

ADMINISTRATIVE PROCEDURE

PERS-01

EMPLOYEE SEXUAL MISCONDUCT PROCEDURES

Number: PERS-1	Name: Employee Sexual Misconduct Procedures
Purpose: <p>This administrative procedure sets forth the Procedures and Due Process rights for employees who are accused of violation Board of Governors policies GA-1.</p>	
Responsible Unit: Human Resources	
Approved by:  HR Director	Approval Date: 8/27/2021

See attached.

MARSHALL UNIVERSITY

TITLE IX GRIEVANCE PROCEDURES FOR EMPLOYEES

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I. INTRODUCTION

Marshall University (“the University”) is committed to providing a safe, non-discriminatory environment for all members of the University community. The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation by or against any member of the University community (together, “Prohibited Conduct”). These forms of Prohibited Conduct are defined in the Discrimination, Harassment, Sexual Harassment, Sexual & Domestic Misconduct, Stalking, and Retaliation Policy – Including Title IX (BOG GA-1) (“Policy”). In accordance with Title IX, these are the Title IX Grievance Procedures¹ (the “Procedures”) the University follows when it receives a report alleging Prohibited Conduct under the Jurisdiction of Title IX by an Employee. The University uses these Procedures to investigate and adjudicate any such allegations and

¹ Although these are referred to a “Grievance Procedures” due to the applicable federal regulation, these Procedures should not be interpreted as amending or affecting the requirements set forth in the West Virginia Public Employees Grievance Board Procedures.

to impose disciplinary sanctions against Employees found responsible for violating the Policy².

II. GENERAL RESPONSE TO SEXUAL HARASSMENT

When the University has actual knowledge of sexual harassment in an “education program or activity”, as defined in the Policy, of the University against a person in the United States, it must respond promptly in a manner that is not deliberately indifferent. The University is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The University will treat Complainants and Respondents equitably by offering supportive measures to the parties and by following these grievance procedures before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined. The Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

III. REPORTING

The University encourages anyone³ who experiences or becomes aware of an incident of Prohibited Conduct involving a Student or Employee to *immediately* report the incident to the University through the following reporting options:

By contacting the University’s Title IX Coordinator by telephone, email, or in person:

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324
Hart70@marshall.edu or TitleIX@marshall.edu
Ph: 304-696-2597

The University’s website for online reporting (which allows for anonymous reporting) is located at <https://www.marshall.edu/eoaa/complaint-form/>.

Anonymous complaints will be reviewed; however, because the Respondent is entitled to certain due process, including but not limited to the right to confront his/her accuser, the University’s ability to address alleged misconduct reported by anonymous sources is significantly limited.

A Complainant may choose to make a report to the University to pursue resolution under these Procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both options at the same time. As set forth in the Policy, a Complainant who wishes to pursue criminal

² These Procedures should be read in conjunction with the Policy. Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator and/or any of the respective trained designees; (2) “Supervisor” means the individual or individuals to whom an Employee reports in the context of their employment with the University (for academic faculty, that individual may be the Department Chair; Dean or other unity administrator); and (3) “Human Resources” means the University Human Resources and/or the Human Resources professional in an particular school or department.

³ Pursuant to University policy, certain University employees, called “Campus Security Authorities,” are required to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See “Reporting by University Employees of Disclosures Relating to Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence.”

action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

Marshall University Police Department (304-696-HELP (4357) (for both emergencies and non-emergencies)

911 (for emergencies)

City of Huntington, WV Police Department (304-696-5510) (for non-emergencies)

South Charleston Police (304-744-6903)

Cabell County Sheriff's Department (304-743-1594) (for non-emergencies)

Mason County Sheriff's Department (304-675-3838) (for non-emergencies)

The administrative investigation of complaints filed in accordance with these Procedures is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation is separate and will not take the place of an investigation, adjudication or disposition of a complaint filed in accordance with these Procedures. The results of a law enforcement investigation, adjudication or disposition are not determinative of and do not determine whether an individual is responsible for violating University rules, regulations, policies. The administration of complaints filed in accordance with these procedures may be carried out prior to, simultaneously with, or following civil or criminal investigations and/or proceedings. The University will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the University community. Such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three (3) to ten (10) days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure. The University will promptly resume its administrative investigation/proceedings as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

The University's ability to take action against third parties may be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the parties to the University. The Evaluation Panel will determine the appropriate manner of resolution, which may include referral to area law enforcement, restriction of access to campus or University activities, or referral to the home school of the third party.

A. RESOURCES FOR COMPLAINANT

The following are confidential resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. Specifically, individuals may contact:

Marshall University Women's & Gender Center

Old Main 115, One John Marshall Drive

Huntington, WV 25755

Phone: 304 696-3338

Email: wcenter@marshall.edu

Marshall University Counseling Center

1st Floor Prichard Hall, One John Marshall Drive

Huntington, WV 25755

Phone: 304 696-3111

Marshall University Violence Prevention and Response Program

1205 Wellness Center, Rec Center, One John Marshall Drive

Huntington, WV 25755

Phone: 304 696-5701
Email: vprprogram@marshall.edu

CONTACT Rape Crisis Center

P.O. Box 2963
Huntington, WV 25728-2963
Office Phone: 304 523-3447
24-hour crisis hotline: (304) 304-399-1111
<http://www.contacthuntington.com>
(Serving: Cabell, Wayne, Lincoln and Mason Counties)

REACH Family Counseling Connection

Phone: (304) 292-5100
<http://www.tccwv.org/Our-Programs/REACH.aspx>
(Serving: Kanawha, Jackson, and Putnam Counties)

BRANCHES Domestic Violence Shelter

P.O. Box 403, Huntington, WV 25708
24-hour crisis phone: 304-529-2382
Email: info@branchesdvs.org
<https://www.branchesdvs.org/>

For a more detailed list of confidential resources available to members of the University community, please see:

Marshall University Counseling Center Staff
Marshall University Women's & Gender Center Staff
Marshall University Psychology Clinic Staff
Marshall University Violence Prevention and Response Program

Your Primary Care Physician.

Cabell Huntington Hospital

Emergency Department
304-526-2200
<https://cabellhuntington.org/services/emergency-trauma/>

St. Mary's Medical Center

Emergency Services
304-526-1111
<https://www.st-marys.org/centers-services/emergency-services/>

Charleston Area Medical Center (CAMC) – General

304-388-7498
<http://www.camc.org/generaler>

Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct.

Although Third Parties do not have the same standing in the University internal process as members of the University community, they may report prohibited conduct to:

Debra Hart, Director/ Title IX Coordinator
Old Main Room 324

Hart70@marshall.edu or TitleIX@marshall.edu
304-696-2597

The U.S. Department of Education's Office for Civil Rights (OCR) enforces, among other statutes, Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education programs or activities that receive Federal financial assistance. A Complainant may choose to make a report to the OCR at any time by contacting:

Philadelphia Office, Office for Civil Rights, U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605; TDD: 800-877-8339
Email: OCR.Philadelphia@ed.gov
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

A statement about Title IX and a link for filing a complaint or making a report are provided on the University websites. Any changes to these procedures will result in notification through email to the University community.

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar
2000 Deitrick Blvd.
Charleston, WV 25311
304-553-7220 or 800-642-3617
<https://wvlawyerreferral.org>

B. RESOURCES FOR RESPONDENT

Marshall University Counseling Center

1st Floor Prichard Hall, One John Marshall Drive
Huntington, WV 25755
Phone: 304 696-3111

Primary Care Physician
Family Counseling Center
Clergy
Advisor, see below

Legal Resources:

West Virginia Lawyer Referral Service

The West Virginia State Bar
2000 Deitrick Blvd.
Charleston, WV 25311
304-553-7220 or 800-642-3617
<https://wvlawyerreferral.org>

AFT-WV for its members.

IV. EXPECTATIONS OF COMPLAINANTS AND RESPONDENTS

Pursuant to these Procedures, Complainants and Respondents can expect:

- A. Reasonably prompt and equitable resolution of allegations of Prohibited Conduct;
- B. Privacy in accordance with the Policy and any legal requirements;
- C. Reasonably available interim supportive measures, as described in these Procedures;
- D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;
- E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy or these Procedures;
- F. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;
- G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- H. Timely notice of any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- I. The opportunity to choose a representative, including the right to have that representative attend any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- J. Written notice of an investigation, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- K. Trained Title IX Coordinator(s), Investigator(s), Decision-Maker(s), Review Panel Member(s), or Informal Resolution Facilitator(s), who do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and the opportunity to challenge the Investigator or any Decision-maker for bias or conflict of interest;
- L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- M. An objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations which may not be based on a person's status as a Complainant, Respondent, or witness;
- N. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the imposition of any sanction(s);
- O. Timely and equal access to any information that will be used during Informal or Formal Resolution proceedings and related meetings;

- P. Reasonable time to prepare any response contemplated by these Procedures;
- Q. Written notice of any temporary delay or limited extension of timeframes for good cause;
- R. Written notice of the outcome of any Formal Resolution proceedings, including the determination of a Policy violation, imposition of any sanction(s), and the rationale for each; and
- S. An opportunity to appeal the findings of the Decision-maker(s).

V. DEFINITIONS

The University prohibits Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in this the Policy by or against any member of the University community (together, “Prohibited Conduct”). These forms of Prohibited Conduct which fall within the jurisdiction of Title IX are defined in the (BOG GA-1) (the “Policy”).

- A. “Actual Knowledge.” Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
- B. “Advisor.” Any person intended to assist the Complainant or Respondent during the disciplinary process, including but not limited to, a University appointed Advisor, faculty member, attorney, or other person. Unless otherwise indicated by the Complainant or Respondent, in writing, the Advisor shall be provided a copy of all materials provided to the Complainant or Respondent.
- C. “Burden of Proof” means that while protecting every party’s right to consent to the use of the party’s own medical, psychological, and similar treatment records, the burden of proof and burden of gathering evidence rests on the University.
- D. “Campus Security Authority” means an official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. For example, a dean of students who oversees student housing, a student center, or student extra-curricular activities, has significant responsibility for student and campus activities. Similarly, a director of athletics, team coach, and faculty advisor to a student group also have significant responsibility for student and campus activities. A single teaching faculty member is unlikely to have significant responsibility for student and campus activities, except when serving as an advisor to a student group. A physician in a campus health center or a counselor in a counseling center whose only responsibility is to provide care to students are unlikely to have significant responsibility for student and campus activities. Also, clerical staff are unlikely to have significant responsibility for student and campus activities.

- E. “Complainant” means, for purposes of this Procedure, an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- F. “Consensual Relationship” means a mutually acceptable romantic, dating, or sexual relationship between individuals.
- G. “Decision-maker” means a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment, the scope of the University’s education program or activity, these procedures, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias who will make determination of responsibility after an independent review of the Investigation Report.
- H. "Employee" means any person hired for permanent employment by Marshall University for a probationary, full- or part-time position.
- I. “Evaluation Panel” means the group of individuals who will conduct the Health and Safety Threat Assessment where law enforcement is not involved and the initial course of action.
- J. “Formal Complaint”. A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by any additional method designated by the University.
 - a. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.
 - b. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part or under these Grievance Procedures.
- K. “Informal Resolution Facilitator” means an individual appointed by the Title IX Coordinator to facilitate voluntary Informal Resolutions between the parties. Informal Resolutions Facilitators cannot be a witness or provide testimony.
- L. “Interpersonal Violence” occurs when one person uses power and control over another through physical, sexual, or emotional threats or actions, economic control, isolation, or other kinds of coercive behavior.
- M. “Investigator” means a University position responsible for the University’s Title IX investigations who is trained on the definition of sexual harassment, the scope of the recipient’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigations may be done by the University Title IX Investigator or such other trained

individual he/she designates or assigns to a particular matter. Provided that, in the absence of a Title IX Investigator, the Title IX Coordinator may investigate or assign cases to other trained Investigators or external resources.

- N. "Member of the University Community," means an individual engaged in any University activity or program, whether on or off campus, or any individual lawfully on University property, including, but not limited to, any person who is a student, staff, faculty member, other University official, or a visitor.
- O. "Notices or Communications." All notices or other communications which are required in these Procedures shall be in writing and shall be deemed to have been duly given if: (a) delivered by hand, (b) sent to the recipient's official University email account with a delivery and read receipt, (c) mailed by certified or registered mail with postage prepaid, (d) mailed by reputable overnight courier, or (e) sent by facsimile transmission, with confirmation that such transmission has been received.
- P. "Prohibited Conduct" means Discrimination, Harassment, Sexual Harassment, Sexual Misconduct, Domestic Misconduct, Stalking, and Retaliation as defined in Board of Governors Policy GA-1.
- Q. "Reporter" means, for purposes of this the Policy, any individual that makes or files a complaint about prohibited conduct under this Policy. The Reporter may be the Complainant, any other person, or the University.
- R. "Respondent" means, for purposes of this Policy, an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- S. "Review Panel" means Decision-makers from a standing pool of members of the University community or external professionals who are trained decision-makers appointed by the Title IX Coordinator to adjudicate allegations of Prohibited Conduct on campus, pursuant to these procedures.
- T. "Standard of Proof" means a Preponderance of the Evidence standard (i.e., the evidence demonstrates that it is more likely than not that the conduct occurred) often referred to as "50 percent plus a feather."
- U. "Student" means, for purposes of this Policy, an individual subject to the Marshall University Board of Governors Policy SA-1, The Code of Student Rights and Responsibilities.
- V. "Supportive Measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before and after the filing of a formal complaint or where no formal complaint has been filed.
- W. "Third Party" means an individual who is not a University student, faculty, or staff member. Third parties may be a participant in any University related program or activity, for example, visitors, guests, independent contractors, and vendors.

VI. INITIAL ASSESSMENT

A. COMPLAINT RECEIVED BY LAW ENFORCEMENT/OFFICE OF PUBLIC SAFETY

1. The Office of Public Safety, Marshall University Police Department (MUPD) will notify the Title IX Coordinator that a report of Prohibited Conduct has been received.
2. Upon request, the University will temporarily suspend the fact-finding aspect of the administrative investigation or any of these proceedings while MUPD or other law enforcement agency is in the process of gathering information. Suspensions of investigations typically last not more than ten (10) business days but may be extended depending upon the circumstances of each case and/or as dictated by other provisions of this Procedure.
3. MUPD or any other law enforcement agency that has requested the suspension of an investigation, will promptly notify the Title IX Coordinator that they have completed their investigation.

B. COMPLAINT RECEIVED BY CAMPUS SECURITY AUTHORITY

1. Before an individual reveals information that they may wish to keep confidential, a Campus Security Authority should make every effort to ensure that the individual understands:
 - a. the employee's obligation to report the names of the alleged perpetrator and individual involved in the alleged Prohibited Conduct, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator,
 - b. the individual's option to request that the school maintain their confidentiality, which the school (e.g., Title IX coordinator) will consider, and
 - c. the individual's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services (e.g., sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers).
2. A Campus Security Authority must report to the Title IX Coordinator within two (2) days, all relevant details about the alleged Prohibited Conduct that the individual or another person has shared and that the University will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged Prohibited Conduct, other students involved in the alleged Prohibited Conduct, as well as relevant facts, including the date, time, and location.

C. COMPLAINT RECEIVED BY TITLE IX COORDINATOR

Upon receipt of a report of Prohibited Conduct committed by an Employee, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator will:

- A. Assess the Complainant's safety and well-being and offer the University's immediate supportive measures and assistance;
- B. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- C. Inform the Complainant of the right to contact law enforcement, decline to contact law

enforcement, and/or seek a protective order;

- D. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- E. Inform the Complainant of the right to seek Informal Resolution (where available) or Formal Resolution under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;
- F. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
- G. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
- H. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- I. Communicate with the Marshall University Office of Public Safety (MUPD) and other appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

The Title IX Coordinator will ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options. When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of supportive protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options.

VII. THREAT ASSESSMENT

Following the initial assessment, the Title IX Coordinator will promptly contact the Director of Human Resources and provide the information about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

The Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will determine any supportive measures which need to be taken regarding the Employee.

Further if the Title IX Coordinator, in conjunction with the Director of Human Resources and any other necessary or appropriate University officials determine that a criminal act has likely been committed, the Title IX Coordinator will contact the MUPD so that it can be disclosed to the appropriate law enforcement

agency.

A. UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY THREAT ASSESSMENT

Upon completion of the health and safety and threat assessment, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Alternative Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the University will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials will be documented and retained by the University in accordance with applicable law.

- 1. Where the Complainant Wishes to Pursue Formal Resolution.** In every case in which the Complainant reports Prohibited Conduct and requests an investigation and disciplinary action, the Title IX Coordinator will promptly initiate Formal Resolution under these Procedures.
- 2. Where the Complainant Requests Anonymity, that an Investigation not be Pursued, and/or that No Disciplinary Action Be Taken.** A Complainant may not request that personally identifying information not be shared with the Respondent if the Complainant desires to initiate grievance procedures. A Complainant may request that no investigation be pursued and/or that no disciplinary action be taken.

The University attempts to balance the needs of the parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of Prohibited Conduct will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to ensure that the institution meets its obligations under Title IX. The institution may be limited in its response and investigation if confidentiality is requested.

If a Complainant requests that no investigation be pursued and/or that no disciplinary action be taken, the report will be referred to the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials for evaluation under discretionary Title IX Dismissal. They will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the potential impact of such action(s) on the Complainant; (3) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (4) the existence of any independent information or evidence regarding the Prohibited Conduct; and (5) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also protecting the health and safety of the Complainant and the University community.

- a) Determination that a Complainant's Request(s) Can be Honored. Where Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate

University officials determines that a Complainant's request(s) that no investigation be pursued, and/or that no disciplinary action be taken *can* be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any time, the parties may choose to pursue Informal Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.⁴

- b) Determination that a Complainant's Request(s) Cannot be Honored. Where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that a Complainant's request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) *cannot* be honored (i.e., because honoring the Complainant's request(s) would impede the University's ability to ensure the health and safety of the Complainant and other members of the University community), the Title IX Coordinator will take any appropriate University actions, which may include, without limitation, (i) imposing a No- Contact Directive or an Interim Disciplinary Suspension on the Respondent; (ii) initiating an investigation and Formal Resolution under these Procedures; and/or (iii) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Title IX Coordinator, in conjunction with the Director of Human Resources, and any other necessary or appropriate University officials has determined that the University must proceed with an investigation despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

- c) When a Complainant Declines to Participate. Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited and such matter may discretionarily be dismissed. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other remedies tailored to the circumstances).

⁴ Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent is an employee of the University.

B. NOTICE TO PARTIES OF UNIVERSITY ACTIONS

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any supportive measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any supportive measures based on all available information. Interim protective measures will remain in effect until the resolution of the report by the Review Panel, unless new circumstances arise which warrant reconsideration of the protective measures prior to the hearing and determination by the Review Panel. A Complainant or Respondent may challenge supportive measures or other actions, or failure to impose supportive measures or take other actions, by contacting the Title IX Coordinator to address any concerns.

VIII. GROUNDS FOR DISMISSAL OF TITLE IX FORMAL COMPLAINT

Grounds for mandatory or discretionary dismissals:

1. **Mandatory Dismissal**: If the conduct alleged in the formal complaint (a) would not constitute sexual harassment as defined in Policy GA-1 even if proved, (b) did not occur in the recipient's education program or activity, or (c) did not occur against a person in the United States, then the University must dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX or this part; such dismissal does not preclude action under another provision of the University's code of conduct.
2. **Discretionary Dismissal**: The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing; (a) a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; (b) the respondent is no longer enrolled or employed by the University; or (c) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

Upon dismissal required or permitted, the University must promptly send written notice of the dismissal and reason(s) for the dismissal simultaneously to the parties. Both parties have an equal opportunity to file an Appeal to challenge the dismissal of any Title IX Formal Complaint.

A dismissal under these sections does not preclude action under another provision of the University's policies or code of conduct and the Title IX Coordinator will notify the Office of Human Resources of any matter involving an employee dismissed for reasons stated above.

IX. UNIVERSITY RESOLUTION

These Procedures offer two (2) forms of resolution of reports of Prohibited Conduct:

1. **Formal Resolution**, which involves an investigation, and review and sanction (if applicable) by a Review Panel and
2. **Informal Resolution**, which includes a variety of informal options for resolving reports.

A. FORMAL RESOLUTION

Formal Resolution is commenced when:

- i. A Complainant reports that an Employee has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action; or
- ii. Informal Resolution does not resolve a reported incident of Prohibited Conduct and, in the Title IX Coordinator's discretion, an investigation of the report of Prohibited Conduct is required; or
- iii. At the conclusion of the threat assessment process described in Section VII.A of these Procedures, the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined, based upon a review of the totality of the circumstances, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

1. **Investigation.** Whenever Formal Resolution is commenced, the Title IX Coordinator will refer the matter to a University Investigator who will designate himself/herself or one or more Investigators and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. Provided that, in the absence of the Title IX Investigator, the Title IX Coordinator may assign cases to other investigators or external investigators. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, relationship violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

- a) **Notice of Investigation.** The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will: (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties' respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; (9) provide a link for the Policy and these Procedures; (10) include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process; (11) inform the parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review both inculpatory and exculpatory evidence; and (12) inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- b) **Notice to Supervisors.** The Title IX Coordinator will also notify, in writing, the Respondent's supervisor, Human Resources and the appropriate administrator(s). Such notice will inform these individuals that (1) the Title IX Coordinator has received a report alleging that the Respondent has engaged in Prohibited Conduct

under the Policy; (2) the report will be investigated in accordance with these Procedures; (3) the supervisor and the Human Resources are obliged to monitor the relevant environment, depending on the facts of the case, for Retaliation; and (4) information related to the report is confidential (including the identity of the Complainant) and will only be shared as needed to either obtain information pertinent to the investigation or to facilitate fulfillment of the duty of the supervisor and/or Human Resources to address any concerns regarding safety or Retaliation.

- c) Ongoing Notice Requirement. The Title IX Coordinator will send an Amended Notice(s) of Investigation to each party should the Investigation reveal additional allegations of misconduct to be investigated.
- d) Consolidation of Formal Complaints. The University may consolidate formal complaints as to allegations of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the University resolution involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.
- e) Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Investigator and/or Review Panel conclude that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Policy. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. Further, the University will not draw any adverse inference from a decision by either of the parties not to participate.
- f) Reasonably Prompt Timeframe for Completion of Investigation; Extension for Good Cause. Typically, the period from commencement of an investigation through Final Investigation Report will not exceed sixty (60) calendar days.⁵ This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. The Investigator or the Title IX Coordinator will notify the parties in writing of any temporary delays or the limited extension of this timeframe and the reason for such actions. Good cause may include 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 disabilities.
- g) Overview of Investigation. During the investigation, the parties will have an

⁵ This is an estimated timeframe which may vary on a case-by-case basis.

equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).

- h) Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an Advisor and/or representative, as applicable. The advisor may be any person, including an attorney paid for by the party desiring their services. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While they may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt, such meetings and/or proceedings. If a party is being represented by an attorney, or an Advisor not provided by the University, they must advise the Title IX Coordinator at least forty-eight (48) hours prior to the scheduled meeting or hearing and a University assigned Advisor will no longer be provided.
- i) Prior or Subsequent Conduct. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- j) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove:
 - i. That someone other than the Respondent committed the conduct alleged by the Complainant, or
 - ii. If the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent.

The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

- k) Relevance. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait. Investigator may decline to interview witnesses unlikely to yield relevant information. The investigator will decline to interview character witnesses if they have no relevant information about the incident.
- l) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- m) Expert Consultation(s). The Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed to achieve a fuller understanding of the issues under investigation.
- n) Coordination with Law Enforcement. The Investigator may contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.
- o) Right to Inspect, Review, and Respond to the Investigative File. At the conclusion of the Investigation, the Investigator will provide both parties an equal opportunity to inspect and review the entire Investigative File which will include all evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Investigator may redact personally identifiable information or protected information from the evidence obtained during the investigation.

The parties will have ten (10) business days to review the Investigative File and submit a written response, to be included as an addendum to the "Investigative File," which the investigator will consider prior to completion of the "Investigative Report." The parties will have an opportunity to review the Investigative File; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness.

Investigator will then promptly provide each party's responses to the "Investigative File" to the other party. Parties will have three (3) days to respond to the other party's response.

- p) Investigation Report. Unless there are significant additional investigative steps requested by the parties or identified by the Investigator after the review of the

Investigative File, within five (5) business days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare an Investigation Report which will:

- i. Fairly summarize and analyze the relevant information and relevant evidence gathered;
- ii. Outline the contested and uncontested information;
- iii. Outline the corroborated and uncorroborated information;
- iv. Include a credibility assessment; however, the credibility assessment must not be a determination regarding responsibility; and
- v. Include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, which could support a finding of responsibility for a violation of the Policy (and, where applicable, the Code of Student Conduct).

The Investigator may make a recommendation as to mandatory or discretionary dismissal to the Title IX Coordinator based upon a review of the Title IX jurisdiction on a case-by-case matter.

The Investigator will deliver the Investigation Report to the Title IX Coordinator.

- q) Distribution of the Investigation Report. Upon receipt of the Investigation Report, the Title IX Coordinator will distribute the Investigation Report to each party and each party's advisor. The parties will have ten (10) business days to review the Investigative Report and submit a written response. The Title IX Coordinator will also notify the Director of Human Resources, or his/her designee and the Respondent's immediate supervisor simultaneously, that the Investigation Report is complete and available for review.
- r) Title IX Coordinator's Role After Distribution of Investigation Report. Upon reviewing the "Investigative Report" and any written responses thereto, the Title IX Coordinator will:
 - i. Determine whether the investigation reveals facts requiring or permitting dismissal of the formal complaint. If dismissal is warranted, the Title IX Coordinator will inform the parties, in writing, of the dismissal decision, the reason therefore, and an opportunity to appeal the dismissal.
 - ii. Determine that the matter should not be dismissed and send a Notice of Referral for a Review Panel Hearing contemporaneously to the parties and the Review Panel Hearing Officer.
- s) Impact and Mitigation Statements. Where the matter has been referred to the Review Panel for Live Hearing, both parties may submit a statement to the Title IX Coordinator for consideration by the Review Panel in determining an appropriate sanction. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will ensure that each of the parties has an opportunity to

review any statement submitted by the other party. The Title IX Coordinator will provide any statement(s) with the Investigation Report and the parties' other written submissions to the Review Panel. Impact and mitigation statements must be received within five (5) business days after referral to Review Panel.

2. **Review Panel Hearing.** The Title IX Coordinator will appoint a standing pool of members of the University community or external professionals who are trained on the definition of sexual harassment; the scope of the University's education program or activity; these Procedures; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and who will make determination of responsibility after an independent review of the Investigation Report. The Title IX Coordinator will select three (3) members from this pool to serve on the Review Panel. The Review Panel shall elect one (1) member as Chair. In addition, the Hearing Officer shall serve as a non-voting Meeting Chair. Where the Respondent is an academic faculty member, at least two (2) of the voting members of the Review Panel will be appropriately trained, full-time faculty members. The Review Panel will review the Investigator's recommended finding(s) and, if applicable, determine any appropriate sanction(s) under these Procedures. All persons serving on any Review Panel (or as the Hearing Officer) must be impartial and free from actual bias or conflict of interest. The Review Panel members cannot be the same person(s) as the Title IX Coordinator or the Investigator(s) assigned to the matter.

- a) **Standard of Review.** If either of the parties contests the Investigator's recommended finding(s) of responsibility (or no responsibility) for an alleged violation of the Policy, the Review Panel will hold a Hearing to determine (1) whether the concerns stated by the contesting party raise substantial doubt about the thoroughness, fairness and/or impartiality of the investigation; and, if not, (2) whether there is sufficient evidence to support the Investigator's recommended finding(s) by a Preponderance of the Evidence.
- b) **Notice and Timing of Hearing.** Typically, a Live Hearing will be held within thirty (30) calendar days from the date of the issuance of the Investigative Report, subject to extension for good cause. The Title IX Coordinator or Hearing Officer will notify the parties in writing of the date, time, and location of the Hearing; the names of the Review Panel members and the Hearing Officer; and how to challenge participation by any member of the Review Panel or the Hearing Officer for bias or conflict of interest. Said notice will be issued at least ten (10) calendar days prior to the Live Hearing date. Any extension, including the reason for the extension, will be shared with the parties in writing.
- c) **Challenge Due to Conflict of Interest.** If either party believes that any member of the Review Panel or Hearing Officer has a conflict of interest, their written challenge must be sent to the Title IX Coordinator. The challenge must state which individual(s) are the subject of the challenge and the basis for the challenge. Upon receipt of the challenge the Hearing Officer shall forward the same to the Review Panel for consideration and a decision as to whether to grant the challenge. The Title IX Coordinator shall make a decision within twenty-four (24) hours of receipt of the challenge and provide a written decision to the parties concerning the same. A challenge for Conflict of Interest will be considered good cause to continue or postpone the hearing if a decision cannot be reached before the scheduled hearing or if a Decision-maker must be replaced.

- d) Postponement of Hearing. Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Hearing Officer prior to the time of the Hearing.
- e) Live Hearing Required. Live hearings may be in person or virtual live hearings. Live hearings may be conducted with all the parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the Review Panel and all participants simultaneously to see and hear each other. All participants must be both seen and heard. In addition, all participants appearing virtually, must identify if there are any other individuals present with them at their location. Individuals who are not a part of the process or who will testify later, may be required to leave the location during the hearing.
- f) Live Hearing Format. The Live Hearing is an opportunity for the parties to address the Review Panel, in person and to provide information relevant to the issue(s) to be decided by the Review Panel.
- i. The parties may address any information in the Investigation Report, supplemental statements submitted in response to the Investigation Report, and any impact and mitigation statements.
 - ii. Each party has the opportunity to be heard, to identify witnesses for the Review Panel's consideration, and to respond to any questions of the Review Panel.
 - iii. Cross Examination:
 - a. The parties may not directly question each other.
 - b. Each party's Advisor is permitted to ask the other party and any witness relevant questions and relevant follow-up questions, including those challenging credibility.
 - c. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Review Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
 - d. Although not required, to aid in the efficiency of the Hearing, it is highly recommended that the parties have questions prepared prior to the Hearing.
 - e. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - f. No harassing or abusive questioning allowed during cross-examination.
 - i. Examples of questioning that may be harassing or abusive:
 - Advisor yells or screams at the other party/witness,
 - Advisors stands and physically leans into the party/witness' personal space, or
 - Advisor asks questions in a manner designed to promote rape myths or sex-based stereotypes.

- iv. Advisors may directly question any witness that is not a party to this Complaint or similar complaint involving either party.
- v. A typical hearing may include brief opening remarks by the Complainant and/or Respondent, with follow-up questions posed by the Review Panel; information presented by the Investigator or witnesses deemed relevant by the Review Panel, with follow-up questions by the Review Panel of the Investigator or witnesses; and brief concluding remarks by the Complainant and/or Respondent. The Hearing Officer has the discretion to determine the specific Hearing format.
- vi. Formal rules of evidence and court procedures are not used and do not apply unless specified herein. Employee conduct hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures, requirements for pleadings, and the hearsay rule do not apply in student disciplinary hearings.
- vii. The Live Hearing will be electronically recorded. The Parties, upon request, shall be provided with a copy of the recording. The original recording will remain the property of the University and will be considered the investigation record. Upon the prior approval of the Hearing Officer, the Respondent and/or the Complainant may utilize the services of a Certified Court Reporter at their own expense. If a Certified Court Reporter is utilized the party utilizing the Certified Court Reporter shall provide the University with the original transcript at no charge to the University. The original transcript will then become the official record of the proceedings. If both parties are requesting to use a Certified Court Reporter, only one Certified Court Reporter will be permitted, and the Respondent and Complainant shall share the costs.

g) Participation in Hearing.

- i. Parties. Both the Complainant and the Respondent have a right to be present at the Live Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Officer at least two (2) business days prior to the Hearing. Any or all parties, witnesses, and other participants may appear at the Live Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- ii. Party's Failure to Attend. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed, and applicable sanctions may be imposed. Neither party is required to participate in the hearing for the Hearing to proceed.
- iii. Investigator or other witnesses. The Review Panel will request the presence of the Investigator or any other witness it deems necessary to its determination. The parties may also request the presence of any witness they deem relevant to the determination by the Review Panel. Proposed witness lists shall be provided to the Hearing Officer at least four (4) business days prior to the Hearing and said lists shall contain a brief statement of the need or relevancy of the proposed witness's presence at the Hearing. The Review Panel has absolute discretion to determine which witnesses are relevant to its determination and may decline to hear from

witnesses where it concludes that the information is not necessary for its review. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.

- a. It is the responsibility of each of the parties to arrange for the attendance of any proposed witness who is not affiliated with the University.
 - b. The University does not have subpoena power to compel the attendance of witnesses who are not affiliated with the University.
 - c. Witnesses will not be present for or hear the testimony of the parties or other witnesses
 - d. If a party or witness does not submit to cross-examination at the Live Hearing, the Review Panel may rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Review Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- iv. Advisors. Both the Complainant and the Respondent must be accompanied to the Hearing by one (1) Advisor, unless required by law, of their choosing, who may or may not be an attorney. If the parties are consulting with more than one (1) Advisor, they must designate their "Advisor" for purposes of these proceedings. During the Hearing, an Advisor will conduct direct examination of their party and witnesses in addition to cross-examination. Advisors may present an opening or closing statement on behalf of their party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If an Advisor is removed for failure to abide by the hearing rules, the hearing will continue after a new Advisor is appointed by the University, who may or may not be an attorney.
- a. If a party's Advisor is also a witness, the party may have an alternative Advisor temporarily step-in to question the Advisor/witness.
 - b. If a party does not choose an Advisor or the chosen Advisor becomes unavailable, the University will appoint an Advisor for the party, who may or may not be an attorney.

3. **Determination by the Review Panel**. At the conclusion of the Live Hearing, the Review Panel must, by majority vote, issue a Final Outcome Letter and determination regarding responsibility. To reach this determination, the recipient must apply the preponderance of the standard of evidence.

Within ten (10) business days, the Review Panel will issue an independent Final Outcome Letter which must include:

- a) Identification of the allegations potentially constituting sexual harassment;
- b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- c) Findings of fact supporting the determination;
- d) Conclusions regarding the application of the recipient's code of conduct and policies to the facts;
- e) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and any whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the Complainant; and
- f) The procedures and permissible bases for the Complainant and Respondent to appeal.

Once the Review Panel has determined that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility under the Policy, it will refer the matter for sanctioning. No decision will be communicated to the parties orally.

The written Final Outcome Letter issued to the parties must include the determination on responsibility AND the disciplinary sanction.

4. **Sanctions.** Where a finding of responsible is made, the matter will be referred to a trained Human Resource Office Designee – excluding the Director – to issue a sanction. The Human Resource Office designee may consult with: (i) Respondent's supervisor; (ii) Office of the Provost (Faculty); (iii) the Vice President of Operations/Chief of Staff (Staff); and (iv) the Office of Equity Programs/the Title IX Coordinator prior to issuing sanctions.

Possible sanctions may include one or more of the following: informal and formal counseling, progressive disciplinary action, No-Contact Directive, transfer of position, removal of administrative appointment, demotion, suspension, and termination of employment.

The Policy prohibits a broad range of conduct, all of which is serious in nature. The propriety of any particular sanction is reviewed on an individual basis based on the unique facts and circumstances. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the decision-makers have a wide latitude in the imposition of sanctions tailored to the facts and circumstances of the Prohibited Conduct, the impact of the conduct on the Complainant and University community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or termination of employment from the University.

In determining the appropriate sanction(s), the decision-maker(s) will be guided by several considerations, including:

- i. The severity, persistence or pervasiveness of the Prohibited Conduct;
- ii. The nature or violence (if applicable) of the Prohibited Conduct;
- iii. The impact of the Prohibited Conduct on the Complainant;

- iv. The impact or implications of the Prohibited Conduct within the University community;
- v. Prior misconduct by the Respondent, including the Respondent's prior disciplinary history, at the University or elsewhere, and any criminal convictions;
- vi. Whether the Respondent has accepted responsibility for the Prohibited Conduct;
- vii. The maintenance of a safe, nondiscriminatory, and respectful environment conducive to learning; and
- viii. Any other mitigating, aggravating, or compelling factors.

The trained Human Resource Office Designee may consult with: (i) the Respondent's supervisor; (ii) the Office of the Provost (Faculty); (iii) the Vice President of Operations/Chief of Staff (Staff); and (iv) The Office of Equity Programs or the Title IX Coordinator prior to issuing sanctions to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures for the Employee type and prior University action for similar policy violations. The decision-maker(s) will also determine any other appropriate actions, which may include: (1) imposing or extending a No-Contact Directive; (2) imposing or extending University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral for formal or informal counseling; (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based education programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Policy.

5. **Appeals of the Final Outcome Letter or Dismissal Letter.** Appeals are not new hearings. Rather, review will be limited to a record of the original hearing and supporting documents. Appeals must be in writing. Verbal appeals are not accepted.
- a) **Who May Appeal.** The Complainant and/or the Respondent may appeal: (1) a decision of the Review Panel and (2) any mandatory or discretionary dismissal, in part or in full, of a Title IX Formal Complaint. The individual appealing is referred to as the appellant. In situations where more than one party appeals, they will be designated as Complainant/Appellant, Respondent/Appellant and/or Director Appellant as appropriate.
 - b) **Bases for Appeal and Content of Appeal Statements.** The Appellant must base the appeal exclusively on one or more of the following grounds:
 - i. Procedural irregularity that affected the outcome of the matter;
 - 1. Relevance determinations made by either the Investigator or the Review Panel may be appealed;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

- c) Statement of Appeal. The Appellant must submit a Statement of Appeal to the Title IX Coordinator within five business days of receipt of the Final Outcome Letter or Dismissal Letter. Upon showing of good cause, an extension may be requested in writing and may be granted by the Title IX Coordinator.
- d) Notification of Appeal. Upon receipt of a Statement of Appeal, the Title IX Coordinator must:
 - i. Notify the other party in writing when an appeal is filed and must implement appeal procedures equally for both parties;
 - ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) from the Review Panel which reached a determination regarding responsibility or sanction, the Investigator(s), or the Title IX Coordinator.
 - iii. Ensure that the final decision-maker(s) for the appeal complies with the University Procedures.
 - iv. Give both parties an opportunity to submit a written statement in support of or challenging the Statement of Appeal. The Title IX Coordinator will submit the Statement of Appeals to the non-appealing party to make a written response to the Statement of Appeal.
 - 1. The responses from a non-appealing party must be submitted to the Title IX Coordinator within five (5) business days.
- e) Sanction Held in Abeyance Pending Appeal. The effective date of any sanction, not already imposed, will be held in abeyance (temporarily delayed) automatically during the period in which an appeal may be filed and until the Title IX Coordinator reaches a decision on any appeal filed; however, the Title IX Coordinator has the right to retain certain conditions or restrictions, particularly those related to life-safety issues and “no contact” directives.
- f) Appeal Must be Timely Filed. If no appeal is filed, or an appeal is not timely, the original finding will stand, effective on the date the appeal period expires. The Title IX Coordinator will determine if the appeal is timely.

If the appeal is timely, the Title IX Coordinator will:

- i. Appoint an Appeal Officer to decide the appeal. The Appeal Officer is independent of the previous process, including from any dismissal appeal that may have been heard earlier in the process.
 - ii. Provide the identity and contact information for the Appeal Officer to the parties.
 - iii. If both parties submit appeals, the same Appeal Officer will decide both appeals individually, but contemporaneously. The same Appeal Officer will decide any appeals arising from the same facts and circumstances.
- g) Assignment to Appeal Officer (Director of Human Resources, or designee). When the Title IX Coordinator receives a Statement of Appeals which complies with the bases for appeals as found in these procedures, the Title IX Coordinator will assign the matter to an Appeal Officer to make a final decision for the matter. The Title IX Coordinator will make available the following items to the Appeal Officer including, but not limited to the:

- i. Investigative Report,
 - ii. Review Panel’s Live Hearing recordings and all documents reviewed and received at the Live Hearing,
 - iii. Impact and Mitigation Statements,
 - iv. Final Outcome Letter from the Review Panel,
 - v. Dismissal Letter from Title IX Coordinator,
 - vi. Statement of Appeal, and
 - vii. Non-Appealing Party’s Response to the Statement of Appeal.
- h) Authority of the Appeal Officer. Upon receipt of the appeal documents, the Appeal Officer will issue a written decision describing the result of the appeal and the rationale for the result which may:
- i. Dismiss the appeal for failure to meet the grounds of appeal, upholding the initial outcome and sanction(s), if applicable.
 - ii. Affirm the action, at which time the matter will be considered final and binding upon all involved.
 - iii. Reverse the action taken by the Review Board and dismiss the case. A case will be dismissed only in rare and extreme circumstances.
 - iv. Remand the case to the Review Board or Investigator based upon new evidence or procedural irregularities, with specific instructions on the remanded issue(s)
 - v. Recommend an increase or decrease any sanctions imposed based on information presented during the appeal process, with a rationale supporting the modification.
- i) Timing of Final Decision. Within ten (10) business days of receipt of the Statement of Appeal, the final decision will be communicated to all parties in writing.
- j) Extension of Issuing a Decision. The time period for the Appeal Officer’s decision may be extended upon agreement of the Respondent and Complainant.
- k) Decision of the Appeal Officer is Final. The decision of the Human Resource Director or designee serving as the Appeal Officer is final.

Provided that, nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., West Virginia State Grievance Procedure). See W. Va. Code §6C-2 -1, *et. seq.*,

<http://www.pegb.wv.gov/links/Pages/default.aspx>;
the [West Virginia Human Rights Commission](#);
the [Office of Civil Rights](#);
and the [Equal Opportunity Employment Commission](#).

B. INFORMAL RESOLUTION

Except for formal complaints alleging that an Employee sexually harassed a student, the parties may voluntarily seek Informal Resolution in place of an investigation and Formal Resolution prior to any determination in a matter. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Informal Resolution, to determine the type of Informal Resolution that may be appropriate in a specific case, and, pursuant to Section

IX.A of these Procedures, to refer a report for Formal Resolution at any time. In addition, Informal Resolution may not be available where the Title IX Coordinator in conjunction with the Director of Human Resources and any other necessary or appropriate University officials has determined that one or more of the following Risk Factors is present. **Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in all cases involving Prohibited Conduct.**

Participation in Informal Resolution (including any specific form of Informal Resolution) is voluntary. The University will not compel a Complainant or Respondent to engage in Informal Resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from an Informal Resolution for any reason within forty-five (45) days of signing the Informal Resolution. Any party wishing to withdraw an Informal Resolution after forty-five (45) days of signing the Alternative Resolution must show good cause reason for the withdrawal and good cause reason that the Informal Resolution was not working appropriately. The University may decline the request for Informal Resolution in any particular case and may terminate an ongoing Alternative Resolution process at any time. Pursuing Informal Resolution does not preclude later use of Formal Resolution, if the Informal Resolution fails to achieve a resolution acceptable to the parties and the University. Where the Complainant or the Respondent withdraws from Informal Resolution or Informal Resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the Informal Resolution may be considered in a subsequent investigation and Formal Resolution.

With any form of Informal Resolution, each party has the right to choose and consult with an advisor or representative, as applicable. The parties may be accompanied by their respective Advisors at any meeting or proceeding held as part of Informal Resolution. The Advisor may provide support and advice to the parties at any meeting and/or proceeding, they may not in any manner disrupt, such meetings and/or proceedings.

Informal Resolution may involve trained Informal Resolution Facilitators and/or community remedies that are designed to address a report of Prohibited Conduct, such as:

- A. One-on-One Communication: If a Complainant wishes to address a situation with a Respondent without the direct involvement of a third party, the Complainant may communicate directly with the Respondent. This form of Informal Resolution is appropriate only if the Complainant does not feel threatened, there is no risk of physical harm, and the Complainant reasonably believes the Respondent will be receptive to the communication. Complainants are NOT required to engage in one-on-one communication before seeking the third-party assistance or other help.
- B. Resolution with the Assistance of an Informal Resolution Facilitator: A Complainant may seek assistance in informally resolving a report of Prohibited Conduct from: (i) Complainant's supervisor, if the Complainant is an Employee; (ii) Respondent's supervisor; (iii) the Human Resources Office; (iv) the Office of the Provost (Faculty); (v) the Office of Equity Programs or the Title IX Coordinator; or (vi) other third party as agreed to by the parties. The availability of this form of Informal Resolution, and any resolution reached through such form of Informal Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant and the Respondent. This form of Informal Resolution may not be used in all allegations of Prohibited Conduct.
- C. Interventions and Remedies: Informal Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the Complainant's access to educational, extracurricular, and/or University employment activities; increased

monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for Student Complainants; workplace modifications for Employee Complainants; one or more of the restorative remedies or other sanctions described in these Procedures; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form or combination of Informal Resolution and any interventions or remedies may be utilized. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the Alternative Resolution, the matter may be referred for an investigation and Formal Resolution under these Procedures.

The Title IX Coordinator will maintain records of all reports and conduct referred for Alternative Resolution, which typically will be completed within thirty (30) calendar days.

Any individual used as an Informal Resolution Facilitator may not serve as a Witness in subsequent Formal Resolution proceedings.

X. RECORDS RETENTION

Unless prescribed elsewhere in the University's record retention policies for personnel record documentation of disciplinary or other personnel actions the University shall retain all records relating to a report of Prohibited Conduct for a period of seven (7) years after the date the report was received, and the University shall retain all of such records for a period of seven (7) years in cases in which the Respondent was found responsible for Prohibited Conduct.