

MORGAN STATE UNIVERSITY PROHIBITED CONDUCT PROCEDURES UNDER THE UNIVERSITY'S SEXUAL HARASSMENT AND PROHIBITED CONDUCT POLICY – RESPONDENT IS AN EMPLOYEE

I. Introduction

Morgan State University (the “University”) has established a Sexual Harassment and Prohibited Conduct Policy (the “Policy”) that articulates the expectations for maintaining an academic and working environment that is safe and free from all forms of Sexual Harassment, Prohibited Conduct, and Retaliation. This document sets forth procedures (the “Procedures”) for responding to, investigating, and resolving reports of Prohibited Conduct (as defined below) where an Employee (as defined below) is the Respondent (as defined below).

These Procedures should be read in conjunction with the Policy. These Procedures apply to complaints by University students, faculty, and staff against an Employee (as defined below) and replace all procedures previously in effect under the University’s Policy.

II. DEFINITIONS

In addition to the definitions in the Policy, the following terms are defined below:

A. Advisor

A person chosen by a Party to provide advice and consultation to that Party in accordance with the Policy and these Procedures. An Advisor may be an attorney or another individual. An Advisor cannot be a witness or provide evidence in a case. A Party’s Advisor also conducts cross-examination on behalf of that Party at a Hearing, if applicable, in accordance with the Policy and these Procedures. An Advisor shall not be an active participant or speak on behalf of a Party except for the purpose of providing cross-examination at a Hearing. If a Party does not have an Advisor, the University will provide without a fee or charge to that Party, an Advisor of the University’s choice, to conduct cross-examination on behalf of that Party; an Advisor appointed by the University acts in a confidential capacity on behalf of the Party and is not otherwise involved in the proceedings.

B. Appeal Officer

An individual designated to review decisions concerning responsibility and sanctions, based on the Respondent’s status as an Employee. Appellate Hearing Officers shall have had no previous involvement with the substance of the Formal Complaint of Prohibited Conduct.

C. Appellant

The party who files a request for an appeal.

D. Appellee

The party who opposes an appeal.

E. Business Day

Monday through Friday when the University is open, excluding federal, state, and University holidays.

F. Complainant

The individual who is alleged to be the victim of Prohibited Conduct.

G. Consent

Knowing, voluntary and unambiguous agreement, affirmatively expressed in mutually understandable words or actions, to engage in a specific sexual activity.

Consent must be obtained. It is the responsibility of the person who wants to engage in the sexual activity to ensure that they have consent from the other party, and that the other party is capable of consent. Accordingly, when there is a dispute as to whether sexual activity was consensual, the University's investigation will assess whether the person initiating the sexual activity knew, or should have known, that the sexual activity was not consensual or that the other party was incapable of providing consent.

Consent must be voluntary. Consent can never be obtained by use of physical force, threats, intimidating behavior or coercion. Furthermore, consent cannot be obtained by taking advantage of an individual's inability to give consent because of incapacitation.

Consent must be affirmative. Consent requires an affirmative demonstration, through words or actions that conveys a clear willingness to engage in the sexual activity.

As a result:

- An individual cannot infer consent through silence, lack of resistance, or absence of a verbal "no" or "stop."
- Consent cannot be inferred by the existence of a current or prior dating or sexual relationship between individuals.
- Consent to any one form of sexual activity does not automatically imply consent to other forms of sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent cannot be obtained from someone who is incapacitated.

Consent must be ongoing. Consent must be present throughout the sexual activity and may be withdrawn at any time. However, withdrawal of consent requires an outward demonstration, through understandable words or actions, which clearly conveys that a party is no longer willing to engage in the sexual activity. If there is any confusion as to whether there is consent or whether prior consent has been withdrawn, the parties should stop the activity until the confusion is resolved.

H. Employee

Faculty or staff employee, regardless of type (i.e. regular or contractual).

I. Formal Complaint or Formal Complaint of Prohibited Conduct

A document filed by a Complainant¹ or signed by the Title IX Coordinator that alleges Prohibited Conduct against the Respondent:

- (1) On campus, which includes any University facility or University property;
- (2) Off campus, if the conduct:
 - (a) occurred in connection with a University sponsored, recognized, or approved program (*e.g.*, University- sponsored study abroad or internship program);
 - (b) occurred within facilities that are located on University-owned land and/or leased property;
 - (c) impedes equal access to any University education program or activity or has the effect of creating a hostile education or employment environment for a member of the University community, or
 - (d) otherwise threatens the health and/or safety of a member of the University community.

J. Informal Resolution

A broad range of conflict resolution strategies, including but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated intervention and remedies.

K. Investigator

The individual(s) designated by the Title IX Coordinator to conduct a prompt, thorough, fair, and impartial investigation of incidents of Prohibited Conduct. The investigator gathers and analyzes all relevant evidence to determine whether the Respondent is responsible for violating the Policy based on a preponderance of the evidence.

L. No Contact Order

An official directive that serves as notice to an individual that the individual must not have verbal, electronic, written, or third-party communications with another individual.

M. Parties

Refers to the Complainant and Respondent collectively.

N. Preponderance of the Evidence

The evidentiary standard used to determine whether a Policy violation occurred. A preponderance of the evidence means that the evidence gathered and information provided during an investigation supports a finding that it is more likely than not that the Respondent did or did not violate the Policy.

¹ The phrase “document filed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint of Prohibited Conduct. Where the Title IX Coordinator signs a Formal Complaint of Prohibited Conduct, the Title IX Coordinator is not a Complainant or otherwise a party.

O. Prohibited Conduct

All gender and sexual conduct prohibited under the Policy to include, but not limited to, gender harassment, sexual violence, sexual exploitation, sexual intimidation, relationship violence, stalking, complicity, University Sexual Harassment and all other conduct of a sexual nature. Prohibited Conduct can occur between people of the same sex or between people of different sexes. It can also include both intentional conduct and conduct that results in negative effects, even if those negative effects were unintended. Prohibited Conduct does not include Sexual Harassment as defined in the Policy.

P. Retaliation

Intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report or complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to or Prohibited Conduct.

Retaliation includes bringing charges against an individual for violations of other University policies that do not involve Prohibited Conduct, but arise out of the same facts or circumstances as a Formal Complaint of Prohibited Conduct, for the purpose of interfering with any right or privilege secured by Title IX.

- Retaliation can be committed by one individual or a group of individuals, not just by a Respondent or Complainant.
- Retaliation may include intimidation, threats, coercion, harassment, and adverse employment or educational actions.

Q. Remedies

Actions designed to restore or preserve the Complainant's equal access to the University's Education Program or Activities. Remedies are similar to Supportive Measures but may be punitive and burden the Respondent.

R. Respondent

An individual who has been reported as the perpetrator of conduct that could constitute Prohibited Conduct.

S. Sanctions

Disciplinary and other consequences imposed on a Respondent who was found to have violated the Policy.

T. Support Person

A person chosen by the Complainant or Respondent to provide emotional, logistical, or other kinds of assistance. The Support Person is a non-participant who is present to assist a Complainant or Respondent by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the Party in a way that does not disrupt or cause any delay. A Support Person shall not be an active participant or a witness, and the Parties must speak for themselves.

U. Supportive Measures

Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties before or after the filing of a Formal Complaint of Prohibited Conduct or where no Formal Complaint of Prohibited Conduct has been filed. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other Party, including measures designed to protect the safety of all parties or the University's educational environment, or deter Prohibited Conduct. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

III. Anticipated Timelines

The University's goals are to provide equal educational opportunities, promote campus safety, and remedy the effects of Prohibited Conduct. Good faith efforts will be made to complete Informal Resolutions, investigations and the adjudication process, if any, in a prompt, fair, and impartial manner. The Office of Diversity, EEO, and Title IX will conduct any investigation as promptly as possible under the circumstances, taking into account the complexity of the allegations, the complexity of the investigation and resolution, the severity and extent of the alleged misconduct, the number and availability of witnesses, the University's calendar, and/or other unforeseen circumstances. The University seeks to take appropriate action, including investigation and resolution of Formal Complaints of Prohibited Conduct ("Formal Complaint"), generally within (120) days, by balancing principles of thoroughness and fundamental fairness from when the Formal Complaint is filed. An extension of the referenced timeframe may be required for good cause to ensure the integrity and thoroughness of the investigation.

The Title IX Coordinator² may extend the time frames set forth in these Procedures for good cause, with written notice of the extension to both Parties and the reason(s) for the delay. Written requests for delays by Parties may be considered. Factors considered in granting or denying an extension may include considerations such as, but not limited to, the following: the absence of a Party, a Party's Advisor, or a witness and/or the need for language assistance or accommodations of disabilities.

The dates and times for meetings and proceedings held under these Procedures are determined by the parties' class or work schedules and the availability of the Title IX Coordinator, the investigator, the Provost, the Vice President of Finance and Management, and/or other University officials. A meeting or proceeding will only be rescheduled for good cause. Good cause means circumstances outside a Party's control, to include but not limited to, personal illness, a death in the family, or an academic/work conflict. The University official conducting the meeting or proceeding shall determine whether a Party has demonstrated good cause to reschedule a meeting or proceeding. If a Party fails to attend a meeting or proceeding such meeting or proceeding may be

² All positions identified in these Procedures include the position or its designee.

held in the Party's absence. If a Respondent leaves or withdraws from the University prior to the conclusion of an investigation and determination of responsibility, the University will move forward with the investigation and determination of responsibility, and may impose sanctions(s), in absentia.

IV. Right to Support Person and Advisor

A Party may be accompanied at any meeting held by the Title IX Coordinator under these Procedures by up to two (2) people, including one (1) Support Person, and one (1) Advisor. Neither the Support Person or the Advisor can be a witness in the Procedures. When a Party wishes to be accompanied by a Support Person or Advisor to a meeting, the Party must notify the Title IX Coordinator in at least 48 hours in advance. Parties may select a Support Person or Advisor at any point before the conclusion of the resolution process. A student Complainant is entitled to legal representation through the Maryland Higher Education Commission during the process, as explained in Section XIV of the Policy.

Throughout the process, the Title IX Coordinator will communicate and correspond directly with the Parties, not indirectly through a Support Person or Advisor.

An advisor whose presence is deemed, at the sole discretion of the University official conducting the meeting or proceeding, to be improperly interfering with the meeting or proceeding will be required to leave and may be prohibited from participating in further meetings or proceedings under these Procedures.

V. Report Intake and Formal Complaint

A. Receipt of a Formal Complaint of Prohibited Conduct

When the University receives a Formal Complaint of Prohibited Conduct, the Title IX Coordinator will provide written acknowledgement of receipt of the report to the Complainant, if known, and include (1) a copy of the Policy and Procedures, (2) options under the resolution process, and (3) notice of Rights and Responsibilities. The Complainant will be informed of available community and campus resources and services; Supportive Measures as specified in Section V.C of these Procedures; their³ right to a Support Person and the Support Person's role; their right to an Advisor and the Advisor's role; their right to file a report with law enforcement; and the University's prohibition against Retaliation.

If the allegations are received from a third party, meaning someone who is not the Complainant or the Respondent, the Title IX Coordinator will provide written acknowledgement of the allegations and take appropriate action as the information provided allows.

Receipt of a report alleging Prohibited Conduct shall not constitute the filing of a Formal Complaint under the Policy.

As explained more fully below, the Complainant may (1) ask the Title IX Coordinator to take no

³ All pronouns in these Procedures are gender neutral and non-binary.

further action beyond offering Supportive Measures; or (2) file a Formal Complaint of Prohibited Conduct.

B. Intake and Initial Assessment of Report

The Title IX Coordinator will contact the Complainant to conduct an intake and initial assessment, which will determine whether the alleged conduct, if substantiated, would constitute Prohibited Conduct under the Policy. The Complainant can choose whether or not to participate with the intake and initial assessment process. If the Complainant opts not to participate, Title IX Coordinator may be limited in its ability to assess the report. The Complainant will have an opportunity to ask questions about options and resources and seek additional information. The Title IX Coordinator will attempt to gather information that will enable the Title IX Coordinator, in consultation with other appropriate University offices, to:

1. Assess a Complainant's request for Supportive Measures;
2. Assess the nature and circumstances reported;
3. Assess jurisdictional concerns regarding each Party;
4. Assess the safety of the Complainant and of the University community;
5. Implement any appropriate Supportive Measures;
6. Assess for pattern evidence or other similar conduct by the Respondent as relevant to the safety assessment;
7. Assess the Complainant's expressed preference regarding resolution, including any request that no further action be taken;
8. Assess any request by the Complainant for confidentiality or anonymity; and
9. Assess the reported conduct for possible referral to Morgan State University Policy for a timely warning under the Clery Act.

When the initial assessment determines the alleged conduct would not constitute Prohibited Conduct under the Policy if substantiated, the Title IX Coordinator may try to resolve an issue without the filing of a Formal Complaint. The alleged conduct may constitute Sexual Harassment (as defined in the Policy) under the Policy and/or violate other University policies, and the allegations will be referred to the appropriate University office or official(s).

C. Supportive Measures

The Title IX Coordinator, in consultation with other appropriate University officials, facilitates Supportive Measures, which are available to the Parties upon receiving a report or Formal Complaint alleging Prohibited Conduct. The Title IX Coordinator will consider the Parties' wishes with respect to planning and implementing the Supportive Measures. The Title IX Coordinator will maintain the reasonable confidentiality of the Supportive Measures, provided that this does not impair the ability to provide the Supportive Measures. The Title IX Coordinator will act to ensure as minimal an academic and employment impact on the Parties as possible and implement Supportive Measures in a way that does not unreasonably burden either Party.

Supportive Measures include, but are not limited to:

Academic Accommodations

- Assistance in transferring to another section of a lecture or laboratory
- Assistance in arranging for incompletes
- Assistance with leave of absence
- Assistance with withdrawal from coursework
- Assistance with withdrawal from campus
- Assistance with communicating with faculty
- Rearranging class schedules
- Re-scheduling exams
- Extensions of academic deadlines
- Re-taking a course
- Dropping a course
- Academic support such as tutoring or other course/program related adjustments
- Facilitating adjustments so complainants and respondents do not share same classes

Housing Accommodations

- Facilitating changes in on-campus housing location to alternate housing
- Assistance in exploring alternative housing off-campus

Care and Support

- Facilitating assistance for an individual to obtain medical, healthcare, advocacy, and therapy services
- Referral to community-based providers
- Referral to on-campus resources

Community Education

- Education to the community or community subgroup(s)
- Training on Prohibited Conduct and/or other relevant issues
- Bystander Intervention Program

Safety

- Providing campus safety escorts
- Providing transportation accommodations
- Increased security and monitoring of certain areas of the campus
- Transportation and parking arrangements
- Assistance in making a report to law enforcement or obtaining a protective order
- Safety planning
- Assisting a person in requesting that directory information be removed from public sources

University Referrals

- Referral to Visa and Immigration assistance
- Assistance in arranging appointments with University resources
- Assistance with exploring changes in class and extra-curricular schedules
- Referral to student financial aid counseling

Other

- No Contact Order
- Denial of Access to campus grounds and/or buildings

The Title IX Coordinator will promptly inform the Respondent of any Supportive Measures that will directly impact the Respondent.

The Title IX Coordinator retains discretion to provide and/or modify any Supportive Measures based on all available information. Supportive Measures will remain in effect as necessary.

D. Filing of a Formal Complaint of Prohibited Conduct

A Formal Complaint of Prohibited Conduct against a Respondent may be filed with the Title IX Coordinator by phone, mail, email, or in person, or by submitting the complaint form which can be accessed on the Office of Diversity and EEO's website by email, mail, facsimile, or in person by using the contact information listed in Section V.B. of the Policy.

Should the Complainant decide to file a Formal Complaint, the Title IX Coordinator will review the Formal Complaint and determine whether it should be dismissed or move into the resolution process.

E. Special Considerations: Requests for Anonymity and to Not Proceed

If a Complainant does not wish to disclose their personally identifiable information (i.e., wishes to remain anonymous) and/or does not wish to file a Formal Complaint, the Complainant may make such a request to the Title IX Coordinator. Regardless of their choice, the Title IX Coordinator will still offer Supportive Measures to the Complainant as appropriate. The Complainant retains the ability to file a Formal Complaint at any time.

The Title IX Coordinator has ultimate discretion over whether the University proceeds, and the Title IX Coordinator may sign a Formal Complaint to initiate the resolution process when appropriate. The Title IX Coordinator's decision to sign a Formal Complaint will be based on whether:

1. An investigation is needed to comply with legal anti-discrimination requirements or is otherwise the most appropriate and effective response;
2. The effect that non-participation by the Complainant may have on the availability of evidence and the ability to pursue the resolution process fairly and effectively; and/or
3. A violence risk assessment shows a compelling risk to health and/or safety which requires the University to pursue formal action to protect the University community. A compelling risk to health and/or safety may result from any combination of the following:
 - a) Evidence of patterns of misconduct;
 - b) Predatory conduct, threats, abuse of minors;
 - c) Allegations that the Prohibited Conduct was committed by multiple persons; and/or
 - d) Use of weapons and/or violence.

When the Title IX Coordinator signs the Formal Complaint, the Complainant does not become the

Complainant and is not otherwise a Party.

Overall, the University's ability to remedy and respond to the Formal Complaint may be limited if the Complainant does not want the University to proceed with the resolution process. The goal is to provide the Complainant with the opportunity to file a Formal Complaint and participate while balancing the University's obligation to protect its community.

F. Designation of Prohibited Conduct

Upon receipt and review of a Formal Complaint, the Title IX Coordinator will promptly send a *Written Notice of Designation* simultaneously to both Parties of the decision that the alleged conduct is Prohibited Conduct and the reasons for this decision.

VI. Resolution Processes

A. Consolidation of Complaints

At the discretion of the Title IX Coordinator, multiple reports may be consolidated into one Informal Resolution and/or investigation if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where the matters involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties, including those arising out of the same or different events(s).

If the allegations are consolidated into the Formal Complaint of Sexual Harassment, these Procedures do not apply. The Sexual Harassment Procedures for when the Respondent is an Employee will apply.

B. Informal Resolution Process

Informal Resolution may serve to address the alleged Prohibited Conduct as an alternative to proceeding to an investigation and responsive action. Informal Resolution can encompass a variety of approaches agreed to by the Parties including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies facilitated by the Title IX Coordinator.

The purpose of Informal Resolution is to take appropriate action by imposing individual and community interventions and remedies designed to maximize the equal access to the education program or activity, as well as to address the effects of the conduct on the larger University community.

1. Request for Informal Resolution

Either Party may request Informal Resolution, including their preferred approach of reaching a resolution, such as mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies. Both Parties and the Title IX Coordinator must agree to the process in writing. Either Party may terminate an ongoing Informal Resolution at any time prior to reaching an agreement.

The Title IX Coordinator has the discretion to determine whether a Formal Complaint is appropriate for Informal Resolution and which resolution approach is best utilized given the specifics of the Formal Complaint. The Title IX Coordinator retains discretion to terminate an ongoing Informal Resolution process at any time, at which point the Title IX Coordinator will determine appropriate next steps. The Title IX Coordinator will inform both Parties simultaneously in writing of the reason(s) for terminating an Informal Resolution process.

2. Informal Resolution Not Permitted

Although the Title IX Coordinator retains discretion to determine whether a Formal Complaint is appropriate for Informal Resolution in other cases, Informal Resolution is not permitted under the following circumstances:

- a. Formal Complaints by a student alleging Sexual Harassment against an Employee (staff or faculty); or
- b. Formal Complaints alleging Sexual Assault or Sexual Coercion.

3. Informal Resolution Permitted

When Informal Resolution is utilized, the process is voluntary and is not a requirement or condition of continued enrollment or employment at the University.

In such case, Parties will receive a written *Notice of Informal Resolution* containing the following:

- a. Summary of the allegations;
- b. Notice that neither Party is required to accept responsibility for the alleged Prohibited Conduct, unless a Respondent chooses to do so;
- c. Notice that there is no finding of a Policy violation or Sanction unless agreed to by the Respondent;
- d. Notice that agreement to Informal Resolution is not a waiver of right to proceed with an investigation and adjudication;
- e. Notice that until an Informal Resolution agreement is finalized, the Parties may, at any time, opt out of Informal Resolution, at which point the Formal Complaint would proceed or resume to investigation and adjudication, as appropriate;
- f. Notice of any potential consequences resulting from participating in the Informal Resolution process, including that records will be maintained or could be shared;
- g. Notice about the reasonable confidentiality restrictions of the Informal Resolution process;
- h. Notice that if an Informal Resolution agreement is finalized and implemented, it precludes the Parties from resuming investigation and adjudication of a Formal Complaint arising from the same allegations; and
- i. Notice that the results of Informal Resolution are not eligible for appeal.

4. Mediation and Other Informal Resolution

Informal Resolution, including mediation, must be conducted by a trained facilitator who guides the Parties in a confidential dialogue to reach an effective resolution, if possible. The trained facilitator may be internal or external to the University depending on the needs of the specific case as determined by the Title IX Coordinator. Sanctions are not possible as a result of Informal Resolution unless the Parties agree to accept Sanctions and/or appropriate Remedies.

5. Negotiated Informal Resolution Interventions and Remedies

If agreed to by the Parties and determined appropriate by the Title IX Coordinator, the following Informal Resolution interventions and Remedies may be utilized, including but not limited to:

- a. Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- b. Targeted or broad-based educational programming or training for relevant individuals or groups;
- c. Academic and/or housing modifications for either Party;
- d. Completion of projects, programs, or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited;
- e. Compliance with a No Contact Order;
- f. Compliance with a Denial of Access;
- g. Completion of community service hours over a specific period of time; and
- h. Separation from the University.

The Title IX Coordinator will work with the Provost (for faculty Employees), the Vice President of Finance and Management (for non-faculty Employees) and any other appropriate University office as needed to facilitate such negotiated interventions and Remedies.

6. Completion of Informal Resolution

When an Informal Resolution agreement is reached and the terms of the agreement are implemented, the matter is resolved and closed. Appeals by either Party are not permitted. The Title IX Coordinator is responsible for ensuring compliance with the agreement.

In cases where an agreement is not reached and the Title IX Coordinator determines that further action is necessary, or if either Party fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and adjudication under these Procedures, as appropriate.

The Parties will be provided with a written copy of the terms of the Informal Resolution agreement. The Title IX Coordinator will maintain all records regarding Informal Resolution, as described in VI.E of the Policy.

7. Respondent Acceptance of Responsibility

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent wishes to accept responsibility, the Title IX

Coordinator may initiate the Informal Resolution process if permitted, after obtaining both Parties' voluntary, written consent, and after providing the required *Notice of Informal Resolution* if it has not already been provided.

Any remaining allegations that are not resolved through the Informal Resolution process may proceed to investigation, as appropriate.

C. Investigation Process

When investigating a Formal Complaint, the below procedures will be utilized. However, at any time prior to reaching a determination regarding responsibility, an Informal Resolution may occur if appropriate conditions are satisfied (see Section VI.B of these Procedures).

1. Presumption of Not Responsible

Respondents are presumed not responsible for any and all allegations until the conclusion of the investigation and adjudication process.

2. Notice of Rights and Responsibilities

The Complainant and Respondent are required to review and sign their *Notice of Rights and Responsibilities*. The Investigator will verify that the Parties have received, reviewed, and signed their *Notice of Rights and Responsibilities* and have been provided with a copy of the Policy and Procedures to ensure the Parties have adequate information about the investigation and adjudication. The Investigator will also ensure that both Parties have had an opportunity to ask and receive answers to any questions.

The *Notice of Rights and Responsibilities* will include but are not limited to the following:

- a. Right to be treated with dignity and respect by all University officials;
- b. Right for information to only be shared with others on a need-to-know basis in order to facilitate a resolution;
- c. Right to be informed of available Supportive Measures;
- d. Right to be informed of available community and campus resources and services;
- e. Right to a Support Person and/or an Advisor;
- f. Right to regular updates on the status of the investigation and/or resolution; and
- g. Prohibition against Retaliation and guidance about reporting any retaliatory conduct.

3. Notice of Investigation

The Parties will be provided a written *Notice of Investigation*, which will include the following:

- a. The University's complete Policy and Procedures as set forth herein;
- b. The allegations of Prohibited Conduct, as defined by the Policy;
- c. Identities of the Parties involved, if known;

- d. Date(s), location(s), and time(s) of the alleged incident(s), if known;
- e. Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the adjudication process;
- f. Parties may have an Advisor of their choice, who may be an attorney;
- g. Parties may have a Support Person of their choice;
- h. Advisement that knowingly making false statements or knowingly submitting false information during the investigation and adjudication process is prohibited under Section XI of the Policy;
- i. If the University decides to investigate additional allegations about either Party that are not in the original notice, the Parties will receive an amended notice containing the additional allegations; and
- j. The range of potential Sanctions associated with the alleged Prohibited Conduct.

4. Role of the Investigator

The Title IX Coordinator will designate an Investigator(s) to conduct a prompt, thorough, fair, and impartial investigation.

5. Overview of the Investigation

a. Standard of Proof

The standard of proof for a determination of responsibility under the Policy is Preponderance of the Evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remain with the University and not on the Parties.

b. Evidence

The investigation is an impartial fact-gathering process. It is an important stage of the process in which both Parties have an opportunity to be heard regarding the Formal Complaint. During the investigation, the Investigator will speak separately with both Parties and any other individuals who may have relevant information. No audio or video recording of any kind is permitted during such interviews. The Parties will each have an equal opportunity to present witnesses (including fact and expert witnesses, at their own expense) and any other relevant evidence.

Evidentiary materials, regardless of relevance, may be provided by a Party; however, the Investigator will determine whether and how the evidence and witnesses submitted by the Parties is directly related to the allegations and whether and how that information will be factored into the investigation. The Investigator will also gather any available physical evidence or documents, including prior statements by the Parties or witnesses, communications between the Parties, email messages, text messages, social media materials, and other records, as appropriate and available.

The University does not restrict the ability of Parties to discuss allegations that have been reported or to gather and present evidence. However, the University has a compelling interest in protecting the integrity of the resolution process, protecting the privacy of Parties and witnesses, and protecting Parties and witnesses from harassment, intimidation, or Retaliation during the resolution

process. To further these goals, witnesses and Parties are encouraged to limit their sharing of information about a matter (including the allegations, the identities of the Parties and witnesses, and the questions asked in interviews) while the resolution process is ongoing. Parties and witnesses are also cautioned not to discuss the allegations in a manner that constitutes Retaliation or unlawful conduct.

c. Special Considerations

Information related to the prior sexual history of either Party is generally not relevant to the determination of a Policy violation. However, prior sexual history between the Parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the Parties, and where Consent is at issue in the case at hand, evidence as to the Parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the Parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to show Consent under the Policy. Sexual history will never be used for purposes of illustrating either Party's individual character or reputation. The Investigator will determine the relevance of prior sexual history and inform the Parties if information about the Parties' sexual history with each other is deemed relevant.

The University cannot access, consider, disclose, or otherwise use a Party's record(s) that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the capacity thereof or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party. However, a Party can provide voluntary, written consent to use the above-mentioned material for the investigation and adjudication. Consent shall be specifically limited to the information provided. At no time shall consent be construed as consent to access any other information in the Party's records.

The Investigator will not use, require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

d. Draft Investigation Report

At the conclusion of the investigation, the Investigator will provide a written investigation report (the *Draft Investigation Report*) that provides a case timeline, appropriately summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and evidence that is directly related to the Formal Complaint.

e. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is complete, the Parties will be given an equal opportunity to review and meaningfully respond to the *Draft Investigation Report*. The Investigator will also send to the Party, and the Party's Advisor if applicable, all evidence obtained that is directly related to the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a Party or other source, for inspection and review. Parties will have ten

(10) Business Days to review the *Draft Investigation Report* and submit a written response, including comments, information, and/or questions to the Investigator. If there is any new or additional information to be provided by either Party, it must be presented to the Investigator at this time.

If further investigation is warranted based on the Parties' written responses, the Investigator will continue the investigation, as needed. The Investigator will consider the Parties' written responses prior to completing the *Final Investigation Report*.

f. Final Investigation Report

Upon timely receipt of the Parties' written responses, or after the ten (10) Business Days review period has lapsed with no written responses, the investigation ends. The Investigator will complete the *Final Investigation Report*. The *Final Investigation Report* will contain summaries of all relevant information obtained throughout the course of the investigation and analysis of fact and a determination, based on a Preponderance of the Evidence, whether the Respondent is responsible or not for the Prohibited Conduct.

Following completion of the *Final Investigation Report*, the Title IX Coordinator will provide each Party with a confidential copy of the *Final Investigation Report*, including all attachments. In order to protect the privacy of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

1. Disciplinary Sanctions, Remedies, and Other Responsive Actions

The University may take responsive action based on a determination of responsibility for a violation of the Policy. Responsive action is intended to eliminate Prohibited Conduct, prevent its recurrence and promote accountability while supporting the University's educational mission and legal obligations. Responsive action may include Sanctions, Remedies, or other responsive action including rehabilitation, educational, restorative, or monitoring components.

- When the Respondent has been found responsible for violating the Policy as determined in the *Final Investigation Report*, the final disciplinary sanction will be determined by the appropriate University official and included in a final disciplinary report.
- When the Respondent is a faculty member, the Associate Vice President of Academic Affairs will determine the appropriate disciplinary action unless a different process is required under the Faculty Handbook.
- When the Respondent is a staff member, the Associate Vice President of Human Resources will determine the appropriate disciplinary sanction unless a different process is required under any applicable collective bargaining agreement.
- Upon receipt of the *Final Investigation Report*, the Associate Vice President for Academic Affairs (faculty) or the Associate Vice President for Human Resources (staff) shall impose all appropriate disciplinary sanctions that do not require the use of additional processes and then, if applicable, refer the matter for further action in accordance with the appropriate policy, handbook, and/or collective bargaining agreement.
- Both parties shall be informed, in writing, at the same time, the disciplinary sanction(s) imposed on the Respondent in the final disciplinary report. The University will not publicly

disclose personally identifiable information about the Parties or the written determination (including any Sanctions) except as required by law.

a. The range of Sanctions and other responsive actions that may be imposed upon the Respondent include but are not limited to the following:

For staff:

- Education and training
- Written reprimand
- No Contact Order
- Denial of Access to campus grounds and/or buildings
- Reassignment
- Suspension without pay
- Separation from employment

For faculty:

- Education and training
- Written reprimand
- No Contact Order
- Denial of Access to campus grounds and/or buildings
- Reassignment
- Suspension without pay
- Separation from employment

b. The following factors will be considered before imposing Sanctions and other responsive actions on a Respondent:

- The nature and degree of violence involved in the conduct at issue.
- The impact of the conduct on the Complainant.
- The impact of the conduct on the community and/or the University.
- Prior relevant misconduct by the Respondent.
- Maintenance of a safe and respectful environment conducive to working and learning.
- Protection of the University community.
- Any other mitigating, aggravating or compelling circumstances appropriate to reaching a just and appropriate resolution.

c. The range of Remedies that may be provided to a Complainant:

The University may provide reasonable Remedies to a Complainant based on a determination of responsibility for a violation of the Policy. The range of Remedies that may be provided to a Complainant depend on their status as a student, staff member or faculty member and include, but are not limited to:

For students:

- Supportive measures: such as extended classwork deadlines, flexible deadlines, change of venue for taking a test or exam, change in test or exam date and/or retaking of a test or exam;

- Academic accommodations: such as retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests and/or tuition reimbursement;
- Additional accommodations: such as a No Contact Order, Denial of Access, housing accommodation; course schedule changes, counseling and/or referral to outside agencies.

For staff:

- Supportive measures: such as reassignment to a different shift, location, supervisor or work unit.
- Additional accommodations: such as counseling and/or referral to outside agencies.

For faculty:

- Supportive measures: such as reassignment of duties, change in work location, change in service assignments, change in reporting structure.
- Additional accommodations: such as counseling and/or referral to outside agencies.

d. In the event of a Final Investigation Report that Respondent violated the Policy and Remedies are provided to the Complainant, the following will occur:

- Remedies will be provided to the Complainant on a confidential basis.
- Remedies are considered confidential and the Respondent will not have access to specific information about what Remedies will be provided except to the extent that the Remedies are punitive and burden the Respondent.
- Remedies may not be appealed by either Party.
- The University will not publicly disclose personally identifiable information about the Parties, the Final Investigation Report or the final disciplinary report, except as required by law.

2. Appeals

a. Disciplinary Limitations and Grievance Rights

University policies and procedures, state law, and/or collective bargaining agreements may require the University to use additional processes before taking employment-related actions against a Respondent. Where a Respondent is covered by such a policy, law, or contract, the investigation and determination of whether Respondent is responsible for the alleged Policy violation(s) will proceed in accordance with these Procedures, except that the Associate Vice President of Academic Affairs (faculty) or the Associate Vice President of Human Resources (staff) will impose all appropriate disciplinary sanctions that do not require the use of additional processes and then refer the matter, if applicable, for action under the additional processes. Nothing in these Procedures abrogates a Respondent’s grievance rights based on their employment classification, terms of an employment contract, and/or collective bargaining agreement. Employees may not grieve remedies that do not constitute formal disciplinary sanction (e.g., No Contact Directive, mandatory counseling/training, restrictions on access to University facilities, resources, or activities). The University’s disciplinary sanction will be considered complete with the Associate Vice President of Academic Affairs or the Associate Vice President of Human Resource’s imposition of disciplinary sanction and referral. The Title IX Coordinator or designee shall promptly notify the Complainant

if any additional processes or grievance procedures alter the disciplinary action imposed under these Procedures.

b. Bases for Appeals

Either Party may initiate this appeal process when the Party receives the written notice of the final disciplinary report. Appeals must be submitted in writing to the Title IX Coordinator within five (5) Business Days of receipt of the final disciplinary report. Appeals are limited to the bases listed below.

i. Procedural Irregularity

- In all cases, the procedural irregularity must be material to the outcome of the designation or the written determination.
- A procedural irregularity affecting the designation or the written determination may include: a failure to follow the University's procedures; a failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence; or a determination regarding what evidence was excluded as irrelevant.

ii. New Evidence

- New Evidence is evidence that was not reasonably available at the time the designation or written determination was made, that could affect the outcome.
- Evidence presented prior to the time the designation or written determination is issued does not qualify as new evidence that was not reasonably available.

iii. Conflict of Interest

- The Title IX Coordinator or Investigator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the designation or written determination.
- Claims of conflict of interest or bias should be based on the current case and process in question and will be assessed accordingly.

iv. Substantially Disproportionate Sanction (Applicable ONLY to final disciplinary report)

- The Sanction imposed on the Respondent is substantially disproportionate to the facts of the particular Policy violation.

Appeals will be reviewed by the Provost (faculty) or the Vice President of Finance and Management (staff) (the "Appeal Officer") for all appeals of designations or written determinations under these Procedures. The Appeal Officer shall be free from conflict of interest or bias and shall not be the same person who reached the determination regarding the designation or the written

determination, the Investigator, or the Title IX Coordinator. The Appeal Officer will have had no previous involvement with the case that they are assigned to review.

b. Appellate Process

The appellate process will proceed as follows:

- i. Appeals will be in writing only. There will be no hearing.
- ii. When a Party appeals, the sanction(s) is stayed until the appeal is complete, but any remedies imposed will continue pending the outcome of the appeal. The Title IX Coordinator, in consultation with appropriate University officials, may impose additional remedies while the appeal is pending to ensure a safe and non-discriminatory academic and work environment
- iii. Parties will have ten (10) Business Days from receipt of the Final Investigation Report (if there is no finding of responsibility) or written notice of the sanctions imposed on the Respondent (if there is a finding of responsibility) to submit a written appeal statement challenging the decision.
- iv. Parties will be notified if the other Party files a written appeal statement and given notice in writing of the general grounds for the appeal. The other Party will be given ten (10) Business Days from receipt of the other Party's written appeal statement to submit a written appeal response, in support of the findings and/or sanctions.
- v. The Title IX Coordinator shall forward the written appeal statement and the written appeal response, if any, to the Appeal Officer.
- vi. Upon review of the appeal information, the Appeal Officer may: (1) affirm the designation or written determination; (2) overturn the designation or written determination; or (3) remand the case to remedy procedural errors or to consider new evidence.
- vii. The written decision by the Appeal Officer is final and is not subject to further appeal.
- viii. After the responsive action is concluded or when the time for filing an appeal has expired and neither Party has submitted an appeal, the Title IX Coordinator shall notify the Parties simultaneously of the final outcome of the adjudication process.
- ix. The determination regarding responsibility for a violation of the Policy becomes final either on the date that the University provides the Parties with the written decision of the result of the appeal if an appeal is filed, or if an appeal is not filed, on the date after which an appeal would no longer be considered timely, subject to any remanded proceedings.

3. Post-Resolution Follow-Up

After any Sanction and/or Remedies are issued, if the Complainant agrees, the Title IX Coordinator may periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine whether additional Remedies are necessary. The Complainant may decline future contact at any time. The Title IX Coordinator may periodically contact the

Respondent to assure compliance with the intent and purpose of any Sanction and/or Remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any Sanction and/or Remedies imposed under the Policy, or a failure by a University Employee to provide specified Sanctions or Remedies should be reported to the Title IX Coordinator.

The Complainant and Respondent are encouraged to provide the Title IX Coordinator with feedback about their experience with the process and recommendations regarding ways to improve the effectiveness of the University's implementation of the Policy and Procedures.