

***The following interim policy is effective August 14, 2020.

This interim policy is being implemented pursuant to UWF Policy P-01.03-12/17, *University Policy Development and Issuance Process*. The University will follow its normal procedures for policy development and has posted the interim policy on the University's website for review and comment.

UNIVERSITY POLICY P-14.03-08/20

TO: University of West Florida Community
FROM: Dr. Martha Saunders, President
SUBJECT: Sexual Harassment and Misconduct Policy
AUTHORITY: Title IX of the Higher Education Amendments of 1972

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OVERVIEW & PURPOSE

The University of West Florida (“UWF” or the “University”) is committed to providing an environment that is free of sexual harassment and sexual misconduct. This Policy covers a broad range of behavior, including sexual harassment, sexual misconduct, and retaliation (hereinafter “Prohibited Conduct”), that is prohibited under this Policy as well as State and Federal law and regulations.

As a recipient of Federal funds, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), which prohibits discrimination on the basis of sex in education programs or activities. The University of West Florida is committed to providing programs, activities and an educational environment free from sex-based discrimination, the Prohibited Conduct outlined in this Policy. The University of West Florida is committed to fostering a community that promotes prompt reporting of all types of Prohibited Conduct. Creating a safe environment is the responsibility of all members of the University community.

This Policy deals primarily with Sexual Harassment as defined in this Policy and as defined under the Federal Title IX regulations. Not all conduct that is commonly understood to be sexual harassment (and not all sexual harassment that the University seeks to prohibit) will fall under this Policy’s definition. If an allegation of Prohibited Conduct does not match this Policy’s definition of Sexual Harassment, the University may still adjudicate the allegation under “Prohibition of Discrimination, Harassment and Retaliation” (University Policy P-13.09-02/20) or the Student Code of Conduct (UWF REG-3.010).

This Policy is designed to provide an equitable process through which an affected individual can report Prohibited Conduct. Nothing in this Policy will be interpreted to violate any individual’s constitutional rights. Through this Policy, the University strives to respond promptly and reasonably to such reports and to provide fairness to both the Complainant and Respondent. Despite the University’s prompt timeframe for the grievance process, the University will allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

For purposes of this Policy, the grievance process includes all or a part of the process of reporting Prohibited Conduct, investigating, holding a hearing, reaching a determination of responsibility,

deciding any appeals, and imposing discipline or providing remedies (if any). At any point during the grievance process described in this Policy, the parties may use an advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or grievance proceeding. Any advisor serves at the requestor's own expense and initiative during the investigative process.

DEFINITIONS

For the purposes of this Policy, the following definitions apply:

1) **Actual Knowledge** - notice of Sexual Harassment or allegations of Sexual Harassment to the University's Title IX Coordinator or other University Official with Authority.

2) **Complainant** - an individual who is alleged to be the victim of conduct that could constitute Prohibited Conduct. A Complainant must be participating in, or attempting to participate in, a UWF program or activity at the time of filing a complaint.

3) **Consent** – an affirmative act or statement by each person that is informed, freely given and mutually understood. Consent cannot be gained by force, by intimidation, through threats, by ignoring or acting in spite of the objections of another, by coercion, through manipulation or assumption, or from an individual who is incapacitated.

Lack of protest or resistance does not mean Consent, nor does silence mean that Consent has been granted. Within each sexual encounter, there may be separate individual sexual acts involved, and Consent to one act by itself does not constitute Consent to another act. Also within each sexual encounter, Consent can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations, can never by itself be assumed to be an indicator of Consent for any current or future sexual encounter.

4) **Dating Violence** – as defined in 34 U.S.C. 12291(a)(10), violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors: length of relationship, type of relationship, and frequency of interaction between the persons involved in the relationship.

5) **Domestic Violence** – as defined in 34 U.S.C. 12291(a)(8), includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Florida, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Florida.

6) **Force** – physical force, violence, threat, intimidation, or coercion.

7) **Formal Complaint** – a written document filed by the Complainant or signed by the Title IX Coordinator requesting that the university investigate alleged Prohibited Conduct.¹

8) **Incapacitation** – a temporary or permanent state in which a person cannot make informed, rational judgments because the person lacks the physical or mental capacity to understand the

¹ If a parent or guardian has a legal right to act on a Complainant's behalf, the parent or guardian may file a Formal Complaint on behalf of the Complainant.

nature or consequences of their words or conduct, or the person is unable to physically or verbally communicate Consent.

Where alcohol or another drug is involved, Incapacitation is determined by the extent to which the alcohol or drug consumed affects an individual's decision-making capacity, awareness of consequences, ability to make informed judgments and ability to communicate unwillingness.

9) **Intake Meeting** – initial meetings, taken separately, of the Complainant and the Respondent with the Title IX Coordinator or designee for the purpose of gathering basic information and providing and reviewing this Policy, Title IX procedures and available resources.

10) **Investigators** – the individuals designated by the Title IX Coordinator to conduct investigations of alleged Prohibited Conduct under this Policy.

11) **Mandatory Reporter** - an employee who has the duty to report the alleged Prohibited Conduct to an Official with Authority.

12) **Officials with Authority** - employees designated by the University with authority to implement corrective measures in response to reports of Prohibited Conduct.

13) **Prohibited Conduct** – Sexual Harassment or Retaliation.

14) **Respondent** – an individual who has been alleged of engaging in Prohibited Conduct.

15) **Retaliation** – intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this 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. Conduct automatically constitutes Retaliation under this Policy when it includes intimidation, threats, coercion, or discrimination, including 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 formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this Policy.

16) **Sexual Assault** - an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation. A “sex offense” is generally any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Without limiting that definition of sexual assault, the following are examples of sexual assault:

- a. Fondling - the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- b. Incest - non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- c. Rape - the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of any sex/gender.
- d. Sodomy - oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- e. Statutory Rape - non-forcible sexual intercourse with a person who is under the statutory age of consent There is no force or coercion used in statutory rape; the act is not an attack.

Under this definition of sexual assault, which is mandated by federal Title IX regulations, it is possible that a similar act may be classified as one or more variants of sexual assault, or different variants, depending on the sex or gender of Complainant or Respondent. For example, under these definitions, oral sex without consent on a vagina would be “rape,” but oral sex without consent on a penis would be “sodomy.” The University will not discriminate on the basis of sex or gender in grievance processes or in disciplinary sanctions in such cases. The University will apply the same proceedings and same range of disciplinary sanctions regardless of sex or gender.

17) **Sexual Exploitation** - a potential form of Sexual Harassment which involves taking sexual advantage of another person without Consent, which includes, but is not limited to, causing or attempting to cause the Incapacitation of another person so as to gain or facilitate a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of sexual activity or intimate parts of another person without that person’s Consent; allowing third parties to observe sexual acts without the consent of all participants; engaging in voyeurism; exposing one’s genitals to another without Consent; or knowingly or recklessly exposing other persons to a significant risk of a sexually transmitted infection, including HIV.

18) **Sexual Harassment** - conduct on the basis of sex that meets one or more of the following scenarios:

- a. University employee who conditions the provision of University aid, benefit or service on an individual’s participation in unwelcome sexual conduct. This conduct is commonly known as quid pro quo harassment;
- b. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or
- c. sexual assault, dating violence, domestic violence, or stalking as those terms are defined in the Definitions section.

19) **Stalking** – as defined in 34 USC 12291(a)(30), engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for that individual’s safety or the safety of others or suffer substantial emotional distress. Examples include, willfully, maliciously, and repeatedly following, harassing, or cyberstalking another person where the victim was targeted due to his or her sex/gender, sexual orientation or gender identity.

20) **Title IX Coordinator** – a University employee with the responsibility of administering this Policy, including identifying and addressing any patterns or systemic problems that arise during the review of Title IX Complaints. The Title IX Coordinator is assisted by Deputy Title IX Coordinators.

PROHIBITED CONDUCT

In determining whether the alleged conduct constitutes Prohibited Conduct, as defined by this Policy, the following standards must be met:

1. **Sexual Harassment and Misconduct** - violates this Policy when any one of the following occur:
 - a. University employee who conditions the provision of University aid, benefit or service on an individual's participation in unwelcome sexual conduct. This conduct is commonly known as quid pro quo harassment;
 - b. unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
 - c. sexual assault, dating violence, domestic violence, or stalking as those terms are defined in the Definitions section.
2. **Retaliation** - intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this 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. Conduct automatically constitutes Retaliation under this Policy when it includes intimidation, threats, coercion, or discrimination, including 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 formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by this Policy..

If the University charges an individual for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy, that charge does not constitute Retaliation. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Individuals must be mindful that although rights of freedom of expression and academic freedom are broad, they are not unlimited. The University will take action on Prohibited Conduct that goes beyond legal protections and violates this Policy.

REPORTING CONDUCT

The University will promptly respond when the University has Actual Knowledge of Prohibited Conduct occurring in a University program or activity. The University will have Actual Knowledge when an Official with Authority receives a report of Prohibited Conduct. Officials

with Authority include, but are not limited to, the Title IX Coordinator and Deputy Title IX Coordinators.

Individuals who feel that they have been victims of or who have witnessed Prohibited Conduct by a University student or University employee should report this information as soon as possible.

Mandatory Reporters

University employees are considered Mandatory Reporters and must report information received regarding Prohibited Conduct to a University Official with Authority. Individuals reporting Prohibited Conduct to any Mandatory Reporter should know that every effort will be made to respect the private and sensitive nature of their allegation. However, disclosure of an allegation to any Mandatory Reporter will result in a notification to the University's Title IX office.

If a student wishes to speak confidentially with someone on campus about alleged Prohibited Conduct or any other matter, the individual should contact and schedule an appointment with Counseling and Psychological Services (850-474-2420). If an employee wishes to do the same, the individual may contact the Employee Assistance Program (1-800-860-2058).²

University Authority

Reports of Prohibited Conduct may be made by a Complainant, as defined in this Policy, or any other individual to an Official with Authority. The reported conduct must have occurred within the University's programs or activities, which include locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurred and any building owned or controlled by a student organization that is officially recognized by the University.

Amnesty from Related Misconduct Charges

The University will not pursue charges against a Complainant who seeks assistance under this Policy who may have been in violation of a different University policy or regulation at the time the individual was the alleged victim of Prohibited Conduct. For example, if a Complainant alleges sexual assault while under the influence of alcohol, is under the age of 21, and seeks assistance under this Policy, the University will not pursue disciplinary action against the Complainant related to underage drinking.

Effect of Criminal Investigation/Proceeding

Because Prohibited Conduct may constitute both a violation of this Policy and criminal law, the University encourages Complainants to report alleged criminal conduct promptly to law enforcement. The standards, procedures, and timelines for criminal law differ from Title IX, and

² Any information disclosed to a mental health professional during a counseling session is considered private and confidential, is legally protected, and is not required by Federal Law or regulation to report the incident to an Official with Authority. University Health Center staff are not required by Federal law or regulation to report the information to an Official with Authority. Under this policy, UWF Ombudspersons are excluded from reporting incidents to an Official with Authority.

the processes are independent of one another. The outcome of a process under this Policy is likewise independent of the outcome of a related criminal process.

TITLE IX INVESTIGATION

Intake Meetings

Once an allegation is made, the Complainant will be invited to participate in an Intake Meeting. Intake Meetings include the review and explanation of this Policy and the University's Title IX procedures, available campus resources, and Supportive Measures. The Intake Meeting will also serve to provide information about the investigation process and informal resolution options. If a Formal Complaint is filed or if certain Supportive Measures are requested and deemed appropriate, the Respondent will be notified of the allegation(s) and also be invited to participate in an Intake Meeting for the same purposes described above. An advisor may be present to advise a party but cannot speak for the individual or otherwise participate directly in any meeting.

In cases where a Formal Complaint is not filed, but Supportive Measures are requested, some Supportive Measures may require the disclosure of the Complainant's identity to the Respondent; however, when Supportive Measures do not require such a disclosure, every attempt will be made to keep the Complainant's identity confidential.

Written Notice of Investigation

The University will provide written notice of an investigation to the Complainant and Respondent. This notice will include sufficient details on the identities of the parties involved, the specific alleged violation, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident, to the extent known. It will also contain notice of the procedures set forth in this Policy, and 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 this process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence collected during the investigation at an appropriate time. The written notice will also inform the parties that this Policy prohibits knowingly making false statements or knowingly submitting false information during this process.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original written notice, the University will provide notice of the additional allegations to the parties.

Supportive Measures

Based on the nature and seriousness of the alleged conduct, regardless of whether or not the Complainant chooses to file a Formal Complaint under this Policy, the University may provide Supportive Measures. Supportive Measures are designed to restore or preserve equal access to a University program or activity without unreasonably burdening a party. Supportive Measures are non-disciplinary, non-punitive individualized services offered where appropriate, when reasonably

available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Depending on the circumstances, the Supportive Measures that may be available to both parties include, but are not limited to:

- **No Contact Order** – the University may issue no-contact orders between the Respondent and the Complainant, or others involved. No-contact orders between the Complainant and Respondent are issued as dual no-contact orders.
- **Administrative Leave** – the University may place an employee on paid administrative leave while an investigation is conducted.
- **On-campus Housing Reassignment** – the University may complete an administrative housing reassignment in order to separate the Complainant and the Respondent. This may include reassigning the Complainant, the Respondent, or others involved. Reassignments may be temporary or permanent.
- **Academic Measures** – the University may work with a Complainant or Respondent to assist that individual's academic coursework. Depending on the circumstances, this may include working with instructors related to missed classes, assigning the Complainant or the Respondent to a new course section as scheduling permits, allowing either party to finish the course requirements via distance learning or independent study, or, where applicable, providing either party with a withdrawal from one or more courses.
- **Employment Measures** – the University may work with either party in the context of the individual's employment on campus, including student employment. Depending on the circumstances, this may include assigning the employee to work alternative hours, assigning the employee to a different work location, or assigning the employee to a different department during the duration of the investigation. Employment measures will be taken in accordance with UWF employment policies and applicable collective bargaining agreements.

Appeal of Supportive Measures

In the event Supportive Measures are requested, but not granted, or Supportive Measures are taken, but are unsatisfactory to either party, either party may request that the decision related to Supportive Measures be reviewed. The request for review must be made in writing and must be submitted to the Title IX Coordinator. The Title IX Coordinator will designate another University office to review the Supportive Measure decision. Additionally, the designated reviewer will provide the other party five calendar days to submit a response to the request for Supportive Measure review. The designated reviewer will make a decision based upon the documents provided by the parties and, if needed, may request an interview with either or both of the parties individually. The designated reviewer has the authority to uphold, modify or withdraw the Supportive Measures.

Emergency Removal

The University may remove Respondent from an education program or activity if:

- (1) the University conducts an individualized safety and risk analysis;

(2) the University determines that Respondent poses an immediate, imminent threat arising from the allegations of Prohibited Conduct to the physical health or safety of any student or individual justifying removal; and

(3) the University provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

To challenge the removal, within three days of receiving notice of the emergency removal, the Respondent must inform the Title Coordinator in writing of the basis of the challenge. The Title IX Coordinator will provide a copy of the challenge to the Complainant.

The University will then hold a hearing without delay, as soon as possible given the circumstances, but no later than five days after the Title IX Coordinators receipt of the challenge. The University will provide written notice to the parties of the date and time of the hearing, provide both parties the opportunity to be heard at the hearing, and issue its written decision no later than three days after the hearing. The emergency removal will remain in effect during any appeal.

If a Respondent is removed pursuant to this emergency removal procedure, that individual retains all rights to an investigation and hearing as set forth in this Policy prior to any ultimate finding of responsibility and sanctions.

Nothing in this section precludes the University from placing a non-student employee on paid administrative leave during the pendency of the grievance process.

Formal Complaint Investigation

If the Complainant files a Formal Complaint, an Investigator will be assigned to complete an investigation and write an investigative report. Prior to completion of the investigative report, the University will provide the Complainant, Respondent, and their advisors, if any, an opportunity to review all evidence collected related to the Formal Complaint. The Complainant and the Respondent will be offered a period of at least 10 days to submit written comments. The University's Title IX Office will consider any written responses prior to completion of the investigation report. Once the Title IX Office completes the investigative report, copies will be provided to the parties and advisors, with at least 10 days for the parties to respond, prior to a hearing. Where an allegation of Prohibited Conduct involves more than one Complainant or more than one Respondent, references to the singular "party," "complainant," or "respondent" include the plural, as applicable.

Standard of Proof

Allegations under this policy are evaluated by the preponderance of the evidence. Under the preponderance of the evidence standard, a Respondent will only be found responsible when it is determined that an allegation is *more likely true than not*. A Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or

paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process.

In addition, during the investigation or any other stage of the processes described in this Policy, the University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

If a party chooses to provide evidence that would otherwise be excluded under this subsection, it will be considered directly related evidence subject to the parties' inspection.

Complaint Dismissal

Following federal regulations, there are circumstances under which the University must dismiss or may dismiss a Formal Complaint. Dismissals may occur at any time during the investigation and hearing phases of the Formal Complaint process.

The University **must** dismiss a Formal Complaint of Sexual Harassment if the Prohibited Conduct:

- a. Would not constitute Sexual Harassment even if proved;
- b. Did not occur in the University's program or activity; or,
- c. Did not occur against a person in the United States.

The University **may** dismiss a Formal Complaint of Sexual Harassment if:

- a. A Complainant requests, in writing, to withdraw the Formal Complaint;
- b. A Respondent is no longer enrolled at or employed by the University; or,
- c. Specific circumstances prevent the gathering of evidence sufficient to reach a determination (such as a party passing away during the course of the investigation).

If a Formal Complaint is dismissed, the parties to the Formal Complaint will receive written notice of the dismissal which will include the reason(s) for the dismissal.

Though a Formal Complaint brought under this Policy may be dismissed, the allegation(s) may be reviewed against other University regulations, policies, or collective bargaining agreements, as applicable.

Appeal of Dismissal

If a Formal Complaint is filed and is dismissed, either party may appeal the dismissal decision and request that it be reviewed within five days of notification of the dismissal. The appeal must be made in writing and must be submitted to the Title IX Coordinator. Once one party has appealed, the other party will be notified in writing. The Title IX Coordinator will designate a University Official who is independent of the Title IX Office to review the dismissal decision. Additionally, the designated reviewer will provide the party not appealing the dismissal five calendar days to submit a response to the appeal. The designated reviewer will make a decision based upon the documents provided by the parties, and, if needed, may request an interview with either or both of

the parties individually. The designated reviewer has the authority to reverse the dismissal. A written decision describing the result of the appeal and rationale for the result will be issued to both parties simultaneously.

An appeal of the dismissal of the Formal Complaint must be made on one or more of the following bases:

- A procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available during the intake or investigation phases that could affect the outcome of the matter;
- Evidence of a conflict of interest or bias of the Title IX Coordinator (including deputies), the Investigator(s), or the hearing decision maker(s) that affected the outcome of the matter.

INFORMAL RESOLUTIONS

If a Formal Complaint has been filed, the University has the discretion at any time prior to reaching a determination regarding responsibility to choose to offer and facilitate informal resolution options so long as the parties give voluntary and informed written consent to attempt informal resolution. Informal resolution is not available when a Complainant is a student alleging that a University employee has engaged in Sexual Harassment.

In offering an informal resolution process, the University will provide the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which, upon reaching an agreed resolution, it precludes the parties from resuming a formal complaint arising from the same allegations; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint. The University will also explain any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Informal Resolution process must be completed within fifteen days of the parties agreeing to pursue such a process. If not completed by that deadline, in the absence of any approved extensions, the Formal Complaint will continue to be investigated and processed for a live hearing as described in this Policy.

HEARINGS

After the investigative report and comment period concludes, the next step in the Formal Complaint process is based upon whether the Respondent is a student or employee.

If the Respondent is a student, it will be referred to the Dean of Students office. For the procedures governing student Title IX hearings, please refer to Article VI of the Student Code of Conduct.

If the Respondent is an employee, it will be referred to the Human Resources office (for staff) or the Provost Office (for faculty). The following procedures apply to employee Title IX hearings.

For employees, the investigative report, evidence that has been disclosed to both parties, any comments of the Complainant and the Respondent, and any other relevant information will be forwarded to Human Resources (for matters concerning staff) and the Office of the Provost (for matters concerning faculty). Human Resources or the Office of the Provost, or their designee shall organize and facilitate the hearing process.

Pre-Hearing Conference

Upon referral, the University will notify the Complainant and Respondent via email of the allegations and charges and include the scheduling information for an individual pre-hearing conference. The pre-hearing conference is **not** a hearing. The purpose is to review the allegations and charges, the applicable HR policy or applicable collective bargaining agreement for in-unit employees, the hearing forum options, the process, possible sanctions, and to answer questions. During the Respondent's pre-hearing conference, the Respondent will be given the opportunity to accept responsibility or not accept responsibility for the charges.

If the Respondent accepts responsibility for the charges:

- The Respondent will be asked to sign a form indicating the individual's acceptance of responsibility and that the individual is waiving the individual's right to a hearing.
- An email documenting the Respondent's responsibility and the discipline notice will be sent concurrently to the Respondents well as the Complainant within ten business days.

If the Respondent does not accept responsibility for the charges:

- The Respondent will be asked to sign a form indicating that the Respondent does not accept responsibility for the charges and will be asked to select a hearing option.
- The University will schedule the hearing providing the Respondent and the Complainant with a minimum notice of five business days.
 - If the Respondent fails to attend the pre-conference hearing or complete the form, the matter will be referred for a hearing to occur.

Hearing Options

At the University's discretion, the decision-maker(s) at the hearing will be either a University official or designee; or a committee or panel comprised of University officials or designees.

Hearing Procedures

The hearing process shall be used to resolve Title IX related formal complaints that are not dismissed or resolved via the informal resolution process or via the pre-conference meeting as detailed above. Throughout the hearing process, Complainants and Respondents shall be treated equitably. Hearings are conducted to consider the totality of all evidence available, from all relevant sources. Hearings are conducted to consider the totality of all evidence available, from all relevant sources. All information presented by the Complainant and Respondent must be objectively evaluated by the University must avoid credibility determinations based on an

individual's status as a Complainant, Respondent, or witness. The parties will have an equal opportunity to present facts and evidence, including fact and expert witnesses and other inculpatory and exculpatory evidence. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

These hearings are not a criminal process and are not legal in nature. Formal rules of process, procedure, or technical rules of evidence, such as are applied in criminal or civil court, are not used in these proceedings. However, information protected under a privilege recognized by state or federal law cannot be disclosed, used, or relied upon unless the person who holds the right to exercise the privilege waives the application of the privilege.

At the discretion of the University, virtual participation via videoconference or other technology of parties, witnesses, advisors, or others is permitted, provided participants can simultaneously see and hear each other and confidentiality of the proceedings is not compromised.

- **Hearing Notification:** the University will notify the parties via email of the date, time and location of the hearing no less than five days in advance of the hearing. This notification will also advise the parties of their rights in the conduct process. If the time or date of the hearing is not convenient to the parties, the parties must submit a written request to reschedule the hearing within two business days of the date of the notice.
- **Pre-Hearing Information:** the University will make available to the Respondent and the Complainant, pre-hearing information including a copy of the hearing procedures and the opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding the responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The pre-hearing information will be available at least three business days in advance of the hearing. The parties must provide the University with a list of potential witnesses and copies of any records that individual will present at the hearing at least three business days in advance of the hearing.
- **Failure to appear:** if either the Respondent or the Complainant fail to appear, the hearing will proceed in the absence of those persons.
- **Closed Hearings:** hearings are closed to the public and only the Respondent, Complainant, and advisors may attend. Witnesses may not be present in the proceedings except to provide information when called upon.
- **Title IX Advisor:** At any point during the processes, the parties may use an advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or hearing. Any advisor serves at the requestor's own expense and initiative, except that if a party does not have an advisor at a hearing, the University will provide one without fee or charge to the party for purposes of cross-examination and questioning of a party or witness. All advisors must follow appropriate rules of decorum. The advisor may be present to advise the individual or the reporting person but cannot speak for the individual, present the case, serve as a witness, or otherwise participate directly in any meeting or hearing, except at the hearing during cross-examination or questioning of witnesses. The name and role of the advisor must be provided to the University in writing at least three business days

prior to the scheduled meeting/hearing. If the advisor is an attorney, this must be disclosed at that time, as the University attorney must also be present at the meeting/hearing.

- **Role of the Hearing Chair or Hearing Officer:** if the hearing is conducted with a committee or panel, the Hearing Chair will preside over the hearing. If the hearing is conducted with only one University official or designee, that individual will be the Hearing Officer and will preside over the hearing. The Hearing Chair or Hearing Officer will be responsible for the order and decorum of the hearing, and will ensure that the hearing procedures are followed. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Chair or Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. At that individual's discretion, the Hearing Chair or Officer may:
 - Accept information for consideration.
 - Make determinations regarding requests for postponements.
 - Make determinations as to procedural questions.
 - Make procedural modifications for purposes of expediting a process or in the interest of fairness or safety.
 - Exclude repetitious or irrelevant information.
 - Dismiss any person who is disorderly, disruptive, or non-compliant.
 - Take any other appropriate action deemed necessary.
- **Self-Incriminating Statements:** the Complainant and the Respondent will not be compelled to make self-incriminating statements. Any information shared by the Respondent or Complainant during a pre-hearing conference may be presented during a hearing. Failure of the Respondent or Complainant to make a statement or to answer questions shall not be considered in the determination of whether or not a Respondent is responsible for violating University policy or the collective bargaining agreements.
- **Information:** The University and the Respondent and the Complainant will be given an opportunity to provide information at the hearing. This may include, but is not limited to, witnesses, pertinent records, documents, written or oral statements, and investigative reports. The Respondent and the Complainant will also be given an opportunity to review records provided by the University.
- **Questioning of the Parties and Witnesses:** All cross-examination of the parties and witnesses must be conducted directly and orally by a party's Title IX Advisor. If a party or witness does not submit to cross-examination at the hearing, the Hearing Officer or committee or panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Officer or committee or panel will not draw an inference about the determination regarding responsibility. The Hearing Officer or committee or panel will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- **Presentation of Information:** Only relevant cross-examination and other questions may be asked of a party or witness. To ensure this, before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Chair or Officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the hearing, the University will provide one, without fee or charge. Each party's advisor will be allowed to

ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

- **Separation of Complainant, or Witness, or Respondent:** At the request of either party, the University will provide for the entire hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties and Hearing Officer or committee or panel to see and hear the party or witness answering questions.
- **Past Behavior:** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- **Recording of Hearing:** Hearings will be recorded. There shall be a single recording of all hearings. This recording is the official record and is the property of the University and will be considered part of the Respondent's disciplinary record. The Respondent may submit a written request for a copy of the recording which will be provided after receipt of the hearing decision letter.
- **Standard of Proof:** the burden to prove disciplinary cases rests with the University and not with the Respondent. The standard of proof shall be "more likely than not." This means that the information presented supports the finding that it was more likely than not that the violation occurred.
- **Multiple Respondents Charged:** in cases involving multiple Respondents from the same incident, information obtained at one hearing may be used at another hearing provided that each Respondent involved has the opportunity to review and respond to the information at that Respondent's hearing.
- **Deliberations:** are closed and the decision making shall include only the hearing committee or panel or Hearing Officer.
- **Determination of Responsibility:** the Hearing Officer or committee or panel shall determine whether the Respondent has violated this Policy. A finding of "responsible" or "not responsible" shall be made for each charge. The Hearing Officer or panel will determine sanctions in those cases where the Respondent is found responsible for violating the policy.
- **Impact Statement:** If the Respondent is found responsible, the Complainant has a right to submit an impact statement to the Hearing Officer or committee or panel for consideration at the sanctioning phase only. The statement may include a description of how the Complainant was impacted by the conduct violation and may include recommendations for sanctions, penalties or restitution. However, the Hearing Officer or committee or panel are not bound by those recommendations. The relevant portions of any impact statement provided by the Complainant, or the relevant portions of character statements or other evidence regarding mitigating circumstances provided by the Respondent, will be considered by the Hearing Officer or committee or panel in issuing sanctions, so long as such information has been subject to questioning and cross-examination during the hearing. While these statements are not binding, they, together with the totality of the circumstances, should be considered by the Hearing Officer or committee or panel involved in determining the appropriate sanctions.
- **Hearing Decision Notification:** The determination of responsibility or whether allegations are substantiated shall be in writing, provided simultaneously to the parties, and

include the following elements:

- Identification of the allegations potentially constituting sexual harassment.
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to parties, interviews, gathering of evidence, and hearings held.
- Findings of fact.
- Conclusions regarding the application of the relevant policy or regulation to the facts.
- As to each allegation, a statement of, and rationale for, the determination of responsibility or substantiation.
- A description of any disciplinary sanctions imposed upon the respondent.
- A description of any remedies designed to restore or preserve equal access that will be provided to the complainant.
- A statement of procedures and bases for appeal of the decision.
- **Employee Separation** If a Respondent voluntarily leaves the University with disciplinary charges pending against that individual, the conduct process may continue with or without that individual's participation.
- **Accommodations for Employees with Disabilities:** any employee with a disability may request reasonable accommodations during the disciplinary process. If accommodations are desired, this request must be made to the University's ADA office at least three business days in advance of the hearing. If necessary, the University may postpone the hearing to provide reasonable accommodations.

Employee Discipline

A Respondent found responsible for violations shall be subject to discipline commensurate with the offense. Consideration may be given to aggravating and mitigating circumstances, and prior discipline, if applicable. If, after the hearing, a determination is made that disciplinary action is appropriate, such action will follow the guidelines set forth in HR-22.00- 2004/07 Standards of Conduct or in the applicable collective bargaining agreement for in-unit employees.

APPEALS OF HEARING RESULTS

Both the Complainant and the Respondent may appeal the decision and or sanction(s) in writing. The appeal must be received within 10 business days of the date of the decision letter.

If either the Complainant or Respondent submits an appeal, the other individual will be notified and provided with a copy of the appeal and will be given 10 business days to respond to the appeal in writing. The Title IX Coordinator will also be provided with a copy of the appeal. The University will review the appeal, including all information provided by all parties. Grounds for appeal are limited to the following:

- Procedural irregularity that affected the outcome of the matter; or
- 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; or
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the

individual Complainant or Respondent that affected the outcome of the matter.

The University may uphold the discipline decision, modify the decision, remand the case to the same Hearing Officer for reconsideration of the discipline decision, or remand the case to a new Hearing Officer for a new hearing. Unless the appeal decision is to remand the case for a new hearing, the appeal decision is considered the final decision of the University. A copy of the decision of the University shall be simultaneously forwarded to both Complainant and Respondent, Human Resources or Office of the Provost, and to the Title IX Coordinator for filing and for distribution to the appropriate parties.

CONFLICT OF INTEREST

During any portion of the Title IX process, if an individual, who, because of that individual's position would ordinarily participate in the administration or disposition of a Formal Complaint under this Policy, becomes involved in a case as a Complainant, Respondent or witness, the University will assign an alternate individual to participate in the administration and or disposition of the matter. Additionally, any individual designated by the University as a Title IX Coordinator, Investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

Change Justification: This policy is being updated in compliance with Federal law and regulatory changes.

Authority: Title IX of the Higher Education Amendments of 1972

Approved: DocuSigned by:
Martha Saunders
D54A387C376848D **Date:** 08/12/2020

History: P-14.01-11/13 Sexual Misconduct and Gender-Based Discrimination Policy, adopted November 2013; P14.02-02/15 Sexual Misconduct, Sexual Violence, Gender-Based Discrimination and Retaliation, adopted March 2015 as an interim policy. Approved as a permanent policy following the expiration of the comment period in May 2015; Adopted August 2020 as an interim policy.