

Northwest University

Heightened Sex-based Harassment Grievance Procedure

- 1. Purpose.** Northwest University (the “University”) has adopted this Heightened Sex-based Harassment Grievance Procedure (“Heightened Procedure”) to provide for resolution of Complaints of Sex-based Harassment involving a student Complainant or student Respondent in violation of the University’s Nondiscrimination, Harassment and Sex-based Harassment Policy (“Nondiscrimination Policy”). Capitalized terms that are defined in the Nondiscrimination Policy have the same meaning in this Heightened Procedure.

When a Complainant or Respondent is both a student and an employee of the University, the University will make a fact-specific inquiry to determine whether the requirements of the Heightened Procedures apply. In making this determination, the University will, at a minimum, consider whether the Party’s primary relationship with the University is to receive an education and whether the alleged Sex-based Harassment occurred while the Party was performing employment-related work.

Any student, employee, or other individual who is participating or attempting to participate in the University’s Education Program or Activity who believes he or she has been subject to Sex-based Harassment is encouraged to file a Complaint with the Title IX Coordinator.

- 2. Making Complaints.** Please see Section 2 of the Nondiscrimination Policy for information about how, when, and where to file a Complaint. Generally, Complaints regarding Sex-based Harassment should be reported to the Title IX Coordinator or a Deputy Title IX Coordinator. Contact information for the Title IX Coordinator and the Deputy Title IX Coordinators is below:

Title IX Coordinator

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Deputy Title IX Coordinators

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3. Heightened Procedure – Basic Requirements.

3.1 Equitable Treatment. This Heightened Procedure is intended to treat Complainants and Respondents equitably. The University will comply with the requirements of this Heightened Procedure regarding investigation and evaluation of evidence before imposition of any Disciplinary Sanctions against a Respondent. Nothing in this Heightened Procedure prohibits the University from taking action against a student, an employee, or others for violation of any other University policy.

3.2 Impartiality and Training.

- A. No Conflict of Interest.** The Title IX Coordinator, Deputy Title IX Coordinators, Equal Opportunity Investigators, Decisionmakers, Appeals Officers, Informal Resolution Facilitators, and other persons with authority to modify or terminate Supportive Measures must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. As long as there is no conflict of interest or bias, a Decisionmaker may be the same person as the Title IX Coordinator or Equal Opportunity Investigator.
- B. Training.** The Title IX Coordinator, Deputy Title IX Coordinators, Equal Opportunity Investigators, Decisionmakers, Appeals Officers, Informal Resolution Facilitators, and other persons with authority to modify or terminate Supportive Measures must receive appropriate training related to their responsibilities promptly upon hire or change of position that alters their duties under Title IX, and annually thereafter. The training must not rely on sex stereotypes. All materials used to provide training are available for inspection by members of the public upon request. Training includes the following:
- (1) The University’s obligation to address sex Discrimination in its Education Program or Activity;
 - (2) The scope of conduct that constitutes sex Discrimination under Title IX and its regulations, including the definition of Sex-based Harassment;
 - (3) All applicable notification, information, and reporting requirements in the Nondiscrimination Policy;
 - (4) How to conduct an investigation and grievance process (including hearings, appeals, and informal resolution process, as applicable);
 - (5) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 - (6) The meaning and application of the term “Relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of Relevance;

- (7) The rules and practices associated with the University's informal resolution process;
- (8) Limitations on the ability to disclose personally identifiable information obtained in connection with complying with Title IX Regulations;
- (9) The University's obligation to offer Supportive Measures;
- (10) The terms of the General Procedure and this Heightened Procedure; and
- (11) Additionally, for Title IX Coordinators, all of the above, plus the University's recordkeeping system and requirements, how to provide equal access to an Education Program or Activity in connection with Pregnancy or Related Conditions, specific responsibilities for the Title IX Coordinator under the Nondiscrimination Policy, and any other training necessary to coordinate the University's compliance with Title IX and the Nondiscrimination Policy.

3.3 Presumption. This Heightened Procedure will operate and be conducted on the presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Heightened Procedure.

3.4 Timeframes. This Heightened Procedure contains reasonably prompt timeframes for the major stages of the grievance process, including reasonably prompt timeframes for evaluation (i.e., the University's decision whether to dismiss or investigate a Complaint), investigation, determination, and appeal.

- A. Delay by Informal Resolution Process.** The intended timeframes under this Heightened Procedure may be delayed if the Parties choose to pursue an informal resolution process.
- B. Extensions.** A limited extension of timeframes may be granted on a case-by-case basis for good cause. Good cause may include the absence of a Party or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of a disability.
- C. Notice.** Each Party will receive written notice of any permitted delay or extension and the reason for that action.

3.5 Confidentiality. The University will take reasonable steps to protect the privacy of the Parties and witnesses during the grievance process. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance process. The Parties cannot engage in Retaliation, including against witnesses.

3.6 Objective Evaluation of Evidence and Credibility. This Heightened Procedure requires an objective evaluation of all evidence that is Relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are Relevant:

- A.** Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- B.** A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless the University obtains that Party's or witness's voluntary, written Consent for use in this Heightened Procedure; and
- C.** Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-based Harassment or preclude determination that Sex-based Harassment occurred.

3.7 Disclosure of Possible Disciplinary Sanctions and Remedies.

- A. Imposition of Sanctions and Remedies.** Disciplinary Sanctions may be imposed on a Respondent who is determined to be responsible. Conduct history may be taken into account in imposing sanctions. Failure to fulfill the terms of sanctions may result in additional and more severe sanctions. Sanctions may be up to dismissal for students or up to termination of employment for employees. Remedies may also be recommended or required, including changes or recommendations to correct or improve a situation, training, process, policy, or procedure; initiate a new program, training, education, or study; or any other Remedy to improve access to the University's Educational Program or Activity or reduce Sex-based Harassment at the University.
- B. Possible Sanctions and Remedies.** The range of Disciplinary Sanctions or Remedies that may be imposed include the following, among others:

- (1) a written warning or reprimand;
- (2) disciplinary probation;
- (3) restriction on, or exclusion from, participating in certain programs or activities;
- (4) participating in counseling;
- (5) paying restitution or fines;
- (6) performing community service;
- (7) being excluded from areas on campus;
- (8) restrictions on, or loss of, rights or privileges (including student, staff, or faculty positions, honorary titles, recognitions, committee membership, etc.);
- (9) being restrained from contact with specific individuals or organizations;
- (10) suspension (termination of student status for a specified period of time and with specific conditions);
- (11) transfer to a different residential living facility on campus;
- (12) temporary or permanent loss of opportunity to live on campus;
- (13) paid or unpaid leave;
- (14) dismissal (termination of student status);
- (15) reduction in pay;
- (16) demotion;
- (17) loss or deferral of opportunity for promotion or increase in pay; and
- (18) termination of employment.

C. Faculty Members. If the Respondent is a faculty member, and the person determining Disciplinary Sanctions is considering dismissal of the faculty member for cause, then the process by which a decision is made regarding the Complaint will include the procedure described in the faculty member's contract and Faculty Manual.

3.8 Supportive Measures. The University may provide Supportive Measures to Complainants and Respondents. Supportive Measures are described in the University's Nondiscrimination Policy.

A. Examples of Supportive Measures: Supportive Measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more Parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to Sex-based Harassment.

4. Initial Complaint Evaluation. Upon receipt of a Complaint, the University will conduct an initial evaluation to determine whether to dismiss or investigate the Complaint. This evaluation will be completed within 5 Business Days of receiving the Complaint of Sex-based Harassment.

4.1 Complaint Dismissal. The University may dismiss a Complaint of Sex-based Harassment if:

A. The University is unable to identify the Respondent after taking reasonable steps to do so;

- B.** The Respondent is not participating in the University's Education Program or Activity and is not employed by the University;
- C.** The University obtains the Complainant's voluntary withdrawal in writing of any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Discrimination or Harassment under the Nondiscrimination Policy or Title IX even if proven (and if the conduct that remains alleged would constitute Discrimination but not Sex-Based Harassment if proven, the Complaint may be addressed under the General Procedure); or
- D.** The University determines the conduct alleged in the Complaint, even if proven, would not constitute Sex-based Harassment under Title IX. Before dismissing the Complaint under this paragraph, the University will make reasonable efforts to clarify the allegations with the Complainant.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will simultaneously notify the Complainant and Respondent in writing of the dismissal and the basis for the dismissal.

4.2 Dismissal Appeal. The University will notify the Complainant in writing that a dismissal may be appealed on the basis outlined in the Appeals section. If dismissal occurs after the Respondent has been notified of the allegations, then the University will simultaneously notify the Complainant and Respondent in writing that the dismissal may be appealed on the same basis. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section.

4.3 University's Obligations. Dismissal of a Complaint does not prohibit action by the University under another University policy or procedure regarding the alleged conduct. When a Complaint is dismissed, the University will, at a minimum:

- A.** Offer Supportive Measures to the Complainant as appropriate;
- B.** If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and
- C.** Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex Discrimination (including Sex-based Harassment) does not continue or recur within the University's Education Program or Activity.

5. Notice of Allegations. Upon initiation of the University's Heightened Procedure, and at least 5 Business Days prior to any initial interview, the Title IX Coordinator will provide a written notice

of allegations to the Parties whose identities are known. This notice of allegations will include the following information:

- A.** The University's Heightened Procedure and any informal resolution process;
- B.** Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex Discrimination (including Sex-based Harassment), and the date(s) and location(s) of the alleged incident(s), to the extent the information is available to the University;
- C.** A statement that Retaliation is prohibited;
- D.** A statement that the Respondent is presumed not responsible for the alleged Sex-based Harassment until a determination is made at the conclusion of the grievance process, and that prior to such a determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
- E.** The Parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- F.** The Parties are entitled to an equal opportunity to access the Relevant and not otherwise impermissible evidence; and
- G.** A statement that the University prohibits the Parties from knowingly making false statements or knowingly submitting false information during the grievance process and that those actions constitute a material violation of the University's policy.

The University will not discipline a Party, witness, or other person participating in the Heightened Procedure for making a false statement based solely on the University's determination whether Sex-based Harassment occurred.

If, in the course of an investigation, the University decides to investigate additional allegations of Sex-based Harassment by the Respondent toward the Complainant that are not included in the written notice or that are included in a consolidated Complaint, it will provide written notice of the additional allegations to the Parties whose identities are known.

If the University has reasonable concerns for the safety of any person as a result of providing this notice, the University may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

- 6. Informal Resolution.** In lieu of resolving a Complaint through the University's Heightened Procedure, at any time prior to determining whether Sex-based Harassment occurred, the University may offer to a Complainant and Respondent an informal resolution process, unless such a process would conflict with Federal, State, or local law. The goal of informal resolution is to conclude the matter to the satisfaction of the Parties quickly and informally and to protect

the safety of all Parties and the University's educational environment. In most cases an informal resolution process should be completed within 20 days after all Parties agree to pursue an informal resolution.

- A.** The University has discretion to determine whether it is appropriate to offer an informal resolution process when it receives information about conduct that reasonably may constitute Sex-based Harassment under Title IX and may decline to offer informal resolution despite one or more of the Parties' wishes. Circumstances when the University may decline to allow informal resolution include but are not limited to when the University determines that the alleged conduct would present a future risk of harm to others.
- B.** If the University provides the Parties an informal resolution process, the Title IX Coordinator will take other appropriate prompt and effective steps to ensure that sex Discrimination (including Sex-based Harassment) does not continue or recur within the University's Education Program or Activity.

6.1 Parties' Consent. The University will not require or pressure the Parties to participate in an informal resolution process. An informal resolution process will only occur if each Party provides voluntary written consent. The University will not require waiver of the right to an investigation and determination of a Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

6.2 Notice of Rights. Before initiation of an informal resolution process, the University will provide written notice to both Parties that explains:

- A.** The allegations;
- B.** The requirements of the informal resolution process;
- C.** That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and initiate or resume the Heightened Procedure;
- D.** That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming grievance procedures arising from the same allegations;
- E.** The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- F.** What information the University will maintain and whether and how the University could disclose such information for use in the University's grievance procedures if grievance procedures are initiated or resumed.

6.3 Informal Resolution Facilitator. The Title IX Coordinator will ensure that any person who facilitates an informal resolution process ("Informal Resolution Facilitator") does not have a conflict of interest or bias for or against Complainants or Respondents generally or

an individual Complainant or Respondent and is trained as required by this grievance procedure. An Informal Resolution Facilitator must not be the same person as the Investigator or the Decisionmaker in the University's Heightened Procedure.

6.4 Range of Resolution. The informal resolution process does not involve a full investigation but instead may encompass a range of resolution options which may include mediation, counseling, educational and training programs, or any other process or agreed upon terms acceptable to the Parties and the University. Potential terms that may be included in an informal resolution agreement include but are not limited to:

- A. Restrictions on contact; and
- B. Restrictions on the Respondent's participation in one or more of the University's programs or activities or attendance at specific events, including restrictions the University could have imposed as Remedies or Disciplinary Sanctions had the University determined at the conclusion of the grievance procedures that Discrimination or Harassment occurred.

Parties who reach an informal resolution must sign a written agreement documenting the terms and conditions for dismissing the Complaint (which may include releasing the Parties' claims against each other and against the University based on the allegations in the Complaint and notice of allegations). The written agreement of informal resolution must also be approved and signed by the Informal Resolution Facilitator and Title IX Coordinator. Failure to comply with the terms of the informal resolution agreement may result in disciplinary action.

- 7. Investigation.** The University will provide for an adequate, reliable, and impartial investigation of all Complaints of Sex-based Harassment involving a student Complainant or a student Respondent. Typically, the investigation process (up to completion of the draft investigation report) should be completed within 60 days of receipt of the Complaint. If more time is necessary, the Investigator will notify both Parties in writing about when to expect completion of the investigation.

7.1 Selection of the Investigator. Upon initiation of a Complaint investigation under this Heightened Procedure, the Title IX Coordinator or Deputy Title IX Coordinator will promptly deliver the Complaint to an employee or independent contractor selected by the Title IX Coordinator or Deputy Title IX Coordinator to investigate the allegations in the Complaint ("Investigator"). Only Investigators trained on their specific responsibilities in the previous 12 months will conduct an investigation.

7.2 Information Gathering.

- A. **Burden of Gathering Evidence.** Throughout the grievance process, including the investigation, the University (not the Parties) bears the burden of gathering evidence sufficient to reach a determination regarding responsibility.
- B. **Written Notice of Participation.** The Investigator will provide to a Party whose participation is invited or expected, written notice of the date, time, location,

participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate.

C. Right to an Advisor. The University will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- (1) The University will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.
- (2) The University may establish restrictions regarding the extent to which the advisor may participate in the grievance procedures, as long as the restrictions apply equally to the Parties.

D. Other Support People. The University will provide each Party with the same opportunity, if any, to have people other than the advisor of the Party's choice present during any meeting or proceeding.

- (1) In addition to the Party's advisor, each Party may be accompanied by one additional eligible support person.
 - i. **Eligibility.** The support person is a supportive presence to the Party and must receive the Party's consent to be present. Witnesses to the incident in question are ineligible to serve as a support person for either Party.
 - ii. **Communication.** All communication will remain between the Parties, Advisors and the Decisionmaker- before, during and after the investigation or hearing. Each Party is responsible for communicating with his or her support person. During a hearing or investigation, the support person may request a brief recess to consult. Parameters and permission for recess are at the discretion of the Decisionmaker.
 - iii. **Scheduling.** Scheduling accommodations will not be made for a support person or serve as a justifiable rationale for delay or rescheduling.
 - iv. **Disruptions.** Support persons must respect the process by not interrupting the hearing or investigation or speaking on behalf of the Parties. If the support person is disruptive or noncompliant, the Decisionmaker may issue a verbal warning and dismiss the support person from the investigation or hearing.
 - v. **Confidentiality.** All information shared within a grievance process is considered confidential and it is expected that support persons comply with any ongoing needs for confidentiality, or investigative

expectations communicated by the Title IX Coordinator, Deputy Title IX Coordinator, Investigator, or Decisionmaker.

- E. Right to Present Fact Witnesses and Relevant Evidence.** The Investigator will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is Relevant and not otherwise impermissible. The Investigator may ask the Parties to provide this information in a written statement, through live interviews, or both.
- F. Right to Present Expert Witnesses.** The University has discretion to determine whether the Parties may present expert witnesses as long as the determination applies equally to the Parties.
- G. Review of Evidence.** The Investigator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance.
- H. Equal Opportunity to Access Relevant Evidence.** The University will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is Relevant to the allegations of Sex-based Harassment and not otherwise impermissible, in the following manner:
 - (1) The University will provide an equal opportunity to access the Relevant and not otherwise impermissible evidence;
 - (2) The University will provide a reasonable opportunity to review the relevant evidence prior to the live hearing and respond to the evidence both prior to and during the live hearing; and
 - (3) The University will take reasonable steps to prevent and address the Parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through this Heightened Procedure. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-based Harassment are authorized.

7.3 Interviewing Parties and Witnesses.

- A.** The Investigator will meet separately with both the Complainant and Respondent and their respective advisors, if any, to understand the allegations of the Complaint and allow each Party to present fact witnesses and other Relevant inculpatory and exculpatory evidence. The Investigator may also request a written statement from either Party regarding the allegations, including the identity and contact information for any fact witnesses and a description and copy of any evidence that is Relevant to the allegations of Sex-based Harassment and not otherwise impermissible (for example a copy of letters, emails, text messages).

- B.** The Investigator will examine any evidence and interview witnesses. The Investigator may structure the investigation and schedule interviews as the Investigator deems appropriate and is not bound to conduct the investigation in any particular sequence. The Investigator may also have more than one interview with each Party and witness.
 - C.** The Investigator will prepare a draft investigation report (which at this stage will not include findings or recommendations). Both the Complainant and the Respondent will have an opportunity to review and submit a written response to the draft investigation report and any Relevant and not otherwise impermissible evidence. The Investigator may set a deadline for receiving responses from the Parties (usually at least 10 Business Days from receipt of the draft investigation report).
 - D.** As part of the written response from the Parties, the Investigator will also request the Parties provide a list of questions they would like the Decisionmaker to ask the other Party or witnesses during the live hearing process.
- 8. Hearing.** The University will provide the following hearing process to enable a Decisionmaker to question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and Relevant to evaluating one or more allegations of Sex-based Harassment.

Live hearings will be conducted with the Parties physically present in the same geographic location or, at the University's discretion or upon the request of either Party, the University will conduct the live hearing with the Parties physically present in separate locations with technology enabling the Decisionmaker and Parties to simultaneously see and hear the Party or witness while that person is speaking. The University will create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

8.1 Selection of a Decisionmaker. The hearing will be held before a Decisionmaker designated by the Title IX Coordinator. In most cases this will be the VP of Student Development, or a designee authorized by the VP of Student Development to impose sanctions provided under this Heightened Procedure. As used in this Heightened Procedure, "Decisionmaker" means the individual responsible for making a determination whether a Respondent has violated the Nondiscrimination Policy.

If the designated Decisionmaker is determined by the Title IX Coordinator to have a conflict of interest or bias, then the Title IX Coordinator will designate another individual to be the Decisionmaker. Neither the Title IX Coordinator nor the Investigator in the case may serve as a Decisionmaker.

8.2 Information Provided to the Decisionmaker. Prior to the live hearing the Decisionmaker will be provided with the following information. This information will also be provided to each Party if not previously provided.

- A.** The names of all Parties, the Parties' advisors, and witnesses;

- B. A copy of the draft investigation report;
- C. Any written responses to the draft investigation report from the Complainant or Respondent;
- D. All Relevant but not impermissible evidence.

8.3 Schedule and Notice of Live Hearing. After receiving the draft investigation report and the other above information, the Decisionmaker will schedule a live hearing and will provide written notice of the time and place of the hearing to each Party, each Party's advisor, if any, and any witness whose participation is invited or expected. The hearing must take place no more than 45 days after the draft investigation report is delivered, unless it is delayed by unavoidable circumstances, such as the unavailability of the Parties, Decisionmaker, Investigator, or key witnesses.

8.4 Questioning the Parties and Witnesses. The Decisionmaker will allow each Party to propose Relevant and not otherwise impermissible questions and follow-up questions of the other Party and witnesses, including questions challenging credibility. Such questioning will never be conducted by a Party personally or their advisor. All questions must be evaluated by the Decisionmaker prior to being asked by the Decisionmaker.

- A. **Procedures for Evaluating and Limiting Questions.** The Decisionmaker will determine whether a proposed question is Relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not Relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or witness being questioned will not be permitted. The Decisionmaker will give a Party an opportunity to clarify or revise a question that the Decisionmaker determines is unclear or harassing. If the Party sufficiently clarifies or revises the question, the question will be asked.
- B. **Party or Witness Refusing to Respond.** The Decisionmaker may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decisionmaker will not draw an inference about whether Sex-based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.
- C. **Additional Questions.** Throughout the hearing, if a Party would like to pose additional questions, the Party may submit the questions to the Decisionmaker for review and consideration.

9. Determination Whether Sex-Based Harassment Occurred.

9.1 Standard of Proof. Following an investigation, hearing, and evaluation of all Relevant and not otherwise impermissible evidence, the Decisionmaker will use the preponderance

of the evidence standard of proof to determine whether Sex-based Harassment occurred. The Respondent is presumed not to have violated the Nondiscrimination Policy unless a preponderance of the evidence supports a finding that a violation occurred. The term “preponderance of the evidence” means the evidence supporting a finding is more convincing than the evidence in opposition to it. This standard of proof requires the Decisionmaker to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness.

9.2 Determination. Within 10 days of the hearing, the Decisionmaker will prepare a final, written investigation report that includes the Decisionmaker’s determination regarding whether the Respondent violated the Nondiscrimination Policy (“final investigation report”). The Decisionmaker will provide a copy of the final investigation report to the Title IX Coordinator. The Decisionmaker will also send each Party a copy of the final investigation report simultaneously. The final investigation report will include:

- A. A description of the alleged Sex-based Harassment;
- B. Information about the policies and procedures that the Decisionmaker used to evaluate the allegations;
- C. The Decisionmaker’s evaluation of the Relevant and not otherwise impermissible evidence and determination whether Sex-based Harassment occurred;
- D. When the Decisionmaker finds that Sex-based Harassment occurred, any Disciplinary Sanctions the University will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by the University to the Complainant, and, to the extent appropriate, other students identified by the University to be experiencing the effects of the Sex-based Harassment; and
- E. The University’s procedures and permissible bases for the Complainant and Respondent to appeal.

9.3 No Finding of Sex-based Harassment. The University will not impose discipline on a Respondent for Sex-based Harassment unless there is a determination at the conclusion of the Heightened Procedure that the Respondent engaged in prohibited Sex-based Harassment.

9.4 Finding of Sex-based Harassment. If there is a determination that Sex-based Harassment occurred, the Title IX Coordinator will:

- A. Coordinate the provision and implementation of Remedies to a Complainant and other people the University identifies as having had equal access to the University’s Education Program or Activity limited or denied by sex Discrimination;
- B. Coordinate the imposition of any Disciplinary Sanctions on a Respondent, including notification to the Complainant of any such Disciplinary Sanctions; and

- C. Take other appropriate prompt and effective steps to ensure that sex Discrimination does not continue or recur within the University's Education Program or Activity.

9.5 Availability of Appeal. Either Party may appeal the determination whether Sex-based Harassment occurred within 5 Business Days after receipt of the final investigation report. A "Business Day" is any day other than a Saturday, Sunday, or state or federal holiday when the University is open for business. The appeal procedures are described in Section 10.

The determination regarding responsibility becomes final either on the date that the University provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

10. Appeals.

10.1 Right to Appeal. Either Party may appeal the dismissal of a Complaint or determination whether Sex-based Harassment occurred within 5 Business Days after receipt of the dismissal notice or final investigation report. The Title IX Coordinator may grant a reasonable extension of time for good reason, but generally, no extensions will be granted.

10.2 Appeal Notice. A notice of appeal must be submitted in writing to the Decisionmaker. The written appeal is limited to five pages, exclusive of exhibits, and must identify at least one of the following grounds as the basis for the appeal.

- A. Procedural irregularity that would change the outcome;
- B. New evidence that would change the outcome and that was not reasonably available when the dismissal or determination was made; or
- C. The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

10.3 Designation of an Appeals Officer. The person hearing the appeal is referred to as the "Appeals Officer" and must be trained consistent with the Nondiscrimination Policy and Title IX Regulations. Appeals by Complainants or Respondents who are students or faculty members will be heard by the Provost or designee. Appeals by Complainants or Respondents who are employees (other than faculty members) will be heard by the Respondent's Area VP. If the Provost or Area VP is the Respondent, then the appeal will be heard by the President.

The Investigator will ensure the Appeals Officer did not take part in the initial investigation of the allegations or dismissal of the Complaint. If either Party alleges the Appeals Officer has a conflict of interest or is biased, the Title IX Coordinator will review the allegation and designate another Appeals Officer, if appropriate.

10.4 Appeal Process. When a notice of appeal is received, the Decisionmaker will provide the Appeals Officer with a copy of the appeal notice and the dismissal notice or the final

investigation report, as applicable. The Appeals Officer will review the information to determine if the request meets the grounds for an appeal.

If the ground for an appeal is met, the Appeals Officer will:

- A. Notify the Parties in writing of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- B. Implement appeal procedures equally for the Parties; and
- C. Communicate to the Parties in writing that the University will provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome.

10.5 Appeal Determination. Within 20 calendar days of receiving the appeal, the Appeals Officer will simultaneously provide the Parties and Title IX Coordinator with a written result of the appeal and the rationale for the result. If the Appeals Officer cannot reasonably consider and resolve the appeal within 20 calendar days, the Appeals Officer will advise the Parties as to when the appeal decision will be provided. The Appeals Officer's determination is final, and no further review will be allowed.

11. Recordkeeping. The University will maintain for a period of at least seven years:

- A. For each Complaint of sex Discrimination under Title IX, records documenting the informal resolution process or grievance procedure and the resulting outcome;
- B. For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex Discrimination under Title IX or its regulations, records documenting the actions the University took to promptly and effectively respond as required by the Title IX Regulations; and
- C. All materials used to provide training to the University's employees, Title IX Coordinator, Deputy Title IX Coordinators, Equal Opportunity Investigators, Decisionmakers, Appeals Officers, Informal Resolution Facilitators, and other persons with authority to modify or terminate Supportive Measures as required under the Nondiscrimination Policy and this Heightened Procedure.

12. External Contact Information. If a Complainant files a Complaint or makes a report under this Heightened Procedure, and the Complainant believes the response of the University is inadequate, or the Complainant believes the University has discriminated against the Complainant on the basis of race, color, national origin, sex, disability, age, or genetic information, or that the University has retaliated against the Complainant, the Complainant may contact or file a complaint with the U.S. Department of Education, Office for Civil Rights ("OCR") by calling 1(800) 421-3481 or emailing ocr@ed.gov. For employment related matters, the Complainant may also contact the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice.