



UNIVERSITY OF  
CHARLESTON

**POLICY PROHIBITING TITLE IX SEXUAL  
HARASSMENT,  
TITLE IX SEXUAL HARASSMENT GRIEVANCE  
PROCEDURES, -and-  
POLICY ON PREGNANCY AND PARENTING**

**\*\*As of 8.15.24, the State of West Virginia is currently under an injunction that does not allow the 2024 regulations to be implemented. This policy will be updated and distributed when the injunction is lifted and the 2024 regulations are implemented for the State of West Virginia.\*\***

## POLICY PROHIBITING TITLE IX SEXUAL HARASSMENT

### POLICY STATEMENT

The University of Charleston is committed to creating and maintaining a learning and work environment that is free from discrimination based on sex.

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

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

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

The University’s Title IX Compliance Coordinator is responsible for administering the Policy and related procedures. Any inquiries about the Policy or procedures should be referred to the University’s Title IX Compliance Coordinator, Virginia Moore, who may be contacted as follows:

Office of Student Life  
Geary Student Union Office 309  
Charleston, WV 25304  
304-357-4987

[virginiamoore@ucwv.edu](mailto:virginiamoore@ucwv.edu) or [titleix@ucwv.edu](mailto:titleix@ucwv.edu)

### APPLICABILITY AND SCOPE

This Policy applies to all members of the University community. This includes, but is not limited to, full and part-time students; full and part-time employees, including faculty members, staff, student employees, and temporary and contract employees; and certain third parties, including applicants for admission and employment, visitors, employees of University contractors, and individuals who are participating

in a University Education Program or Activity, but who are neither enrolled in an academic program/course at the University nor employed by the University (e.g. individuals participating in a University summer camp or attending a University Education Program or Activity by invitation or that is open to the public). The Policy applies regardless of the gender, gender identity, or sexual orientation of the parties.

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

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

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

- [The University of Charleston Student Handbook](#)
- [The University of Charleston Faculty Manual](#)
- [The University of Charleston Employee Handbook](#)

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

### **Online Harassment and Misconduct**

The policies of the University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Recipient's education program and activities or use Universities networks, technology, or equipment.

While the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge

porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Recipient community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the Universities control (e.g., not on the Universities networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the Recipient only when such speech is made in an employee's official or work-related capacity.

## DEFINITIONS

### Definitions of Conduct Prohibited by this Policy

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

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

Sexual Assault includes the following:

- **Rape:** the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her/their temporary or permanent mental or physical incapacity;

- **Sodomy:** oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her temporary or permanent mental or physical incapacity;
  - **Sexual Assault with an Object:** to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her temporary or permanent mental or physical incapacity;
  - **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
  - **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
  - **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent.
- **Domestic violence:** a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of West Virginia.
  - **Dating violence:** an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the (1) length of the relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.
  - **Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his/her/their safety or the safety of others, or (2) suffer substantial emotional distress.

**Retaliation:** an adverse action or other form of negative treatment, including but not limited to intimidation, threats, coercion, discrimination or harassment, carried out in response to a good-faith reporting of or opposition to Title IX Sexual Harassment;

an individual's or group's participation, including testifying or assisting in the University's Title IX Procedures; an individual's or group's refusal to participate in the University's Title IX Procedures; or other form of good faith opposition to what an individual reasonably believes to be Title IX Sexual Harassment under this Policy.

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

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

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

### **Additional Definitions**

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

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

**Consent:** An affirmative decision to engage in mutually acceptable sexual activity freely given by clear actions and/or words. Consent may not be inferred from silence, passivity, or lack of active resistance alone.

- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- An individual is unable to freely give consent when the individual is incapacitated (arising, for example, from the use of alcohol or other drugs or when the individual is passed out, asleep, unconscious, or mentally or physically impaired) (Defined further below). An individual is unable to freely give consent when the individual is coerced into sexual activity, such as, for example, through the use of physical force, threat of physical or emotional harm, undue pressure, isolation, or confinement.
- Consent may be withdrawn at any time. Once withdrawn, sexual activity must cease. The perspective of a reasonable person will be the basis for determining whether a Respondent knew, or reasonably should have

known, whether a Complainant was able to freely give consent and whether consent was given. Additionally, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for Prohibited Conduct.

**Coercion:** the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person decides not to participate in a particular form of sexual activity, decides to stop, or decides not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

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

**Formal Complaint:** a document filed by a Complainant or signed by the Title IX Compliance Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Title IX Sexual Harassment. A Formal Complaint may be filed with the Title IX Compliance Coordinator in person, by mail, or by email at [titleix@ucwv.edu](mailto:titleix@ucwv.edu).

**Incapacitation:** a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

- Indicators that an individual may be *incapacitated* include, but are not limited to, inability to communicate coherently, inability to dress or undress without assistance, clumsiness, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, emotional volatility, difficulty walking without assistance, loss of coordination, or inability to perform other physical or cognitive tasks without assistance.
- An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism.

- An individual who is incapacitated is unable to give Consent to sexual activity. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state where the individual is unaware that sexual conduct is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to Consent to sexual activity.
- In evaluating *Consent* in cases of alleged incapacitation, the University asks two questions: (1) *did the person initiating sexual activity know that the other party was incapacitated? And if not, (2) should a sober, reasonable person in the same situation have known that the other party was incapacitated?* If the answer to either of these questions is “YES,” Consent was absent and the conduct is likely a violation of this Policy.
- No matter the level of an individual’s intoxication, if that individual has not agreed to engage in sexual activity, there is no Consent.

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

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

**Responsible Employee:** an individual designated by University policy who is required to report information regarding Title IX Sexual Harassment to the Title IX Compliance Coordinator.

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

## REPORTING AND RESOURCE OPTIONS

### Reporting Title IX Sexual Harassment to the University

The University encourages all individuals to report allegations of Title IX Sexual Harassment directly to the Title IX Compliance Coordinator or to an Official with Authority (see Appendix A for a complete list of Officials with Authority). Any person,

whether or not they are the Complainant, may report Title IX Sexual Harassment to the Title IX Compliance Coordinator or to a Deputy Title IX Compliance Coordinator.

***The University Title IX Compliance Coordinator***

Name: Virginia Moore  
Position: Vice President & Dean of Students  
On Campus Address:  
Geary Student Union 309  
2300 MacCorkle Ave. SE Charleston, WV 25304  
Email: [virginiamoore@ucwv.edu](mailto:virginiamoore@ucwv.edu)  
Phone Number: 304-357-4987

***The University Deputy Title IX Compliance Coordinators***

Name: Dr. Daniel Silber  
Position: Provost  
On Campus Address:  
201 Riggleman Hall  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: [danielsilber@ucwv.edu](mailto:danielsilber@ucwv.edu)  
Phone Number: 304 357-4711

Name: Janice Gwinn  
Position: Director of Human Resources  
On Campus Address:  
202 Riggleman Hall  
2300 MacCorkle Ave. SE, Charleston, WV 25304  
Email: [janicegwinn@ucwv.edu](mailto:janicegwinn@ucwv.edu)  
Phone Number: 304 357-4383

Name: Nicole Rupe-Harold  
Position: Registrar  
On Campus Address:  
Student Solutions Center Worley Building  
167 Dye Drive, Beckley, WV 25801  
  
Student Solutions Center Riggleman Hall  
167 Dye Drive, Beckley, WV 25801  
Email: [nicolerupe@ucwv.edu](mailto:nicolerupe@ucwv.edu)  
Phone Number: 304 357-4747

Reporting an incident of Title IX Sexual Harassment to the Title IX Compliance Coordinator or an Official with Authority allows the University to provide Supportive

Measures (as described below), but does not necessarily result in the initiation of a grievance procedure.

A report may be made in person, in writing, by telephone, or by email at [titleix@ucwv.edu](mailto:titleix@ucwv.edu).

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

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

### **Reports Involving a Minor (Child)**

WV Code §49-6A-2 states that when any mandated reporter has reasonable causes to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately, and not more than 48 hours after suspecting this abuse, report the circumstances or cause a report to be made to the WV Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State Police and any law enforcement agency having jurisdiction to investigate the complaint. Provided, however, that any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency, or a designated agent thereof, who shall report or cause a report to be made.

For the purpose of this section, the term "sexual abuse" will refer to all sex crimes perpetrated against children including but not limited to sexual intercourse, sexual intrusion and sexual contact.

"Child" means any person under eighteen years of age not otherwise emancipated by law.

### **Required Reports by Responsible Employees**

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

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

- All University of Charleston full time or part-time faculty, staff, Board of Trustee members or Residence Life paraprofessional staff as well as third-parties with a presences at the University of Charleston.

### *Anonymous Notice to a Responsible Employee*

At the request of a Complainant, notice may be given by a Responsible Employee to the Title IX Coordinator anonymously, without identification of the Complainant. The Responsible Employee cannot remain anonymous themselves.

[If a Complainant has requested that a Responsible Employee maintain the Complainant's anonymity, the Responsible Employee may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Responsible Employee can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information].

Anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Responsible Employee, but all other details must be shared with the Title IX Coordinator. The Responsible Employee will not be able to maintain requests for anonymity for Complainants who are minors, based on the state reporting of abuse requirements.

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

### **Emergency Resources and Law Enforcement**

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

**Law Enforcement Assistance:** Members of the University community who believe their safety or the safety of others is threatened or who have experienced or witnessed

Title IX Sexual Harassment that may be criminal in nature should immediately call the Office of Safety and Security (Charleston Campus) at 304-357-4857 or 304-859-2755, the Office of Safety and Security (Beckley Campus) at 304-929-1653 or 304-890-2722 or call 911 to reach local law enforcement.

- Office of Safety and Security (Charleston Campus)  
Geary Student Union Office 104  
304-357-4857 or 304-859-2755
- Office of Safety and Security (Beckley Campus)  
158 Dye Drive  
304-929-1653 or 304-890-2722
- [Charleston Police Department](#)  
501 Virginia St. East, Charleston, WV 25301  
304-348-6460 (non-emergency)  
911 (emergency)

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

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

- Counseling and Outreach Services located in the GSU 301, Charleston Campus  
304-357-4862 or [uc-counseling@ucwv.edu](mailto:uc-counseling@ucwv.edu)
- [REACH- Rape Education, Advocacy, Counseling, and Healing](#)  
1021 Quarrier Street, Suite 414  
Charleston, WV 25301  
304-340-3676  
Confidential Toll Free 24-Hour Hotline 1-800-656-HOPE
- [Women's Resource Center- Beckley](#)  
1-888-825-7836
- [Rape, Abuse, and Incest National Network \(RAINN\)](#)  
Crisis hotline – 1-800-656-HOPE
- Rape, Abuse, and Incest National Network (RAINN) online hotline –  
<https://ohl.rainn.org/online/>

- Charleston Area Medical Center
  - [Memorial Hospital](#)  
3200 MacCorkle Ave SE,  
Charleston, WV 25304  
[\(304\) 388-5432](#)
  - [Women's and Children's Hospital](#)  
800 Pennsylvania Ave N,  
Charleston, WV 25302  
[\(304\) 388-5432](#)
  - [General Hospital](#)  
501 Morris St,  
Charleston, WV 25301  
[\(304\) 388-5432](#)

## CONFIDENTIAL RESOURCES

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

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

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

### *Confidential Reporter*

Position: Campus Counselor

On Campus Address:

Geary Student Union 301

2300 MacCorkle Ave. SE, Charleston, WV 25304

Email: [uc-counselor@ucwv.edu](mailto:uc-counselor@ucwv.edu)

Phone Number: 304-357-4862

## TIMEFRAME FOR REPORTING

In order to maintain and support a community that is respectful and free from Title IX Sexual Harassment and to maximize the University's ability to respond promptly and effectively, the University urges individuals to come forward with reports of Title IX Sexual Harassment as soon as possible. The sooner a report is made, the more

effectively it can be investigated, e.g. while witnesses are still available, memories are fresh, and documentation may still be available.

***There is, however, no time limitation for reporting Title IX Sexual Harassment.*** However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

## **AMNESTY**

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

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

## **PARTICIPANT PRIVACY AND CONFIDENTIALITY**

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

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

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

### **FEDERAL TIMELY WARNING OBLIGATION**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

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

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

If the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Compliance Coordinator will not proceed under this Policy and its Procedures. Instead, if the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Compliance Coordinator may take the following action: (1) refer the matter to the Assistant Dean of Students per the Student Code of Conduct or the Director of Human Resources per the Employee Handbook; or (2) if the reported conduct would not constitute a violation of any University Policy, take no further action. The Title IX Compliance Coordinator will notify the Complainant of the action or referral.

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

- discuss the availability of Supportive Measures;

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

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

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

## **SUPPORTIVE MEASURES**

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

Supportive Measures are available regardless of whether the matter is reported to the University for the purpose of initiating any formal grievance proceeding and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures retains the right to file a Formal Complaint, either

at the time the Supportive Measure is requested or at a later date. Any Complainant that requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint pursuant to this Policy.

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

Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the University community. The Title IX Compliance Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures.

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

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

- Academic support services and accommodations, including the ability to reschedule classes, exams and assignments, transfer course sections, or withdraw from courses without penalty;
- Academic schedule modifications (typically to separate Complainant and Respondent);
- Work schedule or job assignment modifications (for University employment);
- Changes in work or housing location;
- An escort to ensure safe movement on campus;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Mutual no contact directives (to instruct individuals to stop all attempts at

communication or other interaction with one another);

- Placing limitations on an individual's access to certain University facilities or activities;
- Work schedule or job assignment modifications, including suspending employment with or without pay consistent with any applicable written procedures (for University employment);
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus; or
- A combination of any of these measures.

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

#### **EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE**

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

**Administrative Leave of an Employee/Faculty-Respondent.** The University may place an Employee/Faculty-Respondent on administrative leave during the pendency of a Formal Complaint. An employee alleged to have committed Title IX Sexual Harassment will not be placed on administrative leave unless and until a Formal Complaint has been filed with the University. The University President will make the decision to remove an Employee/Faculty-Respondent from active participation at the University based on an individualized assessment and risk analysis. The University will continue regular salary and benefits of the employee during the period of imposed administrative leave.

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

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

#### **Filing a Formal Complaint**

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

When a Complainant does not wish to file a Formal Complaint on their own behalf, the Title IX Compliance Coordinator may, in their discretion, file a Formal Complaint by signing the Formal Complaint form. When the Title IX Compliance Coordinator signs a Formal Complaint, the Title IX Compliance Coordinator is not the Complainant or otherwise a party. While the Complainant may choose to not participate in the grievance process initiated by the Title IX Compliance Coordinator's signing of a Formal Complaint of Title IX Sexual Harassment, the Complainant will still be treated as a party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice of outcome. At no time will the University coerce or retaliate against a Complainant in order to convince the Complainant to participate in the grievance process.

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

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

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

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

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

If the Title IX Compliance Coordinator determines that the allegations in the Formal Complaint do not meet the definition of Title IX Sexual Harassment or that not all of the conditions above are satisfied, the University will dismiss the Formal Complaint for Title IX purposes. However, if the University dismisses the Formal Complaint for Title IX purposes, it may, in its discretion, address the Formal Complaint under the Student Code of Conduct or the Employee Handbook/Faculty Manual policies and procedures, as appropriate.

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

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

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

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

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

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

The University retains discretion on a case-by-case basis to determine if it will dismiss a Formal Complaint for Title IX purposes based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean the

University will automatically dismiss the Formal Complaint for Title IX purposes as is the case with respect to the conditions listed in the “Mandatory Dismissal” section above. Instead, the University will determine if such a decision is appropriate under the circumstances.

If the University dismisses a Formal Complaint for Title IX purposes, it may in its discretion address the Formal Complaint under the Student Code of Conduct or the Employee Handbook/Faculty Manual policies and procedures, as appropriate.

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

### **Consolidation of Formal Complaints**

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

### **Notice of Allegations**

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

- Notice that the Informal and Formal Resolution processes comply with the requirements of Title IX;
- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who may inspect and review evidence;

- Information regarding the availability of support and assistance through University resources and the opportunity to meet with the Title IX Compliance Coordinator in person to discuss resources, rights, and options;
- Notice of the University’s prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that the University will take prompt action when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that the Student Code of Conduct A-4: False Reporting policy and the Employee Handbook Acting in Good Faith policy prohibits knowingly making false statements and knowingly submitting false information during the grievance process.

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

## **TIMELINES**

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

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

## **ADVISORS**

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

Prior to the hearing, a party’s advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party. And, at the hearing, an advisor’s role is limited to quietly conferring with the Complainant/Respondent through written correspondence or whisper. An advisor may not speak for the party they are supporting or address any other participant or the Hearing Officer except as necessary to conduct cross-examination as explained below. Advisors must conduct the cross-examination of all witnesses directly, orally,

and in real time at the hearing. Neither party may conduct cross-examinations personally.

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

## **INFORMAL RESOLUTION**

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

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

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

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

Informal resolution remedies may include but are not limited to mandatory education, counseling, or other resolutions as determined. The Title IX Compliance Coordinator will set a date for the mediation to take place. At the conclusion of a successful informal resolution process, both the Complainant and the Respondent will sign a statement with the reached agreement, stating that they are satisfied with the

outcome and that their case will be concluded.

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

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

## FORMAL RESOLUTION PROCESS

### The Investigation

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

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

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

### Investigation Timeframe

The investigation of a Formal Complaint will be usually concluded within 60 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted if the process will go beyond the 60-day timeframe.

### Interviews and Gathering Evidence

**Interviews.** The investigator will interview the Complainant and Respondent in order to review the disciplinary process and to hear an overview of each party's account of the incident. Before any interview, the individual being interviewed will be informed in writing of the date, time, location, participants, and purpose of the

interview. Such notice will be provided with sufficient time for the individual to prepare for the interview. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional Title IX Sexual Harassment under the Policy.

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

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

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

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

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

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

The parties will have ten (10) days to review the draft investigative report and evidence and to submit a written response. The parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigation. Any party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report.

Generally, only information that is provided to, or otherwise obtained by, the investigator during the course of the investigation will be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the Hearing Officer must be provided to the investigator prior to the final investigation report and will not be allowed during the hearing unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the Hearing Officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

The investigator will review the feedback to the report, interview additional relevant witnesses (as the investigator deems appropriate).

### **Final Investigative Report**

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

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

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

After the Title IX Compliance Coordinator reviews the report and any further investigation, if necessary, is completed, the final report will be shared with the Complainant, Respondent, and their advisors. The parties will have ten (10) business days to respond in writing to the final investigative report. The Complainant and Respondent must also submit in writing by that time the names of any witnesses the

Complainant/Respondent wishes to testify and a summary of information each witness would provide through their testimony. Names of witnesses provided by the Complainant/Respondent will be shared with the other party.

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

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

The matter will then be referred to a Hearing Officer.

## **HEARING PROCEDURE**

### **The Hearing Officer**

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

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

### **Notice**

Both the Complainant and the Respondent will be notified in writing of the date and time of the hearing and the name of the Hearing Officer at least 10 calendar days in advance of the hearing, with the hearing to occur no fewer than ten days after the parties are provided with the final investigative report. The Hearing Officer will receive the names of the Complainant and the Respondent at the same time.

### **Bias and Conflict Of Interest**

The Hearing Officer must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants and respondents generally. If the Hearing Officer has concerns that they cannot conduct a fair or unbiased review, the Hearing Officer may report those concerns to the Title IX Compliance Coordinator and a different Hearing Officer will be assigned.

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

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

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

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

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

### **Participation of Advisors**

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

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

### **Participation of Parties And Witnesses**

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

If a party or witness elects to not participate in the live hearing, or participates in the hearing but refuses to answer questions posed by the other party through their advisor, the Hearing Officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. The Hearing Officer will never draw any inferences based solely on a parties or witness's absence or refusal to answer questions.

**"Statements"** for purposes of the hearing means factual assertions made by a party or witness. Statements might include factual assertions made during an

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

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

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

### **Witnesses**

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

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

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

The Title IX Compliance Coordinator will arrange for there to be an audio recording, or audiovisual recording, or transcript (or combination) of the hearing, which will be made available to the parties for review and kept on file by the University for seven years.

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

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

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

virtually through the use of remote technology so long as the parties and Hearing Officer are able to hear and see one another in real time.

### Hearing Structure

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

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

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

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

## **Determination Regarding Responsibility**

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

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

## **Remedies and Sanctions**

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

Upon a finding of responsibility, the Complainant will be provided with remedies designed to restore access to the University's educational and employment programs and activities.

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

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

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

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

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

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

## APPEALS

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

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

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

The only grounds for appeal are:

- New information not reasonably available at the time of the decision/hearing that could affect the outcome of the matter;
- The Title IX Compliance Coordinator, investigator, or Hearing Officer had a conflict of interest or bias for or against complainants or respondents

generally or the individual Complainant or Respondent specifically that affected the outcome of the matter; and/or

- Procedural error(s) that affected the outcome of the matter.

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

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

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

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

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

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

## **CONFIDENTIALITY**

The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Title IX Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20

U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or other proceeding arising thereunder.

## **RECORD RETENTION**

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

## **STUDENT PREGNANCY AND PARENTING POLICY**

The University of Charleston is committed to creating an accessible and inclusive environment for pregnant and parenting students.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in education programs or activities including academic, educational, extracurricular, athletic, and other programs or activities of schools. This prohibition includes discrimination against pregnant and parenting students.

Students may request adjustments based on general pregnancy needs or accommodations based on a pregnancy-related condition. See below for more information on each process.

### **What types of adjustments may I request?**

Students seeking a pregnancy adjustment are to complete a **Pregnant and Parenting Student Self Identification Form** noting the requested reasonable adjustment. Specific adjustments will be handled on a case by case basis and will depend on medical need and academic requirements. Some examples include:

- a larger desk
- breaks during class, as needed
- permitting temporary access to elevators
- rescheduling tests or exams
- excusing absences due to pregnancy or related conditions
- submitting work after a deadline missed due to pregnancy or childbirth
- providing alternatives to make up missed work
- allowing excused absences for parenting students (both mothers and fathers) who need to take their children to doctors' appointments or to take care of their sick children
- Time and space to express/pump break milk

This list is not intended to be inclusive, but merely illustrative of adjustments/accommodations that may be appropriate to the student's needs.

### **How do I request adjustments?**

Adjustment requests should be directed to one of the appropriate University staff members listed below. The University staff member will discuss the pregnant or parenting individual's needs, and may ask for documentation that supports the requested adjustments.

### **Requests from students should be directed to:**

Virginia Moore, MA  
Title IX Compliance Coordinator  
[virginiamoore@ucwv.edu](mailto:virginiamoore@ucwv.edu) or [titleix@ucwv.edu](mailto:titleix@ucwv.edu)

### **How do I request accommodations for pregnancy-related complications?**

In certain situations, a student may be entitled to a reasonable accommodation due to a pregnancy-related condition. Accommodation requests should be directed to one of the appropriate University staff members listed below. The University staff member will discuss the pregnant or parenting individual's needs, and may ask for documentation that supports the requested accommodations.

### **Requests from students should be directed to:**

Virginia Moore, MA  
Title IX Compliance Coordinator  
[virginiamoore@ucwv.edu](mailto:virginiamoore@ucwv.edu) or [titleix@ucwv.edu](mailto:titleix@ucwv.edu)

## **REVISION OF THIS POLICY AND PROCEDURES**

This Policy and procedures supersede any previous policy(ies) addressing sexual harassment, retaliation, and pregnancy and parenting as outlined in this policy. This policy will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate break periods. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

## APPENDIX A

The following is a list of University officials designated as “Officials with Authority.” An Official with Authority, as defined in this Policy, refers to an official of the University with the authority to institute corrective action on behalf of the University, and notice to whom causes the University to respond to Title IX Sexual Harassment.

***Virginia Moore, Title IX Compliance Coordinator & Vice President/Dean of Students***

Geary Student Union, Office 309

Phone: 304-541-6438(cell) 304-357-4987(office)

***Martin Roth, President***

Riggleman Hall, Office 200

Phone: 304-357-4713 (office)

***Daniel Silber, Provost & Deputy Title IX Coordinator***

Riggleman Hall, Office 201

Phone: 304-357-4711(office)

***Cleta Harless, Executive Vice President & Chief Financial Officer***

Riggleman Hall, Office 203

Phone: 304-357-4738 (office)

***Elizabeth Wolfe, Executive Vice President for Enrollment Management***

Riggleman Hall, Office 224

Phone: 304-357-4839 (office)

## APPENDIX B: STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a University -implemented no contact order or a no-trespassing order against a nonaffiliated third party when a person has engaged in or threatens to engage

in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.

- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from University staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.

- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.

- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.