

# UNIVERSITY POLICY



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## Sexual Misconduct Policy

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**Organizational Part:** Seven – Human Resources  
**Chapter:** One – University Policies  
**Policy Type:** Institution Wide  
**Responsible Office:** Student Affairs  
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### POLICY STATEMENT

Consistent with federal laws known as Title IX, the Clery Act, the Violence Against Women Reauthorization Act of 2013 (“VAWA”) and associated regulations and guidance, Butler University is committed to having an educational and working environment free from sex discrimination in any form, including sexual harassment, misconduct, and violence.

### REASON FOR POLICY

This policy, in compliance with legal obligations, defines prohibited conduct and outlines procedures for reviewing, investigating, and resolving complaints of sex discrimination, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence and stalking involving students, faculty and staff (collectively “Employees”), and visitors, contractors, and vendors (collectively “Third Parties”).

No Division, Department, and/or College is permitted to develop and/or adopt procedures that contradict, modify, or supplement this policy. Because this policy is meant to satisfy compliance obligations, all decisions made under this policy are final and are not subject to additional review, appeals, or governance under any other policy or procedure, including the faculty grievance process.

While this policy is meant to satisfy Title IX compliance obligations, it also addresses alleged sexual misconduct that falls outside of the strict scope of Title IX. Therefore, a formal complaint may be “dismissed” as a Title IX matter, but may still move forward under this policy.

The person responsible for implementing this policy is the Title IX Coordinator. If circumstances require, this official may designate another person to implement the policy.

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**POLICY APPROVAL**

Board of Trustees

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## SCOPE OF POLICY

### A. To Whose Conduct Does the Policy Apply?

1. Students
  - a. Those enrolled in any courses in any format at the University, or
  - b. Those having a continuing relationship with the University such as those eligible and/or applying for reenrollment and/or readmission, or those involved in an appeal or grievance process
2. Employees
  - a. All persons legally defined as employees of the University
3. Third Parties
  - a. Affiliates, visitors, contractors, vendors

### B. Where and When Does This Policy Apply?

1. This policy applies to prohibited conduct where:
  - a. The conduct occurs on campus or other property owned or controlled by the University;
  - b. The conduct occurs in the context of a University employment or education program or activity, including but not limited to University-sponsored study abroad, research, or online programs; or
  - c. The conduct occurs outside the context of a University employment or education program or activity but
    - i. Has continuing adverse effects that create a hostile environment for students or employees while on campus or other property owned or controlled by the University or in any University employment or education program or activity, or
    - ii. Presents an ongoing risk to the safety of the University community.
2. Time for making an initial report
  - a. There is no time limit on making an initial report to the University.
    - i. The University does encourage all individuals to report violations of this policy immediately.
    - ii. Individuals should note that the University's ability to effectively investigate alleged violations of this policy may be limited as time passes.
    - iii. Individuals should also note that the University does not have jurisdiction over those no longer affiliated with the University, even if they were affiliated at the time of the alleged incident.
  - b. Making an initial report to the University does not automatically result in an Administrative Investigation and Adjudication Process.
    - i. Individuals who have experienced sexual misconduct may make an initial report to the University and communicate that they do not wish to move forward with the Administrative Investigation and Adjudication Process outlined in this policy. Please see **REQUESTS FOR NO UNIVERSITY ACTION** for additional information.
3. Title IX Matters
  - a. When prohibited conduct satisfies both (i) and (ii) below, it falls under Title IX and all applicable regulations and guidance. Prohibited conduct that does not meet these requirements may still fall under the jurisdiction of this policy, but will not be considered a Title IX matter.
    - i. The conduct occurs in one of the following contexts:
      1. On campus or other property owned or controlled by the University;

2. A University education program or activity; or
    - A. "Education program or activity" includes locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the alleged conduct occurs.
  3. Any building owned or controlled by a student organization that is officially recognized by the University.
    - ii. The conduct is toward a person in the United States.
- b. In order for an individual to submit a formal complaint for a Title IX matter, triggering the Administrative Investigation and Adjudication Process, that individual must be participating or attempting to participate in a University education program or activity at the time of submission.

## **PROHIBITED CONDUCT AND RELATED DEFINITIONS**

Butler University prohibits all forms of sexual misconduct. Sexual misconduct includes sex- or gender-based discrimination and harassment, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking. Retaliation is also prohibited under this policy.

### **A. SEX- OR GENDER-BASED DISCRIMINATION AND HARASSMENT**

Sex- or gender-based discrimination and harassment is unwelcome conduct based on sex, gender, sexual orientation, gender identity, or gender expression, including verbal, nonverbal, or graphic acts of aggression, intimidation, or hostility, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with, limits, or prevents an individual from participating in or benefitting from the University's education or employment programs and/or activities.

Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. The University will consider the totality of known circumstances, including but not limited to:

1. The frequency, nature, severity, location, duration, and context of the conduct, and
2. Whether the conduct implicates concerns related to academic freedom or protected speech.

This Policy distinguishes sex- and gender-based discrimination and harassment from unwelcome conduct of a sexual nature. Unwelcome conduct of a sexual nature is addressed under the definition of SEXUAL HARASSMENT, below.

### **B. SEXUAL HARASSMENT**

Sexual Harassment is unwelcome conduct on the basis of sex that satisfies the conditions outlined in (1), (2), and/or (3), below. "Unwelcome conduct" may include any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, electronic or otherwise.

1. **Quid Pro Quo:** An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; or
2. **Denial of Equal Access:** 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
3. **Hostile Environment:** Unwelcome conduct that is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or

benefitting from the University's education or employment programs and/or activities.

- a. Conduct must be deemed severe, persistent, or pervasive from both a subjective and objective perspective.
- b. The totality of known circumstances, including frequency, nature, severity, location, duration, and context of the conduct will be taken into account.
- c. A hostile environment can be created by a single or isolated incident, if sufficiently severe.
  - i. The more severe the conduct, the less need there is to show a repetitive series of incidents to establish a hostile environment, particularly if the conduct is physical.
  - ii. The perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

### C. SEXUAL ASSAULT

Sexual Assault is engaging in any of the following knowing or intentional acts without consent:

1. Touching of the buttocks, breasts, groin or genitals of another, whether clothed or unclothed for the purpose of sexual gratification,
2. Touching another with any of these body parts for the purpose of sexual gratification,
3. Making another person touch you or themselves with or on any of these body parts for the purpose of sexual gratification,
4. Penetration, no matter how slight, of the vagina or anus with any body part or object,
5. Any contact between the mouth of one person and the genitalia of another person, and/or
6. Sexual intercourse between persons related to each other within the degrees wherein marriage is prohibited by law.

### D. CONSENT

Consent is voluntary words or actions mutually understood by each party to be agreement or permission to engage in a specific sexual act at a specific time.

1. Consent cannot be inferred from any of the following:
  - a. Silence,
  - b. Passivity,
  - c. The absence of resistance,
  - d. The existence of a current or prior relationship, and/or
  - e. Consent given previously.
2. The party who initiates sexual activity is responsible for obtaining consent for that activity.
3. Consent may be withdrawn at any time by any party.
  - f. Consent is withdrawn by words or actions a reasonable person would understand to mean that a party no longer agrees or gives permission to engage in a specific sexual act at a specific time.
  - g. Once consent is withdrawn, sexual activity must cease immediately.
4. There is no consent if any of the following are present:
  - h. **Force:** The use of physical force that would reasonably overcome an individual's freedom to choose whether to participate in sexual activity.
  - a. **Intimidation or Threat:** Express or implied threat of immediate or future physical, emotional, reputational, financial, or other harm to an individual or others that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.
  - b. **Coercion:** Pressure to engage in sexual activity that would reasonably overcome an

individual's freedom to choose whether to participate in sexual activity.

- c. **Incapacitation:** An individual is incapacitated when they are unable to understand the who, what, when, where, why, and how of the situation due to the use of alcohol and/or other drugs, mental or physical disability, being asleep or unconscious, and/or age (as defined by Indiana state law).
  - i. There is no consent when:
    - 1. The individual who initiated the sexual activity knew of the other party's incapacitation, or
    - 2. A reasonable person in the same situation would have known of the other party's incapacitation.

## **E. SEXUAL EXPLOITATION**

Sexual Exploitation is any of the following knowing or intentional acts:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants;
3. Observing private sexual activity or viewing another person's intimate parts (including genitalia, breasts, and/or buttocks) without the consent of all individuals in a place where a person would have a reasonable expectation of privacy;
4. Recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
5. Disseminating or posting images or recordings of private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
6. Assuming the identity of another person, without consent, for the purpose of seeking sexual activity and/or sexual favors through electronic or other means;
7. Prostituting another person; or
8. Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

## **F. DATING VIOLENCE**

Dating violence is violence or the threat of violence committed by an individual toward another with whom they have a current or previous relationship of a romantic or intimate nature.

The existence of a romantic or intimate relationship will be determined based on the Complainant's description of the relationship and the following factors:

1. Length of the relationship,
2. Type of relationship, and
3. Frequency of interaction between the people involved in the relationship.

## **G. DOMESTIC VIOLENCE**

Domestic violence is violence or the threat of violence committed by an individual toward another who:

1. Is a current or former spouse,
2. Is or has cohabitated with the individual as an intimate partner,
3. Has a child in common with the individual,
4. Is similarly situated to a spouse of the individual under Indiana domestic or family violence laws, or

5. Is an adult or youth who is protected from that individual's acts under the domestic or family violence laws of Indiana.

## H. STALKING

Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or the safety of others or to experience substantial emotional distress.

1. "Course of conduct" means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
2. Substantial emotional distress means significant mental suffering or anguish.

## I. RETALIATION

1. Retaliation is intimidation, threats, coercion, or discrimination:
  - i. Toward any individual because that individual has made a report or formal complaint of prohibited conduct, participated in a process outlined by this policy, or chosen not to participate in a process.
  - j. For the purpose of interfering with any right or privilege secured by federal law or University policy.
2. Retaliation does not include:
  - k. Vague criticisms, stray remarks, and petty slights that do not rise to the level of intimidation, threats, coercion, or discrimination;
  - l. A good faith pursuit of civil, criminal, or other legal action, even in response to an initial report under this Policy; and/or
  - m. The exercise of rights protected under the First Amendment.
3. Reports of retaliation may be consolidated into an ongoing Administrative Investigation and Adjudication Process at the discretion of the Title IX Coordinator.

## REPORTING SEXUAL MISCONDUCT

### A. REPORTING SEXUAL MISCONDUCT TO THE UNIVERSITY

Any person may report sexual misconduct to the University. The person making the initial report does **not** have to be the person alleged to have experienced the misconduct, nor are they required to be affiliated with the University.

Under this policy, an individual reported to have experienced sexual misconduct is referred to as the **Complainant**. An individual alleged to have engaged in sexual misconduct is referred to as the **Respondent**. Collectively, Complainant and Respondent are referred to as the **parties** to a matter.

#### 1. Submitting an Initial Report of Sexual Misconduct

- a. Reports may be made to the Title IX Coordinator in person, or via online report, phone call, email, or postal mail.
- b. Reports may be made at any time. After business hours, reports can be submitted online, or through voicemail, email, or postal mail to the Title IX Coordinator.
- c. The online report form and contact information for the Title IX Coordinator can be found at [www.butler.edu/sexual-misconduct](http://www.butler.edu/sexual-misconduct).
- d. Reports may be submitted anonymously. Please note that the University's ability to respond to anonymous reports may be limited.

- e. Most University employees are expected to report when they are made aware of an incident of sexual misconduct. See below for more information.

Making an initial report of sexual misconduct to the University does **not** automatically result in an Administrative Investigation and Adjudication Process. A formal complaint is required to initiate the Administrative Investigation and Adjudication Process. Please see **FORMAL RESOLUTION: THE UNIVERSITY ADMINISTRATIVE INVESTIGATION AND ADJUDICATION PROCESS**, below.

## **B. EMPLOYEE REPORTING EXPECTATIONS**

The University is committed to protecting the safety of Complainants and the campus community, and to making Complainants aware of their rights, options, and resources. Therefore, it is the University's expectation that all employees, except those designated as confidential employees (defined below), report to the Title IX Coordinator when they become aware of sexual misconduct.

### **1. Confidential Employees**

- a. Confidential employees at Butler University are:
  - i. Counselors at Counseling and Consultation Services,
  - ii. Health Services staff members,
  - iii. Ordained clergy providing pastoral care in the Center for Faith and Vocation, and
  - iv. The Sexual Assault Response and Prevention Specialist.

## **C. REPORTING TO LAW ENFORCEMENT**

A Complainant also has the option of making a criminal report to the appropriate law enforcement agency.

### **1. Where to Report**

- a. Incidents alleged to have occurred on campus should be reported to the Butler University Police Department (BUPD).
- b. Incidents alleged to have occurred off campus should be reported to the appropriate local law enforcement agency.

### **2. The Relationship between the Criminal Process and the University Process**

- a. Complainant has the right to pursue both the University's Administrative Investigation and Adjudication Process and the criminal process simultaneously. Complainant may also choose to pursue either the Administrative Investigation and Adjudication Process or the criminal process exclusively.
  - i. Complainant's decision regarding pursuit of the criminal process does not impact the Administrative Investigation and Adjudication Process.
- b. The Administrative Investigation and Adjudication Process is distinct from the criminal process.
  - i. Any investigation conducted by the University will be conducted independently and separately from any investigation conducted by law enforcement.
  - ii. The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated.
  - iii. Actions that take place in the criminal process, including placing, reducing, or dismissing charges, and/or plea agreements, will not determine the resolution of the University process. This information may be considered in the course of the Administrative Investigation and Adjudication Process.



## **D. IMMUNITY**

The University seeks to remove any barriers to participating in the Administrative Investigation and Adjudication Process, and therefore provides limited immunity with regard to certain policy violations.

1. Any student, whether a party or a witness, who makes a report or participates in the investigation and adjudication process under this Policy will generally be offered immunity from being disciplined for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. The University may encourage educational or therapeutic remedies for those individuals.
2. This limited immunity does not protect any student organization from discipline if information is learned through the course of an investigation under this Policy pertaining to unregistered parties or other violations.

## **UNIVERSITY RESPONSE TO REPORTS OF SEXUAL MISCONDUCT**

### **A. INITIAL RESPONSE**

#### **1. Outreach to the Complainant**

- a. Upon receipt of an initial report, the Title IX Coordinator will reach out promptly to Complainant, sharing information about Complainant's rights, options, and resources, and extending an invitation to meet.
- b. Both on- and off-campus resources are available to Complainant, regardless of whether the conduct alleged falls under the jurisdiction of this policy or whether they choose to move forward with a formal complaint, as defined below.
- c. If this Policy applies to the alleged conduct, Complainant will be provided the opportunity to share their wishes regarding resolution of the initial report.
  - i. Complainant may choose to submit a formal complaint, initiating the Administrative Investigation and Adjudication Process, or request that the University take no action.
  - ii. Once a formal complaint is filed, there is also the option to resolve the matter informally, with the consent of all parties, provided the matter does not involve a student Complainant and employee Respondent. Processes related to each option are outlined below.
  - iii. Complainant's choice not to respond to or meet with the Title IX Coordinator will be evaluated in the same way as a request for no University action. The University's response to such requests is outlined below.

#### **2. Outreach to the Respondent**

- a. If the process moves forward with a formal complaint, each party will receive a Notice of Allegations.
- b. The Title IX Coordinator will also request a meeting with Respondent. In this meeting, the Title IX Coordinator will explain the process and make Respondent aware of their rights and the resources available to them.
- c. The Title IX Coordinator also retains the discretion to reach out to a Respondent for an educational conversation as needed, in the absence of a formal complaint.

## **B. SUPPORTIVE MEASURES**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available, without fee or charge to the Complainant or the Respondent, before or after the filing of a formal complaint or where no formal complaint has been filed.

### **1. Types of Supportive Measures**

- a. Academic adjustments
  - i. May include:
    1. Requesting flexibility regarding deadlines or class attendance
    2. Changing course schedules
- b. Campus escorts
- c. On-campus housing adjustments
- d. On-campus work adjustments
  - i. May include:
    1. Altering work schedule(s)
    2. Arranging for a different workspace
- e. University Building Ban
  - i. A directive prohibiting a party from being present in a particular building on University property.
- f. University Administrative No Contact Orders
  - i. Unless otherwise stated in writing, a person who is issued an Administrative No Contact Order by the University may not have contact with specific individuals for a period of time, either directly, indirectly, or through third parties.
    1. "Third parties" include friends, family, attorneys, and other individuals acting on behalf of a person who has been issued a No Contact Order.
    2. "Contact" includes but is not limited to email, social media, direct messaging, text messaging, phone calls, voicemail, or face-to-face contact.
      - a. Unintentional contact is not considered a violation of the Administrative No Contact Order
    3. Individuals are encouraged to report violations of Administrative No Contact Orders promptly to the Title IX Coordinator. Alleged violations of the Administrative No Contact Order may result in disciplinary action.
    4. Administrative No Contact Orders are separate and distinct from court actions, such as Protective Orders and Restraining Orders. Questions about these should be directed to local law enforcement. The Sexual Assault Response and Prevention Specialist can also assist with exploring options regarding these court actions.
- g. Other supportive measures as needed
  - i. Including adjustments to dining arrangements, co-curricular involvement, etc.

## **C. EMERGENCY REMOVAL**

The University may institute the emergency removal of Respondent when, after conducting an individualized safety and risk analysis, it determines that there is an immediate threat to the physical health or safety of any other individual arising from allegations of sexual misconduct.

If the University institutes an emergency removal, the Respondent's ability to be present on University property and participate in University-related activities will be limited. When information indicates that emergency removal may be warranted, the Title IX Coordinator will refer that information to the appropriate decisional authority for consideration. The appropriate decisional authority is determined

by the status of Respondent, as described below.

**1. Emergency Removal of Students**

- a. The Dean of Students or designee has the sole discretion to institute emergency removal of a student and to determine the terms of such removal.
- b. Notice of emergency removal will be provided to the student in writing. Upon receipt of notice, the student will be expected to comply with the terms of the removal immediately.
- c. The student may petition the Dean of Students or designee for reinstatement immediately. This petition must be made in writing and must articulate why the student does not pose an immediate threat to the physical health or safety of any other individual. The Dean or designee may choose to uphold the emergency removal, modify its terms, or lift it entirely.
- d. Failure to comply with the terms of an emergency removal may result in additional disciplinary action.

**2. Emergency Removal of Staff**

- a. A member of Human Resources senior leadership (“HR senior leader”) or designee has the sole discretion to institute emergency removal of a staff member and to determine the terms of such removal.
- b. Notice of emergency removal will be provided to the staff member in writing. Upon receipt of such notice, the staff member will be expected to comply with the terms of the removal immediately.
- c. The staff member may petition the HR senior leader or designee for reinstatement immediately. This petition must be made in writing and must articulate why the staff member does not pose an immediate threat to the physical health or safety of any other individual. The HR senior leader or designee may choose to uphold the emergency removal, modify its terms, or lift it entirely.
- d. Failure to comply with the terms of an emergency removal may result in additional disciplinary action.

**3. Emergency Removal of Faculty**

- a. The Dean of the faculty member’s academic unit or designee has the sole discretion to institute emergency removal of a faculty member and to determine the terms of such removal.
- b. Notice of emergency removal will be provided to the faculty member in writing. Upon receipt of such notice, the faculty member will be expected to comply with the terms of the removal immediately.
- c. The faculty member may petition the Dean or designee for reinstatement immediately. This petition must be made in writing and must articulate why the faculty member does not pose an immediate threat to the physical health or safety of any other individual. The Dean or designee may choose to uphold the emergency removal, modify its terms, or lift it entirely.
- d. Failure to comply with the terms of an emergency removal may result in additional disciplinary action.

#### D. REQUESTS FOR NO UNIVERSITY ACTION

A Complainant may request that the University take no action in response to a report of sexual misconduct.

##### 1. Evaluating a Request for No University Action

- a. The University will generally work to honor Complainant's wishes but will evaluate such requests on a case-by-case basis.
- b. In some cases, the University may not be able to honor Complainant's request due to its efforts to provide a safe, non-discriminatory environment for all in the University community.
- c. The University will decide whether to honor Complainant's wishes based on the following factors:
  - i. The seriousness of the alleged conduct,
  - ii. Complainant's age,
  - iii. Information indicating a pattern of behavior by Respondent,
  - iv. Aggravating circumstances such as the use of a weapon, force, threats, intimidation, etc., and/or
  - v. Other risks to the University community.
- d. Complainant will be notified of the University's decision.
  - i. Should the University determine that it is necessary to move forward with an Administrative Investigation and Adjudication Process, Complainant may participate in the process. Complainant will be provided with all notifications, information, and updates throughout the process.

#### E. FORMAL RESOLUTION: THE ADMINISTRATIVE INVESTIGATION AND ADJUDICATION PROCESS

##### 1. Initiation of the Administrative Investigation and Adjudication Process

- a. An Administrative Investigation and Adjudication Process is initiated by a **formal complaint**.
  - i. A formal complaint is a document filed by Complainant or signed by the Title IX Coordinator alleging that Respondent engaged in sexual misconduct and requesting an investigation into the allegation(s).
- b. **Formal complaints filed by Complainant**
  - i. Complainant may file a formal complaint with the Title IX Coordinator in person, by postal mail or email, or through the online reporting system.
  - ii. The complaint must be physically or electronically signed by Complainant or otherwise indicate that Complainant is the person filing the formal complaint.
- c. **Formal complaints signed by the Title IX Coordinator**
  - i. Should Complainant decide not to file a formal complaint, the Title IX Coordinator may choose to sign a formal complaint.
  - ii. The Title IX Coordinator may sign a formal complaint when it is determined that moving forward with an Administrative Investigation and Adjudication Process is necessary to fulfill the University's efforts to provide a safe, non-discriminatory environment for all in the University community. Please see **Evaluating a Request for No University Action**, above, for a list of factors considered in making this determination.
  - iii. In signing a formal complaint, the Title IX Coordinator is acting on behalf of the University, not Complainant. The Title IX Coordinator does **not** become a party to a matter as a result of signing a formal complaint.
  - iv. Signing a formal complaint is not a determination of responsibility or judgment of the facts alleged; rather, it is a determination that a report of sexual misconduct

warrants resolution through the Administrative Investigation and Adjudication Process.

- v. Complainant will be notified that the Title IX Coordinator has signed a formal complaint.
  - 1. Complainant may participate in the process. Should Complainant choose not to participate, statements made by Complainant will not be considered in the determination of responsibility.
  - 2. Complainant will be provided with all notifications, information, and updates throughout the process.
- d. **Notice of Allegations**
  - i. After a formal complaint is filed by Complainant or signed by the Title IX Coordinator, the Title IX Coordinator will provide a written notice of allegations to each party.

## 2. Dismissal of a Formal Complaint

- a. A formal complaint may be dismissed at any time prior to the determination of outcome, based on the grounds outlined below.
- b. The Department of Education's Title IX regulations require that a formal complaint be dismissed as a Title IX matter under certain circumstances:
  - i. The conduct alleged, even if proven to have taken place, would not meet the regulations' definition of sexual harassment under 34 CFR § 106.30,
  - ii. The conduct occurred outside the institution's education program or activity,
  - iii. The alleged conduct was not committed against a person in the United States, and/or
  - iv. The Complainant was not participating or attempting to participate in the institution's program or activity at the time of filing the formal complaint.
- c. While this policy is meant to satisfy Title IX compliance obligations, it also addresses alleged sexual misconduct that falls outside of the strict scope of Title IX.
  - i. Therefore, a formal complaint may be "dismissed" as a Title IX matter, but may still move forward under this policy.
  - ii. If the University determines that the formal complaint does not meet the requirements of the Title IX regulations but does fall under the jurisdiction of this policy, the Administrative Investigation and Adjudication Process will continue as outlined below. This decision will be documented in the case file.
- d. A formal complaint may also be dismissed under the following circumstances:
  - i. The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint as a whole or any of the allegations contained therein,
  - ii. The Respondent is no longer enrolled or employed by the University, and/or
  - iii. Circumstances prevent the University from gathering information sufficient to reach a determination of outcome regarding the formal complaint or the allegations therein.
- e. If a formal complaint is dismissed completely (i.e., it is determined that the Administrative Investigation and Adjudication Process will not continue), each party will be notified in writing of this decision.
  - i. Each party has the right to appeal this decision. The appellate process is outlined below.

**3. Fair and Equitable Process**

- a. The University aims to treat all parties and participants in this process fairly, equitably, and with respect.
- b. Respondent will be presumed not responsible. This means that the University will not treat Respondent as though they are responsible for violating this Policy prior to a finding of responsibility.
- c. No party or participant will be viewed as credible or not credible simply based on their status as Complainant, Respondent, or witness.

**4. Consolidation of Investigation**

- a. The Title IX Coordinator has the discretion to consolidate multiple reports into one investigation if the reports arise out of the same facts or circumstances.

**5. Appointment of Investigator**

- a. The Title IX Coordinator will appoint an investigator to conduct a thorough, impartial, and equitable investigation of the report. The investigator may be internal or external to the University.
- b. Once an investigator has been appointed, the Title IX Coordinator will notify each party in writing.
- c. Complainant and Respondent each have the opportunity to challenge the appointment of the investigator for a lack of impartiality or a conflict of interest.
  - i. This challenge must be submitted to the Title IX Coordinator in writing within three (3) business days of notice of the appointment and must include a justification.
  - ii. The Title IX Coordinator will evaluate the challenge and determine whether it would be appropriate to appoint an alternate investigator within five (5) business days.
  - iii. Each party will be notified when a challenge is submitted and of the outcome of the challenge.

**6. Advisors**

- a. Complainant and Respondent may each select an advisor of their choice. This advisor may be internal or external to the University. The advisor may, but is not required to be, an attorney.
- b. Advisors are permitted to be present in all phases of the Administrative Investigation and Adjudication Process.
  - i. During the investigation phase of the process, the advisor may not participate in the process directly.
    - 1. The advisor may whisper or write notes to their advisee, but they may not interrupt, speak on behalf of their advisee, or otherwise interfere with the process.
    - 2. If an advisor violates these parameters, the University may further limit the advisor's participation in the process.
  - ii. During the adjudication phase of this process, the advisor will question the other party (or parties), witnesses, and investigator on behalf of their advisee. No party may directly question another party, witnesses, or the investigator.
    - 1. Outside of this questioning, advisors may not otherwise participate in a hearing on behalf of their advisee.
    - 2. The advisor will be expected to abide by the rules of decorum for the hearing, including the parameters for questioning, which will be provided to all advisors and parties prior to the hearing.

3. If an advisor violates these directives, they may be asked to leave the hearing. If a party's advisor is removed from a hearing, the University will provide the party with an advisor for the purpose of conducting questioning on behalf of that party.
  4. If any party does not have an advisor for the adjudication phase of this process, the University will provide them with an advisor for the purpose of conducting questioning on behalf of that party.
- c. The advisor will be provided with all materials that are provided to the parties, including all evidence directly related to the allegations and the Preliminary and Final Investigation Reports.
- i. A party may request that some or all of these materials not be provided to their advisor. Such requests must be made specifically at each stage in the investigation and will be honored. It will then be left to the discretion of the party to share materials with their advisor.

## 7. Investigation Timeline

- a. The University aims to complete all investigations in a reasonably prompt manner. Specific timelines for each phase of the investigation are outlined below.
- b. These timelines may be modified as necessary by the investigator, in consultation with the Title IX Coordinator.
  - i. Delays may occur when the University is closed, during academic breaks or for other good reason. The parties will be notified of any delay in or modification to the timeline.

## 8. Investigation

- a. The burden of gathering information sufficient to make a determination of responsibility rests with the University.
- b. Complainant and Respondent will each be provided the opportunity to meet with and provide information to the investigator separately.
  - i. Should a party choose not to provide information to the investigator, the investigation will proceed without the benefit of their participation.
  - ii. A party who does not participate in the investigation may not participate in the hearing, nor may statements made by that party be considered in the determination of responsibility.
- c. Each party will also be afforded the opportunity to:
  - i. Identify witnesses who have information directly related to the allegation(s), and
    1. The investigator will make a good faith effort to contact and interview each witness.
    2. The University cannot compel a witness' participation in this process.
    3. Should a witness choose not to respond to outreach or provide the investigator with information, the investigation will proceed without the benefit of their participation.
  - ii. Provide documentation directly related to the allegation(s)
- d. The investigator has discretion to meet with any additional witnesses and review any additional documentation they determine to be necessary to gather information sufficient to make a determination of responsibility.
  - i. This includes, but is not limited to:
    1. Consultation with experts,
    2. Site visits,
    3. Interviews of law enforcement officers, and

4. Review of police reports and related documentation.
- e. All witnesses and parties are expected to provide true and accurate information. Should a witness or party willfully provide false information, they may be subject to disciplinary action.
- f. Information about the Complainant's sexual predisposition and/or prior sexual behavior is not relevant, except in the limited circumstances described below.
  - i. "Prior sexual behavior" encompasses all sexual behavior by Complainant prior to the conclusion of this process.
  - ii. This information is only considered relevant in the limited circumstances where it is offered to prove:
    1. Consent, based on the prior sexual history **between** the parties, or
      - a. In that circumstance, sexual history between the parties may be considered only with regard to patterns of communicating and obtaining consent. Consent will not be assumed based solely on evidence of any prior or subsequent sexual history.
    2. Someone other than the Respondent engaged in the conduct alleged by the Complainant.
- g. The information-gathering phase of the investigation will be completed within sixty (60) business days.

## 9. Investigation Reports

- a. Upon completion of the information-gathering phase of the investigation, the investigator will prepare a **Preliminary Investigation Report**, summarizing the relevant information that has been gathered. The report will be shared with the parties and their advisors. The report may include the following:
  - i. Summaries of the investigator's meetings with Complainant, Respondent, and witnesses,
  - ii. Descriptions of the documentation submitted by the parties and/or obtained by the investigator,
  - iii. Definitions of prohibited conduct and related terms under this Policy that the investigator has determined to be relevant to the case,
  - iv. Identification of material facts in dispute and material facts not in dispute,
  - v. Analysis of submitted information, and
  - vi. An appendix containing raw materials gathered in the investigation (e.g., incident reports, documentation submitted by the parties, etc.).
- b. The report will also include any information directly related to the allegation(s) that the investigator has determined not to be relevant and a log of information submitted that the investigator has determined not to be directly related to the allegations.
- c. **Preliminary Report Review**
  - i. Each party will have the opportunity to submit a response to the Report within ten (10) business days. Advisors may not submit a response.
- d. After the time frame for the responses has ended, the investigator will prepare a **Final Investigation Report**. The report may include the following:
  - i. Summaries of the investigator's meetings with Complainant, Respondent, and witnesses,
  - ii. Descriptions of the documentation submitted by the parties and/or obtained by the investigator,
  - iii. Parties' responses to the Preliminary Report,



- iv. Definitions of prohibited conduct and related terms under this Policy that the investigator has determined to be relevant to the case,
- v. Identification of material facts in dispute and material facts not in dispute,
- vi. Analysis of submitted information, and
- vii. An appendix containing raw materials gathered in the investigation (e.g., incident reports, documentation submitted by the parties, etc.).
- viii. The report will also include any information directly related to the allegation(s) that the investigator has determined not to be relevant and a log of information submitted that the investigator has determined not to be directly related to the allegations.
- e. The investigator will submit the Final Investigation Report to the Title IX Coordinator after the conclusion of the 10-day review and response period.
- f. **Final Report Review**
  - i. Complainant, Respondent, and their respective advisors will each be provided with the Final Investigation Report at least ten (10) business days prior to the hearing.
  - ii. Each party will have the opportunity to submit a response to the Report within this time period. Advisors may not submit a response.

## 10. Referral to Hearing

- a. Upon receipt of the Final Investigation Report, the Title IX Coordinator will refer the matter to a live hearing before a decision-maker for a determination of responsibility.
  - i. The decision-maker may be internal or external to the University and may be one person or a panel of people.
  - ii. If the matter is referred to a panel of people, one panel member will be designated as the hearing panel chair.
    - 1. The chair will guide the hearing and make determinations regarding relevance of questions posed by advisors.
    - 2. The chair's vote regarding determination of responsibility carries no greater weight than the other panel members' votes.
- b. The Title IX Coordinator will send notice of the date, time, and location of the hearing, as well as the name(s) of the decision-maker(s) to the parties at least fourteen (14) business days prior to the hearing date.
- c. Hearings will take place in person, to the extent practicable. When circumstances require that the hearing take place remotely, the Title IX Coordinator will make the necessary arrangements.
- d. Each party will have the opportunity to challenge the appointment of the decision-maker(s) for a lack of impartiality or a conflict of interest.
  - i. This challenge must be submitted to the Title IX Coordinator in writing within three (3) business days of notice of the appointment and must include a justification.
  - ii. The Title IX Coordinator will evaluate the challenge and determine whether it would be appropriate to appoint an alternate decision-maker(s) within two (2) business days. Each party will be notified when a challenge is submitted and will be advised of the outcome of the challenge.
- e. Any party may request not to be present in the same room as the other party during the hearing.
- f. The parties may each select one advisor of their choice to be present at the hearing, under the parameters listed above in E(4).
  - i. In scheduling the hearing, the Title IX Coordinator will accommodate the parties' and advisors' schedules to the extent reasonable. Should the availability of an

- advisor cause an unreasonable delay in this process, a party may need to select a different advisor.
- ii. If a party does not select an advisor to be present at the hearing, the University will provide an advisor for the purpose of conducting questioning on behalf of that party.
  - g. Should a party challenge the investigator’s decision that information gathered in the course of the investigation is not relevant, the decision-maker will make a determination regarding relevance prior to the hearing. If the matter has been referred to a panel of people, the panel chair will make this decision.
  - h. The decision-maker will be provided a copy of the Final Investigation Report.
  - i. The Title IX Coordinator will invite all witnesses who were identified in the course of the investigation and met with the investigator to participate in the hearing.
    - i. The University does not have the power to compel any person, other than the investigator, to participate.
    - ii. Should a witness choose not to participate in the hearing, the hearing panel cannot consider any statements made by the witness when making a determination of responsibility.
  - j. The investigator will be made available to answer questions of the panel and the parties through their advisors.

## 11. Hearing Procedure

- a. The hearing is closed to the public.
- b. The hearing will be recorded. The decision-maker’s deliberations following the hearing will not be recorded.
  - i. Only the University is permitted to record the hearing. Recording of the hearing by parties or participants is prohibited.
  - ii. The recording of the hearing will become part of the file on the case and will be available for review by the parties.
- c. If any individual (party or witness) chooses not to attend the hearing, the hearing will proceed without the benefit of their participation. The decision-maker may not consider any statement made by that individual when making a determination of responsibility.
- d. **Opening Statements**
  - i. Complainant and Respondent each will have the opportunity to share information with the decision-maker.
- e. **Questioning of Parties, Witnesses, and the Investigator**
  - i. All participants are expected to provide true and accurate information. Should a witness, party, or investigator willfully provide false information, they may be subject to disciplinary action.
  - ii. The decision-maker may question the parties, witnesses, and investigator directly.
  - iii. Each party’s advisor may question the other party, witnesses, and investigator on behalf of their advisee.
    1. If a party does not have an advisor for the adjudication phase of this process, the University will provide that party with an advisor for the purpose of questioning the other party, witnesses, and investigator on the party’s behalf.
  - iv. After an advisor poses a question to a party, witness, or investigator, the decision-maker (in cases involving a panel, the hearing panel chair) will determine whether the question is relevant.
    1. The party, witness, or investigator will not answer a question unless and

until the chair determines it to be relevant.

2. If the decision-maker excludes a question as not relevant, they will provide an explanation for that decision.
3. Information about the Complainant's sexual predisposition and/or prior sexual behavior is not relevant, except in the limited circumstances described below.
  - a. "Prior sexual behavior" encompasses all sexual behavior by Complainant prior to the conclusion of this process.
  - b. This information is only considered relevant in the limited circumstances where it is offered to prove:
    - i. Consent, based on the prior sexual history **between** the parties, or
      1. In that circumstance, sexual history between the parties may be considered only with regard to patterns of communicating and obtaining consent. Consent will not be assumed based solely on evidence of any prior or subsequent sexual history.
    - ii. Someone other than the Respondent engaged in the conduct alleged by the Complainant.
4. Questions that are duplicative (i.e., have been asked and answered) may be deemed irrelevant and excluded.
5. The decision of the decision-maker is final. No objections to the determination of relevance will be permitted during the hearing.
6. Parties may raise objections to the decision-maker's determination(s) of relevance on appeal.
- v. Should a party or witness choose not to submit themselves to questioning by a party, the decision-maker **may not** consider **any** statement made by that witness or party when determining responsibility.
  1. "Submission to questioning" means that the party or witness must answer **all** questions deemed to be relevant by the decision-maker.
    - a. If a party or witness chooses to answer some, but not all, of the relevant questions posed by a party, then the decision-maker may not consider any statement made by that witness or party when determining responsibility.
  2. "Any statement made by that witness or party" includes:
    - a. Statements made to the investigator,
    - b. Statements contained in submitted documents, and
    - c. Statements made to another party or witness.
  3. "Any statement made by that witness or party" does **not** include alleged statements made by Respondent that constitute the Policy violation(s) at issue.
  4. Any action intended to dissuade an individual from participating in these proceedings could result in disciplinary action.
  5. If a party chooses not to attend the hearing, an advisor may still conduct questioning on their behalf, so that the decision-maker may consider statements by parties and witnesses who choose to attend and submit themselves to questioning.

vi. Advisors will be expected to abide by the rules of decorum for the hearing, including parameters for questioning, which will be provided to all advisors and parties prior to the hearing.

1. If an advisor violates these directives, they may be asked to leave the hearing. If a party's advisor is removed from a hearing, the University will provide the party with an advisor for the purpose of questioning the other party and witnesses.

f. **Closing Statements**

- i. Once all parties and witnesses have been questioned, Complainant and Respondent each will have the opportunity to make closing remarks to the decision-maker.

g. **Deliberations**

- i. After the hearing concludes, the process will move into the determination of outcome phase. The parties, their advisors, witnesses, and the investigator are not permitted to be present during this phase.

12. **Determination of Outcome**

a. **Determination of Responsibility**

- i. In closed deliberations, the decision-maker will make a determination of responsibility using the ***preponderance of the information (more likely than not) standard***.
- ii. If the matter is heard by a hearing panel, the determination of responsibility need not be unanimous. It will be determined by a majority vote of the panel.

b. **Assignment of Sanctions and/or Remedies**

- i. If Respondent is found responsible, the decision-maker will assign appropriate sanctions.
- ii. Factors considered when assigning sanctions include but are not limited to:
  1. Aggravating and mitigating circumstances,
  2. Respondent's conduct history, and
  3. The need for the sanctions to:
    - a. Bring an end to the misconduct,
    - b. Prevent the future recurrence of the misconduct, and/or
    - c. Ensure the safety of the campus community.
- iii. If Respondent is found responsible, the decision-maker will also assign remedies for the Complainant as needed to restore or preserve the Complainant's equal access to the University's education programs and activities. These remedies may include continuation of supportive measures previously provided.
- iv. Respondent's failure to complete sanctions (including educational outcomes) by the date specified may result in further disciplinary action.

c. **Notice of Outcome**

- i. Following deliberation, the decision-maker will draft a written notice of outcome.
  1. This written notice will include:
    - a. Identification of the allegation(s),
    - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination of responsibility,
    - c. Findings of fact supporting the determination,
    - d. Conclusions regarding the application of those facts to the relevant portions of this Policy,

- e. The decision-maker's determination of responsibility regarding each allegation,
  - f. Sanctions assigned to Respondent, if applicable,
  - g. The rationale for this determination(s),
  - h. A statement that remedies were provided to Complainant, if applicable, and
  - i. Instructions for submitting an appeal.
- ii. Each party will be provided with simultaneous written notice of outcome.

### 13. Sanctions: Students

#### a. Standing Sanctions

- i. The following sanctions impact a student's standing with the University. When a student is found responsible for violating this Policy, one of these standing sanctions must be assigned:
  1. **Warning Letter:** A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure, or directive will result in more severe sanctions or remedial actions.
  2. **Probation:** A written reprimand providing for more severe conduct sanctions in the event that the student or organization is found in violation of any University policy, procedure, or directive within a specified period of time. Probation may also impact a student's ability to participate in certain co-curricular activities, including fraternity and sorority recruitment, leadership opportunities, or other University programs.
  3. **Suspension:** Termination of student status for a definite period of time, and/or until specific criteria are met. In order to return after a suspension, students must complete the stipulations outlined in their outcome letter. Students who return from suspension are automatically placed on probation through the remainder of their time at the University. This sanction will not be noted on the student's official transcript.
  4. **Dismissal:** Permanent termination of student status, revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted on the student's official transcript permanently.
  5. **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities.
- ii. Standing sanctions are assigned progressively. If a student has been assigned a standing sanction in another sexual misconduct matter, the standing sanction for any subsequent violation(s) of this Policy must be greater, absent mitigating circumstances.

#### b. Additional Outcomes

- i. For every standing sanction except dismissal, additional outcomes, e.g., restitution and educational opportunities, may be assigned.

### 14. Sanctions: Employees

- a. When an employee is found responsible for violating this Policy, one of the following sanctions must be assigned:
  - i. **Warning Letter:** A warning is a formal method of informing an employee of a violation of University rules, guidelines, and/or policies. Additional violations will initiate the progressive disciplinary process.

- ii. **Demotion:** A reduction in rank or status.
- iii. **Suspension with pay:** Temporary removal of an employee from performing their work duties.
- iv. **Suspension without pay:** Temporary removal of an employee from performing their work duties and from receiving pay.
- v. **Termination:** If the nature of the violation is so problematic and/or harmful to the campus community that a warning or a suspension is not appropriate, the decision-maker's recommendation will be to terminate employment.
- vi. Other sanctions, corrective actions, or educational outcomes that the decision maker may deem appropriate.

## 15. Appeals

- a. Any party may appeal the dismissal of a formal complaint or the decision-maker's decision regarding responsibility to the appropriate appellate official.
- b. **Appellate Officials**
  - i. The appropriate appellate official is determined by the status of Respondent.
    - 1. If Respondent is a student, the appellate official will be the Vice President for Student Affairs or designee.
    - 2. If Respondent is a staff member, the appellate official will be a member of Human Resources senior leadership or designee.
    - 3. If Respondent is a faculty member, the appellate official will be the Provost and Vice President for Academic Affairs or designee.
  - ii. Should the appellate official be unable or unwilling to act, they may appoint a designee. Should the appellate official be the Respondent or for any reason be disqualified to act, the President or designee will appoint another individual to assume the appellate official's role for that case.
- c. **Appeal Submission**
  - i. All appeals must be submitted in writing to the appropriate appellate official within five (5) business days of the delivery of written notice of outcome.
  - ii. The appeal must include an explanation of the grounds for appeal.
    - 1. Grounds for appeal are limited to the following
      - a. Procedural error that significantly impacted the outcome of the case,
      - b. Availability of new information that could significantly impact the outcome of the case, and/or
        - i. This information must not have been available at any point during the process prior to the time of appeal.
      - c. Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or hearing panel.
        - i. This includes bias for or against Complainants or Respondents generally, or for or against a specific Complainant or Respondent in the matter.
    - 2. Disagreement with the decision to dismiss, determination of responsibility, and/or sanction(s) assigned do not constitute permissible grounds for appeal.
- d. **Notice of Appeal**
  - i. The appellate official will notify each party of receipt of an appeal.
- e. **Determination of Appellate Outcome**
  - i. The appellate official will first review the appeal to determine whether it meets the criteria above (see 15(c)(ii)(1)). If the appeal does not meet the criteria, the appellate official will dismiss the appeal. If any portion of the appeal meets the

criteria, that portion will move forward. The appellate official will inform the parties of this outcome within ten (10) business days of the official's receipt of the appeal.

- ii. If any portion of the appeal moves forward, the appellate official will make a decision on appellate outcome based on the merits of the appeal.
  1. Prior to the determination of appellate outcome, the other party will be provided the opportunity to review the appeal and submit a written response.
    - a. A response must be submitted to the appellate official within five (5) business days of the delivery of notice of the initial appellate determination.
    - b. If a party chooses not to submit a response, the appeal will move forward without the benefit of their participation.
  2. At the conclusion of the five business day response period, the appellate official will make a determination of the appellate outcome.
    - a. The appellate official will confine their analysis to review of the written documentation related to the case, recording of the hearing (if applicable), and information contained in the appeal and any response(s) to the appeal.
    - b. Appeals are not intended to be a full rehearing of the case.
      - i. The appellate official will not substitute their own evaluation of the facts of the case for that of the decision-maker(s).
      - ii. The determination of appellate outcome will be based solely on one or more of the grounds listed above.
    - c. The appellate official may select one of the following outcomes:
      - i. Uphold the dismissal of the formal complaint,
      - ii. Set aside the dismissal of the formal complaint,
        1. In such circumstances, the Administrative Investigation and Adjudication Process will resume at the point it left off at the time of the dismissal.
      - iii. Uphold the original finding of responsibility and/or original assignment of sanction(s), or
      - iv. Set aside the original finding and send the case back to an investigator or decision-maker(s) for further review.
        1. The appellate official may choose to send the case back to the same investigator or decision-maker(s), or may direct the Title IX Coordinator to appoint a new investigator or convene a new hearing before a new decision-maker(s).
  3. The appellate official will provide notice of appellate outcome to each party in writing within ten (10) business days after the conclusion of the five-day response period.

#### **16. Withdrawal or Resignation while a Case is Pending**

- a. Students
  - i. Should a student Respondent choose to withdraw from the University while a case is pending, the University has the discretion to select one of the following options:
    1. The case may continue

- a. Respondent may continue to participate in the case. If they choose not to participate, the case will proceed without the benefit of their participation.
        - i. All requirements regarding submission to questioning by the other party and consideration of Respondent’s statements will apply.
      - b. Respondent’s ability to return to the University will depend on the outcome of the case.
        - i. In cases where there is a responsible finding and the standing sanction assigned is dismissal, Respondent will not be permitted to return.
        - ii. In cases where there is a responsible finding and the standing sanction is anything less than dismissal, Respondent will not be permitted to return unless all sanctions have been satisfied.
        - iii. In cases where there is a not responsible finding, Respondent may return whenever they wish, provided they meet the requirements of all other University policies and procedures, including reapplying for admission, as applicable.
    - 2. The case may be dismissed, following the procedures listed above under **Dismissal of Formal Complaints.**
  - ii. Should a student Complainant withdraw from the University while a case is pending, the University has discretion to select one of the following options:
    - 1. The case may continue
      - a. Complainant may continue to participate in the case. If they choose not to participate, the case will proceed without the benefit of their participation.
        - i. All requirements regarding submission to questioning by the other party and consideration of Complainant’s statements will apply.
    - 2. The case may be dismissed, following the procedures listed above under **Dismissal of Formal Complaints.**
- b. Employees
  - i. Should an employee Complainant or Respondent choose to resign from the University while a case is pending, the University has the discretion to select one of the following options:
    - 1. The case may continue
      - a. The party may continue to participate in the case. If they choose not to participate, the case will proceed without the benefit of their participation.
        - i. All requirements regarding submission to questioning by the other party and consideration of the party’s statements will apply.
      - b. The party’s ability to reapply for employment may depend on the outcome of the case.
    - 2. The case may be dismissed, following the procedures listed above under **Dismissal of Formal Complaints.**



## F. INFORMAL RESOLUTION

1. Informal resolution is available at any point prior to a determination of responsibility through the Administrative Investigation and Adjudication Process.
2. Requirements for an informal resolution:
  - a. A formal complaint must be filed, and
  - b. Each party must give their written, voluntary consent to informal resolution.
    - i. No party is required to consent to an informal resolution. If any party chooses not to consent to an informal resolution, the Administrative Investigation and Adjudication Process will continue.
3. Informal resolution is **not available** in cases involving an employee Respondent and a student Complainant.
4. Several options for informal resolution are available:
  - a. **Mediation**
    - i. Mediation is a voluntary process. The Title IX Coordinator will determine if mediation is appropriate based on the conduct at issue and the agreement of Complainant and Respondent.
    - ii. The Title IX Coordinator will appoint a mediator to speak with each party separately about possible resolution and remedies.
    - iii. Mediation does not require the parties to be in the same room at the same time working to resolve the report. Rather, the mediator may work with each party separately toward a mutually agreeable resolution.
    - iv. The Title IX Coordinator will maintain the record of any mediation resolution agreement in the file on the case.
    - v. Failure to abide by a mediation resolution agreement may result in disciplinary action.
  - b. **Agreement to Outcome**
    - i. Where the facts are not in dispute, the parties may choose to agree to an outcome in the matter—i.e., a responsible or not responsible finding for Respondent and any applicable sanctions.
      - a. This is not the same as a finding of responsibility by the decision-maker at the conclusion of the Administrative Investigation and Adjudication Process.
      - b. Applicable sanctions may include any of the sanctions listed under **Determination of Outcome**, above.
    - ii. The Title IX Coordinator will facilitate this agreement, but it is the parties who determine the outcome.
    - iii. The Title IX Coordinator will maintain the record of any resolution agreement in the file on the case.
      - a. Outcome agreements that involve a responsible finding for a Respondent will be maintained in that Respondent's student conduct file. This means that this information could be shared with other institutions of higher education, employers, or others conducting prior misconduct checks with the University.

- i. Such information would be shared in compliance with all federal and state laws and applicable University policies.
    - iv. Failure to abide by an outcome resolution agreement may result in disciplinary action.
  - c. **Other forms of informal resolution**
    - i. Any party may consult with the Title IX Coordinator regarding other options for informal resolution.
- 5. The Title IX Coordinator retains discretion to determine whether an informal resolution option is appropriate for a given case.
- 6. Each party has the right to end an informal resolution process and request that the Administrative Investigation and Adjudication Process resume at any time prior to the conclusion of the informal resolution process.
  - a. Should the informal process end and an Administrative Investigation and Adjudication Process resume, the mediator or facilitator of an informal process may not serve as a witness in the process, nor may information shared in the informal resolution process be used by any party in the Administrative Investigation and Adjudication Process.
  - b. Should a party request a resumption of the Administrative Investigation and Adjudication Process, the process will resume at the point at which it left off prior to the beginning of the informal resolution process.

## **G. RESOLUTION OF REPORTS INVOLVING CONTRACTORS OR VISITORS**

### **1. Contractors**

- a. When the Title IX Coordinator is made aware of a report of sexual misconduct on the part of a contractor's employee toward a University student or employee while on campus, they will inform the contractor of this report, to be handled under that organization's policies.
- b. Should a contractor fail to address the allegation in a satisfactory manner, the University may terminate the contractor agreement.
- c. The University police department may trespass an individual or group from University property.

### **2. Visitors**

- a. When the Title IX Coordinator is made aware of a report of sexual misconduct on the part of a visitor, they may choose to do one of the following:
  - i. Issue a warning letter to that individual or group, or
  - ii. Work with the University police department to trespass that individual or group from University property.

## **H. RECORDS**

In implementing this Policy, records of all reports of sexual misconduct will be maintained by the Title IX Coordinator. Decisions finding a student responsible for violations of this Policy will also be noted in their student conduct file. Decisions finding an employee responsible for violations of this Policy will also be noted in their personnel file. All records will be kept for at least seven (7) years.

**HISTORY/REVISION DATES**  
Board of Trustees Approval  
Revision

June 9, 2017  
January 28, 2022