, the Hearing Officer or Panel shall be guided by several considerations, including:

- The severity and persistence of the Prohibited Conduct;
- The extent violence was involved;
- The Conduct's impact on the Victim;
- The Conduct's impact on the Campus community;
- Prior disciplinary history or other prior misconduct;
- Whether Responding Party accepted responsibility; and
- Any other mitigating or aggravating factors.

2. Possible Employee Sanctions

- Termination;
- Suspension without pay;
- Probationary period;
- Written or verbal reprimand; and
- Administrative referral to EAP.

3. Failure to Complete Sanctions or to Comply with Remedies

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

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), including suspension, expulsion, 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.

K. Withdrawal or Resignation During the Grievance Process

Students: The University may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status.

L. Timeline of Determination Regarding Responsibility

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

M. Finality

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

N. Appeals

Parties may appeal a determination regarding responsibility. A party must submit their written appeal within five (5) calendar days of being notified of the decision, indicating the grounds for the appeal.

The grounds for appeal available are as follows:

1. To consider new information, sufficient to alter a decision or relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the hearing;
2. An error in the process or an abridgment of rights, as stated in this Policy, which materially impacted the outcome of the hearing;
3. The sanctions imposed were impermissible under this Policy.

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

Appeals may be no longer than three (3) pages (including attachments). Appeals should be submitted in electronic form using Arial or Times New Roman Fonts, 12-point font size, and should be single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by Appeals Officers as follows:

- If the Respondent is a student: the Dean of Students, or their designee.
- If the Respondent is a faculty or staff member: The Provost, or their designee.

Appeals Officers will be free of conflict of interest and bias, and will not have served as Investigator, Title IX Coordinator, or Hearing Officer in the same matter. The outcome of the appeal will be provided in writing simultaneously to both parties, and include the rationale for the decision. Once an appeal is decided, the outcome is final.

Decisions by the Appeals Officer are to be deferential to the original decision. Changes to the finding should only be made when there is a clear error, and the sanction(s) should only be altered if there is a compelling justification to do so.

Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.

Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeals Officer.

In cases in which the appeal results in Respondent's reinstatement to the University or a 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.

O. Record-keeping

In implementing this policy, records of all allegations, investigations, resolutions, and

hearings will be kept for a minimum of seven (7) years, or as required by state or federal law or University policy, by the Title IX Coordinator in the Title IX case database.

P. Disabilities Accommodation 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 resolution process at the University. Students needing such accommodations or support should contact the Director of Disability Services, and Employees needing such accommodations or support should contact the ADA/504 Coordinator. The Director of Student Accessibility Services and the ADA/504 Coordinator will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Q. Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary. The Policy takes effect when it is posted on the University's website.

The Title IX Coordinator may make minor modifications to the procedures that fall within this process as necessary. The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon determining that changes to law or regulation require such alterations.

Version: September 20, 2021