

# DELAWARE STATE UNIVERSITY



## INTERIM SEXUAL MISCONDUCT POLICY AND PROCEDURES

Effective August 14, 2020

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## I. DEFINITIONS

- A. **Advisor-** A source of personal and moral support to the student or employee who can be, but does not have to be, an attorney. This person may be tasked with helping a party prepare for conduct meetings or conferences, accompanying the party in any conduct proceedings, providing general advice, and assisting during the appeals process.
- B. **Complainant-** An individual who has alleged to be the victim of conduct that could constitute sexual misconduct, whether or not a formal complaint has been filed.
- C. **Consent-** Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.

Because individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.

A person cannot consent if he or she is disoriented, helpless, asleep, incapacitated or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this Sexual Misconduct Policy, and may have violated applicable criminal law.

It is not a defense that the Respondent accused of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other. *See 11 Del.C. §421.*

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. Consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

Under Delaware law, a minor (a person under the age of 12 years) cannot consent to sexual activity. **Sexual contact by an adult 20 years of age or older with a person younger than 16 years old is a crime, as well as a violation of this Policy, even if the minor wanted to engage in the act.** *See 11 Del. C. §761(1)*

The State definition of consent, which is applicable to criminal prosecutions for sex offenses in Delaware, may differ from the definition used in this Policy to address Policy violations. The Policy definition will control the purpose of determining violations and sanctions.

NOTE THESE SPECIAL CONSIDERATIONS: WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any casual, romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual who is in the superior or more powerful position. The relationship also may be viewed differently by each of the parties involved, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this Policy. Therefore, for the personal protection of members of this community, relationships in which power differentials are a given (faculty-student, staff-student, administrator-student, supervisor-employee) are strongly discouraged even in cases of consensual, casual and/or romantic involvement.

Consensual casual and/or romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over another person present, at a minimum, a potential conflict. Given this, persons with direct supervisory or evaluative responsibilities who are involved in such a relationship must immediately bring that relationship to the attention of their supervisor. Disclosure of the relationship may necessitate the removal of the employee from the supervisory or evaluative responsibility, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes, without limitation, Resident Assistants and students over whom they have direct responsibility. While no relationships are expressly forbidden by this Policy, failure to self-report such relationships to a supervisor as required may result in disciplinary action for an employee.

- D. Days-** calendar days (including weekends, holidays or inclement weather days) – unless specified as business days.
- E. Deputy Title IX Coordinators-** University employees designated to assist the Title IX Coordinator.
- F. Equity Resolution Panel (ERP)-** A select group of faculty, staff and administration appointed by the President of the University who receive appropriate training to assist in all aspects of the grievance process.
- G. Evidence-** Information relevant to the alleged violation of the Policy.
- H. Formal Complaint-** a signed written statement filed by a Complainant describing allegations of sexual harassment against a Respondent and requesting that the University conduct an investigation. At the time of filing, the Complainant must be participating in or attempting to participate in an education program or activity of the University or a current employee.
- I. Gender Based Harassment-** Gender-based harassment is unwelcome conduct based on a student or employee's actual or perceived sex. It includes slurs, taunts, stereotypes and name-calling, as well as gender-motivated physical threats, attacks, or other hateful conduct.
- J. Incapacitation-** a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the who,

- what, when, where, why or how of their sexual interaction). This Policy also covers a person whose incapacity results from a mental health condition, disability or other impairment, involuntary physical restraint and/or from the taking of drugs or alcohol.
- K. Investigator-** the individual appointed by the University to conduct a prompt, thorough, and equitable investigation into a Formal Complaint involving allegations of sexual misconduct. The investigator will have appropriate training that will demonstrate how to be impartial, unbiased and free from conflicts of interest.
- L. Non-Consensual Sexual Contact-** any intentional sexual touching, however slight, of any clothing or body parts, for the purpose of sexual gratification that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
- M. Non-Consensual Sexual Penetration-** any sexual penetration (anal, oral or vaginal), however slight, that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- N. Preponderance of the Evidence-** This standard of proof requires a showing that it is more likely than not that the Respondent committed the sexual misconduct alleged. Respondents are presumed not responsible for sexual misconduct unless a preponderance of evidence supports a finding. The University uses the preponderance of the evidence standard in all sexual misconduct cases.
- O. Prostitution-** Participating, agreeing or offering to participate in any sexual act with another person in return for something of value.
- P. Reasonable Cause-** Facts and evidence that would warrant a reasonable person to believe that a violation of the Policy has occurred.
- Q. Respondent-** A person who has been reported to have committed a violation of this Policy that could constitute sexual misconduct. This includes a student, employee, faculty member, volunteer or vendor or other individual on campus.
- R. Retaliation-** Retaliation is defined as any materially adverse action taken against a person because of their participation in that protected activity. Protected activity includes reporting an incident that may trigger this Policy, participating in the resolution process, supporting a Complainant or Respondent, or assisting in providing information relevant to an investigation.
- S. Sexual Assault-** Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. The following conduct is also considered Sexual Assault:
- Rape: Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
  - Fondling: Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his or her temporary or permanent mental capacity.
  - Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- Statutory Rape: Sexual intercourse with a person who is under the age of consent (18 years old).

**T. Sexual Exploitation-** Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Penetration or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to the following:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the persons observed).
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent) and using social media to post sexual pictures or sexual activities without the consent of the individuals.
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent.

**U. Sexual Harassment-** Unwelcome verbal, visual or physical sexual conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity. Sexual Harassment also includes the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., *quid pro quo* harassment); or
- Sexual assault;<sup>1</sup> or
- Dating violence, domestic violence, or stalking.<sup>2</sup>

**V. Sexual Violence-** Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (*e.g.*, due to the individual’s age, use of drugs or alcohol, or because an intellectual or other disability prevents the individual from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

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<sup>1</sup> As defined in the Clery Act in 34 CFR 668.46(a).

<sup>2</sup> As defined in the Violence Against Women Act of 1994 (VAWA), 42 U.S.C. §§13701-14040.

**W. Sexual Misconduct** - Acts of sexual misconduct may be committed by any person upon any other person, regardless of sex, gender, sexual orientation, and/or gender identity of the parties involved.

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, the University has defined categories of sexual misconduct, as stated below, for which discipline may be imposed. Generally speaking, the University considers non-consensual Sexual Assault violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, up to and including suspension or expulsion/termination, for any act of sexual misconduct or other gender-based offenses based on the particular facts and circumstances of the complaint. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of the parties involved.

Violations include:

- **Sexual Harassment** (defined above)
- **Non-Consensual Sexual Contact** (defined above)
- **Non-Consensual Sexual Penetration** (defined above)
- **Sexual Exploitation** (defined above)
- **Sexual Violence** (defined above)

**X. Student-** Any individual who has accepted an offer of admission, who is registered or enrolled for credit or noncredit bearing coursework.

**Y. Supportive Measures-** Non-disciplinary, non-punitive individual services offered to the Complainant or Respondent. The University offers these services free of charge as appropriate and/or reasonably available. Such services include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**Z. Title IX Coordinator-** The University official tasked with overseeing the University's response to complaints and reports of sexual misconduct or retaliation under this Policy.

**AA. Vendor-** A company or individual providing goods or services on the University campus or to the University community through a contractual relationship with the University.

**BB. Visitor or Guest-** An individual who is not officially affiliated with the University but who is present on campus either independently or as the guest of a University employee or student.

**CC. Volunteer-** An individual who is not employed by the University but is providing goods or services on the University campus or to the University community, at the

request of or with the authorization of the University, without receiving compensation from the University.



## **DELAWARE STATE UNIVERSITY SEXUAL MISCONDUCT POLICY**

### **II. POLICY STATEMENT**

Delaware State University (the “University”) affirms its commitment to promote the goals of equal opportunity, fairness and equity in all aspects of the educational enterprise. The University adheres to all federal and state civil rights laws and regulations prohibiting sex discrimination in public institutions of higher education.

The University is committed to providing a workplace and educational environment, as well as other benefits, programs and activities that are free from sexual misconduct, sexual discrimination, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational enterprise, the University has developed internal policies and procedures that will provide a prompt, fair and impartial process for those involved in an allegation of sex misconduct and discrimination.

Sexual misconduct encompasses sexual harassment (which includes sexual assault, dating violence, domestic violence and stalking), non-consensual sexual contact, non-consensual sexual penetration, sexual exploitation and sexual violence. Sexual discrimination includes discrimination on the basis of pregnancy, sexual orientation, gender identity, gender expression and domestic violence victim status. Sexual misconduct and sexual discrimination are prohibited, and all allegations are subject to resolution pursuant to the terms of this Policy.

This Policy is not meant to inhibit or prohibit academic freedom, educational content, or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters. The specific forms of prohibited conduct is defined in the Definitions section of the Policy.

### **III. JURISDICTION**

The Delaware State University Sexual Misconduct Policy and Procedure (the “Policy”) is applicable to members and non-members of the campus community, including students, student organizations, faculty, administrators and/or staff, guests, volunteers and vendors. It also applies to medical personnel working at any dispensary, clinic, infirmary, health center, athletic facility, or similar facility operated by the University. The Policy may be applied to an individual incident, patterns and/or to the University climate, all of which may be addressed and investigated in accordance with this Policy.

This Policy applies to behaviors that take place in the United States; on campus; on property owned or controlled by the University; on property controlled by a student organization officially recognized by the University, whether the property is on campus or off campus; and within the University's "education program or activity." Examples of "education program or activity" include locations, events or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Policy violation occurred. This includes but is not limited to, admissions, employment, academics, athletics, housing, and student services.

The University reserves the right to address conduct which does not fit within this Policy through the University's Employee Handbook, Student Code of Conduct, the Human Resources Department and/or other departments' materials which govern these processes. This includes conduct which occurs outside of the United States which is related to a University program or activity.

#### **IV. TITLE IX COORDINATOR**

The University's Title IX Coordinator oversees implementation of the University's Sexual Misconduct Policy. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to investigation, resolution, and implementation of corrective measures to monitor, stop, remediate and prevent conduct and retaliation prohibited under this Policy. The University's Title IX Coordinator is:

Candy Young  
Title IX Coordinator  
Delaware State University  
Martin Luther King Student Center, Suite 317  
1200 North DuPont Highway  
Dover, DE 19901  
Telephone: 302-857-6300  
Email: [csanders@desu.edu](mailto:csanders@desu.edu)  
Website: <https://www.desu.edu/about/administration/university-policies-procedures/sexual-misconduct-harassment-sex-discrimination>

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the University President or designee and the Vice President of Student Affairs. The Title IX Coordinator may designate another person to oversee the procedure below, if the Title IX Coordinator is otherwise unavailable or unable to fulfill his/her duties.

#### **V. CONTACT INFORMATION**

Inquiries about this Policy or allegations of violations of this Policy can be made internally to the Title IX Coordinator.

Inquiries about this Policy can be made externally to:

U.S. Department of Education  
Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

U.S. Department of Education  
Office for Civil Rights (OCR)  
Philadelphia Office  
The Wanamaker Building  
100 Penn Square East, Suite 515  
Philadelphia, PA 19107-3323  
Telephone: (215) 656-8541  
Facsimile: (215) 656-8605

Delaware Department of Justice  
Carvel State Building  
820 N. French St.  
Wilmington, DE 19801  
(302) 577-8400  
Email: [attorney.general@delaware.gov](mailto:attorney.general@delaware.gov)  
Web:  
<https://attorneygeneral.delaware.gov/campus-sexual-assault/>

U.S. Equal Employment Opportunity  
Commission (EEOC)  
Philadelphia District Office  
801 Market Street, Suite 1000  
Philadelphia, PA 19107-3126  
Phone: (800) 669-4000 / (267) 589-9700  
Email: [PDOContact@eeoc.gov](mailto:PDOContact@eeoc.gov)  
Fax: (215)440-2606

## **VI. REPORTING**

The University has an obligation to promptly act on any reports of Policy violations made by any person (complainant, friend, parent or bystander) to the Title IX coordinator, Deputy Title IX coordinator, administrator, faculty, staff or employee. This notice provides the University with actual knowledge of a violation of this Policy. This notice may be in verbal or written form.

Once the University has actual knowledge, the University will respond promptly to the report by utilizing the steps outlined in this Policy, provide supportive measures and/or investigate the allegations.

### **A. How to Report?**

Reports of violations of this Policy and/or retaliation may be made using any of the following options:

#### **1. Report to Title IX Coordinator**

Candy Young, Martin Luther King Student Center, Suite 317, 1200 North DuPont Highway, Dover, DE 19901, (302) 857-6300, [csanders@desu.edu](mailto:csanders@desu.edu)

## **2. Report Online Using the Title IX Incident Report Form**

<https://www.desu.edu/about/administration/university-policies-procedures/sexual-misconduct-harassment-sex-1>

## **3. Report to the University Police Department or Local Law Enforcement Agency**

Delaware State University Police Department  
1200 N. DuPont Highway  
Dover, DE 19901  
Phone: (302) 857-7911  
Confidential Reporting Tip Line: (302) 857-7918

City of Dover (DE) Police Department  
400 S. Queen Street  
Dover, DE 19904  
1-302-736-7111 (Non-Emergency)  
<https://doverpolice.org/>

Delaware State Police  
1441 N. DuPont Highway  
Dover, Delaware 19903  
(302) 739-5901  
<https://dsp.delaware.gov/>

### **B. Reporting Timeline**

Every effort should be made to report violations of this Policy promptly. However, there is no time limitation on the filing of complaints, so long as the Respondent remains subject to the University's jurisdiction.

### **C. Amnesty for Reporting Party and Witnesses**

The University community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident.

It is in the best interests of the University community that reporting parties choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, the University maintains a policy of offering reporting parties and witnesses amnesty from minor violations - such as underage consumption of alcohol or the use of illicit drugs - related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

### **D. Confidentiality in Reporting**

All University employees (faculty, staff and administration) are expected to report actual or suspected violations of this Policy to appropriate officials immediately (except in the case of confidential reporters, described in the Confidential Reporting section below). In order to make

informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting individuals on campus.

On campus, some individuals may maintain confidentiality and are not required to report actual or suspected violations of this Policy. They may offer options and resources without any obligation to inform an outside agency or campus official unless a reporting party has requested this information be shared.

If a Complainant expects formal action on their allegations, reporting to any employee can connect them with resources to report crimes and policy violations, and these employees will immediately forward reports to the Title IX Coordinator (and/or police, if desired by the reporter), who will take action when an incident is reported to them. The following describes the reporting options at the University.

#### i. **Confidential Reporting**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with one of the following individuals: licensed clergy, campus health service providers, victim advocates, licensed professional counselors and medical providers, local rape crisis counselors, domestic violence resources, local or state assistance agencies, or non-university attorneys. All of these people may maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. For students, campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. For employees, the Employee Assistance Program is available.

In cases indicating pattern, predation, threat and/or violence, the University may not be able to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer supportive measures to the victim, but will not otherwise pursue formal action. A Complainant has the right, and can expect to have complaints taken seriously by the University when reported.

#### ii. **Formal Reporting Options**

All University employees have a duty to report, unless they fall within the Confidential Reporting section above. The failure to abide by these mandatory reporting obligations will subject the employee to all penalties under Delaware state law. Employees must promptly share all details of the reports they receive. Complainants should consider carefully whether they wish to share personally identifiable information with non-confidential employees, as the non-confidential employee **must** report those details to the Title IX Director and/or Deputy Title IX Coordinators.

If a Complainant does not wish for their name to be shared, an investigation to take place, or a formal resolution to be pursued, the Complainant may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law and this Policy.

Formal reporting still affords privacy to the Complainant and only a small group of officials who need to know will be told, including, but not limited to, the Division of Student Affairs, the Title IX Office, Public Safety, or the Threat Assessment Team. Information will be shared only as necessary with investigators and witnesses. The circle of people with this knowledge will be kept as limited as possible to preserve the privacy rights of the Complainant.

Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at: <https://www.desu.edu/about/administration/university-policies-procedures/sexual-misconduct-harassment-sex-1>. A Formal Complaint will still need to be filed after that, which will either have to be signed by the Complainant or, in certain circumstances, initiated by the Title IX Coordinator. Note, anonymous reports may prompt a need for the University to investigate.

### **E. Responsible Employees' Duty to Offer to Report**

Responsible employees (as defined by 14 *Del. C.* §9001A), including University professors, faculty, trustees, directors, or employees who regularly interact with students in a teaching, mentoring, advisory or supervisory capacity, who are informed by a victim of an alleged sexual assault committed by a member of the University community, must offer to notify the University Police Department or local law enforcement of the allegation. The responsible employee must notify the sexual assault victim of their duty to offer to report to law enforcement. If permitted by the victim, the responsible employee must make the report to the University Police Department or local law enforcement within 24 hours.<sup>3</sup>

In all cases, the University will consider the victim's wishes with respect to how the reported misconduct is pursued. However, the University reserves the right to investigate and pursue a resolution even if a victim chooses not to initiate or participate in the resolution process, if necessary, to protect the campus community.

## **VII. PROTECTION FROM RETALIATION**

The Policy expressly forbids retaliation against anyone exercising their rights under this Policy. Retaliation against an individual for alleging a violation of this Policy, supporting a Complainant or Respondent or assisting in providing information relevant to a claim pursuant to this Policy is a serious violation and will be treated as an independent violation. The University will take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated.

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<sup>3</sup> See 14 *Del. C.* §9001A-9007A

## **VIII. FALSE ALLEGATIONS AND INFORMATION**

Deliberately false and/or malicious accusations of conduct under this Policy are just as serious the offense itself, and will be subject to appropriate disciplinary action. This does not include erroneous allegations, so long as they are made in good faith.

Witnesses and parties providing knowingly false evidence or deliberately misleading information to an investigator will be subject to discipline under University Code of Conduct.

## **IX. SUPPORTIVE MEASURES FOR POLICY VIOLATIONS**

The University will provide interim supportive measures upon notice of alleged Policy violations, and will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in violative conduct. Procedures for handling reported incidents are fully described below.

## **X. FEDERAL STATISTICAL REPORTING (CLERY ACT) OBLIGATIONS**

Parties reporting sexual misconduct, intimate partner violence, and/or stalking should be aware that under the Clery Act,<sup>4</sup> University administrators must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **XI. STATEMENT OF RIGHTS TO COMPLAINANTS AND RESPONDENTS**

Under this Policy, the University will honor the following rights to both Complainants and Respondents at all times:

- To be treated with respect by the University officials.
- To take advantage of campus support resources (such as Counseling and Psychological Services, the Office of the Chaplains, and the University Student Health Services, or Employee Assistance Program services for employees).
- To experience a safe living, educational and work environment.
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have complaints heard in accordance with these procedures.
- Referral to law enforcement and assistance in doing so.

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<sup>4</sup> 34 CFR 668.46(a).

- Adjustments to housing and living accommodations, if required.
- No contact orders between the parties, if required.
- To be informed in writing of the outcome/resolution of the complaint, sanctions (if any) and the rationale for both.

## **XII. RESOLUTION PROCESS**

The University will act on any formal or informal notice of an alleged violation of the Sexual Misconduct Policy (the “Policy”) that is received by the Title IX Coordinator, Title IX Deputies, or any administrator, faculty, staff, or employee with the exception of confidential resources, as outlined in the Policy.

The resolution process below will apply to all allegations involving members of the University community, whether students, staff or faculty members. Unionized/other categorized employees are subject to the terms of their collective bargaining agreements/employees’ rights to the extent those agreements do not conflict with federal or state law or compliance obligations.

Upon receipt of an allegation, the University initiates this resolution process, which involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the Policy has been violated.

If so, the University will initiate one of three responses:

1. A remedial response because the Complainant does not want to proceed formally;
2. An informal resolution; or
3. A formal resolution including an investigation and an opportunity for a hearing. Formal resolution is thorough, reliable, impartial, prompt, fair, and as private as possible.

The investigation and resolution processes determine whether the Policy has been violated. If so, the University will promptly implement effective remedies designed to end the sexual discrimination, prevent its recurrence and address its effects.

If at any point in the resolution process the evidence indicates that an incident does not rise to the level of a Policy violation but could be in violation of other University policies, the Title IX Coordinator may refer the matter to the appropriate office (e.g., Student Affairs, Human Resources) for further investigation and resolution.

### **Equity Resolution Panel**

The resolution process relies on a group of officials (the “Equity Resolution Panel” or “ERP”) to carry out the process. The current list of ERP members and a description of the ERP can be found at <https://www.desu.edu/about/administration/university-policies-procedures/sexual-misconduct-harassment-sex-discrimination>.



## **A. ERP Roles<sup>5</sup>**

Members of the ERP are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To perform or assist with preliminary inquiries
- To provide appropriate and sensitive intake and initial guidance pertaining to allegations
- To act as advisors to the parties
- To serve in a mediation role in conflict resolution
- To investigate allegations
- To serve on the Hearing Panels
- To serve on the Appeal Panels

## **B. Appointment of ERP Members**

The University President, in consultation with the Title IX Coordinator and such others as the President deems necessary, appoints the ERP, which reports to the Title IX Coordinator. The ERP will be composed of approximately twenty-five (25) diverse<sup>6</sup> members from various University departments, representative of the University community. Students will not be permitted to serve on the ERP.

ERP members are typically appointed to a three to five year term.<sup>7</sup> Individuals who are interested in serving on the ERP are encouraged to contact the Title IX Coordinator.

## **C. Training of ERP Members**

ERP members receive annual training organized by the Title IX Coordinator, including, but not limited to, a review of the Policy. All ERP members are required to attend this annual ongoing training. In addition, any member of the ERP who will serve as the Chair of the Hearing Panel receives training on hearing procedures, the relevance of evidence, and cross-examination.

### **1. Reporting Misconduct**

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<sup>5</sup> ERP members may not have conflicting interests by assuming for the multiple roles in the same manner. For instance, an ERP member serving in an advisor capacity may not simultaneously serve as a member of the Hearing Panel for the same matter. The converse holds true. Hearing panel members may not simultaneously serve as advisors on the same matter.

<sup>6</sup> Age, race, sex, color, sexual orientation, disability, etc.

<sup>7</sup> Initial appointments will be staggered to avoid losing all experienced members every three years.

### **A. Reporting to Title IX Coordinator**

Any member of the University community (i.e., students, faculty, staff, administrators) as well as volunteers, guests, vendors or visitors who believe that the Sexual Misconduct Policy has been violated may contact the Title IX Coordinator.

### **B. Title IX Reporting Form**

The University's website includes a reporting form which may be used by anyone to notify the University of any alleged Policy violation. This form can be found at: <https://www.desu.edu/about/administration/university-policies-procedures/sexual-misconduct-harassment-sex-1>.

### **C. Reporting to Law Enforcement**

If the conduct is criminal in nature, any member of the University community, including volunteers, guests, vendors or visitors, may contact DSU Police Department and/or local law enforcement to make a report.

### **D. Reporting to Supervisor/Advisor/Faculty Member**

Students may notify an administrative advisor or faculty member of any alleged violation of the Policy while employees may notify a supervisor. In turn, administrative advisors, faculty members and supervisors will notify the Title IX Coordinator.

All employees (except those designated as confidential reporters) who receive notice of a potential violation of the Policy are expected to promptly contact the Title IX Coordinator within 24 hours of becoming aware of a report or incident. Specific information relating to any allegations received by any party will be reported to the Title IX Coordinator. Subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating a report.

## **2. Interim Remedies**

Once the University has actual notice of an allegation of a Policy violation, the University will respond promptly and advise the Complainant regarding the availability of supportive measures. The University may also determine if emergency removal of the Respondent is warranted under the circumstances, regardless of whether a formal complaint has been filed.

### **E. Supportive Measures Offered to the Complainant**

The University will offer the Complainant supportive measures, which are intended to address the

short-term effects of the alleged Policy Violation to temporarily redress an ongoing harm to the alleged victim or the community, and to prevent further violations of the Policy. These remedies can include, but are not limited to, referral to counseling and health services or to the Employee Assistance Program, change in housing, modifications of work and/or class, providing campus escorts, implementing limitations on contact between the parties – including no contact orders, and offering adjustments to academic deadlines and course schedules. The University/TIX Office will also provide the Complainant with information about how to file a Formal Complaint, should the Complainant want the University to conduct an investigation.

The University offers these supportive measures in an effort to restore the Complainant's access to the University's education program and activities. These supportive measures are supportive of the Complainant and not punitive toward the Respondent, unless University determines that emergency removal of the Respondent is necessary.

#### **F. Emergency Removal of the Respondent**

If the physical health or safety of any student, employee or other individual is jeopardized by the on-campus presence of the Respondent, the Title IX Coordinator will do the following: (1) refer the matter to the University Police Department who will perform a safety risk analysis, determine if the Respondent will be issued a no trespass order, and make all necessary referrals including, referring the matter to Judicial Affairs to determine if suspension (for students) or referral to Human Resources to determine if administrative leave (for faculty) of the Respondent is necessary; and (2) provide the Respondent with written notice of the potential for an interim suspension/administrative leave and an opportunity to challenge the removal decision within three (3) business days of notice. The Respondent will be given the opportunity to meet with the Title IX Coordinator prior to the imposition of any suspension/administrative leave to show cause why the suspension/administrative leave should not be imposed. After taking these steps and deciding that suspension/administrative leave is warranted, the Title IX Coordinator may suspend the Respondent on an interim basis pending the completion of the investigation and the Final Hearing. The Title IX Coordinator has sole discretion to implement or stay an interim suspension under the Policy, as well as to determine its conditions and duration. Violation of an interim suspension under this Policy may be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to University housing and/or University campus, facilities, and events. As determined by the Title IX Coordinator or Judicial Affairs this restriction includes classes and/or all other University activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Title IX Coordinator, alternative coursework or work options shall be pursued to ensure as minimal of an impact as possible on the Respondent.

### **3. Formal Complaint**

If the Complainant wants the University to conduct an investigation into the allegations of a Policy violation, the Complainants must file a Formal Complaint with the Title IX Coordinator in person, by mail, by email or online. This Formal Complaint must:

- Allege a Policy violation against a Respondent;
- Describe the allegations of the Policy violation;
- Request that the University conduct an investigation into the allegations of the Policy violation; and
- Be signed by the Complainant<sup>9</sup> (including a physical or digital signature – or a statement that the Complainant is the person filing the Formal Complaint).

The Formal Complaint is required to initiate the formal resolution process (investigation and hearing or informal resolution).

#### **4. Preliminary Inquiry**

Following receipt of a report or an alleged violation of the University Policy, the Title IX Coordinator engages in a preliminary inquiry to determine if the alleged conduct as reported would present a potential violation of the Policy and whether further action is warranted. The standard of review used for the Preliminary Inquiry is reasonable cause to believe the Sexual Misconduct Policy has been violated. The Title IX Coordinator may contact the Complainant for additional information. A Complainant's decision to maintain confidentiality, not to pursue an investigation or not to provide identifying information about a Respondent may limit the University's ability to respond to the alleged policy violation. The preliminary inquiry is typically 1-5 days in duration. The Title IX Coordinator will respond to the reported misconduct in a prompt, thorough, fair, impartial and effective manner.

The Title IX Coordinator must dismiss an allegation, report of a Policy violation or Formal Complaint when:

- the complaint alleges conduct that did not occur within the United States;
- the conduct alleged does not meet the definition of an act prohibited by this policy; or
- the conduct alleged did not occur within the University's education program or activity.

The Title IX Coordinator may dismiss an allegation, report, or Formal Complaint when:

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<sup>8</sup> In some cases, the Complainant's parents or guardians may also file the Formal Complaint.

<sup>9</sup> In certain instances, where there allegations of violence, threats, use of weapons, and serial predation, the Title IX Coordinator may sign the Formal Complaint if the Complainant refuses and if all other requirements are met. By signing the Formal Complaint, the Title IX Coordinator does not become a party to the resolution process.

- the Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the allegation, report or Formal Complaint or some of the allegations in it;
- the Respondent is no longer enrolled or employed by the University; or
- if specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the allegations.

The University will give written notice of any dismissal to the parties, as well as the reasons for it. The University will also provide information about the appeal process and how to appeal the dismissal.

## **5. Complaint Resolution**

### **G. Informal Resolution**

Informal resolution is available at any time for the Complainant and the Respondent to consider. Informal resolution is not an option is when a University employee is the Respondent. For all other allegations, including sexual assault, informal resolution, such as mediation, is an option.

Each party must enter the informal resolution process voluntarily and must give written consent to do so. The University will never compel a party to engage in any type of alternative resolution. The University will still provide the Complainant and the Respondent with the Notice of Allegations and their respective rights, including information about how to withdraw from the informal resolution process. Anyone participating in conflict resolution can stop that process at any time before an agreement is reached and request the formal adjudication process instead.

If the parties elect to participate in mediation, the Title IX Coordinator will facilitate a dialogue between the parties – either with both parties present or with both parties separately – with the goal of identifying how the harm(s) alleged by the Complainant can be repaired. Together or separately, the parties and the ERP member will create a written agreement that may include items such as apology letters, agreement to a no contact order, restriction of access, and/or education related to the offense. Sanctions will not be imposed. The Title IX Coordinator will keep records of any resolution that is reached and report that resolution to the parties in writing. A failure by either party to abide by their accord may result in appropriate responsive action by the Title IX Coordinator.

### **H. Resolution without a Hearing**

If the Respondent admits responsibility in writing for all or any part of the alleged Policy violations at any point in the process, the Title IX Coordinator will render a finding that the individual is in violation of University Policy for the admitted conduct, recommend in writing an appropriate sanction or responsive action to the ERP panel on those admitted violations. Any disputed

violations will proceed to a formal hearing.

### **I. Hearing**

For any complaints not resolved through informal resolution or complaints where there is no admission of responsibility, the Title IX Coordinator will initiate a Hearing.

### **J. University Compelling Formal Proceedings**

The University reserves the right to initiate formal resolution without a report or participation by the Complainant when deemed necessary by the Title IX Coordinator. This typically occurs to protect the community in situations evidencing a compelling safety risk.

### **6. Participation**

Every person has the right to choose to participate or not to participate in any part of the grievance process. No person will be forced, threatened, coerced or discriminated against for not participating. The University and the Hearing Panel will not draw any inference from a person's decision not to participate.

If a party or a witness chooses not to appear at the Hearing or chooses not to answer cross-examination questions, then the Chair will exclude the statements made by that party or witness and only evaluate evidence that does not involve those statements.

### **7. Selection and Role of Advisor**

Each Complainant and Respondent may be accompanied by one advisor of their choosing during all aspects of their case preparation, including all interviews and meetings up to and throughout the Hearing. The advisors will ask all of the cross-examination questions during the Hearing. An advisor may also be a witness and testify at the Hearing. Other than cross-examination or testifying at the Hearing as a witness (if applicable), advisors will not speak or otherwise participate on behalf of the student or employee. The parties are otherwise expected respond to questions and engage in the hearing process on their own behalf. The advisor may consult with the Complainant or the Respondent quietly, in writing, or during breaks.

The parties have the option to select an advisor from the ERP members or a friend, mentor, family member, attorney or any other individual a party chooses to advise and consult with throughout the resolution process. If a party does not have an advisor, the University will provide that party with an advisor of the University's choosing from the ERP member list, at no cost, for the purpose of conducting cross-examination at the Hearing. The ERP-appointed advisor is not an attorney and will in act in the best interests of their advisee. The Title IX Coordinator will manage ERP advisor assignments. A party may decline the assistance of an ERP advisor at any time.

All information concerning all aspects of the case will be communicated by the Title IX Office and/or Investigator directly to the student or employee. Timelines and/or deadlines for submission of materials may not be altered to accommodate an advisor's schedule.

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

## **8. Investigation**

### **K. Written Notice of Allegations**

Once a Formal Complaint is filed, the Title IX Coordinator will provide written notice of the allegations ("Notice of Allegations") to the Complainant and Respondent at the start of the formal process and before any initial interview is conducted. The Notice of Allegations will include: 1) a summary of the allegations; 2) the identity of the parties involved (if known); 3) the precise misconduct being alleged; 4) the date and location of the alleged incident; 4) the specific policies violated and; 5) a statement of the potential sanctions that may result. It will also inform the parties that they may have an advisor of their choice.

The Notice of Allegations will also provide that:

- The University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a policy violation.
- Determinations of responsibility are made at the conclusion of the resolution process.
- The parties may request to inspect and review all evidence obtained.
- The University's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.

### **L. Investigator(s) Appointed**

The Title IX Coordinator may conduct the investigation or may appoint one or more ERP members to conduct the investigation. Any individual involved in the resolution process including the Title IX Coordinator, investigator or ERP member cannot have or demonstrate a conflict of interest or bias for either party. The Title IX Coordinator will vet the assigned investigator(s) to ensure impartiality by ensuring there are no actual or perceived conflicts of interest or bias. The parties may at any time during the resolution process raise a concern regarding bias or conflict of interest and the Title IX Coordinator will determine whether the concern is justified. If it is determined that such bias or conflict exists, another investigator will be assigned and any impact of the bias or conflict will be remedied.

### **M. Investigation Timeline**

The University aims to complete all investigations promptly. However, depending the nature, extent and complexity of the allegations, availability of witnesses or police involvement, this time period may be extended as necessary by the Title IX Coordinator with notice provided to both parties. The Title IX Coordinator will communicate regularly with the parties to update them on the process and timing of the investigation.

#### **N. Law Enforcement Involvement/Parallel Proceeding**

The University process for investigating and adjudicating a Formal Complaint will not be precluded because civil or criminal charges involving the same incident have been filed, except where such efforts are limited by court order or other judicial process. The University may agree to a short delay to allow evidence collection when criminal charges based on the same facts or events are being investigated by the University or local law enforcement. In that instance, notice of the delay will be provided to both parties and appropriate remedial actions will be implemented, if necessary.

#### **O. Investigation Process**

The University is committed to providing investigations that are prompt, thorough, reliable, impartial and fair. Investigations will entail interviews with all relevant parties and witnesses, to the extent that they are willing to cooperate in this process; obtaining available evidence; and identifying sources of expert information, as appropriate. During the investigation, both parties may also suggest witnesses, provide evidence and fully review and respond to all evidence gathered by the University.

The University bears the burden of gathering evidence sufficient to reach a determination regarding responsibility, not either party.

The Respondent is presumed not responsible for the alleged conduct unless and until a determination is made based on a preponderance of the evidence that a policy violation has occurred.

##### **i. Inspect and Review of Evidence**

Both parties and their advisors have an equal opportunity to inspect and review any evidence obtained by the University during the investigation. This information may be provided in electronic form or hard copy.

##### **ii. Investigation Report**

Upon completing the investigation, the Investigator will compile a draft Investigative Report



("Draft Report") that fairly summarizes the evidence. Within the Draft Report, the Investigator will describe the relevant information learned during the investigation and summarize all interviews conducted. The Investigator will not offer any recommendations as to whether a violation of the Policy occurred. The Investigator will provide a copy of the Draft Report to the Complainant and the Respondent, and each may submit a written response to the Investigator. The written response must be submitted within ten (10) days after receiving the Draft Report. The Investigator will review and consider any written responses provided by the Complainant and the Respondent.

After considering the written responses provided by the parties, the Investigator may determine that additional investigation must be conducted. If the Investigator revises the Draft Report, the Investigator must then provide the revised Draft Report to the Complainant and the Respondent for their review and comment.

The Complainant and the Respondent will have ten (10) days after receiving the revised Draft Report to submit a written response to the Investigator. The Investigator will again review and consider any written responses provided by the Complainant and the Respondent to the revised Draft Report.

Once all of the investigation is completed, the Investigator will finalize the Investigative Report ("Report"). The Report will then be circulated to the Complainant and the Respondent at least ten (10) days before the Hearing. Complainants and Respondents are not permitted to share the Draft Report or the Report with any individual(s) other than their advisor and/or parent/guardian(s).

## **9. Hearing**

### **P. Hearing Panel**

The Title IX Coordinator will assemble a hearing panel ("Hearing Panel") to review the Report, conduct a Hearing, and determine whether it was more likely than not that, the Respondent violated the Policy. The Hearing Panel will consist of a non-voting panel Chair and three members of the ERP. No one appointed to the Hearing Panel may have been previously involved with the complaint or have a conflict of interest. Hearing panels may include both faculty and non-faculty employees, with at least one faculty member selected in a complaint against a faculty member. No member of the panel may be a student. The Title IX Coordinator will determine what times the Hearing Panel will meet.

The parties will be given a list of the names of each of the ERP Panel members at least two (2) business days in advance of the Hearing. Should any party object to any panelist, he or she must raise all objections, in writing, to the Chair immediately, but no later than one (1) business day before the Hearing. Panel members will only be unseated if the Chair, in consultation with the Title IX Coordinator, concludes that the alleged conflict or bias of the Panel member would prevent

an impartial hearing. Additionally, any panelist or Chair who feels he or she cannot make an objective determination must recuse himself or herself from the proceedings when notified of the identity of the parties and witnesses in advance of the Hearing.

### **Q. Notification of Hearing**

The Complainant and Respondent will be notified of the time and place of the Hearing at least seven (7) days before the Hearing. For compelling reasons, the Title IX Coordinator in his or her discretion may reschedule the Hearing. Hearings for possible violations that occur near or after the end of an academic term will be held as soon as is practicable after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University, and remain within the timely and thorough goal for resolution. This also presumes that a proper and complete investigation can be completed prior to the Hearing.

### **R. Hearing Procedures**

Participants will include the non-voting Chair, the three members of the Hearing Panel, the Investigator(s) who conducted the investigation on the complaint, the Complainant and the Respondent (or up to three organizational representatives in a case where an organization is charged), advisors to the parties and any called witnesses. The Chair will provide the names of witnesses the University intends to call, all pertinent documentary evidence and any written findings from the investigators to the parties at least ten (10) days prior to the Hearing.

The hearing should not exceed one day but can be extended by the Title IX Coordinator in certain extenuating circumstances. All parties will have the opportunity to present facts and arguments in full. Each party will have up to four (4) hours to present their case with extensions granted in extenuating circumstances by the Title IX Coordinator equally to both parties.

The advisors to the parties may cross-examine the other party and all witnesses during the Hearing. Cross-examination will be done in a respectful manner, as well as in real time with back and forth questions. Cross-examination can also include questions about credibility. All questions must be relevant. The Chair will decide if each question is relevant before a party or witness has to answer it. If the Chair decides to exclude a question as not relevant, the Chair must explain to the party's advisor any decision to exclude a question as not relevant. Similarly, an advisor can object to any question that the advisor believes is not relevant. The Chair will similarly decide all objections before a party or witness answers the pending question.

If any party requests, the Hearing can be held with the parties located in separate rooms, with the necessary technology for the parties to see and hear each other. Any such request must be made at least two (2) business days prior to the Hearing. The University has the discretion to allow any or all parties, witnesses, and other participants to appear at the Hearing virtually.

The Chair will begin the Hearing by explaining the procedures to be followed and introducing the

participants. The Investigator(s) will be present during the entire Hearing but not during deliberations of the Panel. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the Report will not be revisited and will be accepted as binding on the panel, except as necessary to determine sanctions/responsive actions. Once the report of the investigation has been presented, the ERP will permit questioning of and by the parties, and of any witnesses present. A party will be allowed to introduce evidence at the Hearing that was not gathered or presented prior to the Hearing.

Formal rules of evidence will not apply. Any evidence that the Panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant, immaterial or repetitive evidence and may ask the Panel to disregard evidence lacking in credibility. The Chair will determine all questions of procedure and regarding the consideration of evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless allegations of a pattern have been made; or (2) the sexual history of or the character of the Complainant. The prior sexual history of the Complainant may only be introduced in two narrow circumstances: (1) where someone other than the Respondent committed the Policy violation; and (2) the sexual behavior between the Complainant and the Respondent is offered to prove consent.

Where issues of competency or job performance are concerned, the Panel will not substitute its judgment of competency or performance for the judgment of other appropriate campus officials. The function of the Hearing Panel is to determine whether violations of the Policy have been committed. Issues of competency or performance may only be considered in that context.

In hearings involving more than one Respondent or in which two Complainants have asserted allegations against the same individual of substantially similar conduct; the standard procedure will be to hear the complaints jointly. However, the Title IX Coordinator may permit the hearing pertinent to each Respondent to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each Respondent.

There will be no observers at the Hearing and it will be conducted in private. The Chair may allow witnesses who have relevant information to appear at a portion of the Hearing in order to respond to specific questions from the Panel or the advisors. All persons present at any time during the Hearing are required to maintain the confidentiality of the proceedings and are subject to University disciplinary action for failing to abide by this requirement. Character witnesses will not testify but the Panel will accept up to two (2) letters supporting the character of the individuals involved.

Hearings will be recorded by the University. No other recording or use of any technology during the Hearing is permitted by the Complainant, Respondent, witnesses, and/or advisors. Only ERP members, the parties and/or the persons who initiated the action and appropriate administrative officers of the University will be allowed to listen to the recording in a location determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator and University's General Counsel. Persons given access to the recording will be required to sign an agreement confirming that they will protect the confidentiality of the information contained in the recording.

If any party does not appear at the scheduled hearing, the Hearing will be held in that party's absence. If a party or witness chooses not to appear at the Hearing or chooses not to answer cross-examination questions, the Chair will exclude the statements of that party or witness and evaluate only the evidence that does not involve those statements. The Panel will not draw any inference from a party's or a witness's decision not to participate in the Hearing. Similarly, the Panel will not draw any inference from a party's or a witness's decision not to be cross-examined.

## **S. Hearing Decisions**

The ERP Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the violation(s) in question. The Panel will base its determination of responsibility on a preponderance of the evidence standard. If a majority of the Panel finds a Respondent responsible, the Panel will issue appropriate sanctions.

Every reasonable effort will be made for the Hearing Panel to reach its decision within three (3) business days after the Hearing. However, a failure to announce a decision within that time period does not constitute grounds for appeal. After the Hearing Panel reaches its decision, the Title IX Coordinator will compile two documents detailing the outcome of the complaint: (1) Notice of Outcome and (2) Letter of Explanation.

### **1. Notice of Outcome**

After the Hearing Panel's decision, the Title IX Coordinator will disclose, in writing, the Notice of Outcome to the Respondent and Complainant at the same time. The Notice of Outcome may include, but is not limited to:

- i. The Hearing Panel's findings for each alleged violation;
- ii. Sanction(s); and
- iii. Protective Measures and/or additional remedies.

### **2. Letter of Explanation**

Within ten (10) business days of distributing the Notice of Outcome to both parties, the Title IX Coordinator will distribute a Letter of Explanation to the Complainant and Respondent. The Letter of Explanation will offer a more detailed rationale regarding the Hearing Panel's decision and will include the following:

- i. Determination regarding responsibility;
- ii. Findings of fact;
- iii. Conclusions about whether the alleged conduct occurred;
- iv. Rationale for the result as to each allegation;
- v. Sanction(s);
- vi. Protective Measures and/or additional remedies; and
- vii. Information about how to file an appeal.

## **T. Sanctions**

The Hearing Panel will determine sanctions or responsive actions. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous complaints or allegations involving similar conduct.
- Any other information deemed relevant by the ERP Panel.
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation.
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the victim and the community.

### **i. Student Sanctions**

The following are the usual, but not the exclusive, sanctions that may be imposed upon students or student organizations singly or in combination:

- *Warning*: A formal statement that the behavior was unacceptable and a warning that further infractions of any the University Policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of the Policy, providing for

more severe disciplinary 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. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, no-contact orders and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed three (3) years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at the University. This sanction may be noted as a Conduct Suspension on the student's official transcript.
- *Expulsion*: Permanent termination of student status, revocation of rights to be on campus for any reason, or attend any University-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: The University may withhold a student's diploma for a specified period and/or deny a student participation in commencement activities if the student has a complaint pending or as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions*: Deactivation, de-recognition, loss of all privileges (including University registration), for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

## **ii. Employee Sanctions**

Sanctions for an employee who has violated this policy include warning, required counseling, demotion, suspension with pay, suspension without pay and termination, or any other sanctions as deemed appropriate. Sanctions for violations of the Policy are in all ways separate and apart from other sanctions under the various union collective bargaining agreements.

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

**Students:** The University does not permit a student to withdraw if that student has a complaint pending for violation of the Policy or for charges under the Code of Student Conduct. Should a student decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University unless all sanctions have been satisfied.

**Employees:** Should an employee resign while charges are pending, the records of the Title IX Coordinator will reflect that status, as will the University responses (which will always be in

writing) to any future inquiries regarding employment references for that individual. The Title IX Coordinator will act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

## **11. Appeals**

All requests for appeal must be submitted by any party in writing to the Title IX Coordinator within seven (7) business days of the date of the Letter of Explanation. Requests must state the explicit grounds for the appeal, which must be based on one of the following:

- A procedural error or omission occurred that impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)
- Newly discovered evidence, unknown or unavailable during the original hearing or investigation that could affect the outcome. A summary of this new evidence and its potential impact must be included.
- Hearing Panel members, Chairperson or Investigator had a conflict of interest or bias that affected the outcome.
- The sanctions imposed are substantially disproportionate to the severity of the violation.

After an appeal has been submitted by a Complainant and/or Respondent, the Title IX Office will review the document to ensure that it follows the established policies and procedures. The Title IX Office will then allow the Complainant and/or Respondent access to the other party's Statement of Appeal, in addition to any other information that the Title IX Office deems relevant to the appeal.

Each party may submit to the Title IX Office a written response to the other party's appeal within two (2) days of receiving a copy of the appeal. The response must respond to the specific ground(s) for appeal raised in the other party's appeal. The Title IX Coordinator will allow the other party to review the response.

The Title IX Coordinator will appoint three (3) members from the ERP to serve on the Appeals Panel ("Appeals Panel"). No one appointed can have been involved in any aspect of the complaint previously.

The Appeals Panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on at least one of the grounds listed above, and such a decision is final. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the Appeals Panel finds that at least one of the appellate grounds is satisfied, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the Appeals Panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive

action only if there is a compelling justification to do so.

- Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The Appeals Panel may elect to listen to the recording of the original hearing, in its sole discretion. Appeals granted based on new evidence should normally be remanded to the original hearing panel for reconsideration.
- Sanctions imposed are implemented immediately upon the issuance of the Notice of Outcome, unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Appeals Panel will render a written decision on the appeal, which the Title IX Coordinator will provide to the parties simultaneously within three (3) business days from hearing of the appeal.
- Once an appeal is decided, the outcome is final and binding on all parties. Further appeals are not permitted.

## **12. Failure to Complete Sanctions/Comply with Responsive Actions**

All Respondents are expected to comply with conduct sanctions/responsive/corrective actions within the timeframe specified by the Title IX Coordinator. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in corrective actions, which may include suspension, expulsion and/or termination from the University. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **13. Records and Continued Privacy**

In implementing this Policy, records of all complaints, resolutions, and hearings will be kept by the Title IX Coordinator for seven (7) years. Those records will be kept private and confidential, and the information contained therein revealed only in response to a valid governmental request, a court-ordered subpoena, or pursuant to a release signed by the individual requesting the information and seeking information solely about his/her personal conduct.<sup>11</sup>

## **14. Revision**

These policies and procedures will be reviewed and updated annually or more frequently, if required, by the Title IX Coordinator in consultation with the University General Counsel. Suggested improvements or changes from any member of the University community will always

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<sup>11</sup> Individual requests for records allow for the disclosure of evidence directly related to the allegations, the investigative report, the written determination and any other documents associated with the matter. Individuals also have the right to inspect and review the recording or transcript of their live hearing.



be considered. The Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. However, the Title IX Coordinator may also vary procedures materially with notice (on the University's website, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedure. Policy and procedures in effect at the time of an offense will apply even if they are changed subsequently, unless the parties consent to be bound by the revised Policy or procedures.