

**Procedure: Title IX Procedures**

**Procedure Number: 3364-50-01.01**



**Responsible Department: Title IX & Compliance**

**Scope:** The University of Toledo will act on any formal or informal notice/complaint of violation of the Title IX Policy that is received by the Title IX Coordinator<sup>1</sup> or any other Official with Authority by applying these procedures.

**Effective date:** August 14, 2020

All other allegations of misconduct unrelated to incidents covered by the Title IX Policy will be addressed through procedures described in the student, faculty, and staff policies or appropriate collective bargaining agreement.

This procedure is authorized by the university's policy on Title IX

**(A) Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Title IX Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University will take.

The Title IX Coordinator will initiate at least one of two responses:

- (1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- (2) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint). During this process, reasonable supportive measures will continue to be offered to the parties involved.

The University uses the Formal Grievance Process to determine whether or not the Title IX Policy has been violated. If so, the University will promptly

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<sup>1</sup> Anywhere this procedure indicates "Title IX Coordinator," The University of Toledo may substitute a trained designee.

implement effective remedies designed to ensure that it is not deliberately indifferent to sex discrimination, sexual harassment or retaliation, their potential recurrence, or their effects.

The day-to-day implementation of this procedure will be the responsibility of the Title IX Coordinator.

**(B) Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Title IX Policy, the Title IX Coordinator<sup>2</sup> engages in an initial assessment. The steps in an initial assessment can include:

- (a) The Title IX Coordinator seeks to determine if the person impacted (the Complainant) wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - i. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a Formal Complaint because a risk assessment indicates a threat to the University community.
- (b) If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is completed correctly.
- (c) The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- (d) The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- (e) The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response or a formal investigation and grievance process.
  - i. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process under the Title IX policy is initiated, though the Complainant can elect to initiate one later, if desired.

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<sup>2</sup> If circumstances require, the Vice President for Student Affairs and Vice Provost or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- An investigation or grievance process under a different policy may still occur though.
- ii. If a Formal Grievance Process is chosen, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
  - iii. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate concern based on the nature of the complaint.
  - iv. If it does not, the Title IX Coordinator determines that Title IX does not apply, and will dismiss the complaint from the Title IX process. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit the University's authority or obligation to address a complaint through another process and/or remedies.

**(1) Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Risk Assessment (RA) should be conducted by the Care Team as part of the initial assessment. A RA can aid in critical and/or required determinations, including but are not limited to:

- (a) Emergency removal of an individual based on immediate threat to physical health/safety;
- (b) To help identify potential predatory conduct;
- (c) To help assess/identify grooming behaviors;
- (d) Impose transcript notation or communicate with a transfer University about a Respondent;

**(2) Dismissal of the Title IX Process (Mandatory and Discretionary)**

The University must dismiss a Formal Complaint or any allegations therein from the Title IX process if, at any time during the investigation or hearing, it is determined that:

- (a) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Title IX policy, even if proved; and/or
- (b) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- (c) The conduct did not occur against a person in the United States; and/or
- (d) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University.<sup>3</sup>

The Title IX Office may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing

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

Upon any dismissal of a Formal Complaint from the Title IX process, the University will promptly send a written notice of the dismissal from the Title IX process via the University issued email address, personal email address, or home address and the rationale for doing so, simultaneously to the parties and to the appropriate office for review for consideration under other university policies.

This dismissal decision of the Title IX process is appealable by the Complainant and/or the Respondent under the procedures for appeal below. The decision not to dismiss from the Title IX process is also appealable by the Complainant

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<sup>3</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

and/or Respondent claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### **(C) Counter Allegations**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counter allegations but uses an initial assessment, described above, to assess whether the complaint in the counter allegations are made in good faith. Complaints by a Respondent may be made in good faith, but are, on occasion, also made for purposes of alleged retaliation. Allegations made with retaliatory intent will not be permitted.

Allegations determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counter allegations may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of the Title IX Policy.

### **(D) Right to an Advisor**

The parties may each have an Advisor<sup>4</sup> of their choice present with them for all meetings, interviews, and hearings they attend within the formal grievance process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>5</sup>

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<sup>4</sup> This could include an attorney, advocate, union representative, or support person. The law requires the University to permit one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally), if the University allows more than one Advisor for one party, will do so for all parties in the matter.

<sup>5</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

The University may permit parties to have one additional Advisor upon advance written request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties. If the request is made too late to notify the other party of the opportunity to obtain and bring a second advisor, the request may be denied for that reason.

The University will provide members of collective bargaining units notice of an employee's rights to have a union representative present if the interview, meeting, or hearing may result in the employee facing discipline, and the employee will be permitted to request that a union representative be present as their advisor.

The University will not delay a specific hearing, interview, or meeting more than once to allow for a union representative or other advisor of the party's choosing.

**(1) Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, union representative or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

Parties have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

The Title IX Coordinator will make available a pool of Advisors for either party. If the parties choose an Advisor from the pool available from the University, the Advisor will have been trained by the University on Title IX. They are not acting as attorneys and are not able to give legal advice nor opine on the potential impact of discipline on pending or impending civil or criminal cases.

**(2) Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including the intake and any follow-up interviews.

If one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

Advisors are not permitted to disrupt the meeting or hearing and are expected to maintain decorum. In addition, attorneys should remember that the hearing procedure is not litigation, and the rules of civil procedure, the rules of criminal procedures, and the rules of evidence used in court do not apply. At the hearing, advisors are not permitted to interject objections or other statements during questioning conducted by another participant at the hearing.

**(3) Advisors in Hearings/University-Appointed Advisor**

The parties are not permitted to directly question each other or any witnesses at a hearing in this process. If a party does not have an Advisor for a hearing, the University will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

**(4) Advisor Violations**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings and are expected to be respectful of all participants in the process.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Advisors are not permitted to answer questions on behalf the parties. The Advisor may consult with their advisee, either privately as needed, or by quietly conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this procedure will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**(5) Sharing Information with the Advisor**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a request form for faculty and staff cases and a FERPA Release Form for student cases that authorizes or requests the University to share such information with their Advisor. The parties must either complete and submit the request form and or FERPA Release Form to the Title IX Coordinator or provide similar documentation demonstrating consent or a request to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their Advisor, the University will continue to communicate directly with the party and will copy the Advisor on the communication.

**(6) Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. In particular, University employees should be aware that some information received may be protected from further disclosure by FERPA, and that further disclosure of those records, other than to the United States Department of Education, could result in disciplinary action. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.



(7) **Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend interviews and meetings when planned but may change scheduled interviews and meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. The University may choose to use technology, i.e. WebEx, to facilitate timely meetings. For employees represented by a collective bargaining agreement, a meeting or hearing will only be postponed once to allow an advisor to attend.

(8) **Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Title IX Investigator(s) of their Advisor as soon as possible.

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are required to inform the Title IX Coordinator of the identity, phone number and email address of their hearing Advisor at least five (5) Business Days before the hearing.

(E) **Grievance Process Pool**

The Formal Grievance Process relies on a pool of trained personnel ("the Pool") to carry out the process. Members of the Pool are will be listed on the University's Title IX Website available to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at [www.utoledo.edu/title-ix/pool.html](http://www.utoledo.edu/title-ix/pool.html)

(1) **Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- (a) To provide appropriate intake of and initial guidance

pertaining to complaints

- (b) To act as an Advisor to the parties
- (c) To perform or assist with initial assessment of a reported complaint
- (d) To investigate complaints
- (e) To serve as a hearing facilitator (process administrator, no decision-making role)
- (f) To serve as a Decision-maker regarding the complaint
- (g) To serve as an Appeal Decision-maker

## (2) **Pool Member Appointment**

The Title IX Coordinator, in consultation with the Vice President of Student Affairs and Vice Provost appoints the Pool<sup>6</sup>, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

## (3) **Pool Member Training**

The Pool members receive annual training [jointly and/or based on their respective roles]. This training includes, but is not limited to:

- (a) The University's Title IX Policy and Procedures
- (b) How to conduct investigations and hearings that promote accountability, and provides due process
- (c) Implicit bias
- (d) Disparate treatment and impact
- (e) Reporting, confidentiality, and privacy requirements
- (f) Applicable laws, regulations, and federal regulatory guidance
- (g) How to implement appropriate and situation-specific remedies
- (h) How to investigate in a thorough, reliable, and impartial manner
- (i) How to uphold fairness, equity, and due process
- (j) How to weigh evidence

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<sup>6</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.

- (k) How to conduct questioning
- (l) How to assess credibility
- (m) Impartiality and objectivity
- (n) How to render findings and generate clear, concise, evidence-based rationales
- (o) The definitions of all offenses
- (p) How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with the Title IX policy
- (q) How to conduct an investigation and grievance process including hearings, and appeals
- (r) How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- (s) Any technology to be used at a live hearing
- (t) Issues of relevance of questions and evidence
- (u) Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- (v) How to determine appropriate sanctions
- (w) Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are University employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [www.utoledo.edu/title-ix/mandatorytraining.html](http://www.utoledo.edu/title-ix/mandatorytraining.html).

#### **(4) Pool Membership**

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

#### **(F) Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview with the Title IX Investigator(s) and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant.

The NOIA will include:

- (a) A summary of all of allegations,
- (b) The identity of the involved parties (if known),
- (c) The misconduct being alleged,
- (d) The date and location of the alleged incident(s) (if known),
- (e) The policy implicated,
- (f) A description of the applicable procedures,
- (g) A statement of the potential sanctions/responsive actions that could result,
- (h) A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- (i) A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- (j) A statement about the University's policy on retaliation,
- (k) Information about the privacy of the process,
- (l) Information on the need for each party to have an Advisor of their choosing at the hearing and suggestions for ways to identify an Advisor,
- (m) A statement informing the parties that the University's Title IX Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- (n) Detail on how the party may request disability accommodations during the interview/resolution process,
- (o) A link to the University's Title IX Resource guide,
- (p) The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- (q) An instruction to preserve any evidence that is directly related to the allegations,
- (r) If required by a collective bargaining agreement, a statement of the Respondent's Garrity Rights.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address provided by the party, emailed to the parties' University-issued email or the parties' personal email address that they have provided. Once mailed, emailed using the

University assigned email address or email address provided, and/or received in-person, notice will be presumptively delivered.

**(G) Resolution Timeline**

The University will make a good faith effort to complete the resolution process within a timely manner, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who may provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Timelines will not be extended to accommodate public records or FERPA requests. The Title IX process provides for significant information exchange, review, and comment before any decision making occurs, as well as an appeals process. A party or advisor's decision to request records outside of the Title IX process will not constitute a reason to delay the prompt resolution of the matter.

**(H) Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation.

**(I) Impartiality**

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President for Student Affairs and Vice Provost or designee.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported sexual harassment or retaliation unless and until the Respondent is determined to be responsible for a Title IX Policy violation by the Preponderance of the Evidence standard of proof.

**(J) Investigation Timeline**

Investigations are completed in a timely manner, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit.

**(K) Delays in the Investigation Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

The University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

**(L) Steps in the Investigation Process**

Investigations are intended to be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to provide evidence as well as expert and non-expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- (a) Determine the identity and contact information of the Complainant
- (b) In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- (c) Identify the Title IX policy violation(s) implicated by the alleged misconduct and notify the Complainant and Respondent of the specific Title IX policy violation(s) implicated
- (d) Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential Title IX Policy violation
- (e) Meet with the Complainant to finalize their interview/statement, if necessary
- (f) Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - i. Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- (g) Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence from their respective interviews and meetings
- (h) When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose; in addition, If required by a collective bargaining agreement, a statement of the Respondents Garrity Rights

- (i) Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- (j) Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- (k) Complete the investigation promptly and without unreasonable deviation from the intended timeline
- (l) Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- (m) Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- (n) The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- (o) Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- (p) The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- (q) The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- (r) The Investigator(s) shares the report with the Title IX Coordinator



- (s) The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.
- (t) The University of Toledo cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process. If a party is not an "eligible student," as defined in 34 CFR 99.3, then the recipient must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3

#### **(M) Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Title IX policy and may warrant discipline.

WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

#### **(N) Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are 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.

**(O) Referral for Hearing**

Once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student. The decision-maker selected will not have previously participated in the investigation at issue.

**(P) Hearing Decision-maker Composition**

The University will designate a single Decision-maker for employees and/or a three-member panel for students from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

**(Q) Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant may be

considered. The Decision-maker(s) will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence standard; whether it is more likely than not that the Respondent violated the Title IX Policy as alleged.

#### **(R) Notice of Hearing**

No less than fourteen (14) Business Days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- (a) A description of the alleged violation(s), the applicable policy allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- (b) The time, date, and location of the hearing.
- (c) Any technology that will be used to facilitate the hearing.
- (d) Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least seven (7) Business Days prior to the hearing.
- (e) A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must

- be raised with the Title IX Coordinator at least five (5) Business Days prior to the hearing.
- (f) Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
  - (g) A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
  - (h) Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present to conduct questioning of the other party and witnesses. There are no exceptions.
  - (i) A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
  - (j) An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) Business Days prior to the hearing.
  - (k) If required by the collective bargaining agreement a statement of the Respondent's Garrity rights.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Procedure) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the reasonable timeframe goal for resolution. Those on less than a 12-month appointment will be expected, if they wish to participate in the process, to participate over summer if it has not been completed during their active time.

### **(S) Hearing Participation Options**

The University must hold a live hearing in which individuals can see and hear each other. The live hearing can be either virtual or in person. The live hearing is an opportunity for both parties to tell their side of the story in front of the decision maker(s).

The Title IX Coordinator or the Chair can arrange to use technology to allow remote questioning. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least seven (7) Business Days prior to the hearing so that appropriate arrangements can be made.

When a hearing is being held in person, if any party requests, the entire live hearing must be held, with the parties located in separate rooms with technology enabling everyone to see and hear each other so that parties never need to face each other in person during a live hearing.

### **(T) Pre-Hearing Preparation**

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) Business Days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have offered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing.

The parties will be given a list of the names of the Decision-maker(s) at least seven (7) Business Days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than three (3) Business Days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) Business Days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) Business Day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

#### **(U) Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sex discrimination, sexual harassment and/or retaliation.

Participants at the hearing will include the Decision-maker(s), any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, an organizational representative when an organization is the Respondent, Advisors to the parties, any called witnesses while they are being questioned, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

Neither the parties nor the Decision-maker(s) may ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

#### **(V) Role of Hearing Facilitator**

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**(W) Investigator Presents the Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

**(X) Statements and Questioning**

Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair will state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair and/or Decision Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the parties or Advisors on relevance once the Chair has ruled on a question. Advisors or Attorneys will not be permitted to object during the hearing.

**(Y) Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness (including those contained in the

investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that party or witness statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If the University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **(Z) Recording Hearings**

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator without FERPA release from each student participant.

### **(AA) Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the Title IX policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.



When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair or Decision Maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations. For employees, this will be the determination and sanction decision of the Appointing Authority.

This report is will be submitted to the Title IX Coordinator within five (5) Business Days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

#### **(AB) Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within seven (7) Business Days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' the University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct

report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law.

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and basis for any available appeal options.

**(AC) Statement of the Rights of the Parties (see [Appendix C](#))**

**(AD) Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- (a) The nature, severity of, and circumstances surrounding the violation(s)
- (b) The Respondent's disciplinary history
- (c) Previous allegations or allegations involving similar conduct
- (d) The need for sanctions/responsive actions to bring an end to the sex discrimination, sexual harassment and/or retaliation
- (e) The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sexual harassment and/or retaliation
- (f) The need to remedy the effects of the sex discrimination, sexual harassment and/or retaliation on the Complainant and the University community
- (g) The impact on the parties
- (h) Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome

of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

(1) **Student Sanctions**

The following are the usual sanctions<sup>7</sup> that may be imposed upon students or organizations singly or in combination:

- (a) **Written Warning** – Written notice to the respondent (student, student group, student organization) that their behavior has violated the Student Code of Conduct, and that further violations may result in more severe sanction(s).
- (b) **Conduct Probation Without Restrictions** – The respondent (student, student group, student organization) is not in good standing with the University and is subject to more severe sanction(s), including suspension or expulsion if there are any further violations.
- (c) **Conduct Probation with Restrictions** – The respondent (student) is not in good standing with the University and is subject to more severe sanction(s), including suspension or expulsion if there are any further violations. The respondent may also receive any of the following restrictions, including, but not limited to: not representing the University on any athletic team other than intramurals, hold an office in any registered student organization, represent the university in any extracurricular activity or official function, or participate in the study abroad program.
- (d) **Conduct Suspension** – Separation of the respondent (student) from the University for a definitive period of time, after which the respondent is eligible to return. Conditions for readmission are specified.
- (e) **Conduct Expulsion** – Permanent separation of the respondent (student) from the University.

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<sup>7</sup> The University policies on transcript notation will apply to these proceedings.

(f) Restriction of Privileges – Restrictions placed upon a respondent (student group/organization) which limits University privileges for a specified period of time. These restrictions may include, but are not limited to: Inability to represent the University in any capacity, inability to maintain an office or other assigned space on University property, inability to receive/retain University funds, inability to participate in intramural sports, inability to sponsor, co-sponsor, and/or participate in any social event or other activity, inability to sponsor any speaker or guest on campus, inability of rush or membership recruitment activities, inability of the use of University facilities, inability of the use of University vehicles, inability of advertising on-campus for organizational activities, and inability of soliciting and/or selling any items on-campus.

(g) Suspension of Student Group/Student Organizational Recognition – The denial of privileges of a student group/organization for a designated period.

(h) Expulsion of Student Group/Student Organization Recognition – Permanently excludes the student group/student organization from the University without any recourse to reapply for recognition.

(i) Residence Hall Transfer – The respondent is required to transfer residence halls.

(j) Residence Life Suspension – Separation of the respondent from all residence life facilities for a set period after which the respondent may be eligible to return. Conditions for return may be specified.

(k) Residence Life Expulsion – Permanent separation of the respondent from all residence life facilities.

(l) Educational Action – Action intended to educate the respondent on their choices and behaviors. Examples of educational actions include reflective essays, research papers, designing and/or attending programs, completion of community service, counseling center screenings, parent/guardian notification, etc.

(m) Administrative Fee(s)/Fine(s) – Imposed when a respondent (student, student group, or student organization) is found responsible for violating the Student Code of Conduct. Fee(s) and Fine(s) assist with costs associated with educational workshops and programs offered by the Office of Student Conduct and Community Standards.

(n) Restitution – Compensation for the loss, damage, or injury caused by the respondent. Restitution may include one of the following: Monetary or material replacement.

(o) No Contact Directive – Written directive to refrain from intentional contact, direct or indirect, with one or more person(s), through any means.

(p) Revocation of Admission or Degree – Admission to, or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in gaining admission or obtaining the degree, or for other serious violations committed by a student prior to graduation.

(q) Withholding Degree – The University may withhold a respondent's earned degree until the completion of the student conduct process, including the completion of all sanction(s).

## (2) Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in sex discrimination, sexual harassment and/or retaliation include:

- (a) Warning – Verbal or Written
- (b) Performance Improvement Plan/Management Process
- (c) Enhanced supervision, observation, or review
- (d) Required Training or Education
- (e) Probation
- (f) Denial of Pay Increase/Pay Grade
- (g) Loss of job Responsibilities
- (h) Demotion
- (i) Transfer
- (j) Reassignment

- (k) Delay of progress toward tenure
- (l) Restriction of stipends, research, and/or professional development resources
- (m) Suspension with pay
- (n) Suspension without pay
- (o) Termination
- (p) Other Actions: In addition to, or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

### **(AE) Withdrawal or Resignation While Charges Pending**

**Students:** If a student has an allegation pending for violation of the Title IX Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of the University. A hold will be placed on their ability to be readmitted. They may also be barred from the University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to the University if found to have violated the Title IX Policy, unless and until all sanctions have been satisfied.

**Employees:** Should a Respondent no longer be an employee of the University unresolved allegations with the Title IX process ends.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing

effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending will be coded as resigned in lieu of termination and/or a notation in the personnel file will be made regarding the pending allegations.

### **(AF) Appeals**

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within five (5) Business Days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will review and make a decision on the appeal. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-Maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **(1) Grounds for Appeal**

Appeals are limited to the following grounds:

- (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; and
- (c) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this procedure, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this procedure, then the Appeal Chair will notify the other party(ies) and their

Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given seven (7) Business Days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this procedure by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in seven (7) Business Days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than seven (7) Business Days, barring exigent circumstances. All decisions will be made while applying the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' the University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **(2) Sanctions Status During the Appeal**



Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### (3) **Appeal Considerations**

- (a) Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- (b) Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- (c) An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- (d) The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- (e) Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- (f) Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- (g) In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- (h) The results of a remand to a Decision-maker(s) cannot be appealed. The

results of a new hearing can be appealed, once, on any of the three available appeal grounds.

- (i) In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **(AG) Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sex discrimination, sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- (a) Referral to counseling and health services
- (b) Referral to the Employee Assistance Program
- (c) Education to the individual and/or the community
- (d) Permanent alteration of housing assignments
- (e) Permanent alteration of work arrangements for employees
- (f) Provision of campus safety escorts
- (g) Climate surveys
- (h) Policy modification and/or training
- (i) Provision of transportation accommodations
- (j) Implementation of long-term contact limitations between the parties
- (k) Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no Title IX policy violation is found.

When no Title IX Policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

**(AH) Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Decision-Maker).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

**(AI) Recordkeeping**

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

- (a) Each sex discrimination and sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- (b) Any disciplinary sanctions imposed on the Respondent;
- (c) Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- (d) Any appeal and the result therefrom;
- (e) All materials used to train Title IX Coordinators, Investigators, Decision-makers, The University will make these training materials publicly available on the University's Title IX website
- (f) Any actions, including any supportive measures, taken in response to a report or formal complaint of sex discrimination and/or sexual harassment, including:
  - i. The basis for all conclusions that the response was not deliberately indifferent;
  - ii. Any measures designed to restore or preserve equal

- access to the University's education program or activity; and
- iii. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

#### **(AJ) Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Accessibility who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **(AK) Revision of this Policy and Procedures**

These procedures supersede any previous procedures addressing sex discrimination, sexual harassment and/or retaliation under Title IX and 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 on the University's Title IX website, 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 summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in these procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

These procedures are effective August 14, 2020

Reviewed by:

/s/  
Vicky Kulicke, CAAP  
Director, Title IX and  
Compliance

August 14, 2020  
Date

Initial effective date: August  
14, 2020

Review/Revision Date: n/a

**Next review date: August 14,  
2021**

### APPENDIX A: POLICY EXAMPLES

Some examples of possible sexual harassment include:<sup>8</sup>

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised, or a bad grade is threatened.
- A student repeatedly sends graphic, sexually oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them

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<sup>8</sup> ATIXA recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.

that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

#### Examples of Stalking

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if they had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student, they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’s car, both on-campus and at home. Asked again to stop, the student stated by email, “You can ask me to stop, but I’m not giving up. We are meant to be together, and I’ll do anything to make you have the feelings for me that I have for you.” When the tutor did not respond, the student emailed again, “You cannot escape me. I will track you to the ends of the earth. If I can’t have you, no one will.”

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his

room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.



Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

APPENDIX B: STATEMENT OF RIGHTS FOR PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited sex discrimination, sexual harassment or retaliation made in good faith to the University officials.
- The right to timely written notice of all alleged Title IX policy violations, including the identity of the parties involved (if known), the misconduct being alleged, the date and location of the alleged misconduct (if known), 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 have the University Title IX policy and procedures followed without material deviation.
- The right not to be discouraged by the University officials from reporting sex discrimination, sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by the University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the 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 the Title IX Policy responded to promptly and with sensitivity by the University law enforcement and/or other the University officials.

- The right to be informed of available interim actions and supportive measures, such as but not limited to counseling, advocacy, health care, on campus and in the community.
- The right to the University implemented no-contact directive or a no-trespass order against a non-affiliated third party, when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice of a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already.

These actions may include, but are not limited to:

- (a) Referral to counseling, medical, and/or other healthcare services
  - (b) Referral to the Employee Assistance Program
  - (c) Referral to community-based service providers
  - (d) Student financial aid counseling
  - (e) Education to the institutional community or community subgroup(s)
  - (f) Altering campus housing assignment(s)
  - (g) Altering work arrangements for University employees
  - (h) Safety planning
  - (i) Providing campus safety escorts
  - (j) Implementing contact limitations (No Contact Directive) between the parties
  - (k) Academic support, extensions of deadlines, or other course/program-related adjustments
  - (l) Persona Non Grata (PNG) order, or Be-On-the-Lookout (BOLO) Notice
  - (m) Class schedule modifications, withdrawals, or leaves of absence
  - (n) Increased security and monitoring of certain areas of the campus
  - (o) Any other actions deemed appropriate by the Title IX Coordinator
- 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 ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- 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 Title IX Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least eight hours of relevant annual training.
- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.
- 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 of the decision (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 fair resolution as defined in these procedures.
- The right to be protected from retaliation for being involved in the Title IX process.