

# **Resolution Process Procedures for Alleged Violations of the Policy Prohibiting Power Based Violence and Sexual Misconduct**

## **Title IX Grievance Process (Known as “Process A”)**

### **1. Overview**

Process A and the procedures below apply **only** to qualifying allegations of sexual harassment (including, sexual assault, dating violence, domestic violence, and stalking, involving students, staff, administrator, or faculty members within the scope of Title IX jurisdiction).

The Title IX Regulations of 2020 have defined in detail the complaints of sexual harassment that fall under the jurisdiction of Title IX and require a specific protocol for addressing and resolving a grievance. Specifically Sexual Harassment as defined by Title IX is conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome conduct of a sexual nature, whether verbal or physical; (2) 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 (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

Process B applies to sexual misconduct (including sexual harassment, sexual assault, dating violence, domestic violence, and stalking, and sexual exploitation) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty and staff handbooks.

### **2. Notice/Complaint**

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

The University will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) An informal resolution; and/or
- 3) A formal investigation and grievance process that includes a live hearing and a finding.

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

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Policy Prohibiting Power Based Violence and Sexual Misconduct, the Title IX Coordinator<sup>1</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

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<sup>1</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator, or the Coordinator is otherwise unavailable or unable to fulfill their duties.

- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No formal investigation or grievance process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a formal investigation and grievance process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, and refers the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is procedural and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

**a. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a violence risk assessment should be conducted as part of the initial assessment. This assessment can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning or trespass order is needed.

This type of assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. This process will be used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Where an assessment is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

**b. Dismissal (Mandatory and Discretionary)<sup>2</sup>**

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

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<sup>2</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.

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

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

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

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

#### **4. Counterclaims**

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

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

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

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

The parties may each have an Advisor<sup>3</sup> of their choice present with them for all meetings and interviews within the resolution process if they so choose. The parties may select whoever they wish to serve as their Advisor as

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<sup>3</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

long as the Advisor is eligible and available.<sup>4</sup>

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

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

**a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose an Advisor from inside or outside of the University community.

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

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

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

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

**c. Advisor's Role**

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

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

**d. Pre-Interview Meetings**

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

**e. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may

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<sup>4</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

not make a presentation or represent their advisee<sup>5</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other hearing panel members except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

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

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

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

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

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

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

#### **h. Expectations of an Advisor**

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

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

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

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

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

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<sup>5</sup> Subject to the state law provisions or University policy above.

## **6. Resolution Processes**

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

### **Informal Resolution**

Informal Resolution can include two different approaches:

- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by facilitating a negotiated resolution to remedy the situation.

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

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

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

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

An informal resolution is not available in complaints of sexual harassment by a student against an employee of the University.

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

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

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

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

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

#### **b. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the



allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

## **7. Grievance Process Pool**

The Formal Investigation and Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Any of the roles listed in section a. below can also be filled by an external party, at the discretion of the Title IX Coordinator in consultation with the Dean of Students and/or Human Resources.

### **a. Pool Member Roles**

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

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker Panel Member regarding the complaint
- To serve as an Appeal Decision-maker

### **b. Pool Member Appointment**

The Title IX Coordinator appoints the Pool<sup>6</sup>, which acts with independence and impartiality.

### **c. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudice of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing

- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

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

#### **d. Pool Membership**

Pool members are usually appointed to three-year terms.

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

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

The NOIA will include:

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

An instruction to preserve any evidence that is directly related to the allegations.

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<sup>6</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.



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

Notice will be made in writing and will be delivered by email to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

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

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

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

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members, or an external party, to conduct the investigation, usually within two business days of determining that an investigation should proceed.

#### **11. Ensuring Impartiality**

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

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

The Formal Investigation and Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation.

Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

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

#### **12. Investigation Timeline**

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

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

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

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

accommodations for disabilities or health conditions.

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

University actions are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incidents have been filed or that criminal charges have been dismissed or reduced.

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

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

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

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

- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- May assist the Title IX Coordinator to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, the Investigator will provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report. The Investigator will also provide an opportunity to inspect and review all of the

evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination. The Investigator will allow a 10-business day review and comment period so that each party may meaningfully respond to the evidence.

- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least 10 business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

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

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

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

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

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

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

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

#### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution or the complaint is not dismissed by the Title IX Coordinator, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than 10 business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Hearing Panel—unless all parties and the Hearing Panel agree to an expedited timeline.

#### **19. Hearing Panel Composition**

The University will designate a three-member panel from the Pool and/or external parties, at the discretion of the Title IX Coordinator. With this panel, one of the three members will serve as the Hearing Chair.

The Hearing Panel members will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event

that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Hearing Panel members. Those who are serving as Advisors for any party may not serve as Hearing Panel members in that matter.

The Title IX Coordinator may not vote in the matter but may serve as a Hearing Facilitator if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a Deputy Title IX Coordinator or other designee may fulfill this role of Facilitator. The hearing will convene at a time determined by the Chair.

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

Any evidence that the Hearing Chair determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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

The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Panel at the sanction stage of the process when a determination of responsibility is reached.

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

## **21. Notice of Hearing**

No less than 10 business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once emailed, and/or received in-person, notice will be presumptively delivered. The University will use a remote hearing protocol that allows all parties to be present, even though they are not in the same room.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least seven business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Hearing Panel. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.

- A copy of all the materials provided to the Hearing Panel about the matter unless they have been provided already.<sup>7</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that Hearing Panel will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60 to 90 business day goal for resolution.

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

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<sup>7</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

## **22. Pre-Hearing Preparation**

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least 10 business days prior to the hearing.

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

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

The Title IX Coordinator will give the Hearing Panel members a list of the names of all parties, witnesses, and Advisors at least seven business days in advance of the hearing. Any Hearing Panel member who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Panel member is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the 10-business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **23. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

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

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



## **24. Hearing Procedures**

At the hearing, the Hearing Panel has the authority to hear and make determinations on all allegations of sex discrimination, sexual harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sex discrimination, sexual harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy Prohibiting Power Based Violence and Sexual Misconduct.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Panel and the parties and will then be excused.

## **25. Joint Hearings**

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

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

## **26. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Hearing Panel members on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case Title IX Coordinator will review and decide the challenge.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

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

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Panel and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

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

## **28. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Hearing Panel and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during

questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility.

The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

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

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

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

### **29. Recording Hearings**

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

The Hearing Panel, the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

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

The Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

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

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Panel may – at their discretion – consider the statements, but they are not required to do so.

The Hearing Panel will review the statements and any pertinent conduct history provided by the Title IX Coordinator or Human Resource Management and will determine the appropriate sanction(s) in consultation with appropriate administrators, as required.

The Chair will then prepare a written deliberation statement, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions/ or

recommendations. This report must be submitted within two business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **31. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three business days of receiving the Hearing Panel's deliberation statement.

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

The Notice of Outcome will identify the specific policies reported to have been violated, including the relevant policy section. The Notice of Outcome will also contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination.

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

The Notice of Outcome will also include information on the relevant procedures and bases for the available appeal options (section 37).

### **32. Statement of the Rights of the Parties (see Appendix A)**

### **33. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Panel

The sanctions will be implemented as soon as feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students singly or in combination. See the [UNO Student Code of Conduct](#) for a complete listing and more detailed description of all possible sanctions.

**Conduct Admonition:** The student or student organization is given written notice that their conduct is in violation of university policies, rules or regulations. Future violations of the code may result in the imposition of additional sanctions.

**Fine:** a fine assessed by the institution or paid by the student/student organization for participation in an on-line course or workshop as part of a sanction.

**Educational Project, Workshop or Course:** This may include the assignment of a research paper, participation (cost, if any, will be borne by the student) in an on-line educational program relevant to the issue, or other assignment or workshop relevant to the violation(s) of the Policy.

**Loss of Privileges:** The student or student organization will incur the loss of one or more privileges, such as, but not limited to, on-campus employment, representing the University in any official function or leadership position (e.g., athletics, student leadership position, cheerleader, membership in any registered student organization or holding of an elected office in any registered student organization); entering or being in specific locations (e.g. a residence hall or other facility); and/or engaging in specified activities on campus.

**Administrative Separation Directive:** Prohibits named students from contacting, emailing, telephoning or otherwise disturbing each other in situations where there is reason to believe that an alleged violation of harassment, a physical altercation and/or sexual misconduct/sexual harassment may have occurred. An Administrative Separation Directive can be given to one/all parties involved. The Administrative Separation Directive will not prohibit students named from attending classes or any other campus activity (even though students named may be enrolled in the same class(es)). The Administrative Separation Directive will not be construed as a finding of responsibility on the part of any student. It may require moving the student(s) named to another residence hall or removing the student(s) from the residence hall environment.

Violation of the term or conditions of the on-campus Administrative Separation Directive may subject the student to the disciplinary action without regard to the outcome of the case that led to the issuance of the administrative action.

**Disciplinary Suspension** An involuntary separation of the student from the University for a specified period of time after which the student is eligible to return assuming no intervening serious misconduct has occurred and any prerequisite conditions for readmission have been met. During the period of suspension, the student is prohibited from receiving credit at a component of the university system for scholastic work done in residence or by correspondence or extension. Conditions for readmission may be specified. In accord with University of Louisiana System Policy Number: S-II.I.B.-1, the notation "Student is eligible to return (semester) (year)" will be placed on the student's transcript. This notation will be removed from the transcript when the student is eligible to return. The student is placed on Disciplinary Probation for the first semester following the return to the University.

**Disciplinary Expulsion:** The student is involuntarily and permanently separated from the university, including access to the university and its resources. The notation "Student is ineligible to enroll" will be made on the student's transcript when a student is permanently dismissed from the University for Disciplinary Reasons.

## **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation may include:

- *Warning*
- *Performance Improvement Process*
- *Required counseling*

- *Required training or education*
- *Probation*
- *Loss of annual pay increase*
- *Loss of oversight or supervisory responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to, or in place of the above sanctions, the University may assign any other sanctions deemed appropriate.

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

Students: If a student has an allegation pending for violation of the Policy Prohibiting Power Based Violence and Sexual Misconduct, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

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

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

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

During the resolution process, the University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

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

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

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **37. Appeals**

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

The Appeal Officer in reports in which the respondent is a student will be by the Vice President for Student Affairs or designee. The Appeal Officer in reports in which the respondent is an employee will be the University President or designee.

The Request for Appeal will be forwarded to the appropriate Appeal Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**a. Grounds for Appeal**

Appeals are limited to the following grounds:

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

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

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer will notify the other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panel.

The other party and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panel members will be emailed and/or provided a hard copy of the request with the approved grounds and then be given three business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Officer to all parties for review and comment.

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

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

Notification will be made in writing and will be emailed to the parties' University-issued email or otherwise approved account. Once emailed and/or received in-person, notice will be presumptively delivered.

**b. Sanctions Status During the Appeal**

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

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



### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
  - An appeal is not an opportunity for Appeal Officer to substitute their judgment for that of the original hearing panel merely because they disagree with the finding and/or sanction(s).
  - The Appeal Officer may consult with the Title IX Coordinator or the Hearing Chair on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
  - Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or hearing panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
  - A student may appeal to the Board of Supervisors if the sanction is one of suspension from the university for a period of one academic year, or if the sanction is of greater severity. If the student chooses to appeal to the Board of Supervisors after all administrative procedures have been exhausted at the institutional level, the appeal must be submitted within 30 calendar days of the institution's decision. The Board's review is limited to a determination of compliance with established and appropriate procedures at the institutional level. The student shall be notified of the Board's decision. In rare cases where a procedural or substantive error cannot be cured by the original Hearing Panel (as in cases of bias), the appeal may order a new hearing with a new Hearing Panel.
  - The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
  - In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

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

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

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

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

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

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

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not

impair the University's ability to provide these services.

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

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Panel (including the Appeal Officer). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

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

**40. Disabilities Accommodations in the Resolution Process**

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

- Anyone needing such accommodations or support should contact the Office of Student Accountability and Disability Services if a student or Human Resource Management if an employee. The appropriate office 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.

## Resolution Process Procedures for Alleged Violations of the Policy Prohibiting Power Based Violence and Sexual Misconduct

### Alternative Grievance Process (Known as “Process B”)

#### **1. Overview**

Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed. If Process A is applicable, Process A must be applied in lieu of Process B.

- VAWA Section 304 requirements apply to Process B
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, the 2001 Revised Guidance, etc.) may also be applicable to Process B.

Process B applies to sexual misconduct (including sexual harassment, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation) when jurisdiction **does not fall within Process A**, as determined by the Title IX Coordinator.

Sexual Misconduct as a sexual act or contact of a sexual nature that occurs, regardless of personal relationship, without the consent of the other person(s), or that occurs when the person(s) is unable to give consent or whose consent is coerced or obtained in a fraudulent manner. For the purpose of this Policy, sexual misconduct includes, but is not limited to, sexual assault, sexual abuse, violence of a sexual nature, sexual harassment, quid pro quo harassment, non-consensual sexual intercourse, sexual exploitation, video voyeurism, contact of a sexual nature with an object, or the obtaining, posting or disclosure of intimate descriptions, photos, or videos without the express consent of the persons depicted therein, as well as dating violence, domestic violence, and stalking.

The procedures described below apply to all allegations sex discrimination and sexual misconduct involving students, staff, faculty members, or third parties.

All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

#### **2. Notice/Complaint**

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

The University will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to proceed formally; and/or
- 2) An informal resolution; and/or
- 3) A formal investigation and grievance process that includes a live hearing and a finding.

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

#### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>9</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

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<sup>9</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No formal investigation or resolution process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
    - If a formal investigation and resolution process is preferred, the Title IX Coordinator will initiate the formal investigation and resolution process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue, based on the nature of the complaint.

#### **Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that an assessment should be conducted as part of the initial assessment. This assessment can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning / Trespass order is needed.

This type of assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. This process will be used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Where an assessment is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

#### **4. Counterclaims**

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

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

case a delay may occur.

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

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

The parties may each have an Advisor<sup>10</sup> of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>11</sup> Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest.

### **a. Advisor's Role**

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

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

### **b. Pre-Interview Meetings**

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

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

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>12</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Title IX Coordinator or Investigator(s).

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

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

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<sup>10</sup> This could include an attorney, advocate, or support person.

<sup>11</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

<sup>12</sup> Subject to the state law provisions or University policy above.

**d. Sharing Information with the Advisor**

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

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

**e. Privacy of Records Shared with Advisor**

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

**f. Expectations of an Advisor**

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

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

**g. Expectations of the Parties with Respect to Advisors**

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

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

**6. Resolution Processes**

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

**Informal Resolution**

Informal Resolution can include two different approaches:

- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by facilitating a negotiated resolution to remedy the situation.



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

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

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

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

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

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

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

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

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

#### **b. Negotiated Resolution**

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

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

### **7. Grievance Process Pool**

The Formal Investigation and Resolution Process relies on a pool of administrators ("the Pool") to carry out the process.

#### **a. Pool Member Roles**

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

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To perform or assist with initial assessment]
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker Panel Member regarding the complaint

- To serve as an Appeal Decision-maker

#### **b. Pool Member Appointment**

The Title IX Coordinator appoints the Pool<sup>13</sup>, which acts with independence and impartiality.

#### **c. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- discrimination, and/or retaliation allegations
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

How to determine appropriate sanctions in reference to all forms of harassment,

Specific training is also provided for Hearing Panel members, Appeal Officers, and Chairs. All Pool members are required to attend these trainings annually.

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

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the "NOIA") to the Respondent upon commencement of the Formal Investigation and Resolution Process. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),

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<sup>13</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.

- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and will be delivered by email to the parties' University-issued email or designated accounts. Once emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

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

## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an investigator, usually within two business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Hearing Panel members may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

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

The Formal Investigation and Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation.

Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

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

## **12. Investigation Timeline**

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

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

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

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

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

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

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

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

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

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

- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties.
- May assist the Title IX Coordinator to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and document in the report which witnesses

were interviewed, with a rationale for any or omissions.

- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, for a 10 business day review and comment period so that each party may meaningfully respond to the evidence.
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten business days prior to the Decision-maker Panel meeting to make a determination.

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

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

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

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

No unauthorized audio or video recording of any kind is permitted during investigation meetings/interviews. Investigator(s) will record interviews.

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

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

#### **18. Referral for Determination by Hearing Panel**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a Hearing Panel for deliberation and determination.

The parties will be given a list of the names of the Hearing Panel members and the parties will have three business days to respond with an objection to any panel member. All objections to any Hearing Panel member must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator within the three-day time limit. Hearing Panel members will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial deliberation of the allegation(s).

The Title IX Coordinator will give the Hearing Panel a list of the names of the parties. Any Hearing Panel member who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties. If a Hearing Panel member is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

### **19. Hearing Panel Composition**

The University will designate a three-member panel, at the discretion of the Title IX Coordinator. One of the members of the panel will serve as the Chair.

The Hearing Panel members will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve on the Hearing Panel.

### **20. Evidentiary Considerations by the Hearing Panel**

The Title IX Coordinator will provide the members of the Hearing Panel with a copy of the Investigation Report and all relevant evidence collected during the investigation. Any evidence that the Hearing Panel determine is relevant and credible may be considered. The Hearing Panel does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.

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

The parties may each submit a written impact statement for the consideration of the Hearing Panel at the sanction stage of the process if a determination of responsibility is reached.

The Hearing Panel renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

Determinations for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60 to 90 business day goal for resolution.

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



## **21. Notice of Hearing**

No less than 10 business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once emailed, and/or received in-person, notice will be presumptively delivered. The University will use a remote hearing protocol that allows all parties to be present, even though they are not in the same room.

The notice will contain:

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

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60 to 90 business day goal for resolution.

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

## **22. Pre-Hearing Preparation**

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least 10 business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing.

<sup>7</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

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

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

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least 10 business days prior to the hearing.

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

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

The Title IX Coordinator will give the Hearing Panel members a list of the names of all parties, witnesses, and Advisors at least seven business days in advance of the hearing. Any Hearing Panel member who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Panel member is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the 10 business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **24. Hearing Procedures**

At the hearing, the Hearing Panel has the authority to hear and make determinations on all allegations of sex discrimination, sexual harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sex discrimination, sexual harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy Prohibiting Power Based Violence and Sexual Misconduct.

### **25. Joint Hearings**

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

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

## **26. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Hearing Panel members on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case Title IX Coordinator will review and decide the challenge.

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

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

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Panel and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

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

## **28. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Hearing Panel and then by the parties through their Advisors (“cross-examination”).

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

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

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility.

The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

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

## **29. Recording Hearings**

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

The Hearing Panel, the parties, their Advisors, and appropriate administrators of the University will be permitted to

listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

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

The Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The Hearing Panel has the authority to hear and make determinations on all allegations of sexual misconduct and/or retaliation. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

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

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party. The Hearing Panel may – at their discretion – consider the statements, but they are not required to do so.

The Hearing Panel will review the statements and any pertinent conduct history provided by the Title IX Coordinator or Human Resource Management and will determine/recommend the appropriate sanction(s) in consultation with appropriate administrators, as required.

The Chair will then prepare a written deliberation statement, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions/ or recommendations

This report must be completed within two business days of the end of deliberations. The Title IX Coordinator will consider any request for an extension from the Chair and communicate any extensions with the parties.

### **31. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties within five business days of receiving the Hearing Panel's deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered in person or emailed to the parties' University- issued email or otherwise approved account. Once emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination.

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

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for appeal options (see section 37).

## **32. Statement of the Rights of the Parties (see Appendix A)**

### **33. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Panel

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities

#### **a. Student Sanctions**

The following are the usual sanctions that may be imposed upon students singly or in combination. See the [UNO Student Code of Conduct](#) for a complete listing and more detailed description of all possible sanctions.

**Conduct Admonition:** The student or student organization is given written notice that their conduct is in violation of university policies, rules or regulations. Future violations of the code may result in the imposition of additional sanctions.

**Fine:** a fine assessed by the institution or paid by the student/student organization for participation in an on-line course or workshop as part of a sanction.

**Educational Project, Workshop or Course:** This may include the assignment of a research paper, participation (cost, if any, will be borne by the student) in an on-line educational program relevant to the issue, or other assignment or workshop relevant to the violation(s) of the Policy.

**Loss of Privileges:** The student or student organization will incur the loss of one or more privileges, such as, but not limited to, on-campus employment, representing the University in any official function or leadership position (e.g., athletics, student leadership position, cheerleader, membership in any registered student organization or holding of an elected office in any registered student organization); entering or being in specific locations (e.g. a residence hall or other facility); and/or engaging in specified activities on campus.

**Administrative Separation Directive:** Prohibits named students from contacting, emailing, telephoning or otherwise disturbing each other in situations where there is reason to believe that an alleged violation of harassment, a physical altercation and/or sexual misconduct/sexual harassment may have occurred. An Administrative Separation Directive can be given to one/all parties involved. The Administrative Separation Directive will not prohibit students named from attending classes or any other campus activity (even though students named may be enrolled in the same class(es)). The Administrative Separation Directive will not be construed as a finding of responsibility on the part of any student. It may require moving the student(s) named to another residence hall or removing the student(s) from the residence hall environment.

Violation of the term or conditions of the on-campus Administrative Separation Directive may subject the student to the disciplinary action without regard to the outcome of the case that led to the issuance of the administrative action.

**Disciplinary Suspension** An involuntary separation of the student from the University for a specified period of time after which the student is eligible to return assuming no intervening serious misconduct has occurred and any prerequisite conditions for readmission have been met. During the period of suspension, the student is prohibited from receiving credit at a component of the university system for scholastic work done in residence or by correspondence or extension. Conditions for readmission may be specified. In accord with University of Louisiana System Policy Number: S-II.I.B.-1, the notation "Student is eligible to return (semester) (year)" will be placed on the student's transcript. This notation will be removed from the transcript when the student is eligible to return. The student is placed on Disciplinary Probation for the first semester following the return to the University.

**Disciplinary Expulsion:** The student is involuntarily and permanently separated from the university, including access to the university and its resources. The notation "Student is ineligible to enroll" will be made on the student's transcript when a student is permanently dismissed from the University for Disciplinary Reasons.

#### **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation may include:

- Warning
- Performance Improvement Process
- Required counseling
- Required training or education
- Probation
- Loss of annual pay increase
- Loss of oversight or supervisory responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other actions: in addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

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

Students: If a student has an allegation pending for violation of the Policy Prohibiting Power Based Violence and Sexual Misconduct, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

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

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

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to University



unless and until all sanctions have been satisfied.

During the resolution process, the University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

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

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

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **35. Appeals**

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

The Request for Appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

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

Appeals are limited to the following grounds:

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

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

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Officer will notify the other party and their Advisor, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panel

The other party and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panel will be, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

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<sup>14</sup> University policies on transcript notation will apply to these proceedings.

<sup>15</sup> Subject to University's Organizational Code of Conduct.

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

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

Notification will be made in writing and will be emailed to the parties' University-issued email or otherwise approved account. Once emailed and/or received in-person, notice will be presumptively delivered.

#### **a. Sanctions Status During the Appeal**

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

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

#### **b. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full review of the allegation(s). In most cases, appeals are confined to a review of the written documentation and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Hearing Panel merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Panel for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- A student may appeal to the Board of Supervisors if the sanction is one of suspension from the university for a period of one academic year, or if the sanction is of greater severity. For appeals regarding less severe sanctions, the final appeal shall be at the university level. If the student chooses to appeal to the Board of Supervisors after all administrative procedures have been exhausted at the institutional level, the appeal must be submitted within 30 calendar days of the institution's decision. The Board's review is limited to a determination of compliance with established and appropriate procedures at the institutional level. The student shall be notified of the Board's decision. In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new determination from a new Decision-maker(s).
- The results of a remand to a Hearing Panel cannot be appealed. The results of a new determination can be appealed, once, on any of the three available appeal grounds.

In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable

attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

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

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

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

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

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

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

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

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

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Panel and/or the Hearing Appeal Chair.

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

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

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

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

Anyone needing such accommodations or support should contact the Office of Student Accountability and Disability Services, if a student or Human Resource Management, if an employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process

## **APPENDIX A: STATEMENT OF RIGHTS OF THE PARTIES**

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

- Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  - The right not to have irrelevant prior sexual history or character admitted as evidence.
  - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  - The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least 10 business days to review the report prior to the hearing.
  - The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
  - The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  - The right to regular updates on the status of the investigation and/or resolution.
  - The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
  - The right to preservation of privacy, to the extent possible and permitted by law.
  - The right to meetings, interviews, and/or hearings that are closed to the public.
  - The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
  - The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.

- The right to have the University compel the participation of faculty and staff witnesses.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

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