

Sexual Harassment Grievance Process (Title IX)

Northwest University (*University*) prohibits Sexual Harassment, as set forth in its Sexual Harassment Policy. The University will also follow this Sexual Harassment Grievance Process (Title IX) (*grievance process*) to address Formal Complaints of Sexual Harassment. Capitalized terms are defined in the Sexual Harassment Policy or below.

1. Basic Requirements and Disclosures

1.1 Equitable Treatment.

- A. **Meaning of Equitable Treatment.** The University will treat Complainants and Respondents equitably by:
- (1) providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent; and
 - (2) following this grievance process before imposition of any disciplinary sanctions or other actions that are not Supportive Measures regarding allegations of Sexual Harassment (as defined under the Title IX regulations) in connection with the University's Education Program or Activity. Nothing in this grievance process prohibits the University from taking action against a student, employee, or others for violation of any other University policy.
- B. **Remedies.** Remedies may be sanctions imposed on the Respondent or Supportive Measures provided to the Complainant. Remedies may also be those things designed to restore or preserve for Complainant equal access to the University's Education Program or Activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

1.2 Objective Evaluation of Evidence and Credibility. This grievance process requires:

- A. an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence; and
- B. credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.

1.3 Impartiality and Training.

- A. **No Conflict of Interest.** The Title IX Coordinator, Investigator, Decision-maker, Reviewer, and any Informal Resolution Facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

B. **Training.** The Title IX Coordinator, Investigator, Decision-maker, Reviewer, and Informal Resolution Facilitator must receive appropriate training. This training must promote impartial investigations and adjudication of Formal Complaints of Sexual Harassment. Training materials must not rely on sex stereotypes, and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment. A link to training materials is posted on the Title IX webpage. Training must include:

- (1) the definition of Sexual Harassment under the Title IX regulations and the Sexual Harassment Policy;
- (2) the scope of the University's Education Program or Activity;
- (3) how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution process, as applicable);
- (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- (5) for Decision-makers, issues of relevance of questions and evidence (including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant) and how to use or operate any technology to be used at a live hearing; and
- (6) for Investigators, issues of relevance to create an investigative report that fairly summarizes relevant evidence.

1.4 **Presumption.** This grievance process must 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 grievance process.

1.5 **Time Frames.** This grievance process operates with reasonably prompt time frames for the conclusion of this process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes.

A. **Delay by Informal Resolution Process.** An Informal Resolution Process allows for a temporary delay of this grievance process.

B. **Extensions.** Limited extension of time frames may be granted by the Title IX Coordinator for good cause. Good cause may include 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 a disability.

C. **Notice.** The Title IX Coordinator will provide the Parties written notice of any permitted delay or extension and the reason for that action.

1.6 Disclosure of Possible 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 programs, training, education, or study; or any other remedy to improve access to the University's Educational Program or Activity or reduce Sexual Harassment at the University.
- B. **Some Possible Sanctions.** 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 Decision-maker is considering dismissal of the faculty member for cause, then the process by which the Decision-maker makes a decision regarding the Formal Complaint will include the procedure described in the faculty member's contract and Faculty Manual.

1.7 **Supportive Measures.** The University may provide Supportive Measures to Complainants and Respondents. Supportive Measures are described in the University's Sexual Harassment Policy.

2. Preliminary Jurisdictional Matters and Consolidation

2.1 **Formal Complaint.** As defined in the Sexual Harassment Policy, a Formal Complaint is the document filed by the Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent.

A. **Complainant's request not to investigate; Title IX Coordinator signing a Formal Complaint.** Generally, the University will honor a Complainant's request that the University not conduct an investigation. However, if the Complainant is unwilling to file a Formal Complaint and the Title IX Coordinator determines that a failure to investigate would prevent the University from meeting its responsibility to provide students and employees with an environment free from Sexual Harassment, the Title IX Coordinator may initiate an investigation by signing a Formal Complaint.

- (1) The Title IX Coordinator will inform the Complainant before signing a Formal Complaint.
- (2) The University will provide the Complainant with all notices required under the applicable procedures. But the Complainant is not required to respond or participate in any manner.
- (3) When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party to the grievance process. The Title IX Coordinator must comply with the impartiality requirements and all other standards required of individuals involved in administering processes under this policy.

- B. **Separating Allegations.** If a Formal Complaint includes multiple allegations of Sexual Harassment that do not arise out of the same facts or circumstances or that are not subject to discipline under the same University policy or procedure, the University may address them separately. And if a Formal Complaint includes allegations of Sexual Harassment together with allegations of other misconduct or violations of University policy, the University may address the allegations of Sexual Harassment under this grievance policy and may refer allegations not subject to this policy to the appropriate University office, subject to any applicable confidentiality provisions and amnesty protections, which will still be in force.
- C. **Delays; Suspension of Other Process.**
- (1) An investigation or resolution of a Formal Complaint will not be suspended pending the conclusion of a criminal investigation or any other investigation, including another University investigation.
 - (2) However, the fact-finding portion of the investigation may be delayed temporarily to comply with a law enforcement request for cooperation (for example, to allow for criminal evidence collection) when the criminal charges are based on the same allegations that are being investigated under this policy and the applicable procedures.
 - (3) In addition, if the University determines the issues raised in a Formal Complaint may be relevant to its determination in another investigation or another process that is simultaneously pending at the University, the other investigation or process may be suspended until this process and any appeal are concluded.
- D. **Sharing Information in any other Investigation.** Although the findings and conclusions of one investigation will not necessarily determine the outcome of any other, any information or findings developed in any University or external investigation may be shared with and considered in any other University investigation.

2.2 **Mandatory or Permissive Dismissal of Formal Complaint.**

- A. **When a Formal Complaint Must be Dismissed.** The University must investigate the allegations in a Formal Complaint of Sexual Harassment. The University must dismiss the Formal Complaint if the alleged conduct:
- (1) would not constitute Sexual Harassment, even if proved;
 - (2) did not occur in the University's Education Program or Activity; or
 - (3) did not occur against a person in the United States.

- B. **When a Formal Complaint May be Dismissed.** The Title IX Coordinator may dismiss a Formal Complaint or any of its allegations or may suspend an investigation if at any time during the investigation or hearing:
- (1) a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations;
 - (2) the Respondent is not or is no longer enrolled at or employed by the University; or
 - (3) specific circumstances prevent the Investigator from gathering evidence sufficient to reach a determination as to the allegations in the Formal Complaint.
- C. **Other Policy Violation.** Mandatory or permissive dismissal of a Formal Complaint of Sexual Harassment does not prohibit action by the University under another University policy or procedure regarding the alleged conduct.
- D. **Notice of Dismissal.** On a dismissal required or permitted above, the Title IX Coordinator will promptly send written notice of the dismissal and reason for the dismissal simultaneously to the Parties. A determination to dismiss allegations of a Formal Complaint may be appealed as provided in this grievance process.

2.3 **Consolidations of Formal Complaints.** The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references to a singular Party, Complainant, or Respondent includes the plural, as applicable.

3. Investigation

- 3.1 **Selection of the Investigator.** On receiving or signing a Formal Complaint of Sexual Harassment, the Title IX Coordinator will promptly deliver the Formal Complaint to an employee or independent contractor selected by the Title IX Coordinator to investigate the allegations in the Formal Complaint (*Investigator*). The Title IX Coordinator will ensure that any Investigator has received training in the previous 12 months required by this grievance process.
- 3.2 **Notice of Allegations; Related Complaints; Additional Allegations.**

- A. **Notice of Allegations.** On receipt of a Formal Complaint, the Investigator will promptly collect the information necessary to prepare a written *Notice of Allegations* and will provide the notice to the known Parties at least five business days before the Respondent's initial interview. The Notice of Allegations will include the following:
- (1) notice of the University's formal and informal grievance resolution processes;
 - (2) notice of the allegations potentially constituting Sexual Harassment (including sufficient details known at the time), including the identities of the Parties involved in the incident (if known); the conduct allegedly constituting Sexual Harassment; and the date and location of each alleged incident constituting Sexual Harassment (if known);
 - (3) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination as to whether the Respondent is responsible for Sexual Harassment (*Determination Regarding Responsibility*) will be made only after the grievance process is complete;
 - (4) notice to the Parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - (5) notice to the Parties that they may inspect and review evidence;
 - (6) notice informing the Parties that the University prohibits the Parties from knowingly making false statements or knowingly submitting false information during the grievance process and informing the Parties that those actions constitute a material violation of the institution's policy. (Refer to Employee Manual, Graduate/Online Student Handbook and Community Handbook); and
 - (7) notice prohibiting any Party from engaging in retaliation (*see* Sexual Harassment Policy).
- B. **Related Complaints.** A Party who wishes to file a Formal Complaint of Sexual Harassment or other violation of the Sexual Harassment Policy against another Party or individual based on allegations arising out of the same facts or circumstances identified in the Notice of Allegations must file the Formal Complaint within 15 business days of receiving the Notice of Allegations or becoming aware of the facts on which the Formal Complaint is based, whichever is later. Allegations in any additional Formal Complaint received

under this section may be consolidated or separated as permitted by this grievance process.

- C. **New Allegations.** If, in the course of an investigation, the Investigator decides to investigate Sexual Harassment allegations about the Complainant or Respondent that are not included in the Notice of Allegations, the Investigator must provide all known Parties with a supplemental Notice of Allegations as to the additional allegations.

3.3 Information Gathering.

- A. **Burden of Proof and Burden of Gathering Evidence.** Throughout the grievance process, including the investigation, the University (not the Parties) bear the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.
- B. **Privileged Information.** The University and the Investigator may not access, consider, disclose, or otherwise use a Party's records that are privileged made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that Party's voluntary, written consent to do so.
- C. **Parties may Present Evidence.** The Investigator will provide an equal opportunity for the Parties to identify witnesses, including fact and expert witnesses, and to provide other information, whether the information tends to show the Respondent's responsibility for Sexual Harassment or tends to show the Respondent is not responsible. The Investigator may ask the Parties to provide this information in a written statement or through live interviews or both.
- D. **Discussion Allegations and Gathering and Presenting Relevant Information.** The University will not restrict the ability of either Party to discuss the allegations under investigation with others or to gather and present relevant information. But the Parties are reminded that any discussions may not violate any protection orders then in force and must not include intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by the Sexual Harassment Policy or this grievance process.
- E. **Same Opportunities; Advisors; Notice.**
 - (1) The Parties will have the same opportunity to have others present during any grievance proceeding, including the opportunity to be

accompanied to any related meeting or proceeding by the Party's advisor.

- (2) The University may establish restrictions regarding the extent to which an advisor may participate in the proceedings, as long as the restrictions apply equally to both Parties.
- (3) Unless otherwise expressly permitted by the Title IX Coordinator, Investigator, Decision-maker, Review, Informal Resolution Facilitator, or other authorized University employee, advisors may not speak on behalf of the Parties, except as required to conduct permitted cross-examination at the hearing.
- (4) Written notice will be provided to each Party whose participation is invited or expected regarding the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.

3.4 Investigator Obligations.

- A. **Presumption Respondent is not Responsible.** The Investigator will presume that the Respondent is not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process.
- B. **Investigator's Collection of Information.** The Investigator will seek to collect information sufficient for the individuals assigned to make a Determination Regarding Responsibility (*Decision-maker*) to reach a determination based on the preponderance of the evidence (i.e., evidence sufficient to show that the determination is more likely than not to be true).
- C. **Consider All Relevant Information.**
 - (1) The Investigator will consider all relevant information – including information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible – from the Parties or from other sources, including University records.
 - (2) However, the Investigator will not interview a person about matters for which a legal privilege exists, unless the Party with the right to assert the privilege voluntarily provides written consent to the interview about those matters. A legal privilege may exist for a Party's spouse, member of the clergy, attorney, physician, psychiatrist, psychologist, or other professional or paraprofessional acting or assisting in that capacity. In addition, the Investigator will not access,

consider, disclose, or otherwise use records that are made or maintained in connection with the confidential communication with or treatment by any such person, unless the Investigator obtains that Party's voluntary, written consent to do so.

- (3) The University will not intentionally require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the Party holding the privilege has waived the privilege.

3.5 **Investigation Record.**

- A. **Investigation Record.** The Investigator will create a record of the investigation (*Record*) consisting of all information obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This includes evidence that the University does not intend to rely upon in reaching a determination regarding responsibility, and inculpatory and exculpatory evidence, whether obtained from a Party or other source, so that each Party can meaningfully respond to the evidence before the conclusion of the investigation.
- B. **Inspection of Record.** Before the Investigator completes the Investigative Report (defined below), the Investigator will send the Record to each Party and each Party's advisor, if any. The Record may be sent in an electronic format or hard copy. If possible, the Record should be sent to each Party and the Party's advisor, if any, through a file-sharing platform that provides the Parties and their advisors with read-only access and maintains the confidentiality of the transmitted data.
- C. **Confidentiality.** Each Party and each Party's advisor must maintain the confidentiality of all information shared with them during the grievance process, must use this information only for purposes of the grievance process, and must not further distribute or disclose this information, except as permitted by this grievance process to discuss the allegations under investigation or to gather and present relevant evidence. The University may restrict further access to the Record and seek appropriate sanctions against a Party or a Party's advisor who violates a confidentiality obligation under this grievance process. The Record will remain available to the Parties and their advisors until the conclusion of the grievance process.

- 3.6 **Written Response to Record.** After the Investigator sends the Record to the Parties, they will have at least 10 days to submit a written response, which the Investigator will consider before completing the Investigative Report. Any written response and any additional evidence provided in connection with a Party's response will be added to the Record.

3.7 Investigative Report.

- A. **Contents of the Investigative Report.** At the conclusion of the investigation and after providing the Parties at least 10 days to submit a written response, the Investigator will create an investigative report (*Investigative Report*) that:
- (1) identifies the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation;
 - (2) describes the procedural steps taken from the receipt of the Formal Complaint through the conclusion of the investigation, including notifications to the Parties, interviews with Parties and witnesses, site visits, and methods used to gather other evidence; and
 - (3) fairly summarizes the relevant evidence.
- B. **Delivery of Investigative Report.** At least 10 days before the hearing on the Formal Complaint, the Investigator will simultaneously send the Investigative Report to the Title IX Coordinator and to each Party and each Party's advisor, if any, and will include the Investigative Report as part of the Record. The Investigative Report may be sent in an electronic format (including a file share) or a hard copy for review by the Parties and their advisors.
- C. **Response to Investigative Report.** Each Party may submit a written response to the Investigative Report. Any written response will be sent to the Investigator and included as a part of the Record. Any written response to the Investigative Report must be received no later than 10 days after the Investigative Report is made available to the Parties.
- D. **Time to Complete Investigative Report.** The Investigator will, in good faith, attempt to conclude the investigation and issue an Investigative Report within 90 days of receiving the Formal Complaint of Sexual Harassment. If, as a result of the complexity of a case or other good cause, the investigation cannot reasonably be concluded within the 90-day period, the Investigator will provide the Complainant and the Respondent with written notice of the delay and the reason for the delay or extension. Good cause for a delay or extension includes the absence of a Party, a Party's advisor, or a witness; ongoing law enforcement activity; or the need for language assistance or accommodation of disabilities; or other good cause.

4. Hearing

- 4.1 **Schedule and Notice of Live Hearing.** After receiving the Investigative Report, the Title IX Coordinator will schedule a live hearing and will provide written notice of the time and place of the hearing to each Party and each Party's advisor, if any. The

hearing must take place at least 10 days after the Investigative Report is delivered to the Parties and should take place within 45 days after the Investigative Report is delivered unless it is delayed by unavoidable circumstances, such as the unavailability of the Parties, Decision-maker, Investigator, or key witnesses.

A. Live Hearings.

- (1) The Decision-maker will ensure that the hearing is conducted impartially.
- (2) Live hearings will either be conducted with all Parties physically present in the same room or with the Parties located in separate rooms with technology enabling the Decision-maker and Parties to simultaneously see and hear the Party or the witness answering questions. At the request of either Party, the University will provide the live hearing with the Parties located in separate rooms. When the hearing is conducted with the Parties in separate rooms, the Decision-maker may impose additional conditions on both Parties to ensure the integrity of the process.
- (3) In the Decision-maker's discretion, some or all of the Parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The Decision-maker may impose additional conditions on the persons appearing virtually to ensure the integrity of the process.
- (4) Any Party requesting a hearing with the Parties in separate rooms or requesting that any witness be permitted to appear virtually at a live hearing, must submit a written request to the Title IX Coordinator at least seven days before the date of the hearing so the Title IX Coordinator can make the appropriate arrangements.
- (5) The Title IX Coordinator (or designee) will arrange for an audio or audiovisual recording, or transcript, of the hearing. The recording or transcript will be made available within the Record for the Parties' inspection and review after the hearing.

B. Decision-maker.

- (1) The hearing will be held before a Decision-maker designated by the Title IX Coordinator as follows:
 - (a) for a student Respondent, the VP of Student Development or a designee authorized by the VP

- (b) of Student Development to impose all sanctions provided under this grievance process;
 - (c) for an employee Respondent, the Provost or a designee authorized by the Provost to impose all sanctions provided under this grievance process;
 - (d) for a Respondent who is neither a student nor an employee, the Provost or a designee authorized by the Provost to impose all sanctions provided under this grievance process.
- (2) If the designated Decision-maker is determined by the Title IX Coordinator to be biased, then the Title IX Coordinator will designate another individual to be the Decision-maker.
 - (3) Neither the Title IX Coordinator nor the Investigator may serve as a Decision-maker.
 - (4) The Decision-maker will determine all points in the written Determination Regarding Responsibility, except for questions of relevance or other procedural questions.
 - (5) The Title IX Coordinator will ensure that any individual designated as a Decision-maker receives training or has received training in the previous 12 months on any technology to be used at a live hearing and on issues of relevance of questions and evidence – including when questions and evidence about a Complainant’s sexual predisposition or prior sexual behavior are not relevant – and meets all other standards required of Grievance Administrators (as defined in *Section 6.1*).

C. Written Submissions.

- (1) After receiving the Investigative Report, and no fewer than 10 days before the hearing, the Parties must provide a written submission to the Decision-maker and the other Party, with the submission including the following:
 - (a) the Party’s written response, if any, to the Investigative Report, which will be included in the Record;
 - (b) the name and contact information of any witnesses the Party intends to call at the hearing and the substance of the witnesses’ anticipated statements; and

- (c) the name and contact information of the Party's chosen advisor for the hearing.
 - (2) If a Party does not identify an advisor in the written submission, the Title IX Coordinator will, without fee or charge to the Party, appoint an advisor for that Party. At least five days before the hearing, the Title IX Coordinator will provide the advisor's name and contact information to the Parties.
 - (3) The Decision-maker will review the Parties' written submissions. The Decision-maker will forward the written submission to the other Party and the other Party's advisor.
- D. **Opening and Closing Statements.** The Decision-maker may ask the Complainant and the Respondent to make a brief statement at the opening or the closing (or both) of the hearing. The Decision-maker may limit the time for these statements but will give each Party an equal opportunity to make any statements at the hearing.
- E. **Record.** The Record will be available to the Decision-maker and the Parties during the hearing. Each Party will be given equal opportunity to refer to information in the Record during the hearing, including for purposes of cross-examination. Physical or documentary information not included in the Record will not be admissible during the hearing unless the Decision-maker determines that the information was not reasonably available to the Party seeking its admission during the investigation.
- F. **Witnesses.** The Decision-maker and the Parties may ask the Investigator and any witness to answer questions at the hearing. The University will make reasonable allowance for University students and employees to participate in the hearing, if necessary, during regular University or work hours. However, the University will not compel any Party or witness to participate in a hearing.
- G. **Direct and Cross-Examination of Parties and Witnesses.**
- (1) The Decision-maker may ask any relevant questions of any Party or witness at the hearing, including the Investigator.
 - (2) The Decision-maker will permit each Party's advisor to ask the Parties and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. This cross-examination at the live hearing will be conducted directly, orally, and in real time by a Party's advisor and never by a Party personally.

- (3) If a Party does not have an advisor present at the live hearing, the University, without fee or charge to that Party, will provide an advisor of the University's choice to conduct cross-examination on behalf of that Party. The advisor provided by the University need not be an attorney.

H. **Relevance.** Only relevant questions may be asked of a Party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and may not be asked, unless 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.

I. **Determination Regarding Responsibility.**

- (1) The Decision-maker will objectively evaluate all evidence relevant to the allegations in the Notice of Allegations – including both information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible. The Decision-maker will determine, based on the preponderance of the evidence (that is, whether it is more likely than not), whether the Respondent is responsible for Sexual Harassment.
 - (a) The Decision-maker will not require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived it.
 - (b) The Decision-maker will presume that the Respondent is not responsible for the alleged conduct until a Determination Regarding Responsibility is made at the conclusion of the grievance process.
 - (c) The Decision-maker will not base any credibility determinations on a person's status as a Complainant, Respondent, or witness.
 - (d) It is the Decision-maker's responsibility to ensure that the burden of proof is met with regard to any Determination Regarding Responsibility of Respondent.

- (2) Within 10 business days of the hearing, the Decision-maker will issue a written Determination Regarding Responsibility to the Parties. The Determination Regarding Responsibility must include the following:
 - (a) identification of the allegations potentially constituting Sexual Harassment;
 - (b) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (c) findings of fact supporting the Determination Regarding Responsibility;
 - (d) conclusions regarding the application of the Sexual Harassment Policy to the facts;
 - (e) a statement of, and the rationale for, the result as to each allegation, including:
 - (i) a determination regarding responsibility;
 - (ii) any disciplinary sanctions the University imposes on the Respondent;
 - (iii) 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
 - (f) the University's procedures and permissible bases for the Complainant and Respondent to appeal and the date the Determination Regarding Responsibility becomes final.
- (3) Remedies provided by the Decision-maker may include Supportive Measures and disciplinary sanctions against the Respondent as detailed in the Sexual Harassment Policy or this grievance process. The Title IX Coordinator is responsible for effectively implementing any remedies in conjunction with the other University employees authorized to implement the remedies.
- (4) The Decision-maker will promptly and simultaneously send a copy of the written Determination Regarding Responsibility to the Parties and their advisors and will provide copies to the Title IX Coordinator and the Investigator.

- (a) The Determination Regarding Responsibility becomes final 11 calendar days after it is delivered to the Parties, unless an appeal is filed within 10 calendar days of the Parties receiving the written determination.
- (b) If an appeal is timely filed, the Reviewer's Determination Regarding Responsibility becomes final on the date that the appeal decision is provided to the Parties.
- (c) The Parties' access to the Record will terminate as soon as the Determination Regarding Responsibility becomes final, and any further access will be only as permitted as required by the University's FERPA policy or as required by law.

5. Appeal

- 5.1 **Right to Appeal.** Either Party may appeal from a Determination Regarding Responsibility and from the dismissal of a Formal Complaint or any of its allegations.
- 5.2 **Written Appeal.** The appealing Party must submit a written appeal to the Title IX Coordinator within 10 calendar days of receiving the Determination Regarding Responsibility or notice of dismissal. 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. A procedural irregularity that affected the outcome of the matter.
 - B. New evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal was made, that could affect the outcome of the matter. This new evidence and an explanation of both why it was unavailable at the time the Determination Regarding Responsibility was made and its potential impact must be included in the appeal.
 - C. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest, a bias for or against Complainants or Respondents generally, or a preexisting bias against the individual Complainant or Respondent that affected the outcome of the matter.
- 5.3 **Written Opposition.** The Title IX Coordinator will send a copy of the written appeal to the other Party, who may file a written opposition to the appeal. The opposition must be sent to the Title IX Coordinator within 10 calendar days of receiving the written appeal and is limited to five pages, exclusive of exhibits. The Title IX Coordinator will send a copy of the opposition to the appealing Party for reference. No further opposition or statements will be accepted.

5.4 **Appeal Reviewer.** The Title IX Coordinator will send the Determination Regarding Responsibility, written appeal, and any written opposition to a designated appeal reviewer (*Reviewer*) for review and will provide the Reviewer with access to the Record. The Title IX Coordinator, the Investigator, and the Decision-maker in the matter may not be designated as the Reviewer in the same matter.

A. The Reviewer will be determined as follows:

- (1) The Reviewer of a determination involving a student Respondent, including a student employee, will be the Provost, unless the Provost was the Decision-maker, in which case the President will be the Reviewer.
- (2) The Reviewer of a determination involving a faculty Respondent will be the Provost. However, if the Provost was the Decision-maker or if the sanction imposed by the Decision-maker is for the involuntary termination of a faculty member, the University's President will be the Reviewer and will make the decision after a hearing before the Separation Agreement is issued. Tenured faculty members have certain rights described in the Faculty Manual.
- (3) The Reviewer of a determination involving an administrative or staff employee Respondent will be the Provost. However, if the Provost was the Decision-maker or if the sanction imposed by the Decision-maker is for the employee's involuntary termination, then the University's President will be the Reviewer.
- (4) The Reviewer of a determination involving a Respondent who is neither a student nor an employee will be the Provost, unless the Provost was the Decision-maker, in which case the President will be the Reviewer.

B. If either Party alleges the Reviewer has a conflict of interest or is biased, the Title IX Coordinator will review the allegation and designate another Reviewer, if appropriate.

5.5 **Review Limited to Record and Appeal and Opposition.** Except as provided in the Faculty Manual, the Reviewer will not interview the Parties or witnesses or consider any information outside the Record and the written appeal and opposition of the Parties.

5.6 **Determination.** Within 30 calendar days of receiving the appeal, the Reviewer will simultaneously provide the Parties and the Title IX Coordinator with a written Determination Regarding Responsibility upholding, reversing, or amending all or part of the original Determination Regarding Responsibility and providing the Reviewer's rationale for the result. If the Reviewer cannot reasonably consider and

resolve the appeal within 30 calendar days, the Reviewer will advise the Parties as to when the appeal decision will be provided. The Reviewer's Determination Regarding Responsibility is final, and no further review will be allowed.

6. Recordkeeping

6.1 **Records.** The University will keep the following records for a period of seven years:

- A. Each Sexual Harassment investigation, including any Determination Regarding Responsibility and any audio or audiovisual recording or transcript of any hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to any University Education Program or Activity.
- B. Any appeal and the results of the appeal.
- C. Any informal resolution and the result of any informal resolution process.
- D. The University will make all training materials for the Title IX Coordinator, Investigators, Decision- Makers, Informal Resolution Facilitator and Reviewer (Grievance Administrators) publicly available on its website.
- E. For each response to a report of Sexual Harassment, the University will create and maintain records of any actions, including any Supportive Measures taken in response to a report or Formal Complaint of Sexual Harassment.
 - (1) In each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's Education Program or Activity.
 - (2) If the University does not provide a Complainant with Supportive Measures, then the University must document the reasons why the response was not clearly unreasonable in light of the known circumstances.
 - (3) The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

7. Informal Resolution

7.1 **Informal Resolution May be Available if a Formal Complaint has been Filed.** The Parties may resolve a Formal Complaint through an informal resolution process that allows the Parties to forego all or some of the formal grievance process. The goal of informal resolution is to conclude the matter to the satisfaction of the Parties quickly

and confidentially and to protect the safety of all Parties and the University's educational environment.

- 7.2 **Request by Either Party.** After a Formal Complaint has been filed, either Party may ask the Title IX Coordinator to facilitate an informal resolution process at any time before a Respondent is determined to be responsible for Sexual Harassment. The following conditions must be satisfied:
- A. all Parties must have received a written Notice of Allegations;
 - B. all Parties must provide their voluntary, written consent to the informal resolution process; and
 - C. the informal resolution process may not be used to resolve allegations that an employee sexually harassed a student.
- 7.3 **Range of Resolution.** Informal resolution may involve an informal resolution process that does not involve a full investigation or hearing. For example, the informal resolution process may involve mediation or any other process acceptable to the Parties and the University.
- 7.4 **Right of Parties.**
- A. Participation in an informal resolution process is never required as a condition of enrollment or employment or as a precondition to any Party's right to an investigation and adjudication of a Formal Complaint of Sexual Harassment or any other right provided as part of the formal resolution provisions set forth in this policy or any other University policy or procedure.
 - B. The Parties must receive written notice disclosing the requirements of the informal resolution process, including the circumstances under which it precludes the Parties from resuming a Formal Complaint arising from the same allegations.
 - C. The Parties must voluntarily provide written consent to the informal resolution process.
 - D. At any time before signing a written agreement of informal resolution, a Party may withdraw from the informal resolution process and resume the Formal Complaint resolution process.
- 7.5 **Resolution Requirements.** Parties who reach an informal resolution must sign a written agreement documenting the terms and conditions for dismissing the Complainant's Formal Complaint (which may include releasing the Parties' claims against each other and against the University based on the allegations in the Formal Complaint and Notice of Allegations). The written agreement of informal resolution

must also be approved and signed by the Title IX Coordinator or by her or his designee.

- 7.6 **No Bias; Training.** 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 policy. The Title IX Coordinator will also ensure the informal resolution facilitator has received the training required by this grievance process.

Approved by Cabinet 8/16/2022