

# **COPPIN STATE UNIVERSITY PROCEDURES FOR INVESTIGATING AND RESOLVING ALLEGATIONS OF SEXUAL HARASSMENT AND OTHER SEXUAL MISCONDUCT**

These Procedures are part of the *VI-1.60(A) COPPIN STATE UNIVERSITY Policy and Procedures on Sexual Harassment and Other Sexual Misconduct* and are the exclusive procedures that govern the handling of all reports or complaints of Prohibited Conduct under the Policy.

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### **I. Anticipated Timelines**

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

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

### **II. Right to Support Person and Advisor**

A Party may be accompanied at any meeting held by the Title IX Coordinator or designee under these Procedures by up to two (2) people, including one (1) Support Person, and one (1) Advisor. When a Party wishes to be accompanied by a Support Person or Advisor to a meeting, the Party must notify the Title IX Coordinator or designee in advance. Parties may select a Support Person or Advisor at any point before the conclusion of the resolution process.

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

### **III. Report Intake and Formal Complaint**

#### **A. Receipt of Report of Prohibited Conduct**

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

If the report is received from a third party, meaning someone who is not the Complainant or the Respondent, the TIXO will provide written acknowledgement of receipt of the report and take appropriate action as the information provided allows.

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

As explained more fully below, the Complainant may: (1) ask the TIXO to take no further action beyond offering Supportive Measures; or (2) file a Formal Complaint.

#### **B. Intake and Initial Assessment of Report**

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

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

When the initial assessment determines the alleged conduct would not constitute a potential violation under this Policy if substantiated, the Title IX Coordinator may try to resolve an issue without the filing of a Formal Complaint. The alleged conduct may also violate other University policies, and the report may be referred to another University process and/or office, including but not limited to the following: *COPPIN STATE UNIVERSITY Non-Discrimination Policy*, the Office of Student Conduct, Human Resources, and/or Academic Affairs, as appropriate.

### **C. Supportive Measures**

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

Supportive Measures include, but are not limited to:

#### **Academic Accommodations**

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

#### **Housing Accommodations**

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

#### **Employment Accommodations**

- Arranging for alternate University employment
- Arranging different work shifts temporary assignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management
- Extensions of work deadlines

### **Care and Support**

- Facilitating assistance for an individual to obtain medical, healthcare, advocacy, and therapy services
- Referral to the Employee Assistance Program (EAP)
- Referral to community-based providers

### **Community Education**

- Education to the community or community subgroup(s)
- Training
- Bystander Intervention Program

### **Safety**

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

### **University Referrals**

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

### **Other**

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

The TIXO will promptly inform the other party of any Supportive Measures that will directly impact that party.

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

### **D. Filing of a Formal Complaint**

A Formal Complaint alleging Prohibited Conduct against a Respondent may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in Section IV of the Policy.

Should the Complainant decide to file a Formal Complaint, the Title IX Coordinator will review the Formal Complaint and determine whether it should be dismissed or move into the resolution process (see Section III.F of these Procedures).

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

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

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

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

When the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator does not become the Complainant and is not otherwise a Party.

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

## **F. Designation of Prohibited Conduct and Dismissal of Formal Complaint**

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will promptly send a *Written Notice of Designation* simultaneously to both Parties of:

1. Its decision about whether to designate the alleged conduct as Title IX-based Prohibited Conduct, and the reasons for this decision;
2. Its decision to proceed with the resolution process or to dismiss the Formal Complaint as described below<sup>1</sup>; and
3. The Parties' rights to appeal the designation and/or dismissal decision.

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<sup>1</sup> Dismissal under this Policy and Procedures does not preclude a referral to another University process and/or office, as appropriate.

### Title IX-based Prohibited Conduct

The Title IX Coordinator or designee ***must*** designate the alleged conduct as Title IX-based Prohibited Conduct if:

1. The alleged conduct would constitute Sexual Harassment within an Education Program or Activity against a person in the United States if substantiated; and
2. The Complainant is participating or attempting to participate in an Education Program or Activity at the time the Complainant files a Formal Complaint, or the Title IX Coordinator files a Formal Complaint because the alleged conduct meets the above definition.

### Mandatory Dismissal

The Title IX Coordinator or designee ***must*** dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes it is determined that:

1. The conduct alleged in the Formal Complaint, if substantiated, would not constitute Prohibited Conduct; or
2. The allegations in the Formal Complaint do not fall within the University's jurisdiction.

### Permissive Dismissal

The Title IX Coordinator or designee ***may*** dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes:

1. A Complainant notifies the Title IX Coordinator or designee in writing that the Complainant requests to withdraw the Formal Complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

## **G. Appeal of Designation and/or Dismissal**

Either Party may appeal the *Written Notice of Designation*. The bases for appeal are limited to procedural irregularity, new evidence, and conflict of interest as explained in Section IV.D.5.a of these Procedures. The process for the appeal is set forth in Section IV.D.5.b of these Procedures.

## **IV. Resolution Processes**

### **A. Consolidation of Complaints**

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

## **B. Informal Resolution Process**

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

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

### **1. Request for Informal Resolution**

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

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

### **2. Informal Resolution Not Permitted**

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

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

### **3. Informal Resolution Permitted**

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

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

- a. Summary of the allegations;

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

#### **4. Mediation and Other Informal Resolution**

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

#### **5. Negotiated Informal Resolution Interventions and Remedies**

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

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



The Title IX Coordinator or designee will work with the Offices of Student Conduct, Human Resources, and/or Provost/Faculty Affairs as needed to facilitate such negotiated interventions and Remedies.

## **6. Completion of Informal Resolution**

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

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

The Parties will be provided with a written copy of the terms of the Informal Resolution agreement. The Title IX Coordinator or designee will maintain all records regarding Informal Resolution.

## **7. Respondent Acceptance of Responsibility**

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent wishes to accept responsibility, the Title IX Coordinator may initiate the Informal Resolution process if permitted, after obtaining both Parties' voluntary, written consent, and after providing the required *Notice of Informal Resolution* if it has not already been provided.

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

## **C. Investigation Process**

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

### **1. Presumption of Not Responsible**

Respondents are presumed not responsible for any and all allegations until the conclusion of the investigation and adjudication process. The University provides the Parties with the written determination following any appeal if an appeal is filed, or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.

### **2. Notice of Rights and Responsibilities**

The Complainant and Respondent are required to review and sign their *Notice of Rights and Responsibilities*. The Title IX Coordinator or designee will verify that the Parties have received, reviewed, and signed their *Notice of Rights and Responsibilities* and have been provided with a copy of the Policy and Procedures to ensure the Parties have adequate information about the investigation

and adjudication.

The Title IX Coordinator or designee will also ensure that both Parties have had an opportunity to ask and receive answers to any questions.

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

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

### **3. Notice of Investigation**

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

- a. The University's complete Policy and Procedures as set forth herein;
- b. The allegations of Prohibited Conduct as defined by the Policy;
- c. Identities of the Parties involved, if known;
- d. Date(s), location(s), and time(s) of the alleged incident(s), if known;
- e. Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the adjudication process;
- f. Parties may have an Advisor of their choice, who may be an attorney;
- g. If Parties do not select an Advisor of their choice, the University will provide a trained Advisor for purposes of performing cross-examination on behalf of that Party at the Hearing;
- h. Parties may have a Support Person of their choice;
- i. Advisement that knowingly making false statements or knowingly submitting false information during the investigation and adjudication process is prohibited under Section XII of the Policy;
- j. If the University decides to investigate additional allegations about either Party that are not in the original notice, the Parties will receive an amended notice containing the additional allegations; and
- k. The range of potential Sanctions associated with the alleged Prohibited Conduct.

### **4. Role of the Investigator**

The Title IX Coordinator or designee will designate an Investigator(s) from the TIXO and/or an external Investigator to conduct a prompt, thorough, fair, and impartial investigation.

## **5. Overview of the Investigation**

### **a. Standard of Proof**

The standard of proof for a determination of responsibility under this Policy is Preponderance of the Evidence (i.e., determining whether it is more likely than not that the alleged conduct occurred). The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remain with the University and not on the Parties.

### **b. Evidence**

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

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

The University does not restrict the ability of Parties to discuss allegations that have been reported or to gather and present evidence. However, the University has a compelling interest in protecting the integrity of the resolution process, protecting the privacy of Parties and witnesses, and protecting Parties and witnesses from harassment, intimidation, or Retaliation during the resolution process. To further these goals, witnesses and Parties are encouraged to limit their sharing of information about a matter (including the allegations, the identities of the Parties and witnesses, and the questions asked in interviews) while the resolution process is ongoing. Parties and witnesses are also cautioned not to discuss the allegations in a manner that constitutes Retaliation or unlawful conduct.

### **c. Special Considerations**

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

The University cannot access, consider, disclose, or otherwise use a Party's record(s) that are made

or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the capacity thereof or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party. However, a Party can provide voluntary, written consent to use the above-mentioned material for the investigation and adjudication. Consent shall be specifically limited to the information provided. At no time shall consent be construed as consent to access any other information in the Party's records.

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

#### **d. Draft Investigation Report**

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

#### **e. Notice of Opportunity to Review the Draft Investigation Report**

Before the investigation report is complete, the Parties will be given an equal opportunity to review and meaningfully respond to the *Draft Investigation Report*. The Title IX Coordinator or designee will also send to the Party, and the Party's Advisor if applicable, all evidence obtained that is directly related to the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a Party or other source, for inspection and review. Parties will have ten (10) Days to review the *Draft Investigation Report* and submit a written response, including comments, information, and/or questions to the Title IX Coordinator or designee. If there is any new or additional information to be provided by either Party, it must be presented to the Investigator at this time.

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

#### **f. Final Investigation Report**

Upon timely receipt of the Parties' written responses, after any further inquiry deemed necessary by the TIXO following receipt of the Parties' written responses, or after the ten (10) Day review period has lapsed with no written responses, the investigation ends. The Investigator will complete the *Final Investigation Report*. The *Final Investigation Report* will contain summaries of all relevant information obtained throughout the course of the investigation and analysis of fact.

The Title IX Coordinator or designee will submit the *Final Investigation Report* to the Hearing Officer.

### **D. Adjudication Process**

#### **1. Review of Final Investigative Report**

- a. Following completion of the *Final Investigation Report*, the Title IX Coordinator or designee will meet separately with each Party.
- b. At the meeting, the Title IX Coordinator or designee will provide each Party with a confidential copy of the *Final Investigation Report*, including all attachments, and explain the next steps in the process.
- c. Each Party will be allowed ten (10) Days to submit a written response to the *Final Investigation Report*, which will be considered by the Hearing Officer. Exceptions may be made during times when the University is not in session or in other circumstances. All written responses will be shared with the other Party prior to the Hearing.
- d. In order to protect the privacy of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

## **2. Hearing Procedures**

- a. A Hearing date will be provided to the Parties at least five (5) Days in advance of the Hearing. Hearing dates are scheduled in consultation with the Parties whenever possible.
- b. If a Party does not have an Advisor present at the Hearing, the University will provide one free of charge for the purpose of conducting cross-examination on behalf of that Party. Parties seeking an Advisor from the University must notify the Title IX Coordinator or designee at least 48 hours prior to the hearing if an Advisor is needed, so that the TIXO may ensure that one will be available for the hearing.
- c. There may be one Hearing Officer or up to three Hearing Officers who are trained and will conduct the Hearing.
- d. The University will notify all witnesses interviewed during the investigation of the date and time of the Hearing. The Hearing Officer(s) may also request the presence of witnesses.
- e. The Hearing Officer(s) may conduct the Hearing with all Parties and witnesses physically present in the same geographic location or, with any or all Parties, witnesses, and other participants present at the Hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- f. At either Party's request, the University will provide the Parties with separate rooms (including separate virtual rooms if the Hearing is held virtually) and use technology enabling the Hearing Officer(s) and Parties to simultaneously see and hear the Party or the witness who is answering a question.
- g. All Hearings are closed to the public.
- h. Hearings will be recorded by the University. No other recordings are permitted.

Recordings are maintained by the University. Parties may submit a written request to inspect and review the recording.

- i. All evidence subject to the Parties' inspection and review as explained in Section IV.C.5.f of these Procedures will be available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination. The Investigator will summarize the *Final Investigation Report* and clarify any information in the *Final Investigation Report*.
- j. Each Party may provide a brief opening statement.
- k. Each Party's Advisor will be provided an opportunity to cross-examine the other Party and any witnesses. Questioning will be conducted directly, orally and in real time by the Party's Advisor only. Parties may not question each other or witnesses directly.
- l. Before a Complainant, Respondent, or witness answers a cross-examination or other question, one of the Hearing Officer(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. All relevant questions and follow-up questions, including those challenging the credibility of Parties and witnesses, will be allowed.
- m. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence:
  - i. Are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  - ii. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- n. Questions and evidence about the Respondent's prior sexual history with an individual other than a Party to the proceedings may only be considered if the evidence:
  - i. Proves prior sexual misconduct;
  - ii. Supports a claim that a Party has an ulterior motive; or
  - iii. Impeaches a Party's credibility after that Party has put their own prior sexual conduct in issue.
- o. The Hearing Officer(s) may not consider a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent.
- p. The Hearing Officer(s) may not consider any questions or evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.
- q. The Hearing Officer(s) may not consider questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

- r. The Hearing Officer(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.
- s. Parties will have the option to provide written impact statements to the Hearing Officer(s) on the day of the Hearing, which will be reviewed and considered for purposes of sanctioning.
- t. Each Party will have the opportunity to make a brief closing statement.

### **3. Written Notice of Determination**

A Hearing Officer will provide the Parties with a *Written Notice of Determination* at the same time. The *Written Notice of Determination* will include:

- a. Identification of the allegations at issue;
- b. A description of the procedural steps taken throughout the case;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding application of the Policy to the facts;
- e. A statement of, and rationale for, the determination for each allegation;
- f. A statement of, and rationale for, any Sanctions imposed on the Respondent, and whether any Remedies will be provided to the Complainant, as set forth in more detail below; and
- g. A description of the procedures and permissible grounds for appeal.

### **4. Disciplinary Sanctions, Remedies, and Other Responsive Actions**

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

#### **a. Prior to issuing the Written Notice of Determination, the following will occur:**

- The Hearing Officer(s) shall confer with the Title IX Coordinator or designee, and other University administrators as appropriate, prior to issuing the written determination. Other University administrators may include the Office of Human Resources/Employee Relations and department/unit heads and supervisors for staff, and the Provost's Office/Academic Affairs and department/unit heads and supervisors for faculty.
- Although the Hearing Officer(s) may confer with University officials as described above, the Hearing Officer(s) is the decision maker(s) responsible for issuing the *Written Notice of Determination*.
- The Title IX Coordinator or designee and other University administrators will provide input with respect to any recommended Sanction and other responsive action to the Hearing Officer(s). The University will not publicly disclose personally identifiable information about the Parties or the written determination (including any Sanctions) except as required by law.

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

**For students:**

- Expulsion: Permanent separation of the student from the University. A permanent notation will appear on the student's transcript. The student will also be barred from the University premises (grounds and buildings).
- Suspension: Separation of the student from the University for a specified period of time. A permanent notation will appear on the student's transcript. The student shall not participate in any University-sponsored activity and may be barred from the University's premises (grounds and buildings) during the period of suspension. Suspended time will not count against any time limits required by the Graduate School for completion of a degree.
- Disciplinary Probation: The student is prohibited from representing the University in any extracurricular activity or from running for or holding office in any student or University organization. Additional restrictions or conditions may also be imposed.
- Disciplinary Warning: Warning to the student that further misconduct may result in a more severe disciplinary action
- Educational Sanctions: In addition to Sanctions specified in this section, educational Sanctions that provide the student with learning, assistive or growth opportunities, research or reflective assignments, community services, values/ethics-based activities or other learning-based sanctions
- Housing Sanctions which may include but are not limited to: University Housing Suspension or Termination, Denial of Re-contracting with University Housing, Administrative Room Moves, and Housing Probation
- Loss of Privileges: Denial of specified privileges for a designated period of time
- Fines – Previously established and published fines may be imposed
- Restitution – Compensation for loss, damage or injury through monetary and/or appropriate service or material replacement
- No Contact Order
- Denial of Access to campus grounds and/or buildings

**For employees:**

- Education and training, including counseling
- Reprimand (Verbal or Written)
- Denial of a pay increase
- Demotion to a lower pay grade/classification
- No Contact Order
- Denial of Access to campus grounds and/or buildings
- Reassignment
- Suspension without pay
- Separation from employment

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

- The nature and degree of violence involved in the conduct at issue.



- The impact of the conduct on the Complainant.
- The impact of the conduct on the community and/or the University.
- Whether the respondent has accepted responsibility for their actions.
- Whether the respondent is reasonably likely to engage in the conduct in the future.
- Prior relevant misconduct by the Respondent.
- Maintenance of a safe and respectful environment conducive to working and learning.
- Protection of the University community.
- Any other mitigating, aggravating or compelling circumstances appropriate to reaching a just and appropriate resolution.

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

The University may provide reasonable Remedies to a Complainant based on a determination of responsibility for a violation of the Policy. The range of Remedies that may be provided to a Complainant include, but are not limited to:

**For students:**

- Supportive measures: such as extended classwork deadlines, flexible deadlines, change of venue for taking a test or exam, change in test or exam date and/or retaking of a test or exam;
- Academic accommodations: such as retroactive drop from a particular class, retroactive withdrawal from a semester, policy exemption requests and/or tuition reimbursement;
- Additional accommodations: such as a No Contact Order, Denial of Access, housing accommodation, course schedule changes, counseling and/or referral to outside agencies.

**For staff:**

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

**For faculty:**

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

**e. In the event of a written determination that Respondent violated the Policy and Remedies provided to the Complainant are warranted, the following will occur:**

- Remedies will be provided to the Complainant on a confidential basis.
- The written determination issued by the Hearing Officer(s) will not include specific Remedies provided to the Complainant but will state whether Remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided.
- Remedies are considered confidential, and the Respondent will not have access to specific information about what Remedies will be provided except to the extent that the Remedies are punitive and burden the Respondent. Remedies may not be appealed by either Party.
- The University will not publicly disclose personally identifiable information about the Parties, the written determination, or the Sanctions, except as required by law.

**5. Appeals**

## **a. Bases for Appeals**

Either Party may initiate this appeal process when the Party receives a *Written Notice of Designation* or a *Written Notice of Determination*. Appeals must be submitted in writing to the Title IX Coordinator within five (5) days of receipt of the *Written Notice of Designation* or the *Written Notice of Determination*. Appeals are limited to the bases listed below.

### **i. Procedural Irregularity**

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

### **ii. New Evidence**

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

### **iii. Conflict of Interest**

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

### **iv. Substantially Disproportionate Sanction (Applicable ONLY to *Written Notice of Determination*)**

- The Sanction set forth in the written determination is substantially disproportionate to the facts of the particular Policy violation.

Appeals will be reviewed by the designated Appellate Hearing Officer for all appeals of designations or written determinations under these Procedures. The Appellate Hearing Officer will be determined in accordance with the Respondent's status, as explained below. The Appellate Hearing Officer shall be free from conflict of interest or bias and shall not be the same person who reached the determination regarding the designation or the written determination, the Investigator, or the Title IX Coordinator. All Appellate Hearing Officers will have had no previous involvement with the case that the Appellate Hearing Officer are assigned to review.

- Appeals involving a student Respondent shall be reviewed by one member of trained Appellate Hearing Officers designated by the Office of Student Conduct.

- Appeals involving a staff Respondent shall be reviewed by the Vice President for Administration and Finance (VPAF) or designee. The VPAF or designee will appoint staff members available to serve as trained Appellate Hearing Officers. Appeals by staff Respondents will be assigned to one such Appellate Hearing Officer on a rotating case basis.
- Appeals involving a faculty Respondent shall be reviewed by the Provost and Vice President of Academic Affairs (Provost/VPAA) or designee. The VPAA/Provost or designee will appoint faculty members available to serve as trained Appellate Hearing Officers. Appeals by faculty Respondents will be assigned to one such Appellate Hearing Officer on a rotating case basis.

### **b. Appellate Process**

The appellate process following a *Written Notice of Designation* or *Written Notice of Determination* will proceed as follows:

- i. Appeals will be in writing only. There will be no hearing.
- ii. Parties will have five (5) Days from receipt of a *Written Notice of Designation* or *Written Notice of Determination* to submit a written appeal statement challenging the decision.
- iii. Parties will be notified if the other Party files a written appeal statement and given notice in writing of the general grounds for the appeal. The other Party will be given five (5) Days from receipt of the other Party's written appeal statement to submit a written appeal statement in support of the designation or written determination.
- iv. The Title IX Coordinator or designee shall coordinate the scheduling of the Appellate Hearing Officer and notify the Parties of the date of the appeal deliberation.
- v. The appeal deliberation is closed to the parties.
- vi. The Appellate Hearing Officer will issue a written decision including its rationale which decision shall be shared with both Parties, within five (5) Days of the deliberations.
- vii. The Appellate Hearing Officer may: (1) affirm the designation or written determination; (2) overturn the designation or written determination; or (3) remand the case to remedy procedural errors or to consider new evidence.
- viii. The written decision by the Appellate Hearing Officer is final and is not subject to further appeal.
- ix. After the adjudication process is concluded or when the time for filing an appeal has expired and neither Party has submitted an appeal, the Title IX Coordinator or designee shall notify the Parties simultaneously of the final outcome of the adjudication process.
- x. The determination regarding responsibility for a violation of the Policy becomes final either on the date that the University provides the Parties with the written decision of the result of the appeal if an appeal is filed, or if an appeal is not filed, on the date after which an appeal would no longer be considered timely, subject to any remanded proceedings.

## **6. Academic Transcripts and Effect of Withdrawal on Student Respondents**

Sanctions of expulsion and suspension are permanently noted on a student Respondent's academic transcript. When a student Respondent requests their transcript prior to the completion of the resolution process, the existence of a pending investigation is also noted. In the event a Respondent chooses to withdraw from the University prior to the resolution of a Formal Complaint, or where the Respondent declines to participate in the University proceedings under the Policy and Procedures, the University will continue the resolution process in accordance with the Procedures. When a Respondent withdraws before the conclusion of the resolution process, the Respondent is ineligible to return to the University until the resolution process has concluded.

## **7. Post-Resolution Follow-Up**

After any Sanction and/or Remedies are issued, if the Complainant agrees, the Title IX Coordinator or designee may periodically contact the Complainant to ensure the Prohibited Conduct has ended and to determine whether additional Remedies are necessary. The Complainant may decline future contact at any time. The Title IX Coordinator or designee may periodically contact the Respondent to assure compliance with the intent and purpose of any Sanction and/or Remedies that have been imposed. Any violation by a Respondent of the intent and purpose of any Sanction and/or Remedies imposed under the Policy, or a failure by a University employee to provide specified Sanctions or Remedies should be reported to the TIXO.

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

## **8. Recordkeeping for Sexual Harassment Cases**

The University will maintain for a period of seven years records of the following:

1. Each Sexual Harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the Education Program or Activity;
2. Any appeal and the result thereof;
3. Any Informal Resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, Appellate Hearing Officers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on its website.
5. Any Supportive Measures taken in response to a report or Formal Complaint of Sexual Harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's Education Program or Activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.