

# Sexual Harassment/Sexual Assault Policy

Effective August 14, 2020



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## HOW TO GET HELP

Any member of the university community who has experienced sexual or physical assault is encouraged to immediately seek medical assistance and crisis counseling, contact law enforcement to make a report, and make a report to the university.

### **EMERGENCY RESPONSE**

#### **Campus Safety (Winona)**

507-457-1703

#### **Campus Safety (Twin Cities)**

612-720-0417

#### **City of Winona Police Department**

911 or 507-457-6302

#### **City of Minneapolis Police Department**

911 or 311

#### **City of Rochester Police Department**

911 or 507-328-6800

**Emergency Law Enforcement Response:** 911 (from anywhere)

### **MEDICAL TREATMENT**

#### **Winona Community Memorial Hospital**

855 Mankato Avenue, Winona, MN 55987

507-454-3650 - *Provides medical treatment and sexual assault forensic exams*

#### **Hennepin County Medical Center**

730 South 8<sup>th</sup> Street, Minneapolis, MN 55415

(612) 873-3000 - *Provides medical treatment and sexual assault forensic exam*

#### **Mayo Clinic – St. Mary’s Hospital**

1216 2<sup>nd</sup> Street SW, Rochester, MN 55902

507-255-5385 - *Provides medical treatment and sexual assault forensic exam*

#### **Jay Johnson Wellness Center (Winona Campus)**

700 Terrace Heights, 131 Vlazny Hall, Winona, MN 55987-1399

507-457-1492

Hours: Monday–Friday 8 a.m. to 4:30 p.m. when classes are in session

## **COUNSELING**

### **Jay Johnson Wellness Center (Winona Campus)**

700 Terrace Heights, 131 Vlazny Hall, Winona, MN 55987-1399  
507-457-1492

Hours: Monday–Friday 8 a.m. to 4:30 p.m. when classes are in session

### **Hiawatha Valley Mental Health Center**

420 E. Sarnia Street, Winona, MN 55987  
(507) 454-4341

### **First Call for Help**

211 - Provides referral to local mental health agencies in times of crisis

## **CONFIDENTIAL RESOURCES**

The resources designated below can provide counseling, information, and support under confidentiality protections.

### **ON CAMPUS**

#### **Jay Johnson Wellness Center – Counseling Services**

700 Terrace Heights, 131 Vlazny Hall, Winona, MN 55987-1399  
507-457-1492

Hours: Monday–Friday 8 a.m. to 4:30 p.m. when classes are in session

#### **Jay Johnson Wellness Center – Health Services**

700 Terrace Heights, 131 Vlazny Hall, Winona, MN 55987-1399  
507-457-1492

Hours: Monday–Friday 8 a.m. to 4:30 p.m. when classes are in session

## **OTHER RESOURCES**

### **The Advocacy Center of Winona**

100 Latsch Square #201, Winona, MN 55987

<http://www.advocacywinona.org/>

507-452-4440, 507-452-4453 (24-hour hotline) – *Provides information, referrals, and advocates for victims of sexual assault*

### **Sexual Violence Center**

2021 East Hennepin Avenue, Suite 418, Minneapolis, MN 55413

612-871-5111 - *Provides information, referrals, and advocates for victims of sexual assault*

### **Dodge, Filmore & Olmsted Counties Victim Services**

151 4th St SE, Rochester MN 55904

507-328-7270 - *Provides information, referrals, and advocates for victims of*

*sexual assault*

**National Domestic Violence Hotline** 800-799-7233 (SAFE)

**Rape, Abuse and Incest National Network** 800-656-4673

**Minnesota Coalition against Sexual Assault** 651-209-9993

**REPORTING OPTIONS AT SAINT MARY'S (Private, but not Confidential)**

Tracy Lehnertz  
Interim Title IX Coordinator  
103 Saint Mary's Hall  
700 Terrace Heights  
Winona, MN 55987  
(507)457-1694  
[TitleIX@smumn.edu](mailto:TitleIX@smumn.edu)

Scott Walker  
Interim Deputy Title IX Coordinator  
2900 19<sup>th</sup> Street  
Rochester, MN 55901  
(507)457-8700  
[TitleIX@smumn.edu](mailto:TitleIX@smumn.edu)

Marisa Naryka, Ed.D.  
Assistant Vice President for Student Affairs  
105 Vlazny Hall  
700 Terrace Heights  
Winona, MN 55987  
(507) 457-1781  
[mnaryka@smumn.edu](mailto:mnaryka@smumn.edu)

Winona Campus Safety  
507-457-1703

Twin Cities Campus Security  
612-720-0417

## **I. PURPOSE AND STATEMENT OF POLICY**

Saint Mary's University of Minnesota ("the university") is committed to fostering a climate free from sexual discrimination, harassment and violence, dating violence, domestic violence, and stalking through clear and effective policies, a coordinated education and prevention program, and prompt and equitable procedures for resolution of reports of conduct prohibited under this policy.

As a Lasallian Catholic institution of higher education, the university believes in the inherent dignity and worth of every student and employee. As such, the university strives to create an environment where the dignity of each person is respected and honored. Sexual discrimination, harassment and violence violate the dignity of the person and are inconsistent with the mission and values of the university.

The university is committed to taking all appropriate steps to eliminate Prohibited Conduct, prevent its recurrence and address its effects. Individuals found responsible under this policy may face disciplinary sanctions up to and including dismissal from the university and/or termination of employment.

The university will not tolerate retaliation against an individual who makes a report or participates in any proceedings under this policy. This policy prohibits any form of retaliation, and community members engaging in retaliation will be subject to disciplinary action, whether such acts are implicit or explicit, or committed directly or indirectly.

This policy provides the university community with (1) resources and recourse for individuals who experience prohibited conduct, (2) guidance to a reporting party, complainant, respondent or other affected community members, (3) the university's expectations for healthy respectful interpersonal interaction and communication, and (4) a procedural outline for addressing behaviors that are counter to university's mission and prohibited by this policy.

This policy provides for several paths by which an individual who experiences Prohibited Conduct may proceed, including seeking assistance from confidential resources, filing a report with the university and/or law enforcement, seeking supportive measures, and filing a formal complaint. The filing of a formal complaint may lead to an informal resolution, or to a formal investigation and resolution. See Section XI. below.

All university proceedings under this policy are conducted in compliance with the

requirements of Title IX, the Clery Act, as amended by VAWA, the Family Educational Rights and Privacy Act (FERPA), and state and federal law, as may be applicable. No information shall be released from such proceedings except as required or permitted by law and university policy.

## II. GLOSSARY AND DEFINITIONS

**Complainant.** An individual who is alleged to have experienced conduct that could constitute Prohibited Conduct under this Policy.

**Education Program or Activity.** All of the university's operations, including locations, events, or circumstances over which the university exercises substantial control of both the respondent and the context in which the conduct occurs; and any building owned or controlled by a student organization that is officially recognized by the university.

**Formal Complaint.** A document filed by and signed by a complainant or signed by the Title IX Coordinator alleging sexual harassment and/or other forms of Prohibited Conduct against a respondent AND requesting that the university investigate the allegation(s). Formal complaints must be filed in order to pursue either an Informal Resolution Process or a Formal Resolution. The decision-making process includes a live hearing when the complaint involves allegations of "Sexual Harassment – Title IX," as explained in greater detail in Section XI.G.

**Formal Resolution.** A grievance process initiated when a formal complaint is signed and filed alleging sexual harassment against a respondent and also requests that the complaint be investigated. The Formal Resolution includes an investigation, a decision, and appeal. The decision-making process includes a live hearing when the complaint involves allegations of "Sexual Harassment – Title IX," as explained in greater detail in Section XI.G.

**Informal Resolution Process.** Alternate complaint resolution process available when a formal complaint is signed and filed alleging sexual harassment against a respondent, and both parties agree to have the complaint resolved informally.

**Mandatory Reporter.** Any university employee that has the authority to institute corrective measures relating to allegations of sexual harassment is required to disclose to the Title IX Coordinator any report of sexual harassment or misconduct of which they are aware to ensure the university is able to provide a prompt, thorough, and supportive response. Confidential resources are exempt from this

requirement as detailed in Section VI. Mandatory reporters include individuals like vice presidents, provost, vice provosts, the assistant vice president for human resources, the assistant vice president for student affairs, and residence life directors. Mandatory reports do not require that complainants take any specific course of action or any action at all, with regard to any process under this Policy.

**Preponderance of the Evidence.** A preponderance of the evidence means that the information or evidence provided is more likely than not to be true. When evaluating the information and evidence, the decision-maker(s) will first evaluate the quality. The decision-maker(s) will consider all of the information and evidence regardless of its origin. Any information or evidence the decision-maker(s) find to be of high quality should be given more weight than any information or evidence the decision-maker(s) find to be of low quality. Quality may or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness or a single piece of information or evidence may be sufficient to establish a fact.

Decisions that require the use of an evidentiary standard (determinations of responsibility, process appeals, challenges to Title IX dismissal, and findings of fact) will be made after the decision maker(s) assess the quality of the information or evidence and determine that the decision is justified. That is, the decision-maker(s) should find that there is sufficient evidence that is relevant, probable, and persuasive to convince them that a particular assertion is more likely than not and that the evidence supporting such an assertion outweighs any evidence to the contrary.

**Prohibited Conduct.** Conduct prohibited by this Policy and listed in Section VII. This includes Sexual Harassment – Title IX, Sexual Assault – Non-Title IX, Dating Violence – Non-Title IX, Domestic Violence – Non-Title IX, Stalking – Non-Title IX, Sexual Harassment – Non-Title IX, Threats Toward an Intimate Partner, Sex/Gender Discrimination, Harassment on the Basis of Sex/Gender, Sexual Exploitation, and Retaliation.

**Remedies.** Measures determined to be necessary by the Hearing Chair (Title IX) or Adjudicator (non-Title IX) to restore or preserve the complainant’s equal access to the university’s education program or activity. Remedies will be determined and monitored by the Title IX Coordinator throughout the complainant’s enrollment, employment, and/or engagement with the university.

Remedies include “supportive measures.” However, they need not be non-disciplinary or non-punitive, and need not avoid burdening the respondent.

**Reporting Party.** Any person who files a report of Prohibited Conduct.

**Respondent.** An individual who has been reported to have committed Prohibited Conduct. A respondent can be an individual or a student group or organization that is alleged to have engaged in conduct that violates this policy.

**Supportive Measures.** Non-disciplinary, non-punitive individualized services offered, as appropriate, as reasonably available, and without fee or charge to both the complainant and respondent before or after the filing of a formal complaint or when no formal complaint has been filed.

**Title IX Dismissal.** If the conduct alleged in a formal complaint does not constitute sexual harassment as defined under Title IX, did not occur in a university education program or activity, or did not occur against a person in the United States, the university must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX.

### **III. SCOPE OF POLICY**

This policy applies to all students, faculty, staff, groups, members of the Board of Trustees, consultants, vendors, volunteers, others engaged in business with the university, guests and visitors. Every individual is responsible for acting in accordance with this policy and other university policies and procedures. Any individual can be a reporting party or complainant.

While the university prohibits discrimination and harassment on the basis of other protected characteristics, these characteristics are addressed by other university policies. Discrimination or harassment on the basis of age, race, color, national origin, religion, genetic information, veteran status, marital status, or any other characteristic protected by institutional policy or state, local, or federal law are protected by the university's Discrimination and Harassment Policy. Discrimination or discriminatory harassment on the basis of disability is covered in the Grievance Procedures for the Americans with Disabilities Act and the Rehabilitation Act of 1973.

This policy applies to all forms of Prohibited Conduct that:

- Occur on a university campus;
- Occur in any university education or employment activities and programs; or
- Have continuing adverse effects on a campus, on any member of the university community, or in the context of any university education or employment activities and programs, regardless of where the conduct occurred.

Upon receipt of a report, the university will take prompt and effective action by: providing supportive remedies and support for individuals who make a report or seek assistance under this policy; considering the wishes of an individual regarding supportive measures they are to receive; conducting a review of the conduct; addressing the safety of the complainant and the campus community; and as appropriate, pursuing resolution through informal resolution or formal disciplinary action against the accused individual. Regardless of whether a complainant chooses to pursue disciplinary action, the university will offer reasonably available supportive measures to protect the parties involved and address safety, emotional and physical well-being concerns. The university will not tolerate retaliation and will take immediate and responsive action to any report of retaliation or any violation of supportive measures.

The university may also hold individuals and groups responsible for off-campus conduct that is prohibited by the Student, Employee or Faculty Handbooks. Regardless of when, where or with whom the conduct was reported to have occurred, the university will offer resources, assistance and reasonably available supportive measures to any individuals who have been affected by Prohibited Conduct.

The university supports the free exchange of ideas in the academic enterprise and shall interpret this policy in a way that protects such an exchange.

## **IV. NOTICE OF NON-DISCRIMINATION**

The university does not discriminate in its educational programs and activities on the basis of age, race, color, national origin, sex, gender, gender identity, sexual orientation, disability, religion, disability, genetic information, veteran status, marital status, or any other characteristic protected by institutional policy or state, local, or federal law. The requirement of non-discrimination in educational programs and activities extends to employment and admission.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, and its implementing regulations (34 C.F.R. Part 106, as amended by 85 FR 30026 (May 19, 2020)), a federal law that provides that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, including admissions and employment.” Prohibited Conduct under this policy is also prohibited under the Clery Act as amended by VAWA, Title VII of the Civil Rights Act of 1964, Ohio Revised Code Chapter 4112, and other applicable statutes, regulations and administrative code provisions.

Inquiries or complaints concerning the application of Title IX may be referred to the university’s Title IX Coordinator and/or the United States Department of Education:

Interim Title IX Coordinator	U.S Department of Education
Tracy Lehnertz	Office for Civil Rights
Saint Mary’s University of Minnesota	John C. Kluczynski Federal Building700
700 Terrace Heights	230 S. Dearborn Street, 37 <sup>th</sup> Floor
Winona, MN 55987	Chicago, IL 60604
<a href="mailto:TitleIX@smumn.edu">TitleIX@smumn.edu</a>	<a href="mailto:OCR.Chicago@ed.gov">OCR.Chicago@ed.gov</a>
507-457-1694	312-730-1560

## **V. ROLE OF THE TITLE IX COORDINATOR**

The university has designated and authorized Tracy Lehnertz as the Interim Title IX Coordinator and Scott Walker as the Interim Deputy Title IX Coordinator. The Title IX Coordinator will be informed of all reports of Prohibited Conduct shared with designated university employees, and will manage the university’s centralized review, investigation, and resolution of those reports to ensure the university’s compliance with Title IX and the effective implementation of this policy. All references to actions by the Title IX Coordinator may be performed by the Title IX Coordinator or a designee.

The Title IX Coordinator is:

- Knowledgeable and trained in university policies and procedures and relevant state and federal laws;
- Available to advise any individual, including a reporting party, complainant, or respondent about the courses of action, formal or informal, available at the university and in the community;
- Responsible for offering and implementing reasonably available supportive

measures;

- Available to provide assistance to any university employee regarding how to respond appropriately to a report of Prohibited Conduct;
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this policy;
- Responsible for overseeing training, prevention and education efforts and reviews of climate and culture; and
- Responsible for facilitating periodic review of this policy as needed to maintain compliance with state and federal law.

In addition to addressing complaints against a particular party, the Title IX Coordinator also facilitates the handling of reports raised that university policies or practices may discriminate on the basis of sex, gender, or sexual orientation. The Title IX Coordinator assesses such concerns and, using procedures the Title IX Coordinator determines to be appropriate given the circumstances, works with the university to ensure that its policies and practices are compliant.

## **VI. REPORTING**

The university encourages prompt reporting of Prohibited Conduct. To make a report about possible sexual harassment or sexual misconduct, a party or any third party should notify the Title IX Coordinator or mandatory reporter. A report may be made at any time, including during non-business hours, in person, by telephone, by mail, by email, or by completing the online reporting form.

A complainant does not need to provide a definitive label of his or her experience at the time a report is made, nor does a complainant have to decide on a particular course of action in advance. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The university will offer reasonably available supportive measures consistent with Section X. The university also provides support that can assist a complainant in making the important decisions about how to proceed, and to the extent possible, will respect a complainant's autonomy in deciding how to proceed. The university will seek to balance a complainant's interest with its responsibility to provide a safe and non-discriminatory environment for all members of the university community.

All individuals may seek assistance from medical provider(s) and/or law enforcement immediately after an incident of Prohibited Conduct, whether or not the complainant plans to pursue criminal charges. This is the best option to ensure

preservation of evidence and to begin a timely response by law enforcement. If an individual believes that the Title IX Coordinator has engaged in Prohibited Conduct or has otherwise behaved inappropriately, the individual should contact the President's Chief of Staff to discuss the complaint process.

## **A. Privacy**

Privacy generally means that information related to a report of Prohibited Conduct will only be shared with those university employees who "need to know" in order to assist in the active review, investigation, or resolution of the report, including the issuance of supportive measures. The university will determine which employees have a legitimate need to know about individual conduct complaints pursuant to FERPA, Title IX, the Clery Act, and university policy and will share information accordingly. The university may notify the parents or guardians of any dependent students who are respondents regarding conduct charges or sanctions, particularly disciplinary probation, loss of housing, suspension and dismissal.

## **B. Confidentiality**

There is a distinction between seeking assistance from a confidential resource and making a report to the university through designated reporting options. Confidential resources, including counselors, medical health providers, and clergy, have confidentiality obligations imposed by law and will not share information about a complainant or respondent (including whether or not that individual has received services) except under limited circumstances as permitted or required as described below. In contrast, all other university employees are expected to share information with the Title IX Coordinator.

For a list of confidential resources, please refer to the "How To Get Help" Section above.

Limits to confidentiality include:

1. **Mandatory Reporting of Child Abuse**  
All university employees, including confidential resources, are required to immediately report any knowledge or reasonable suspicion that a minor (someone under 18 years old) is experiencing abuse or neglect based on information shared by the minor, any other individual, or one's own observations or knowledge. See Section VI.D. for more information.
2. **Risk of Harm to Self or Others**  
Mental health professionals are required to disclose information where there is an imminent threat of harm to self (the client) or others.
3. **Clery Act Reporting**

Pursuant to the Clery Act, anonymous statistical information for certain offenses that have been reported at campus locations must be shared with Campus Safety. The information does not include the names or any other identifying information about the persons involved in such incidents.

### **C. Anonymous Reporting**

Any individual may make an anonymous report concerning an act of Prohibited Conduct. A report can be made without disclosing a name, identifying the respondent, or requesting any action. Depending on the level of information available about the incident or the individuals involved, anonymous reporting may limit the university's ability to respond or take further action.

Anonymous reports can be submitted through the university's website. Follow-up communications with the person submitting the anonymous report are not possible unless contact information is provided. As with all other reports, anonymous reports will be shared with the Title IX Coordinator. Where there is sufficient information, the university will ensure that anonymous reports are reviewed and included for compliance with the Clery Act.

Employees who have a duty to report information to the Title IX Coordinator under this policy may not make such reports anonymously.

### **D. Protection of Minors**

All university employees are required to report any knowledge or reasonable suspicion that a minor (under 18 years old) is experiencing abuse or neglect based on information shared by the minor, any other individual, or the employee's own observations or knowledge. A university employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the following:

- Immediate danger – If the employee knows or suspects that a child is in immediate danger (such as a recent sexual assault or a serious physical assault) or a child is abandoned, contact local law enforcement right away. Law enforcement officers can remove a child from a threatening environment to protect them.
- No immediate danger – If a child is not in immediate danger, as soon as the employee has reason to believe a child has been maltreated, the employee should contact:
  - The local child welfare agency if an alleged perpetrator is a parent, guardian, family child care provider, family foster care provider, an unlicensed personal care provider organization, or juvenile correctional facility staff person.

- The local law enforcement agency if the alleged perpetrator is staff working in a private or parochial school, someone outside the family, and not a staff person at a regulated facility.

All university employees, including confidential resources, are required to immediately report any knowledge or reasonable suspicion of child abuse or neglect to the General Counsel. In Minnesota, a child is defined as anyone under 18.

The source of abuse does not need to be known in order to file a report, nor is there a requirement that there is actual evidence of abuse before making a report.

## **E. Reporting to Law Enforcement**

The Title IX Coordinator, the Director of Campus Safety (Winona campus) or the Director Campus Security (Twin Cities campus) will assist a complainant, at the complainant's request, in contacting local law enforcement. If a complainant decides to pursue the criminal process, the university will cooperate with law enforcement agencies. A complainant has the right to choose whether to notify, or decline to notify law enforcement. Under most circumstances, the complainant may decline to participate in a law enforcement investigation.

The university's policy, definitions, and burden of proof may differ from Minnesota criminal law. A complainant may seek resolution through the university's processes, may pursue criminal action, may choose one but not the other, or may choose both options. Neither law enforcement's determination whether or not to prosecute a respondent nor the outcome of any criminal prosecution are determinative of whether Prohibited Conduct has occurred under this policy. Proceedings under this policy may be carried out prior to, concurrent with, or after civil or criminal proceedings as determined by the Title IX Coordinator.

## **F. Campus Reporting Options**

To enable the university to respond to all reports in a prompt and equitable manner, the university encourages all individuals to report any Prohibited Conduct directly to the Title IX Coordinator. However, the university recognizes that a student or employee may choose to report to any employee of the university.

All university employees who are mandatory reporters (Section II) are required to share all known information related to a report of Prohibited Conduct, including the identities of the parties, with the Title IX Coordinator. In addition, student employees who have responsibility for the welfare of other students, including resident assistants and peer ministers, are required to report all known information. All other

employees, including student employees, are strongly encouraged to report Prohibited Conduct, including the identities of the parties, with the Title IX Coordinator.

## **G. Reporting Considerations**

### **Timeliness of Report**

In order to maximize the university's ability to respond promptly and effectively to reports, all those impacted by Prohibited Conduct are encouraged to report as soon as possible. There is no time limit on reporting violations of this policy, though prompt reporting is encouraged. If the respondent is no longer a student or employee at the time of the report, the university may not be able to take disciplinary action against them. The university will still provide support and reasonably available supportive measures to a complainant, as well as assistance in identifying appropriate external reporting options.

### **Amnesty for Personal Use of Alcohol or Other Drugs**

The university seeks to remove barriers to reporting, including potential concern about policy violations related to underage drinking or the use of prohibited drugs. The university will offer any student who reports or experiences Prohibited Conduct limited immunity from being charged for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. The university may choose, however, to pursue educational or therapeutic remedies for those individuals.

## **H. Report Resolution**

A report to the Title IX Coordinator is not the same as a formal complaint. In order for a report to be officially resolved, a formal complaint must be filed in writing alleging sexual harassment or other Prohibited Conduct against a respondent and requesting that the school officially investigate and resolve the allegation. The complaint may be resolved through either Informal Resolution (Section XI.F.) or through the Formal Resolution (Section XI.G.).

## **VII. PROHIBITED CONDUCT**

Federal regulations mandate certain procedures that must be used in the case of conduct that meets the definition of sexual harassment under Title IX. However, where conduct does not meet certain threshold requirements

under Title IX, the same or similar conduct is still prohibited by the university. Where the types of prohibited conduct are listed as both, they are labeled as “Title IX” or “Non-Title IX” for clarity.

## **A. Sexual Harassment - Title IX**

There are six types of prohibited conduct that qualify as “sexual harassment” under Title IX, each of which is defined more specifically below: (1) quid pro quo sexual harassment, (2) unwelcome conduct sexual harassment, (3) sexual assault, (4) dating violence, (5) domestic violence, and (6) stalking. The definitions outlined herein are required by federal regulations.

For reported behavior to qualify as prohibited conduct under this section, in addition to meeting the elements of the specific type of sexual harassment below, it must meet all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the university’s education program or activity. For purposes of this provision, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the university.
- The complainant must be participating in or attempting to participate in the education program or activity of the university at the time the formal complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, but may still be resolved through the Investigator Resolution (Non-Title IX) as described more fully in Section XI.G.5.

1. **Quid Pro Quo.** Conduct on the basis of sex where a university employee conditions the provision of a university aid, benefit, or service on an individual’s participation in unwelcome sexual conduct; or,
2. **Unwelcome Conduct.** Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or,
3. **Sexual Assault.** Engagement or the attempt to engage in one of the

following activities with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity:

- Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g. penis, finger, hand, or tongue) or an object, however slight;
- Intentional touching of the intimate body parts of another for the purpose of sexual gratification. Intimate body parts include the breasts, buttocks, groin, and genitals.
- Sexual intercourse (anal, oral, or vaginal) between individuals who are not permitted to marry.
- Sexual intercourse (anal, oral, or vaginal) with a person who is under the statutory age of consent.

4. **Dating violence.** Conduct on the basis of sex that consists of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

5. **Domestic violence.** A felony or misdemeanor crime of violence constituting conduct on the basis of sex committed by:

- a current or former spouse or intimate partner of the victim;
- a person with whom the victim shares a child in common;
- a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

6. **Stalking.** Conduct on the basis of sex that consists of engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third

parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;

- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the complainant; or,
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## **B. Sexual Assault - Non-Title IX**

Conduct that meets the definition of Sexual Assault in Section A.3., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A. above.

## **C. Dating Violence - Non-Title IX**

Conduct that meets the definition of Dating Violence in Section A.4., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A.”

## **D. Domestic Violence - Non-Title IX**

Conduct that meets the definition of Domestic Violence in Section A.5., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A.

Conduct that otherwise meets the definition of Domestic Violence in Section A.5., above, except that it is not “conduct on the basis of sex.”

## **E. Stalking - Non-Title IX**

Conduct that meets the definition of Stalking in Section A.6., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A.

Conduct that otherwise meets the definition of Stalking in Section A.6., above, except that it is not “conduct on the basis of sex.”

## **F. Sexual Harassment - Non-Title IX**

“Sexual Harassment - Non-Title IX” is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present:

1. Submission to or rejection of such conduct is an explicit or implicit condition of an individual’s employment, evaluation of academic work, or any university program or activity; or
2. Submission to or rejection of such conduct by an individual is used as the

basis for decisions affecting the individual; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

A single incident of Sexual Harassment - Non-Title IX alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a pattern of incidents to create a hostile environment. The determination of whether an environment is "hostile" will be based on the totality of the circumstances, including, but not limited to:

1. The frequency of the speech or conduct;
2. The nature and severity of the speech or conduct;
3. Whether the speech or conduct was physically threatening;
4. The effect of the speech or conduct on the individual's mental and/or emotional state;
5. Whether the speech or conduct was directed at more than one person;
6. Whether the speech or conduct arose in the context of other discriminatory conduct;
7. Whether the speech or conduct unreasonably interfered with the individual's educational opportunities or performance (including off campus study), university-controlled living environment, work opportunities or performance;
8. Whether a statement is a mere utterance of an epithet that engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or
9. Whether the speech or conduct deserves the protections of academic freedom.

Sexual Harassment - Non-Title IX can take many forms:

1. May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated;
2. Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents;
3. May be committed by anyone, regardless of gender, age, position, or authority;
4. May be committed by a stranger, an acquaintance, or someone with whom the individual has an intimate or sexual relationship;
5. May be committed by or against an individual or may be a result of the actions of a group;
6. May occur by or against an individual of any sex, gender identity, or sexual orientation;
7. May occur in the classroom, in the workplace, in residential settings, over

electronic media (including the internet, telephone, and text), or in any other setting; and

8. May affect the individual and/or others who witness or observe the harassment.

There may be situations where the respondent's reported conduct constitutes both "Sexual Harassment - Title IX" and "Sexual Harassment - Non-Title IX." The respondent will receive notice of both charges and the resolution process will investigate both charges. If the reported conduct is adjudicated and the respondent is found responsible for the charge of "Sexual Harassment - Title IX," the respondent will not be separately sanctioned for the charge of "Sexual Harassment - Non-Title IX."

### **G. Threats toward an Intimate Partner**

Threats toward an Intimate Partner means any threatened act of violence between employees or students who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. The university will evaluate the existence of an intimate relationship based upon the reporting party's statements taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### **H. Sex/Gender Discrimination**

Sex/Gender discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual's or group's access to opportunities, programs, or resources in relation to sex, gender, or sexual orientation in a manner that interferes with an individual's working, academic, residential, or social environment or athletic participation or performance.

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

1. Different treatment in determining whether such person satisfies any requirement or condition for the provision of any aids, benefits, or services;
2. Different provision of aid, benefits, or services;
3. Provision of aid, benefits, or services in a different manner;
4. Denial of any aids, benefits or services;
5. Subjection to separate or different rules of behavior, sanctions or other treatment;
6. Limitations in the enjoyment of any rights, privileges, advantages or opportunities with regard to aids, benefits or services; or
7. Differential treatment with regard to terms, conditions or benefits of employment, or in the recruitment, consideration or selection thereof.

When these or other forms of discrimination are based on sex, gender, or sexual orientation, the conduct will be resolved under this policy.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the university. The federal regulations regarding Title IX outline certain exceptions that do not constitute Sex/Gender Discrimination, such as single-gender housing, athletic participation and chorus participation.

## **I. Harassment on the Basis of Sex/Gender**

Harassment on the basis of sex/gender is any unwanted verbal or physical conduct on the basis of sex, gender, or sexual orientation when one or more of the following conditions is present:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, participation in a program or activity or grade in a course or coursework;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or
3. Such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile or offensive work environment, under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe.

The determination as to whether a hostile environment exists is based on the totality of the circumstances, including but not limited to:

1. The nature and severity of the conduct;
2. The type, frequency and duration of the conduct;
3. The identity of and relationship between the respondent and the complainant;
4. The number of individuals involved;
5. The age and maturity levels of the respondent and complainant; and
6. The location of the conduct and the context in which it occurred.

Examples of harassment on the basis of sex/gender include but are not limited to:

1. Threatening to "out" a person's sexual orientation;;
2. Repeatedly leaving notes/photos, etc. on a person's door that demonstrates homophobia or transphobia;
3. Repeated, and unwanted, comments related to a person's appearance and/or demeanor, e.g., "That tight-fitting top really shows off your curves."

## **J. Sexual Exploitation**

Sexual Exploitation is knowingly, intentionally or purposefully taking advantage of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, or personal benefit. Examples of Sexual Exploitation include:

1. Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
2. Voyeurism;
3. Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
4. Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms or locker rooms, regardless of whether the images captured reveal sexual activity or nudity;
5. Prostituting another individual;
6. Exposing one's genitals in non-consensual circumstances;
7. Inducing incapacitation for the purpose of making another person vulnerable to non- consensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).
8. Removal of a condom, without consent, during sexual intercourse;
9. Knowingly exposing another individual to a sexually transmitted infection or virus without that individual's knowledge; and

## **K. Retaliation**

Retaliation is defined as intimidating, threatening, coercing, or discriminating against any individual:

1. For the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations; or
2. Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy or under the complaint procedures relating to Title IX complaints with the U.S. Department of Education's Office for Civil Rights.

Retaliation also includes filing a complaint against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with

any right or privilege secured by Title IX law or regulations.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a proceeding under this Policy does not constitute retaliation, except that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **VIII. CONSENT, FORCE, COERCION AND INCAPACITATION**

### **A. Consent**

Individuals who choose to engage in sexual activity of any type with each other must first obtain clear consent. Consent is clear, knowing, and voluntary permission. It can only be given by someone of legal age. Consent is demonstrated through mutually understandable words or actions that clearly indicate a willingness to engage freely in sexual activity. Consent cannot be obtained through the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise free will to choose whether or not to have sexual contact. Silence does not constitute an indication of consent.

Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity in order for the activity to be considered consensual. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.

Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. While consent can be given by words or non-verbal actions, non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.

When consent is requested verbally, the absence of any explicit verbal response or the absence of a clear non-verbal response constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive. Under this policy,

“no” always means “no.” “Yes” only means “yes” when it is voluntarily and knowingly given by an individual who has the capacity to give consent.

If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of other individuals to proceed, all parties should stop and verbally clarify the other’s willingness to continue before proceeding with such activity.

Any party may withdraw consent prior to the completion of the act. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even within the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity each time.

Individuals must be able to fully understand what they are doing in order to consent to sexual activity. An individual who is incapacitated is unable to give consent. See Incapacitation in Section VIII.D. for further discussion.

In the State of Minnesota, the age of majority is 18. Under state law, consent cannot be given by any individual under the age of 16 to participate in sexual activity with an individual over the age of 18.

## **B. Force**

Force is the use or threat of physical violence or intimidation to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request. Consent cannot be obtained by force.

## **C. Coercion**

Coercion is the use of unreasonable pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion contains a wide range of behaviors that override the voluntary nature of participation. Such acts include, but are not limited to, threatening to disclose personal sexual information, or threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity. Consent cannot be obtained by coercion.

## **D. Incapacitation**

An individual who is incapacitated lacks the ability to make informed, rational judgments and cannot consent to sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. In addition, persons with certain intellectual or developmental disabilities may not have the capacity to give consent. Consent cannot be obtained by taking advantage of another individual's incapacitation.

Where alcohol or other drugs are involved, incapacitation is a state beyond intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady balance, strong odor of alcohol, combativeness, or emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's:

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

In other words, a person may be considered unable to give valid consent due to incapacitation if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction.

Evaluating incapacitation also requires an assessment of whether a respondent was or should have been aware of the complainant's Incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

Being intoxicated or impaired by drugs or alcohol is never an excuse for any Prohibited Conduct under this policy and does not diminish one's responsibility to obtain informed and freely given consent.

## **IX. SUPPORTIVE MEASURES**

Upon receipt of a report of Prohibited Conduct, the university may impose reasonable and appropriate supportive measures designed to restore or preserve a

complainant's equal access to university programs or activities without fee or charge, and without treating the respondent as responsible unless and until the completion of a Formal Resolution that determines the respondent to be responsible for a policy violation. Supportive measures are designed to restore or preserve equal access to the university's education programs and activities without unreasonably burdening the other party. They include measures designed to protect the safety of all parties or the university's educational environment, and include measures to deter sexual harassment.

Supportive measures are available to both the complainant and respondent regardless of whether the complainant chooses to file a formal complaint. The Title IX Coordinator will maintain the privacy of any supportive measures provided to the extent possible and will promptly address any reported violation/s of the supportive measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Any requests for or questions concerning supportive measures may be directed to the Title IX Coordinator or the Assistant Vice President for Student Affairs.

### **A. Range of Supportive Measures**

Potential supportive measures, implemented on behalf of the complainant and/or the respondent to the extent reasonably available and warranted by the circumstances, include, but are not limited to:

- Access to counseling services and assistance in setting up an initial appointment, both on and off campus;
- Imposition of a mutual "no-contact order" (failing to abide by the no-contact order may result in allegations of additional policy violations);
- Rescheduled exams and assignments;
- Extensions of deadlines;
- Alternative course completion options;
- Change in class scheduling, including the ability to transfer course sections or withdraw from a course without penalty;
- Change in work schedule or job assignment;
- Change in student's university-owned, sponsored or controlled housing;
- Assistance in completing housing relocation;
- Limiting an individual's or organization's access to certain university facilities or activities pending resolution of the matter;
- Voluntary leave of absence;

- Providing an escort to ensure safe movement between classes and activities;
- Increased security and monitoring of certain areas of the campus;
- Medical services;
- Academic support services, such as tutoring;
- University-imposed administrative leave or separation;
- University-imposed restricted access;
- Assistance with identifying resources available to help with visa or immigration issues, legal issues and transportation options;
- Other remedies that can reasonably be tailored to the involved individuals to achieve the goals of this policy.

## **B. University-Imposed Restricted Access and Administrative Leave**

Restricted Access is the removal of a respondent from the university's education program or activity on an emergency/temporary basis. Restricted Access is not disciplinary in nature and is not recorded on the respondent's transcript or permanent employee file. Restricted Access is evaluated on an individualized basis to determine the appropriate level of access to campus and participation in the university's programs and activities. Students placed on Restricted Access are often, but not always, permitted to continue to participate in classes and other academic obligations, and may or may not be able to remain in university housing, eat in the dining hall, or be present on campus during unstructured periods of time.

The Title IX Coordinator conducts an individualized safety and risk analysis to determine whether there exists an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment and/or other allegations of Prohibited Conduct. If so, the Title IX Coordinator may, in consultation with the appropriate university personnel, impose Restricted Access on respondents. The Title IX Coordinator will notify both parties in writing of the resulting restrictions and any changes to such restrictions.

All respondents are able to challenge Restricted Access. If a Respondent wishes to challenge Restricted Access, the respondent shall provide written notice of such challenge, including the basis for the challenge, to the Title IX Coordinator within two (2) business days of receiving notice of the restriction. The Title IX Coordinator, in conjunction with appropriate university personnel, shall meet with the respondent. The Respondent may be accompanied by an advisor of his or her choice. The purpose of the meeting is to permit the respondent to contest the restriction. The

location of the meeting will be determined by the Title IX Coordinator and may occur via telephone or video-conference. Within two (2) business days of the meeting, the Title IX Coordinator and appropriate university personnel shall again consult regarding the Restricted Access and shall notify the respondent in writing of the outcome. Any changes to the restrictions shall be provided in writing to all parties.

The Title IX Coordinator, in conjunction with other appropriate university personnel, may impose administrative leave on employee respondents if the facts and circumstances surrounding the reported conduct support such leave. Administrative leave is a separate process from Restricted Access and is not disciplinary in nature. Employees placed on administrative leave will receive written notice of the conditions of that leave, but will not be able to challenge the administrative leave.

## **X.COMPLAINT RESOLUTION**

When a formal complaint is filed, the complaint resolution process begins. Complaints may be resolved through either Informal Resolution or a Formal Resolution. The Title IX Coordinator will provide the complainant and the respondent with a written overview of resolution options and available resources.

The university will conduct an initial assessment and determine the most appropriate manner of resolution under the policy. The university recognizes that in some circumstances, due to aspects of a particular case, strict compliance with the policy may create unexpected conflicts of interest or raise other concerns about the implementation of the process. The Title IX Coordinator is empowered to adjust the process, with notice to the parties, as necessary to provide a prompt and equitable process.

Resolution of a formal complaint will typically continue when a complainant separates from the university. If a respondent withdraws, resigns, graduates, retires, or otherwise departs from the university after the filing of a formal complaint and prior to decision, the Title IX Coordinator will determine whether to: (1) offer to the parties informal resolution; (2) discontinue the complaint process without a finding but with a respondent's student file marked "withdrew pending disciplinary action" or their employee file marked "no rehire"; (3) continue the formal complaint process to its conclusion; (4) take other action deemed appropriate by the Title IX Coordinator.

### **A. Process Assurances: Complainant and Respondent**

In any report, complaint, investigation or resolution under this policy, both a complainant and a respondent can expect:

1. a prompt and equitable response to reports of Prohibited Conduct;
2. supportive measures that may be reasonably available and necessary for protection and support;
3. information about how to access confidential resources on and off campus and other forms of support available through the university and in the community;
4. written notice of the alleged conduct, potential policy violations at issue, and details about the process;
5. an adequate, reliable, thorough and impartial process conducted by individuals free from conflict of interest and bias;
6. a process that includes the presumption that the respondent is not responsible for a policy violation unless and until a determination regarding responsibility is made at the conclusion of the process;
7. the opportunity for an advisor of choice who may attend all meetings and proceedings related to the report and/or complaint;
8. timely notice of any meeting at which the party's presence is required, with sufficient time to prepare for the meeting;
9. agency and autonomy to decline to participate in an investigation or resolution under the policy, although the university may choose to continue the process even if the complainant and/or respondent does not participate;
10. the ability to identify witnesses, submit suggested questions in writing during the investigation, and provide evidence during the investigation and resolution;
11. timely and equal access to any information that is used in the investigation and resolution;
12. prompt remedial action if Prohibited Conduct is determined to have occurred;
13. regular communication about the progress of the process and of the resolution;
14. timely written notice of the outcome, required remedies, and issued sanctions and rationale;
15. the opportunity to appeal the outcome (determination as to responsibility) and sanction;
16. freedom from retaliation;
17. interpreters and/or translators which will be selected and provided by the university;
18. reasonable accommodation for individuals with disabilities . Any requests for accommodation should be made through established university protocol as provided by the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act; and,
19. freedom from university-imposed orders restricting parties from discussing

the case with others. This does not prohibit the university from issuing no-contact orders or requiring employees to abide by confidentiality laws.

## **B. Request for Anonymity or No Action**

The Title IX Coordinator will take all reasonable steps to respond, resolve, and remedy a report of Prohibited Conduct consistent with a complainant's preferences where possible. Where a complainant makes a report but requests that a name or other identifiable information not be shared with the respondent or that no formal action be taken, the university will balance this request with its responsibility to provide a safe and non-discriminatory environment for all university community members.

In considering a complainant's request to take no action and evaluating whether to proceed, the Title IX Coordinator will assess and consider:

- the preferences and concerns of the complainant;
- the nature and circumstances of the allegation;
- the severity and impact of the reported conduct;
- pattern evidence or other similar conduct by respondent;
- the respective ages of the parties, including whether the complainant is a minor (under the age of 18);
- whether the respondent has admitted to the conduct;
- whether the respondent has been the subject of other complaints or reports of Prohibited Conduct under this policy;
- whether the respondent threatened further sexual violence or other violence against the complainant or others;
- whether the report indicates that multiple respondents were involved;
- whether the report indicates that the conduct was perpetrated with a weapon;
- whether the respondent is an employee; and,
- whether the university possesses independent means to obtain relevant evidence (e.g., witnesses, security cameras or personnel, or physical evidence).

Where the university is unable to take action consistent with the request of the complainant, the Title IX Coordinator will inform the complainant about the chosen course of action, and implement necessary supportive measures.

## **C. Initial Assessment**

Upon receipt of a report, the Title IX Coordinator will conduct an initial assessment to provide an integrated and coordinated response to reports under

this policy. In the course of this initial assessment, the Title IX Coordinator will consider the complainant's expressed preference regarding supportive measures and the manner of resolution, unless the Title IX Coordinator determines that such a course of action would be unreasonable in light of the known circumstances.

As part of the initial assessment, the Title IX Coordinator will:

- address immediate physical safety and emotional well-being;
- notify the complainant of the right to contact law enforcement, to decline to contact law enforcement, and to seek medical treatment;
- inform the complainant of the importance of preservation of evidence (i.e., medical, forensic, physical, electronic, etc.)
- ask Campus Safety to enter the incident into the university's daily crime log, if appropriate (without identifying information);
- evaluate whether to issue a timely warning consistent with the Clery Act;
- provide the complainant with information about on and off-campus resources;
- notify the complainant of the range of supportive measures;
- consider the complainant's interests with respect to supportive measures;
- provide the complainant with an explanation of the procedural options under the policy, including Informal Resolution and a Formal Resolution;
- notify the complainant of the ways the complainant may choose to participate, or decline to participate, in the various steps of the process. This will include notification that the Title IX Coordinator may, in certain circumstances, proceed without complainant's participation and that non-participation by the complainant may limit the ability of the university to respond;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding;
- explain the university's policy prohibiting retaliation; and,
- if the determination has been made to notify the respondent of the report, provide the respondent with information about resources, supportive measures, and procedural options.

**No formal complaint filed by the complainant:** If a complainant chooses not to file a formal complaint, the Title Coordinator will determine whether it is appropriate to take proactive steps to address the behavior with the respondent. In this instance, the Title IX Coordinator will not typically disclose the specifics of any report without the consent of the complainant. Alternatively, as below, the Title IX Coordinator may elect to file a formal complaint.

**Formal complaint filed:** if a complainant decides to file a formal complaint, the Title IX Coordinator will communicate with the respondent about the complaint, and discuss the above listed information with the respondent. When a formal complaint is initiated, the respondent and complainant will be informed of the nature of the alleged conduct and/or potential charges being investigated as detailed in Section XI.D.

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

A formal complaint is a written document filed by a complainant, or signed by the Title IX Coordinator, that alleges Prohibited Conduct by a respondent and requests that the university officially investigate and resolve the allegation. The formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by in-person delivery, or through the online reporting form and must contain the complainant's physical or digital signature. In the instances when the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or a party during a Formal Resolution, and must comply with requirements for any person involved in the response and/or resolution to be free from conflicts and bias.

A formal complaint may be resolved through either an Informal Resolution or a Formal Resolution. Informal Resolution may only be offered after a formal complaint has been filed, so that the parties understand what the Formal Resolution entails and can decide whether to voluntarily attempt informal resolution as an alternative.

A formal complaint may be withdrawn if the complainant informs the Title IX Coordinator in writing that they want to withdraw the complaint or the allegations. The Title IX Coordinator may choose to withdraw a formal complaint if a respondent is no longer participating in or attempting to participate in the education or program activity of the university, the complainant submits a written request to withdraw the complaint, or specific circumstances prevent the university from gathering evidence sufficient to reach a determination. No matter the reason for the withdrawal of a complaint, the parties will be notified, simultaneously, in writing of the decision, including the reasoning.

## **E. Advisor of Choice**

Complainants and respondents may be accompanied to any meeting, Informal Resolution session, interview, and/or hearing related to the procedures outlined in this Policy by an advisor of their choice. The advisor of choice may be, but is not

required to be, an attorney. If a formal complaint is filed, advisors are invited and strongly encouraged to speak with the Title IX Coordinator for an orientation to the university's policies and procedures, privacy protections, and expectations around participation and decorum. If a formal complaint is addressed through an Informal Resolution (Section XI.F.), the parties are encouraged but not required to have an advisor. If a formal complaint is addressed through a Formal Resolution (Section XI.G.) both the complainant and the respondent must have an advisor for the purpose of conducting cross-examination at the live hearing. If either party does not have an advisor for the live hearing phase of a Formal Resolution, an advisor of the university's choosing will be assigned at no cost to the party. The advisor's participation is defined below:

*Meetings with the Title IX Coordinator:* Advisors may accompany the complainant or the respondent to any meeting with the Title IX Coordinator. If a formal complaint is filed, advisors are invited and strongly encouraged to speak with the Title IX Coordinator (or designee) for an orientation to the university's policies and procedures, privacy protections, and expectations around participation and decorum. If an advisor also expects to serve as a witness, the advisor should disclose this information to the Title IX Coordinator as soon as possible.

*Informal Resolution Process:* Advisors are not required to be present during any phase of the Informal Resolution process, but parties are strongly encouraged to include them. Advisors will be permitted to ask questions and advise the party with whom they are working.

*Investigation:* Advisors will receive access to the investigative report that contains the report narrative and all submitted evidence produced in the investigation, unless the party they are advising indicates in writing that the advisor should not be able to access the evidence. Advisors are not required to attend the investigation interview/s but they are permitted to attend other meetings. Advisors may not ask or answer questions or provide information during any meeting.

*Pre-Hearing Conference:* Advisors **are required** to attend a pre-hearing conference with the Hearing Officer to review the university's live hearing procedures. Advisors are encouraged to ask questions to understand their role at the hearing and the university's expectations around participation and decorum. If an advisor also expects to serve as a witness, the advisor should disclose this information to the Title IX Coordinator no later than this conference.

*Live Hearing:* At the live hearing, each party's advisor will be responsible for asking

relevant questions to the other party or parties and any witnesses. Advisors are encouraged to focus questions on disputed issues so as to assist the Hearing Officer in determining issues of credibility. This questioning will be conducted orally, directly and in real-time in a manner that, in the Hearing Officer's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant. The Hearing Officer reserves the right to remove an advisor who questions witnesses in an abusive, intimidating, harassing, or disrespectful manner. In the instance that an advisor is removed, the hearing will be suspended until a later date to permit an alternative advisor to be obtained or assigned.

## **F. Informal Resolution**

The Informal Resolution process may only be pursued after a formal complaint has been filed. Informal Resolution will only occur with the voluntary, and written consent of both parties and the Title IX Coordinator. Informal Resolution is not permitted to resolve allegations that an employee (staff person or faculty member) engaged in Sexual Harassment - Title IX against a student.

Prior to initiating an informal resolution, the Title IX Coordinator will issue each party a written notice disclosing:

- the allegations;
- the requirements and procedure of the informal resolution process; and
- any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

At any time, either party has the right to withdraw from the Informal Resolution process and resolve the formal complaint through a Formal Resolution. If the parties are not able to resolve the complaint through the Informal Resolution process, the complaint would be resolved through a Formal Resolution unless the complaint is withdrawn.

The Title IX Coordinator retains the discretion to determine the type of Informal Resolution that may be appropriate in a specific case and may refer a complaint to a Formal Resolution at any time. Informal Resolutions will typically be completed within 30 calendar days of the decision to engage in Informal Resolution. Informal Resolution agreements are signed by the parties and the Title IX Coordinator and are enforced by the university.

When the respondent is a student, an Informal Resolution will only be recorded in the respondent's student file in the Student Affairs Office if the Resolution Agreement includes a sanction of disciplinary probation, suspension, or

dismissal. When the respondent is an employee, a notation of the Informal Resolution will be made in the employee's file maintained by the Office of Human Resources and/or the Provost's Office.

Violations of an Informal Resolution Agreement will be reviewed by the Title IX Coordinator and may be referred to a Formal Resolution or referred to the appropriate university official for further review and possible sanctioning.

## **G. Formal Resolution Process**

The Formal Resolution may only be pursued after a formal complaint has been filed. The Title IX Coordinator will identify the potential violations and prepare the initial notification of investigation outlining the charges to be investigated and assessed. At the completion of the investigation, the complaint will be addressed through either the Adjudicator Resolution (non-Title IX) or the Hearing Resolution (Title IX). Both parties will have the opportunity to appeal the decision regarding responsibility and any sanctions imposed. The university may delay granting a diploma otherwise earned until the completion of all phases of a Formal Resolution, including completion of an appeal and/or any sanctions imposed.

### **Investigation**

The parties and their advisors will receive written notice that an investigation has been initiated. The notice of investigation will include:

1. the identities of the parties involved;
2. the specific section/s of the policy allegedly violated;
3. the precise conduct alleged to constitute the potential violation/s;
4. the approximate date, time, and location of the alleged incident;
5. a statement indicating that the respondent is presumed not responsible for the alleged conduct;
6. a statement that the determination of responsibility will be made at the conclusion of a Formal Resolution;
7. a notice that parties have the right to an advisor of their choice;
8. the result of an initial assessment to determine whether the allegations suggest a potential violation of "Sexual Harassment - Title IX," with an indication that this decision will be reviewed again when the investigators prepare their report;
9. the name of the investigator and the ability to challenge the individual for conflict of interest or actual bias;
10. the appropriate policy language prohibiting a party from knowingly making false statements or knowingly submitting false information;
11. a statement that the parties may inspect and review evidence; and

12. notice that retaliation is prohibited.

The notice shall be provided reasonably in advance of any interviews with the investigator so that the parties have sufficient time for meaningful preparation. The Title IX Coordinator, in consultation with the investigator, may amend the charges as part of the investigative process. The Title IX Coordinator will, if appropriate, issue amended charges to both parties.

The Title IX Coordinator will designate an investigator to conduct an adequate, reliable and impartial investigation. The university may engage an external investigator. In complex situations, the Title IX Coordinator may engage additional trained investigators to assist in gathering the information that will be considered by the primary investigator. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the university and not the parties. The interviews will be recorded by the investigator.

The parties will have an equal opportunity to present witnesses, including expert witnesses, and to submit evidence. The investigator will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate and available. The parties may submit questions to be asked of parties and witnesses. The investigator will review submitted questions and, in the investigator's discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up, as the investigator deems relevant. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of university policy and can subject a student or employee to disciplinary action. Making a good faith report to the university that is not later substantiated does not constitute false or misleading information.

The Title IX Coordinator may combine multiple complaints that arise out of the same set of facts or circumstances into one investigation. Where multiple complainants or respondents are involved in the same investigation, the parties will only be provided with the appropriate portion(s) of the investigative documents that relate to the complaint(s) in which they are a party.

A person's medical, counseling/psychological, and similar treatment records are privileged and confidential documents that a party will not be required to disclose. Where a party provides written permission to share medical, counseling/psychological, and similar treatment records as part of the investigation, only the portion of the records directly related to the allegations raised in the formal complaint will be included in the case file for review by the other party and for use in

the investigative process.

Evidence related to the prior sexual history of the complainant is generally not relevant to the determination of a policy violation and will only be considered in very limited circumstances. For example, to prove that someone other than the respondent committed the alleged conduct, or where the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion.

Information regarding other acts by a party will be permitted as relevant where the nature and means of those other acts may affect the credibility of the assertions in the current case. It is not required that the party have been found responsible for policy violations related to those other acts for them to be included in the current case. Any party seeking to introduce information about prior sexual history or other acts by a party should bring this information to the attention of the investigator at the earliest opportunity. While the investigators may explore relevant areas of inquiry, the Title IX Coordinator has the responsibility to make the final determination whether evidence of prior sexual history or other misconduct is relevant and should be included in the report.

If the Title IX Coordinator determines that reports of other acts by a party may be relevant, the Title IX Coordinator may offer the information to the investigator for consideration to determine whether it may be relevant. The investigator may determine whether and how to follow up on that information within the scope of the current investigation. It is ultimately the adjudicator's or hearing officer's discretion to determine whether the information is relevant in the current case.

If, at any time, the respondent agrees to a finding of responsibility to some or all of the charged conduct, the matter may be referred to a Formal Resolution (Section XI.G.) for adjudication, or if all parties agree, referred to Informal Resolution (Section XI.F.). The university will seek to complete the investigation in a reasonable timeframe from the notice of investigation, typically within 20 business days. This time frame may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may be based on delays occasioned by the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other circumstances, all of which will likely extend the length of time it takes to complete the investigation. The

Title IX Coordinator will provide regular updates to all parties regarding the progress of the investigation.

### **Review of Evidence**

The evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available to the complainant and respondent and their advisors, including the evidence upon which the university may not rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. The parties will have 10 calendar days to review the evidence. The parties will be offered the opportunity to review the evidence and provide a written response that will be submitted to the investigator for the completion of the Investigation Report.

Due to the privacy of all those involved, evidence shared in an electronic format will not be printable, downloadable or electronically shareable by the parties or their advisors. Exceptions may be made in compliance with Section 504 of the Rehabilitation Act of 1973.

### **Investigation Report**

Once the parties have reviewed the evidence and have submitted responses, or the time period to submit such responses has passed, the investigator will complete any follow up deemed necessary, and write the investigation report. The investigator will consider whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute "Sexual Harassment - Title IX," in light of the evidence gathered during the investigation, and make a recommendation to the Title IX Coordinator regarding the same. The Title IX Coordinator will review the recommendation of the investigator and make the final determination as to whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute "Sexual Harassment – Title IX." The Title IX Coordinator will notify the parties, in writing, of the final assessment and whether or not the complaint will proceed to a hearing or be decided by an adjudicator.

The investigation report will include, but is not limited to, the following sections:

1. overview of the complaint made and summary of the investigative methodology;
2. summary of relevant information gathered, including:
  - a. timeline of incident being investigated;
  - b. complainant's account of events;
  - c. respondent's account of events;
  - d. witness accounts;

- e. evidence gathered;
3. areas of agreement;
4. areas of disagreement;
5. assessment of whether or not the complaint meets one or more of the required elements of the definition of sexual harassment under Title IX, including rationale; and
6. appendix containing all of the collected evidence.

The investigation report will not include:

1. Information about the complainant's sexual predisposition or prior sexual behavior, unless:
  - a. The information is to prove that someone other than the respondent committed the alleged conduct; or
  - b. The information concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
2. Information that is protected by a legally recognized privilege; and
3. A party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

At the time the Title IX Coordinator shares the investigative report with the parties and their advisors, the Title IX Coordinator will include a cover letter detailing the final assessment of whether or not the conduct alleged, if demonstrated by a preponderance of the evidence, could constitute "Sexual Harassment - Title IX. Either party may appeal this decision. Instructions and grounds for the appeal will be shared by the Title IX Coordinator in the cover letter.

Parties have three (3) business days after receipt of the investigative report to submit in writing an appeal of the Title IX dismissal (see Section XI.G.4). When no appeal of the Title IX decision is filed, the parties have ten (10) calendar days beginning at the conclusion of the three-day appeal window to submit their written response to the Investigation Report. The response may include an assertion that evidence not summarized in the report, but present in the case file, should be considered as relevant.

In a case with multiple charges, if any of the charges constitute "Sexual Harassment - Title IX," all the charges in that case will be handled at the same time through the Hearing Resolution process.

### **Appeal of Title IX Dismissal**

Parties have three (3) business days after receipt of the investigative report to submit in writing an appeal of a determination regarding whether the conduct constitutes "Sexual Harassment - Title IX." The appeal will be considered by an appropriately trained staff member designated by the Title IX Coordinator. The appeal decision will be communicated in writing to the parties, their advisors, and the Title IX Coordinator. The decision will also indicate the path for complaint resolution: Hearing Resolution or Investigator Resolution. From the date the appeal decision letter is sent to the parties, the parties have ten (10) calendar days to submit a written response to the Investigation Report. The written response will be included for consideration by the Hearing Chair or the adjudicator in the resolution process.

### **Adjudicator Resolution (Non-Title IX)**

The Adjudicator Resolution process will be used to resolve cases that do not include a charge of "Sexual Harassment - Title IX." The Title IX Coordinator will assign the adjudicator. The adjudicator will make a determination, by a preponderance of the evidence, whether there is sufficient information to support a finding of responsibility. The adjudicator's finding, and the rationale for the finding, will be included in the final determination report that will be shared with the parties by the Title IX Coordinator.

The adjudicator should first evaluate the quality of the evidence. The adjudicator should consider all of the evidence regardless of who provided it. Any evidence the adjudicator finds to be of high quality should be given more weight than any evidence the adjudicator finds to be of low quality. Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness may be sufficient to establish a fact.

The adjudicator will evaluate all admissible, relevant evidence for weight or credibility. Credibility is not based solely on observing demeanor, but also considers detail, interest or bias, corroboration where it would reasonably be expected to exist, the circumstances of the disclosure, and the nature of the relationship. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the adjudicator, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required.

The adjudicator will not consider or rely on:

1. Information about the complainant's sexual predisposition or prior sexual behavior, unless:
  - a. The information is to prove that someone other than the respondent committed the alleged conduct; or
  - b. The information concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent
2. Information that is protected by a legally recognized privilege; and
3. A party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

A party's answers to questions can and should be evaluated by the adjudicator in context, including taking into account that a party may experience stress while trying to answer questions, or other factors that may affect the party's ability to recall the specific details of an incident in sequence.

If the adjudicator determines by a preponderance of the evidence that there is **insufficient** information to find the respondent responsible for violating this or other policies, the complainant may appeal this outcome following the procedures set forth in Section XI.I.

If the adjudicator determine, by a preponderance of the evidence, that there is **sufficient** information to find the respondent responsible for violating this or other policies, the adjudicator will consult with Student Affairs in complaints involving students, and Human Resources in complaints involving employees to determine the appropriate sanction. The Title IX Coordinator will notify the Registrar to place a hold on the respondent's transcript until the sanction has been issued by the adjudicator.

### **Adjudication**

The adjudicator is determined by the status of the respondent:

1. For reports against students or student groups, the adjudicator is typically the Vice President for Student Affairs.
2. For reports against employees, the adjudicator is typically a member of the of Human Resources office.

When the typical or alternate adjudicator is unable to serve, or is not otherwise designated in this policy, the Title IX Coordinator will select a trained individual to be

the adjudicator with notice to the parties.

The adjudicator must be a neutral and impartial decision-maker. The parties will be informed, in writing, of the specific adjudicator assigned to determine responsibility and impose sanctions, if any. Within one (1) calendar day of receiving the notice of the designated adjudicator, a party may submit a written request to the Title IX Coordinator to replace the named adjudicator, if there are reasonable articulable grounds to establish bias, conflict of interest or an inability to be fair and impartial. The designated adjudicator will only be replaced if the Title IX Coordinator determines that their bias precludes impartiality or constitutes conflict. Additionally, an adjudicator who has reason to believe they cannot make an objective determination must recuse himself or herself from the process.

For a range of possible sanctions and factors considered by the adjudicator, see Section XI.H.

### **Timeframe for Resolution**

The university will seek to complete the adjudication (determination of responsibility and imposition of sanction) within then (10) calendar days of the notice of referral to adjudication, but this time frame may be extended for good cause with written notice to the parties of the delay and the reason for the delay.

### **Notice of Outcome**

The adjudicator's written determination of the outcome, the sanction and the rationale for each will be provided to each party simultaneously. The parties will be informed of any sanctions, the date by which the requirements must be satisfied (if applicable), and the consequences of failure to satisfy the requirements.

The outcome letter will also provide each party with their appeal options. If, due to extenuating circumstances, there are any changes to the outcome, both parties will be simultaneously notified at the earliest possible time. The university may also notify appropriate university officials, including a direct supervisor, of a sanction, as necessary to implement the outcome and/or sanctions.

### **Hearing Resolution (Sexual Harassment - Title IX)**

A Hearing Resolution will be used to resolve cases that include charges of "Sexual Harassment - Title IX." If such cases also include other charges, all the charges in that case will be handled at the same time through the Hearing Resolution process. A Hearing Resolution includes a pre-hearing conference, a live hearing, decisions about responsibility and sanctioning by the Hearing Chair, and an

optional appeal process.

A single Hearing Chair will typically conduct the live hearing. The Title IX Coordinator chooses a trained, impartial Hearing Chair. In some cases, at the discretion of the Title IX Coordinator, a three-person Hearing Panel will be convened to conduct the hearing, whose members are selected by the Title IX Coordinator. When a three-person Hearing Panel is convened, one of the panelists will serve in the role of the Hearing Chair and a majority vote is required to make the determination of responsibility. The Hearing Chair and Hearing Panelists cannot be the individual assigned in the role of the Title IX Coordinator for the case, nor can they have acted in the role of an investigator or served in any other function that would pose a potential conflict of interest.

### **Pre-Hearing Conference**

Each party will have their own pre-hearing conference. The Title IX Coordinator will communicate to the parties, their advisors, and the Hearing Chair the date, time, and format for their Pre-Hearing Conference. The Title IX Coordinator, the Hearing Chair, and the advisor must be in attendance. While the parties are strongly encouraged to attend, they are not required to do so.

During the Pre-Hearing Conference, the advisors must share with the Hearing Chair their list of witnesses to appear at the hearing, the identity of any requested witnesses that were not questioned during the investigation, their request for any new evidence to be considered that was not submitted previously to the investigators, and the availability of the advisor and the party for hearing dates.

Evidence and witnesses may only be presented at the hearing if they were submitted to the investigator and made available to the parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until the investigative report was submitted. The Hearing Chair will address any requests to present new evidence and new witnesses at the Pre- Hearing Conference.

The advisor is strongly encouraged to discuss lines of questioning with the Hearing Chair at the Pre-Hearing Conference to obtain guidance from the Hearing Chair on relevancy prior to the hearing. The Hearing Chair will discuss the expectations and guidelines for appropriate behavior and decorum during the hearing.

After reviewing each party's witness list, the Hearing Chair may, at his/her discretion,

add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross-examination.

After the conclusion of the Pre-Hearing Conferences, the Title IX Coordinator will provide each party and their advisor with written notice of the date, time, and manner for the hearing, which will typically occur no less than five (5) business days after the conclusion of the final pre-hearing conference.

### **Live Hearing**

The live hearing may be conducted with all 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. Regardless of format, the hearing will be recorded, and the recording will be the property of the university. It will be made available to the parties for review and inspection upon their request during the pendency of the process.

Those persons present during the entirety or at designated portions of the hearing include: complainant, complainant's advisor; respondent, respondent's advisor; Hearing Chair/Panel; Title IX Coordinator; General Counsel; witnesses; other appropriate individuals at the discretion of the Title IX Coordinator (for example, an interpreter).

The Hearing Chair will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all parties of the expectation to be candid and honest in their responses, and provide a brief overview of the procedure and the anticipated order of the hearing.

The advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other party or parties and any witnesses directly, in real-time and in a manner that, in the Hearing Chair's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant. A party will never conduct cross-examination personally. Only relevant questions may be asked of a party or witness. Relevant questions are those tending to prove or disprove a fact at issue. Questions that are not relevant include:

1. Repetition of the same question;
2. Questions related to information about the complainant's sexual predisposition or prior sexual behavior, unless:
  - a. The information is to prove that someone other than the respondent committed the alleged conduct; or
  - b. The information concerns specific incidents of the complainant's prior

sexual behavior with respect to the respondent and are offered to prove consent

3. Questions related to information that is protected by a legally recognized privilege; and
4. Questions related to a party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

The Hearing Chair/Panel will objectively evaluate all evidence to determine its relevance, materiality, weight and reliability.

Before a complainant, respondent, or witness answers a question by an advisor, the Hearing Chair will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question. The Hearing Chair is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The Hearing Chair may later send to the parties any revisions to the explanation of relevance that was provided during the hearing.

If a party does not have an advisor present at the live hearing, the university must provide, without fee or charge to the party, an advisor of the university's choice to conduct cross-examination.

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Chair/Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Chair/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. However, video evidence showing the conduct alleged within a complaint may be considered, even if the party does not submit to cross-examination. Further, a respondent's verbal or written conduct that is alleged to constitute the sexual harassment at issue is not considered to be the respondent's "statement" and thus, information about or evidence of such conduct may be admitted even if the respondent does not submit to cross-examination.

### **Decision/Finding/Sanctions**

Decisions regarding responsibility will be made by the Hearing Chair/Panel and communicated to the parties and their advisors in writing within fifteen (15) business days from the conclusion of the live hearing. When a three-person Hearing Panel is convened, one of the panelists will serve in the role of the Hearing Chair and a majority vote is required to make the determination of responsibility.

The Hearing Chair/Panel should first evaluate the quality of the evidence. The Hearing Chair/Panel should consider all of the evidence regardless of who provided it. Any evidence the Hearing Chair/Panel finds to be of high quality should be given more weight than any evidence the Hearing Chair/Panel finds to be of low quality. Quality may, or may not be identical with quantity, and sheer quantity alone should not be the basis for a finding of responsibility. The testimony of a single party or witness may be sufficient to establish a fact.

The Hearing Chair/Panel will evaluate all admissible, relevant evidence for weight or credibility. Credibility is not based solely on observing demeanor, but also considers detail, interest or bias, corroboration where it would reasonably be expected to exist, the circumstances of the disclosure, and the nature of the relationship. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the Hearing Chair/Panel, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required.

The Hearing Chair/Panel will not consider or rely on:

1. Information about the complainant's sexual predisposition or prior sexual behavior, unless:
  - a. The information is to prove that someone other than the respondent committed the alleged conduct; or
  - b. The information concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
2. Information that is protected by a legally recognized privilege; and
3. A party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

A party's answers to questions can and should be evaluated by the Hearing Chair/Panel in context, including taking into account that a party may experience stress while trying to answer questions, or other factors that may affect the party's ability to recall the specific details of an incident in sequence.

The Hearing Chair/Panel will also determine the sanctions. In determining the sanctions, the Hearing Chair/Panel will consult with appropriate university staff members:

- For reports against students or student groups, the Office of Student

Affairs;

- For reports against staff, the Office of Human Resources;
- For reports against faculty, the Provost or Vice Provost for Academic Affairs.

For a range of possible sanctions, see Section XI.H.

The written decision will include the following:

1. identification of the allegations potentially constituting policy violations;
2. a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. summary of statements made at the hearing,
4. findings of fact supporting the determination;
5. conclusions regarding the application of the Policy to the facts;
6. a statement and rationale as to the finding for each allegation, including a determination regarding responsibility;
7. any disciplinary sanctions imposed on the respondent;
8. whether additional remedies will be provided to the complainant designed to restore or preserve the complainant's equal access to the university's educational programs or activities; and
9. the opportunity for appeal.

The written decision will be provided to the parties simultaneously.

When remedies are provided, they will be monitored by Student Affairs in the case of students and Human Resources in the case of employees throughout the complainant's enrollment, employment, and/or engagement with the university. The availability of a particular remedy may depend on the university's current relationships with the complainant or respondent.

## **H. Possible Sanctions**

In determining the sanctions, the following factors will be considered, to the extent the information is available in the case file: (1) the respondent's prior conduct history; (2) how the university has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the respondent has accepted responsibility for his/her actions; (7) any other

mitigating or aggravating circumstances, including the university's values.

The imposition of sanctions will typically take effect immediately, but may be stayed at the discretion of the Hearing Chair/Panel in consultation with the Title IX Coordinator. A respondent who separates from the university under any circumstance is not eligible for re-admittance or re-employment until they have successfully completed the terms of any sanctions imposed.

## I. Sanctions for Students and Student Groups

For students, the sanction may include removal from specific courses or activities, removal from university housing, suspension from the university, or dismissal. While sanctions may be of a punitive nature, they are intended to be educational as well. The possible sanctions that may be issued, individually or in combination, for students found responsible for Prohibited Conduct include:

1. **Statement of Concern.** A statement to students who are found in the presence of a policy violation, but who are not held formally accountable for that violation.
2. **Warning.** A notification that a student has committed certain violations and that continuance of such conduct will result in more severe disciplinary action.
3. **Educational Sanctions.** Sanctions include, but are not limited to, alcohol education, mandatory counseling assessment and adherence to professional counseling recommendations, research papers or projects, residence hall programming, group education program, etc.
4. **Behavioral Contract.** A contract allowing a student to successfully manage their behavior while remaining an active member of the university community. Failure to complete the agreed-upon provisions of the contract will result in suspension from the university, unless the student voluntarily withdraws. If suspended or withdrawn, the student must follow the readmission process outlined in the university Catalog before they may resume their studies at the university.
5. **Administrative Hold on Student Accounts.** A sanction used when students fail to comply with assigned tasks from a conduct hearing or Title IX investigation. This action precludes students from registering for classes and obtaining such documents as transcripts and diplomas. Once the outstanding sanction has been satisfactorily completed, the hold will be lifted.
6. **Disciplinary Service.** Service hours in a given area as a way to give back to the campus or local community.
7. **Fine/Restitution.** A monetary penalty for violations such as vandalism or damage to university property or the property of others. All fines must be paid by personal or cashier's check; they will not be applied to a student's account.

8. **University Restriction.** Restriction from certain buildings, events, activities, etc.
9. **University Housing Restriction.** Residence re-assignment, removal from university housing, or restrictions on where a student may live.
10. **Disciplinary Probation.** A specified period of time (ordinarily no less than the equivalent of one semester) during which a student is not in good disciplinary standing with the university.
11. **Administrative Withdrawal.** Withdrawal from a specific course, major, or academic department where a student or group of students violates expectations of the academic arena (classroom incivility, disruption, harassment of faculty or other students in the classroom).
12. **Deferred Suspension.** A sanction for students who have been held responsible for behavior that warrants suspension but where mitigating circumstances and additional sanctions may allow a student to remain in the community while these sanctions are being completed. Failure to complete any of the additional expectations by the stated deadlines will lead to the immediate implementation of suspension without further hearing. In addition, if a student is found responsible for any further university policy violations, at a minimum, the student will automatically be recommended for suspension for at least one full semester.
13. **Suspension.** Denial of the opportunity to continue at the university for a specified period of time (ordinarily no less than one semester), or indefinitely until the student's intervening record can support an application for readmission. While suspended, a student is not allowed to be on campus or to attend any official university event. In the event that additional sanctions are imposed in conjunction with the suspension, these sanctions will most likely be expected to be completed prior to an application for readmission to be considered. Upon return from suspension, the student will be placed on probationary status for one calendar year following completion of suspension. This sanction is noted permanently on the student's transcript.
14. **Dismissal.** Denial of the opportunity to continue as a student at the university. A student who has been dismissed is not eligible to apply for readmission. A student who is dismissed is not allowed to be on campus or to be at any official university event at any time. This sanction is noted permanently on the student's transcript.
15. **Club/Organizational Notification.** Written or verbal notification to club or organization representatives, officers or advisers.
16. **Loss of Privileges.** Loss of privileges such as removal of services and access to facilities, restriction of use of campus financial accounts and/or student activity fee funding, attendance or participation in activities/programs, loss of housing privileges, loss of athletic opportunities, etc..
17. **Social Probation.** Probationary status during which time a club/organization

is restricted from participating in social events, including hosting as an organization.

18. **Probation of Student Club/Organization.** Probationary status for a specified period, typically not less than one semester, during which time a club/organization will be required to fulfill specific conditions before reinstatement to good standing.
19. **Suspension of Student Club/Organization.** Separation from the university for a specified period, typically not less than one semester. Involves loss of all rights and privileges of student clubs/organizations, including the use of university facilities, and probationary status for one year following completion of suspension.
20. **Termination of Student Organization.** Permanent separation of a student club/organization from the university and removal of recognition of the club/organization.

For a student employee who is acting within the scope of their employment at the time of the incident, the sanction may include any permissible sanction for students or employees.

## **J. Sanctions for Employees or Employee Groups**

For employees, the sanction may include any form of responsive action or progressive discipline as set forth in the Employee Handbook, including training, referral to counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination of employment.

## **K. Sanctions for Faculty or Faculty Groups**

Appropriate sanctions may range from a warning, a reprimand, relevant training, referral to counseling, removal from certain responsibilities (e.g. supervising employees), paid leave or unpaid leave, non-renewal of contract, reassignment, termination of tenure and/or termination of employment.

## **L. Sanctions for Non-students and Non-employees**

Appropriate sanctions may include, but are not limited to, the following: warning, counseling, training, restricted campus access, restricted participation in university activities and events.

## **M. Appeal of Finding and/or Sanction**

Regardless of whether a complaint is resolved through the Investigator Resolution or the Hearing Resolution, both the complainant and respondent may

appeal the outcome, including a finding of responsibility (or no responsibility) and/or the sanction. In a request for an appeal, the burden of proof lies with the party requesting the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The limited grounds for appeal are as follows:

1. procedural irregularity that affected the outcome of the matter;
2. 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;
3. the Title IX Coordinator, investigator(s), adjudicator, or Hearing Chair/Panel 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; or
4. the decision of the investigators under Section XI.G.5, the Hearing Chair/Panel under Section XI.G.6, or the adjudicator under Section XI.G.5. was clearly erroneous based on the evidential record.

The Appeal Officer will be designated by the Title IX Coordinator, who will notify the parties of the individual so designated.

The Appeal Officer must be a neutral and impartial decision maker. The parties will be informed, in writing, of the specific Appeals Officer. Within one (1) calendar day of receiving the notice of the designated Appeals Officer, the complainant and the respondent may submit a written request to the Title IX Coordinator to replace the named Appeals Officer if there are reasonable articulable grounds to establish bias, conflict of interest or an inability to be fair and impartial. The designated Appeals Officer will only be replaced if the Title IX Coordinator determines bias precludes impartiality or constitutes conflict. Additionally, an Appeals Officer who has reason to believe they cannot make an objective determination must recuse themselves from the process.

A complainant or respondent must submit a written appeal to the Title IX Coordinator within five (5) business days of receipt of the Notice of Outcome. The written appeal must include the specific basis for the appeal and any information or argument in support of the appeal. Upon receipt of the appeal, the Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted to the Title IX Coordinator within three (3) business days from the other party's receipt of the appeal. Appeal responses are shared with the other parties, but no reply is permitted.

The Appeals Officer will make a decision regarding the written appeal and, within ten (10) business days of receipt of all appeal documents, notify the complainant and the respondent of the outcome and the rationale for the outcome. The Appeal Officer may affirm the finding(s); alter the finding(s); alter the sanctions; or request that additional steps be taken.

Appeal decisions are final. All appeal deadlines may be extended for good cause by the Title IX Coordinator. Any extension will be communicated to the parties.

## **XI. RECORDS**

As required under Title IX regulations, the university maintains records of all reports, complaints, supportive measures, investigations, evidence, informal resolutions, investigator decisions, hearings, hearing records, hearing outcomes, sanctions, remedies, and appeals governed by this policy. Such records will be maintained by the Title IX Coordinator for a period of at least seven (7) years after the last party graduates, leaves employment of the university, or otherwise is no longer engaged in a university program or activity. Records are accessible only to the extent permissible under applicable records confidentiality and disclosure laws, including FERPA, 20 U.S.C. 1232g, and the Clery Act, 20 U.S.C. 1092(f). At the conclusion of the process, consistent with confidentiality requirements, access to all initial and final investigative documents and reports will be restricted once the appeals process has been completed.

The university also maintains all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process for a period of at least seven (7) years. These materials are available on the university's website, as required under Title IX regulations.

## **XII. EDUCATION AND PREVENTION PROGRAMS**

The university recognizes that the most effective way to achieve a community free of Prohibited Conduct is to equip all community members with the skills to recognize and prevent these prohibited forms of conduct.

Throughout the year, the university offers educational programs to promote awareness of Prohibited Conduct. Prevention programs include an overview of the university's policies and procedures, relevant definitions, including Prohibited

Conduct, consent, discussion of the impact of alcohol and illegal drug use, safe and positive options for bystander intervention, and information about risk reduction. Incoming first-year students and new employees will receive primary prevention and awareness programming as part of their orientation.

The university offers regular primary prevention programs and ongoing education and awareness programs for all students and employees. Employees who play a key role in implementing the policy, including those faculty and staff who are likely to receive reports of Prohibited Conduct will receive regular training to assist with a timely, sensitive, respectful, and effective institutional response. The university is committed to ensuring that all employees understand how to respond to these reports of this nature.

### **XIII. POLICY MAINTENANCE**

The university will review the Sexual Harassment and Misconduct Policy annually.

### **XIV. COMPLIANCE**

#### **TITLE IX COMPLIANCE**

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex, including sexual and gender-based harassment and violence, sexual assault, dating violence, domestic violence and stalking in any federally funded education program or activity. The university will not tolerate such conduct. The university's Title IX Coordinator manages the resolution of all conduct prohibited by this policy. To make a report or discuss any aspect of this policy, please contact Interim Title IX Coordinator Tracy Lehnertz. at 507-457-1694 or Interim Deputy Title IX Coordinator Scott Walker at 507-457-8700, or email [TitleIX@smumn.edu](mailto:TitleIX@smumn.edu)

#### **CLERY ACT COMPLIANCE**

The Clery Act, as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA), imposes certain requirements on the university's response to Sexual Assault, Dating Violence, Domestic Violence, and Stalking. Post-secondary institutions who receive federal funding are required to report crime statistics in their daily crime log, Annual Security Report, and to the U.S. Department of Education. Key response and procedural protections under the Clery Act include issuing a timely warning when there is a serious or ongoing threat, instituting

protective measures (referred to as supportive measures below), using trained and impartial investigators and decision-makers, reaffirming the right of individuals to decide whether to report or seek assistance from law enforcement and/or campus authorities, allowing individuals to be accompanied by an advisor of their choice during the process, allowing timely and equal access to any information used in a disciplinary proceeding, and providing written notice of the outcome and rationale.