



WHEELING UNIVERSITY

# **POLICY PROHIBITING TITLE IX SEXUAL HARASSMENT**

## **I. POLICY STATEMENT**

Wheeling University (“the University”) is committed to creating and maintaining a learning and work environment that is free from discrimination based on sex.

This Title IX Sexual Harassment Policy (the “Policy”) prohibits sex-based discrimination, including sex-based harassment, in all operations of the University. The Policy is intended to meet the University’s obligations under Title IX of the Education Amendments of 1972 (“Title IX”); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”), with respect to its application to sex-based misconduct; and other applicable law and regulations.<sup>1</sup>

*The University is committed to the principles of academic freedom and freedom of expression and the Policy should be interpreted, and will be applied, consistent with both of these principles.*

The Policy also prohibits retaliation against an individual: (1) who makes a report or files a Formal Complaint of Title IX Sexual Harassment; (2) about whom a report is made or against whom a Formal Complaint is filed; (3) who participates in the reporting, investigation, or adjudication of possible violations of this Policy; or (4) who engages in good faith opposition to what another individual reasonably believes to be Title IX Sexual Harassment under this Policy.

The University’s Title IX Coordinator is responsible for administering the Policy and related procedures.<sup>2</sup> Any inquiries about the Policy or procedures should be referred to the University’s Title IX Coordinator, David Hacker, who may be contacted as follows:

David Hacker  
Title IX Coordinator  
316 Washington Ave.  
Center for Educational Technologies (CET), Suite 307  
Wheeling, WV 26003  
304.242.2639  
Title9@wju.edu

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<sup>2</sup> All references in the Policy to the Title IX Coordinator should be understood to also include any individual acting as a designee of the Title IX Coordinator.

## II. APPLICABILITY AND SCOPE

This Policy applies to all members of the University community. This includes, but is not limited to, full and part-time students; full and part-time employees, including faculty members, staff, student employees, and temporary and contract employees; and certain third parties, including applicants for admission and employment, visitors, employees of University contractors, and individuals who are participating in a University Education Program or Activity, but who are neither enrolled in an academic program/course at the University nor employed by the University (e.g. individuals participating in a University summer camp or attending a University Education Program or Activity by invitation or that is open to the public). The Policy applies regardless of the gender, gender identity, or sexual orientation of the parties.

This Policy prohibits Title IX Sexual Harassment committed against any member of the University community in the United States and within a University Education Program or Activity.

The University retains the discretion to determine that conduct that occurs outside of the United States or outside of a University Education Program or Activity, including online conduct that is not part of a University Education Program or Activity, is within the scope of this Policy. In making this determination, the University will consider the severity of the alleged conduct, the risk of ongoing harm, whether both parties are members of the University community, the impact on University programs or activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus.

Alleged incidents of discrimination or other misconduct on the basis of sex that are not covered by this Policy may be governed by other University policies, including but not limited to:

- Wheeling University Student Handbook
- Wheeling University Employee Handbook
- Wheeling University Faculty Handbook

This Policy supersedes any conflicting information in any other University policy with respect to the definitions and procedures applicable to alleged Title IX Sexual Harassment. This Policy and the related procedures provide the exclusive remedy for alleged Title IX Sexual Harassment.

## III. DEFINITIONS

### A. Definitions of Conduct Prohibited by this Policy

**Title IX Sexual Harassment:** conduct on the basis of sex that satisfies one or more of the following –

- A University employee (including a faculty member) conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. *Also known as quid pro quo sexual harassment.*
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a University Education Program or Activity.
- **Sexual assault:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders.

Sexual Assault includes the following:

- **Rape:** the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Sodomy:** oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object:** to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her temporary or permanent mental or physical incapacity;
- **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent.
- **Domestic violence:** a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom

the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of West Virginia.

- **Dating violence:** an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the (1) length of the relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.
- **Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his/her/their safety or the safety of others, or (2) suffer substantial emotional distress.<sup>3</sup>

**Retaliation:** an adverse action or other form of negative treatment, including but not limited to intimidation, threats, coercion, discrimination or harassment, carried out in response to a good-faith reporting of or opposition to Title IX Sexual Harassment; an individual's or group's participation, including testifying or assisting in the University's Title IX Procedures; an individual's or group's refusal to participate in the University's Title IX Procedures; or other form of good faith opposition to what an individual reasonably believes to be Title IX Sexual Harassment under this Policy.

Individuals are also protected from retaliation for making good faith requests for accommodations on the basis of religion or disability.

To be a Policy violation, the challenged actions or treatment must be sufficiently serious to discourage a reasonable person from further reporting, participation, or opposition.

Charging an individual with a Policy violation for making a materially false statement in bad faith in the course the University's Title IX process does not constitute Retaliation. The exercise of rights protected under the First Amendment also does not constitute Retaliation.

## **B. Additional Definitions**

**Designated Official:** an official of the University with the authority to institute corrective action on behalf of the University and notice to whom causes the University to respond to Title IX Sexual Harassment. For a full list of University officials that meet this definition, see Appendix A attached to this Policy.

**Complainant:** an individual who is alleged to be the victim of Title IX Sexual Harassment.

**Consent:** Words or actions that reasonably demonstrate a knowing and voluntary agreement, by both parties, to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.

- In whatever way Consent is communicated, it must be mutually understandable.
- An affirmative statement or action does not constitute Consent if such Consent is the product of threat or Coercion or is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of:
  - Incapacitation;
  - Unconsciousness; or
  - Mental disability or incapacity.
  - It is the responsibility of the initiator of sexual contact to make sure that they understand fully what the person with whom they are involved wants and does not want sexually.
  - Past Consent does not imply future Consent.
  - Silence, in and of itself, or the absence of resistance, does not mean Consent.
  - A current or past dating relationship, or prior consensual sexual activity, is not sufficient in and of itself to constitute Consent between the same parties.
  - Consent to one form of sexual activity does not 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 can be withdrawn through words or action at any time.

**University Education Program or Activity:** all operations of the University, including (1) those locations, events, and circumstances where the University exercises substantial control and (2) any building owned or controlled by a student organization recognized by the University. Conduct that occurs on-campus occurs within the University’s Education Program or Activity. Conduct that occurs off campus in locations or at events with no connection to the University is unlikely to occur in the University’s Education Program or Activity.

**Formal Complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Title IX Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email or by completing the complaint form on the University website.

**Incapacitation:** The inability, temporarily or permanently, to give Consent. A person may be incapacitated because they are mentally and/or physically helpless, asleep, unconscious, or unaware that he sexual activity is occurring. Incapacitation may result from the use of alcohol and/or drugs; however, Incapacitation is a state beyond drunkenness or intoxication.

The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching Incapacitation may include slurring speech, vomiting, unsteady gait, acting confused or incoherent, and/or emotional volatility.

Evaluating Incapacitation due to alcohol and/or drug consumption requires an assessment of how

the consumption of alcohol and/or drugs affects an individual's:

- Decision making ability;
- Awareness of consequences;
- Ability to make informed judgments; and
- Capacity to appreciate the nature and quality of the act.

Evaluating Incapacitation, and its impact on Consent, also requires an assessment of whether a Respondent should have been aware of the Complainant's Incapacitation based on objectively and reasonably apparent indications of impairment when viewed

**Report:** formal notification to the Title IX Coordinator or an Official with Authority, either orally or in writing, of the belief that Title IX Sexual Harassment occurred.

**Respondent:** the person or office, program, department, or group against whom an allegation or complaint is made; i.e., the individual(s), organizational unit(s), or group(s) who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

**Responsible Employee:** University employees required to report instances of Sexual Misconduct of which they become aware. The University has designated all administrators, including the President, Vice Presidents and Deans of the University; faculty members, including adjunct and visiting faculty; resident advisors (RAs) and their supervisors; Athletics staff and coaches; and University security officers as Responsible Employees.

**Student:** an individual who was selected for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at the University.

#### **IV. REPORTING AND RESOURCE OPTIONS**

##### **A. Reporting Title IX Sexual Harassment to the University**

The University encourages all individuals to report allegations of Title IX Sexual Harassment directly to the Title IX Coordinator or to an Official with Authority (see Appendix A for a complete list of Officials with Authority). Any person, whether or not

they are the Complainant, may report Title IX Sexual Harassment to the Title IX Coordinator.

Reporting an incident of Title IX Sexual Harassment to the Title IX Coordinator or an Official with Authority allows the University to provide Supportive Measures (as described below), but does not necessarily result in the initiation of a grievance procedure.

A report may be made in person, in writing, by telephone, by email, or by completing the online reporting form on the University website.

To make a report, contact the Title IX Coordinator at:

David Hacker  
Title IX Coordinator  
316 Washington Ave.  
Center for Educational Technologies (CET), Suite 307  
Wheeling, WV 26003  
304.242.2639  
[Title9@wju.edu](mailto:Title9@wju.edu)

[Wheeling University Online Reporting Form](#)

A report can also be made anonymously by telephone, in writing, or electronically through the website reporting system. Depending on the level of information available about the incident or the individuals involved, the University's ability to respond to an anonymous report may be limited. The University will, however, take whatever steps it deems appropriate and in the best interests of the overall University community, consistent with the information available.

***Only a report to the Title IX Coordinator or an Official with Authority will trigger the University's obligation to respond to an allegation of Title IX Sexual Harassment.***

Any report involving a minor will be shared with law enforcement agencies and child protective services.

#### **B. Required Reports by Responsible Employees**

Responsible Employees are expected to be discreet, but are required by the University to promptly consult with Title IX Coordinator by telephone, email, or online reporting form to share known details of an incident of alleged Title IX Sexual Harassment.



The following have been designated by the University as Responsible Employees:

- President
- Vice Presidents
- Faculty Members (including adjunct and visiting faculty)
- Resident Assistants (RAs)
- Athletics staff and coaches
- University security officers
- University administrative and support staff

A Responsible Employee's receipt of information will not automatically trigger an obligation to respond to an allegation of Title IX Sexual Harassment. Only a report to the Title IX Coordinator or an Official with Authority will trigger the University's obligation to respond to an allegation of Title IX Sexual Harassment.

### **C. Emergency Resources and Law Enforcement**

Emergency medical assistance and campus safety/law enforcement assistance are available 24/7 both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being or following a potential criminal offense.

**Law Enforcement Assistance:** Members of the University community who believe their safety or the safety of others is threatened or who have experienced or witnessed Title IX Sexual Harassment that may be criminal in nature should immediately call 911 to reach local law enforcement and then should report the incident immediately to:

WU Public Safety  
Call 304-243-2486 or x2486 from any campus phone  
Location: Swint Hall, Suite 209, 316 Washington Ave.

**Emergency Medical Assistance:** The University encourages individuals to seek assistance from a medical provider or crisis response service immediately after an incident that may require medical attention. This provides the opportunity to address physical well-being or health concerns, preserve any available evidence, and begin a timely investigative and remedial response.

Emotional care, counseling, and crisis response are available on and off campus:

**On Campus Medical Support:**  
Campus Health Center  
Acker Science Center, Suite 204  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2275

**On Campus Confidential Counseling Services:**

WU Counseling Center  
Donahue Hall, Suite 340  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2081

WU Campus Ministry  
Acker Science Center, Suite 112A  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2635

**Off Campus Medical Services:**

Wheeling Hospital 1  
Medical Park Wheeling, WV 26003  
304-243-3000

**D. Confidential Resources**

Confidential Resources are employees or offices who are available to provide individuals with assistance, support, and additional information.

Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential Resources may be required to report non-identifying information to the Office of Public Safety for Clery Act crime reporting purposes.

The following University resources can provide counseling, information, and support in a confidential setting:

Director Counseling Services  
WU Counseling Center  
Donahue Hall, Suite 340  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2081

Campus Minister  
WU Campus Ministry  
Acker Science Center, Suite 112A  
316 Washington Ave.  
Wheeling, WV 26003  
304-243-2635

## **V. TIMEFRAME FOR REPORTING**

In order to maintain and support a community that is respectful and free from Title IX Sexual Harassment and to maximize the University's ability to respond promptly and effectively, the University urges individuals to come forward with reports of Title IX Sexual Harassment as soon as possible. The sooner a report is made, the more effectively it can be investigated, e.g. while witnesses are still available, memories are fresh, and documentation may still be available. *There is, however, no time limitation for reporting Title IX Sexual Harassment.*

## **VI. AMNESTY**

Sometimes students are reluctant to seek help after experiencing Title IX Sexual Harassment, or may be reluctant to help others who may have experienced Title IX Sexual Harassment, because they fear being held responsible by the University or law enforcement for drug use or underage alcohol consumption.

The University generally will not pursue disciplinary action against a student who makes a good faith report to the University, or who participates as a party or witness in the grievance process related to Title IX Sexual Harassment, for personal consumption of alcohol or other drugs (underage or illegal) which would otherwise be a violation of the Student Handbook, provided the misconduct did not endanger the health or safety of others. The University may, however, engage in an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

## **VII. PARTICIPANT PRIVACY AND CONFIDENTIALITY**

The University recognizes that privacy is important. The University will attempt to protect parties' privacy to the extent reasonably possible. The Title IX Coordinator, investigators, advisors, facilitators of informal resolution, hearing officers, and any others participating in the process on behalf of the University shall keep the information obtained through the process private and, to the extent possible, confidential. All other participants in the process (including the Complainant, Respondent, non-University advisors, and witnesses) are encouraged to respect the privacy of the parties and the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

While the University is committed to respecting the confidentiality of all parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include, but are not limited to, the following:

- When the University is required by law to disclose information (such as in response to a subpoena or court order).
- When disclosure of information is determined by the Title IX Coordinator to be necessary for conducting an effective investigation of the claim.
- When confidentiality concerns are outweighed by the University's interest in protecting the safety or rights of others.
- When a Formal Complaint is filed.

### **VIII. INTAKE PROCESS FOR REPORTS OF TITLE IX SEXUAL HARASSMENT**

Once a report of Title IX Sexual Harassment is made to or received by the Title IX Coordinator, the Title IX Coordinator shall review the report to determine appropriate next steps.

If the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator will not proceed under this Policy and its Procedures. Instead, if the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator may take one of the following actions: (1) address the report under other University policies and/or handbooks, as appropriate; (2) refer the matter to an appropriate department (i.e. Office of Human Resources or Student Conduct) or (3) if the reported conduct would not constitute a violation of any University Policy, take no further action. The Title IX Coordinator will notify the Complainant of the action or referral.

After receiving a report of conduct that, if true, would constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator will promptly contact the Complainant and:

- discuss the availability of Supportive Measures;
- explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment;
- inform the Complainant of the process for filing a Formal Complaint of Title IX Sexual Harassment; and
- inform the Complainant that even if they decide not to file a Formal Complaint of Title IX Sexual Harassment, the Title IX Coordinator may do so by signing a Formal Complaint.

The Title IX Coordinator will also ensure that the Complainant receives a written explanation of available resources and options, including the following:

- Support and assistance available through University resources, including the Complainant's option to seek Supportive Measures regardless of whether they choose to participate in a University or law enforcement investigation;
- The Complainant's option to seek medical treatment and information on preserving potentially key forensic and other evidence;
- The process for filing a Formal Complaint of Title IX Sexual Harassment, if appropriate;
- The University's procedural options including Formal and Informal resolution;
- The Complainant's right to an advisor of the Complainant's choosing;
- The University's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and any reporting parties, along with a statement that the University will take prompt action when Retaliation is reported (and how to report); and
- The opportunity to meet with the Title IX Coordinator in person to discuss the Complainant's resources, rights, and options.

## **IX. SUPPORTIVE MEASURES**

Supportive Measures are non-disciplinary, non-punitive individualized services, accommodations, and other assistance that the University offers and may put in place, without fee or charge, after receiving notice of possible Title IX Sexual Harassment via a report to the Title IX Coordinator or an Official with Authority. Supportive Measures are designed to restore or preserve access to the University's Education Program and Activity, protect the safety of all parties and the University's educational environment, or deter Title IX Sexual Harassment, while not being punitive in nature or unreasonably burdening any party.

Supportive Measures are available regardless of whether the matter is reported to the University for the purpose of initiating any formal grievance proceeding and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures retains the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any Complainant that requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint pursuant to this Policy.

The Title IX Coordinator will contact a Complainant after receiving notice of possible Title IX Sexual Harassment (1) to discuss the availability of Supportive Measures and (2) to explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment. The Title IX Coordinator will consider the Complainant's wishes with respect to implementation of Supportive Measures.

Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the University community. The Title IX

Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures.

To determine the appropriate Supportive Measure(s) to be implemented, the University conducts an individualized assessment based on the unique facts and circumstances of a situation. Whether a possible Supportive Measure would unreasonably burden the other party is a fact-specific determination made by the University in its discretion that takes into account the nature of the education programs, activities, opportunities and benefits in which an individual is participating.

Examples of Supportive Measures include, but are not limited to, the following:

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses without penalty;
- Academic schedule modifications (typically to separate Complainant and Respondent);
- Work schedule or job assignment modifications (for University employment);
- Changes in work or housing location;
- An escort to ensure safe movement on campus;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Mutual no contact directives (to instruct individuals to stop all attempts at communication or other interaction with one another);
- Placing limitations on an individual's access to certain University facilities or activities;
- Work schedule or job assignment modifications, including suspending employment with or without pay consistent with any applicable written procedures (for University positions);
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus; or
- A combination of any of these measures.

The University will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair the University's ability to provide the Supportive Measures.

## **X. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

**Emergency Removal of a Student-Respondent.** Where there is an immediate threat to the physical health or safety of any students or other individuals arising from reported Title IX Sexual Harassment, the University can remove a Student-Respondent from the University's education Program or Activity and issue any necessary related no-trespass and no-contact orders. The University, through the Title IX Coordinator, will make the decision to remove a Student-Respondent from the University's Education Program or Activity based on an individualized assessment and risk analysis. If the University makes such a decision, the Student-Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

**Administrative Leave of an Employee/Faculty-Respondent.** The University may place an Employee/Faculty-Respondent on administrative leave during the pendency of a Formal Complaint. An employee alleged to have committed Title IX Sexual Harassment will not be placed on administrative leave unless and until a Formal Complaint has been filed with the University. The University, in its discretion and based on the circumstances, will determine whether any administrative leave imposed is to be imposed with or without pay or benefits.

## **Title IX Sexual Harassment Grievance Procedures**

## **XI. FORMAL COMPLAINTS OF TITLE IX SEXUAL HARASSMENT**

### **A. Filing a Formal Complaint**

A Complainant has the option to file a Formal Complaint against a Respondent alleging Title IX Sexual Harassment and requesting that the University investigate those allegations. In order to file a Formal Complaint, the Complainant should contact the Title IX Coordinator and sign the University's Formal Complaint Form. This may be done online, in person, or by email by contacting the Title IX Coordinator.

When a Complainant does not wish to file a Formal Complaint on their own behalf, the Title IX Coordinator may, in their discretion, file a Formal Complaint by signing the Formal Complaint form. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a party. While the Complainant may choose to not participate in the grievance process initiated by the Title IX Coordinator's signing of a Formal Complaint of Title IX Sexual Harassment, the Complainant will still be treated as a party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice

of outcome. At no time will the University coerce or retaliate against a Complainant in order to convince the Complainant to participate in the grievance process.

After a Formal Complaint is filed, the matter will proceed to either the Informal Resolution process or Formal Resolution process, as described below. A Formal Complaint must be filed before the University can commence an investigation or the Informal Resolution process under the Title IX Sexual Harassment Procedures.

### **B. Mandatory Dismissal of Formal Complaint for Title IX Purposes**

When the Title IX Coordinator receives a Formal Complaint alleging conduct, which, if true, would meet the definition of Title IX Sexual Harassment, the Title IX Coordinator will evaluate the allegations in the Formal Complaint to determine whether the allegations satisfy the following conditions:

- The Title IX Sexual Harassment conduct is alleged to have been perpetrated against a person in the United States;
- The Title IX Sexual Harassment conduct is alleged to have taken place within the University's programs and activities; and
- At the time of the filing or signing of the Formal Complaint, the Complainant is participating in or attempting to participate in the University's programs or activities.

If the Title IX Coordinator determines that all of the above conditions are satisfied, the University will address the Formal Complaint of Title IX Sexual Harassment under these Procedures.

If the Title IX Coordinator determines that the allegations in the Formal Complaint do not meet the definition of Title IX Sexual Harassment or that not all of the conditions above are satisfied, the University will dismiss the Formal Complaint for Title IX purposes. However, if the University dismisses the Formal Complaint for Title IX purposes, it may, in its discretion, address the Formal Complaint under other applicable University policies and/or handbooks as appropriate.

Additionally, if the Title IX Coordinator investigates a matter as Title IX Sexual Harassment based on the allegations in the Formal Complaint, but, during the course of the investigation, the Title IX Coordinator determines that all of the above conditions are no longer satisfied, the University will dismiss the Formal Complaint for Title IX purposes and instead pursue the matter under other University policies and/or handbooks as appropriate and applicable, or will dismiss the Formal Complaint in its entirety.

If the Title IX Coordinator determines that a Formal Complaint of Title IX Sexual Harassment will not be adjudicated under the Title IX Procedures, either at the outset after reviewing the Formal Complaint or during the course of the investigation, the parties will receive simultaneous written notice of the dismissal and the reasons for that dismissal.



Either party may appeal the decision to dismiss a Formal Complaint as explained below in Section XVI.

### **C. Discretionary Dismissal of Formal Complaint for Title IX Purposes**

In addition to the reasons discussed above in Section XI(B) regarding mandatory dismissals, the University may, in its discretion, choose to dismiss a Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

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

The University retains discretion on a case-by-case basis to determine if it will dismiss a Formal Complaint for Title IX purposes based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean the University will automatically dismiss the Formal Complaint for Title IX purposes as is the case with respect to the conditions listed in the “Mandatory Dismissal” section above. Instead, the University will determine if such a decision is appropriate under the circumstances.

If the University dismisses a Formal Complaint for Title IX purposes, it may in its discretion address the Formal Complaint under other University policies and/or handbooks as it deems appropriate.

The parties will receive simultaneous written notice of the dismissal and the reasons for that dismissal. Either party may appeal the decision to dismiss as explained below in Section XVI.

### **D. Consolidation of Formal Complaints**

In their discretion, the Title IX Coordinator may consolidate multiple Formal Complaints for resolution under this Policy. Consolidation might involve a single Complainant or multiple Complainants, a single Respondent or multiple Respondents, and allegations of conduct that is temporally or logically connected (even where some of that alleged conduct is not Title IX Sexual Harassment or where the above conditions are not met with respect to some of the alleged conduct). If Formal Complaints involving multiple Complainants and/or multiple Respondents are consolidated, each party will have access to all of the information being considered; including as provided by all involved Complainants, all involved Respondents, and all involved witnesses. The decision to consolidate Formal Complaints is not subject to appeal.

### **E. Notice of Allegations**

If a Complainant files, or the Title IX Coordinator signs, a Formal Complaint of Title IX Sexual Harassment within the scope of this Policy, the Title IX Coordinator will simultaneously send both parties a written Notice of Allegations that contains the following:

- Notice that the Informal and Formal Resolution processes comply with the requirements of Title IX;
- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who may inspect and review evidence;
- Information regarding the availability of support and assistance through University resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options;
- Notice of the University's prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that the University will take prompt action when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that both the Employee and Student Handbooks prohibit knowingly making false statements and knowingly submitting false information during the course of a University investigation, which would include the grievance process.

If, during the course of an investigation, the Title IX Coordinator decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not included in the earlier written notice, the Title IX Coordinator will provide an amended Notice of Allegations to the parties.

## **XII. TIMELINES**

Throughout these Procedures, the University designates timelines for different steps of the process. The Title IX Coordinator has authority to extend such timelines for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disability. In the case of such an extension, the

Title IX Coordinator will notify the affected parties of the extension, including the reason(s) for the extension.

The phrase “business days” shall refer to those days ordinarily recognized by the University administrative calendar as workdays.

### **XIII. ADVISORS**

Throughout the resolution process (whether informal or investigative), the Complainant and a Respondent may each have an advisor of their choice to provide support and guidance. An advisor may accompany the Complainant/Respondent to any meeting with the Title IX Coordinator, the investigator, or to a hearing.

Prior to the hearing, a party’s advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party. And, at the hearing, an advisor’s role is limited to quietly conferring with the Complainant/Respondent through written correspondence or whisper. An advisor may not speak for the party they are supporting or address any other participant or the Hearing Officer except as necessary to conduct cross-examination as explained below. Advisors must conduct the cross-examination of all witnesses directly, orally, and in real time at the hearing. Neither party may conduct cross-examinations personally.

The University (including any official acting on behalf of the University such as the Hearing Officer) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. For example, the University will not tolerate an advisor questioning a witness in an abusive, intimidating, or disrespectful manner. The University has the right to take appropriate steps to ensure compliance with the Policy and Procedures, including by placing limitations on the advisor’s ability to participate in future meetings and proceedings.

### **XIV. INFORMAL RESOLUTION**

Informal Resolution is an alternative resolution process that does not include an investigation or hearing. Informal Resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the University community.

Informal Resolution is not available in cases involving a Student-Complainant and Employee-Respondent. Additionally, the Informal Resolution process may not commence unless and until a Formal Complaint of Title IX Sexual Harassment is filed. Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility.

The Title IX Coordinator reserves the right to determine whether Informal Resolution is appropriate in a specific case. Before the Title IX Coordinator commences the Informal Resolution process, both parties must provide informed consent in writing. In addition, where both parties and the University determine that Informal Resolution is worth exploring, the University will provide the parties with a written notice disclosing:

- the allegations,
- the requirements of the Informal Resolution process, and
- any consequences resulting from participating or withdrawing from the process, including the records that may be maintained by the University.

At any time prior to reaching a resolution, either party may withdraw from the Informal Resolution process and proceed with the formal grievance process for resolving the Formal Complaint.

Once an Informal Resolution is agreed to by all parties, the resolution is binding and the parties generally are precluded from resuming or starting the formal grievance process related to that Formal Complaint. Any breach of the terms of an Informal Resolution agreement may result in disciplinary action.

## **XV. FORMAL RESOLUTION PROCESS**

### **A. The Investigation**

An investigation affords both the Complainant and the Respondent an opportunity to submit information and other evidence and to identify witnesses. Although the parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the investigation is with the University.

When the formal resolution process is initiated, the Title IX Coordinator will designate an investigator who will be responsible for gathering evidence directly related to the allegations raised in a Formal Complaint of Title IX Sexual Harassment. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. Specifically, the investigator will be trained on (1) issues of relevance; (2) the definitions in the Policy; (3) the scope of the University's Education Program or Activity; (4) how to conduct an investigation; and (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

A Complainant or a Respondent who has concerns that the assigned investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.) may report those concerns to the Title IX Coordinator, who will assess the circumstances and determine whether a different investigator should be assigned to the matter.

## **1. Investigation Timeframe**

The investigation of a Formal Complaint will be usually concluded within 90 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted if the process will go beyond the 90-day timeframe.

## **2. Interviews and Gathering Evidence**

**Interviews.** The investigator will interview the Complainant and Respondent in order to review the disciplinary process and to hear an overview of each party's account of the incident. Before any interview, the individual being interviewed will be informed in writing of the date, time, location, participants, and purpose of the interview. Such notice will be provided with sufficient time for the individual to prepare for the interview. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional Title IX Sexual Harassment under the Policy.

Following the interview, each party will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness. The parties' feedback may be attached or otherwise incorporated into the final investigative report to the extent deemed relevant by the investigator.

**Evidence.** During the interview, and as the investigator is gathering evidence, each party will be given the opportunity to identify witnesses and to provide other information, such as documents, communications, photographs, and other evidence. Although the University has the burden of gathering evidence sufficient to reach a determination regarding responsibility, all parties are expected to share any relevant information and/or any information that is requested by the investigator. Such information shared by the parties with the investigator may include both inculpatory and exculpatory evidence.

The investigator will review all information identified or provided by the parties, as well as any other evidence they obtain. Evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint will be shared with the parties for their review and comment, as described below.

## **3. Draft Investigative Report and Opportunity to Inspect and Review Evidence**

After all the evidence is gathered, and the investigator has completed witness interviews, the investigator will prepare a draft investigative report. The investigator will send each party, and the party's advisor, if any, the draft investigative report.

The investigator will also provide the parties, and their advisors, if any, with copies of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. Before doing so, the investigator may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a recognized legal privilege; and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure. The evidence may be provided in either an electronic format or a hard copy

only upon the execution of a non-disclosure agreement by each party and their applicable advisor(s).

The parties will have ten (10) days to review the draft investigative report and evidence and to submit a written response. The parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigation. Any party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report. Generally, only information that is provided to, or otherwise obtained by, the investigator during the course of the investigation will be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the Hearing Officer must be provided to the investigator prior to the final investigation report and will not be allowed during the hearing unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the Hearing Officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence. The investigator will review the feedback to the report, interview additional relevant witnesses (as the investigator deems appropriate).

#### **4. Final Investigative Report**

After the time has run for both parties to provide any written response to the draft investigative report and evidence, and after the investigator completes any additional investigation, the investigator will complete a final investigative report. The investigator will submit the final investigative report of relevant information to the Title IX Coordinator. The Title IX Coordinator will review the report for completeness and relevance, and direct further investigation as necessary before the report is provided to the Complainant and Respondent.

The investigator and/or Title IX Coordinator, as appropriate, may exclude and/or redact information or evidence from the final investigative report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- Information about a Complainant's prior or subsequent sexual activity, unless such information about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; and

- Medical or mental health information, treatment and/or diagnosis, unless the party consents.

After the Title IX Coordinator reviews the report and any further investigation, if necessary, is completed, the final report will be shared with the Complainant, Respondent, and their advisors. The parties will have ten (10) business days to respond in writing to the final investigative report. The Complainant and Respondent must also submit in writing by that time the names of any witnesses the Complainant/Respondent wishes to testify and a summary of information each witness would provide through their testimony. Names of witnesses provided by the Complainant/Respondent will be shared with the other party.

After the ten-business-day deadline, the Complainant and Respondent may not provide any additional written information for the hearing, unless that information was not reasonably available prior to the closing of the ten-business-day window. The Hearing Officer determines whether to grant exceptions to this ten-business-day deadline.

The Title IX Coordinator will determine what, if any, final changes or additions are made to the final investigative report based upon its review of the report and feedback as described above from the Complainant and Respondent.

The matter will then be referred to a Hearing Officer.

## **B. Hearing Procedure**

### **1. The Hearing Officer**

The Hearing Officer will be selected by the University from a pool of individuals deemed appropriate.

All Hearing Officers receive annual training on the following: how to conduct a hearing; issues of relevance, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant; how to serve impartially by, among other things, avoiding prejudice of the facts at issue, conflicts of interest, and bias; and other relevant issues. The Hearing Officer will also be trained on any technology that might be used during a hearing.

### **2. Notice**

Both the Complainant and the Respondent will be notified in writing of the date and time of the hearing and the name of the Hearing Officer at least seven (7) calendar days in advance of the hearing, with the hearing to occur no fewer than ten days after the parties are provided with the final investigative report. The Hearing Officer will receive the names of the Complainant and the Respondent at the same time.

### **3. Bias and Conflict Of Interest**

The Hearing Officer must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants

and respondents generally. If the Hearing Officer has concerns that they cannot conduct a fair or unbiased review, the Hearing Officer may report those concerns to the Title IX Coordinator and a different Hearing Officer will be assigned.

A Complainant and/or Respondent may challenge the participation of the Hearing Officer because of perceived conflict of interest, bias, or prejudice. Such challenges, including rationale, must be made within forty eight (48) of notification of the name of the Hearing Officer.

At their discretion, the Title IX Coordinator will determine whether such a conflict of interest exists and whether a Hearing Officer should be replaced. Postponement of a hearing may occur if a replacement Hearing Officer cannot be immediately identified.

#### **4. Pre-Hearing Procedures and Ground Rules**

The Hearing Officer and/or the Title IX Coordinator may establish pre-hearing procedures relating to issues such as scheduling, hearing structure and process, witness and advisor participation and identification, and advance determination of the relevance of certain topics. The Hearing Officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.

The Hearing Officer also has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.

#### **5. Participation of Advisors**

Both parties must be accompanied by an advisor to the hearing. If a party does not have an advisor for the hearing, the University will provide an advisor of the University's choice for that party.

Each party's advisor must conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the parties' advisors do not have a speaking role at the hearing; an advisors' participation is limited to conferring with the party at intervals set by the Hearing Officer.

#### **6. Participation of Parties And Witnesses**

A party or witness who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a witness who chooses to participate in the investigation is expected to make themselves available for a hearing if requested to do so).

If a party or witness elects to not participate in the live hearing, or participates in the hearing but refuses to answer questions posed by the other party through their advisor, the Hearing Officer will not rely on any statement of the non-participating party or witness in reaching



a determination regarding responsibility. The Hearing Officer will never draw any inferences based solely on a party's or witness's absence or refusal to answer questions.

**“Statements”** for purposes of the hearing means factual assertions made by a party or witness. Statements might include factual assertions made during an interview or conversation, written by the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g. in an investigative report, police report, or medical record). Where evidence involves intertwined statements of both parties (e.g. a text message exchange or an email thread) and one party refuses to participate in the hearing or submit to questioning about the evidence while the other does participate and answer questions, the statements of only the participating party may be relied on by the Hearing Officer.

If a party does not appear for the hearing, their advisor may still appear for the purpose of asking questions of the other party and witnesses. If a non-participating party's advisor also does not appear for the hearing, the University will appoint an advisor to participate in the hearing for the purpose of asking questions of the other party on behalf of the non-participating party.

Parties are reminded that, consistent with the prohibition on Retaliation, intimidation, threats of violence, and other conduct intended to cause a party or witness to not appear for a hearing are expressly prohibited.

## **7. Witnesses**

The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant or duplicative. The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

## **8. Electronic Devices and Record the Hearing**

A Respondent, Complainant, advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room, unless authorized by the Hearing Officer.

The Title IX Coordinator will arrange for there to be an audio-visual recording of the hearing, which will be made available to the parties for review and kept on file by the University for seven years.

Reasonable care will be taken to create a quality record and minimize technical problems, however, technical problems that result in no recording or an inaudible recording are not a valid basis for appeal.

## **9. Hearing Location and Use of Technology**

The hearing will be live, with all questioning conducted in real time. Upon request, the parties may be located in separate rooms (or at separate locations) with technology enabling the Hearing Officer and the parties to simultaneously see and hear the party or witness

answering questions. A hearing may be conducted entirely virtually through the use of remote technology so long as the parties and Hearing Officer are able to hear and see one another in real time.

## **10. Hearing Structure**

The Hearing Officer has general authority and wide discretion over the conduct of the hearing. Although the Hearing Officer has discretion to modify the hearing structure, the general course of procedure for a hearing is as follows:

- Introductions;
- Respondent's statement accepting or denying responsibility;
- Opening Statement from the Complainant;
- Opening Statement from the Respondent;
- Questioning of the Complainant by the Hearing Officer;
- Cross-examination of the Complainant by the Respondent's advisor;
- Questioning of the Respondent by the Hearing Officer;
- Cross-examination of the Respondent by the Complainant's advisor;
- Hearing Officer questioning of other witnesses (if applicable);
- Cross-examination of other witnesses by the parties' advisors;
- Closing comments from the Complainant; and,
- Closing comments from the Respondent.

A Complainant or Respondent may not question each other or other witnesses directly; they must conduct the cross-examination through their advisors. Before a party or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant. The Hearing Officer may exclude irrelevant information and/or questions. The Hearing Officer will explain any decision to exclude a question or information as not relevant.

The evidence collected as part of the investigative process will be made available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

### **C. Determination Regarding Responsibility**

Following the hearing, the Hearing Officer will consider all relevant evidence and make a determination by a preponderance of the evidence whether the Respondent has violated the Policy.

A preponderance of the evidence standard means that, based on the information acquired during the investigation and the hearing, it is more likely than not the Respondent engaged in the alleged conduct.

### **D. Remedies And Sanctions**

In the event the Hearing Officer finds the Respondent responsible for a violation of the University's policies, appropriate remedies and sanctions will be determined by the Hearing Officer. Remedies are designed to resort or preserve equal access to the University's Education Program or Activity and may be disciplinary or punitive.

Upon a finding of responsibility, the Complainant will be provided with remedies designed to restore access to the University's educational and employment programs and activities. Sanctions for a finding of responsibility for Student Respondents include, but are not limited to, expulsion, suspension, disciplinary probation, recommended counseling, and/or other educational sanctions. In determining (a) sanction(s), the Hearing Officer] will consider whether the nature of the conduct at issue warrants removal from the University, either permanent (expulsion) or temporary (suspension). Other factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent (shared only upon a finding of responsibility for the allegation), previous University response to similar conduct, and University interests (e.g., in providing a safe environment for all).

Sanctions for findings of responsibility for Employee and Faculty Respondents include, but are not limited to, progressive disciplinary action; prohibition from various academic or managerial responsibilities involving the Complainant or others; letter of reprimand placed in a Respondent's personnel file; restrictions on a Respondent's access to University programs or facilities; limitations on merit pay or other salary increases for a specific period; or demotion, suspension, or dismissal/termination from the University, or a recommendation that a separate process required to impose such action be commenced.

### **E. Written Notice Regarding Outcome and, if applicable, Sanctions/Remedies**

After a determination regarding responsibility and, if applicable, a determination regarding appropriate remedies and/or sanction has been made, the Complainant and Respondent will receive a simultaneous written notification including the decision regarding responsibility and, as applicable, remedies and sanctions. The written notification will include the following:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;

- A description of the procedural steps taken from the receipt of the Formal Complaint of Title IX Sexual Harassment, with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided by the University to the Complainant; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The written notification of outcome becomes final seven days after it is sent to the Parties, unless an appeal is filed on or before that day.

## **XVI. APPEALS**

A Respondent and Complainant both have the right to appeal (1) The Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment; and (2) the Hearing Officer's decision regarding responsibility.

A party wishing to appeal the Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment must file a written appeal statement within five (5) business days of the date the decision to dismiss is communicated to the parties.

A party wishing to appeal a Hearing Officer's decision must file a written appeal statement within five (5) business days of the date the written decision is sent to the parties. Appeal statements are limited to five (5) pages. The written appeal statement must identify the ground(s) upon which the appeal is being made.

The only grounds for appeal are:

- New information not reasonably available at the time of the decision/hearing that could affect the outcome of the matter;
- The Title IX Coordinator, investigator, Hearing Officer, or had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent specifically that affected the outcome of the matter; and/or
- Procedural error(s) that affected the outcome of the matter.

An appeal is not a re-hearing of the case. The University may summarily deny an appeal if it is not based on one of the enumerated grounds for appeal.

**Appellate decision-maker.** If the University does not summarily deny the appeal, the University will appoint an appellate decision-maker. The appellate decision-maker's role is limited to reviewing the underlying record of the investigation and hearing, the appealing party's ("Appellant") written appeal statement, any response to that statement by the other party ("Appellee"), and information presented at a meeting of the appellate decision-maker, if convened.

**Conflict of interest.** The University will notify the Appellant and Appellee of the name of the appellate decision-maker. The Appellant and/or Appellee may challenge the participation of an appellate decision-maker because of an actual conflict of interest, bias, or prejudice. Such challenges, including rationale, must be submitted in writing to the University no later than forty eight (48) hours after notification of the name of the appellate decision-maker. The University will determine whether such a conflict of interest exists and whether an appellate decision-maker should be replaced.

**Response to Appeal.** The appellate decision-maker will provide written notice to the Appellee that an appeal has been submitted and will give the Appellee an opportunity to review the appeal statement. The Appellee may submit a written response to the appeal ("response"). The response is due three (3) business days from the date the University provides written notice of the appeal to the Appellee limited to five (5) pages. The University will provide the Appellant an opportunity to review the response, the Appellant will not have an additional opportunity to respond.

**Written Decision.** The appellate decision-maker will provide written notification of the final decision to the Appellant and Appellee simultaneously.

The appellate decision-maker will typically notify the parties of its decision regarding an appeal in writing within ten (10) business days from receipt of the appeal statement. If the decision will take longer, the parties will be informed. The decision of the appellate decision-maker will be final and no subsequent appeals are permitted.

## **XVII. CONFIDENTIALITY**

The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Title IX Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or other proceeding arising thereunder.

## **XVIII. RECORD RETENTION**

The University shall retain for a period of seven (7) years after the date of case closure: the official file relating to a formal resolution, including any investigation hearing, sanctioning, and/or appeals processes involving allegations of Title IX Sexual Harassment. In cases in which a Respondent was found to have violated the Policy and was expelled or terminated, the University may