



Policy Title: GE2039 – Sexual Harassment & Sexual/Gender-Based Misconduct Policy (INTERIM)

Subject Area: General

Responsible Official(s): Director and Title IX Coordinator

Responsible Office(s): Office for Civil Rights Compliance and Title IX

Policy Statement

This policy is adopted by the University of Memphis specifically to address: 1) sexual harassment as defined by Title IX of the Education Amendments of 1972 and its implementing regulations which includes dating violence, domestic violence, sexual assault, and stalking; and 2) sexual/gender-based misconduct as defined by University policy. The University of Memphis prohibits conduct that constitute sexual harassment and sexual/gender-based misconduct. The University is committed to eliminating all acts of sexual harassment and sexual/gender-based misconduct on its campus. Any allegation of sexual harassment as defined herein will be investigated and adjudicated according to this policy and its corresponding procedures and in compliance with Title IX of the Education Amendments of 1972, the Higher Education Act, and the Violence Against Women Reauthorization Act of 2013, as well as the regulations implementing these Acts.

Conduct falling outside of the definition of sexual harassment as set forth by Title IX and its implementing regulations may still constitute a violation of the University's policy against sexual/gender-based misconduct. Such conduct will still be addressed by the University using the same procedures applicable to Title IX based sexual harassment.

Nothing in this policy prohibits the Title IX Coordinator, or their designee, from determining what conduct constitutes sexual harassment under Title IX and its implementing regulations and what conduct constitutes sex/gender-based misconduct under University policy.

Definitions

Advisor – Any person selected by the parties to provide assistance during meetings, interviews, hearings, or any phase of the University's grievance process. The University will not limit a parties' choice of advisor. A party is required to use an advisor to ask the opposing party and any witnesses all relevant questions during hearings. If a party does not have an advisor during this phase of the process, the University will provide one free of charge.

Appeal – The process by which any party to the University’s sexual harassment grievance process can request a reconsideration of the findings and/or sanctions issued by the hearing officer.

Campus Security Authority – A University official who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. All Campus Security Authorities are required to report to the Title IX Coordinator any knowledge they may have of conduct covered by this policy.

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent – Means an informed decision, freely given, made through mutually understandable words or actions that indicate a willingness to participate in mutually agreed upon activity. Consent cannot be given by an individual who is asleep; unconscious; or incapacitated, either through the effect of drugs/alcohol or for any other reason; or is under duress, threat, coercion, or force. Past consent does not imply present or future consent. Silence or an absence of resistance does not imply consent. Consent can be withdrawn at any time.

Dating Violence – Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the complainant; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - o The length of the relationship.
 - o The type of the relationship.
 - o The frequency of interaction between the persons involved in the relationship.

Domestic Violence – Felony or misdemeanor crimes of violence committed by:

- A current or former spouse or intimate partner of the complainant;
- A person with whom the complainant shares a child in common;
- A person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner;
- A person who is similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies; or
- Any other person against an adult or youth who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Formal Complaint – A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. A formal complaint may be filed with the Title IX

Coordinator in person, by mail, by electronic mail or by submission to the official University complaint reporting system.

Grievance Process – The formal means of resolving complaints of sexual harassment and sexual/gender-based misconduct. The grievance process includes all meetings, interviews, conferences, hearings and appeals that occur during the resolution of a complaint.

Incapacitation – The inability to make rational reasonable judgments as a result of the use of alcohol, other drugs, being asleep, unconscious, or in a state of blackout. Incapacitation is a state beyond drunkenness or intoxication in which a person is unable to make fully informed judgments or have an awareness of consequences.

Informal Resolution – A process by which the complainant and respondent agree to resolve a complaint. The informal resolution process is designed to assure fairness, facilitate communication and maintain an equitable balance of power between the parties. Informal resolutions are facilitated by the Title IX Coordinator or his/her designee.

Investigator – An official designated by the Title IX Coordinator to conduct investigations of sexual harassment under this policy, the Student Conduct Code, and any other applicable University policies.

Notice – University provided email is the official form of communication. When notice is transmitted by email, the notice is effective on the date that the email is sent. In situations where no University provided email is available or active, notice will be given in writing and transmitted by United States mail and or hand delivery to the address on file. When notice is transmitted by United States mail, the notice is effective on the date that it is mailed. When notice is hand delivered, it is effective on the date of delivery. Parties must notify the University of updated contact information throughout the grievance process.

Party – Either the complainant or the respondent. References in this Policy to the plural “parties” includes complainant and respondent.

Preponderance of The Evidence – The standard by which the University will determine at a hearing whether a violation of this policy has occurred. Preponderance of the evidence is also referred to as “more likely than not” that a violation of policy did or did not occur. This standard applies for all complaints of sexual harassment under this Policy.

Report – Any communication by any person to the Office for Civil Rights Compliance and Title IX of the occurrence of conduct that could constitute sexual harassment or sexual/gender-based misconduct.

Reporter – Any person communicating to the Office for Civil Rights Compliance and Title IX of an occurrence of conduct that could constitute sexual harassment or sexual/gender-based misconduct.

Respondent – An individual who has been reported to be the perpetrator of conduct that could constitute a violation under this Policy.

Retaliation – Any action taken against a person because that person has reported an alleged violation of this policy or because that person has filed a complaint, served as a witness, assisted, participated or refused to participate in an investigation or grievance process. This includes action taken against a bystander who intervened to stop or attempt to stop sexual harassment as defined in this policy. Retaliation includes intimidating, threatening, or coercing an individual because of the individual's complaint or participation.

Sexual Assault – An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, which includes:

1. Sex Offenses, Forcible: Any sexual act directed against a complainant, without the consent of the complainant including instances where the complainant is incapable of giving consent.
 - a. Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
 - b. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
 - c. Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
 - d. Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
2. Sex Offenses, Nonforcible: Unlawful, nonforcible sexual intercourse.
 - a. Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- b. Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Sexual Exploitation – Occurs when a person makes non-consensual or unjust sexual advantages toward another person for their own advantage or benefit, or to benefit another person other than the one being exploited. Any act that extends the bounds of consensual sexual activity with or without the knowledge of the other individual for any purpose, including but not limited to sexual gratification, financial gain, or personal benefit. Examples include:

1. Non-consensual streaming, audio or video recording, photographing, or transmitting intimate or sexual utterances, sounds, or images without consent of all parties involved;
2. Allowing others to view sexual acts (whether in person or via a video camera or other recording device without consent of all parties involved);
3. Engaging in voyeurism without consent, even if the act itself is consensual;
4. Prostituting an individual;
5. Knowingly exposing an individual to sexually transmitted diseases without the individual's knowledge;
6. Inducing incapacitation for the purpose of making an individual vulnerable to non-consensual sexual activity.

Sexual/Gender-Based Misconduct – Any conduct on the basis of sex or gender that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be severe, pervasive, or objectively offensive that it denies a person equal access to the University's educational programs or activities; or
3. Any conduct that constitutes sex/gender-based discrimination, sexual assault, dating violence, domestic violence, stalking, or sexual exploitation as defined in this policy.

Sexual Harassment – For purposes of Title IX of the Education Amendments of 1972, sexual harassment is any conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's educational programs or activities; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear his or her safety or the safety of others; or (2) suffer substantial emotional distress.

Title IX Coordinator – The official responsible for oversight and coordination of the University’s educational programs and training efforts for the University community with regard to sexual harassment. The Title IX Coordinator, conducts or oversees investigations and, in conjunction with the Dean of Students, Human Resources and Academic Affairs, has the authority to implement all interim and supportive measures deemed appropriate. The Title IX Coordinator may delegate investigatory responsibility to Deputy Title IX Coordinators who are also authorized to implement appropriate interim measures. The Title IX Coordinator receives annual training on topics related to responding to or investigating allegations of sexual misconduct and is the University official responsible for overseeing the institution’s response to sexual misconduct reports and complaints, and for addressing any patterns or systemic issues identified by such reports and complaints.

Policy

APPLICABILITY

This policy is applicable to the following individuals:

- A. **Title IX sexual harassment:** For a complaint to be evaluated as a Title IX sexual harassment complaint, the following criteria must be met:
 - a. The complainant must be a current employee or student who has been subjected to sexual harassment as defined by Title IX and its implementing regulations;
 - b. The complainant must be a former student or employee who was subjected to sexual harassment if the conduct took place during the time of enrollment or employment at the University of Memphis, the conduct has a reasonable connection to the institution and the former student or employee is attempting to access the programs or benefits of the University;
 - c. The respondent must be a current employee or student or otherwise affiliated with the University such that the University exercises substantial control over the respondent’s access to or participation in its programs or activities.
- B. **University sexual/gender-based misconduct:** For a complaint to be evaluated as University sexual/gender-based misconduct, the following criteria must be met:
 - a. The complainant must be a current or former employee, student, or individual who has been subjected to sex/gender-based misconduct while accessing or attempting to access the University’s programs or activities;

- b. The respondent must be a current employee or student or otherwise affiliated with the University such that the University exercises substantial control over the respondent's access to or participation in its programs or activities.

TRAINING OF UNIVERSITY PARTIES

All University employees or designees involved in the investigation or adjudication of alleged violations of this policy will receive annual training on issues related to sexual harassment, domestic violence, dating violence, sexual assault, and stalking and the process for conducting an investigation and hearing that protects the safety of and promotes accountability of members of the University community. All training will be conducted in an unbiased and objective manner and will prepare those involved in the sexual harassment grievance process to serve impartially.

GEOGRAPHICAL SCOPE

The University will exercise Title IX jurisdiction over reports or complaints when the parties fall into the categories as defined above in section II. A. **and** the conduct occurred in the United States and at locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurred. This also includes any building owned or controlled by a student organization that is officially recognized by the University. Additionally, the University will exercise Title IX jurisdiction over any sexual harassment that occurs via the use of University computers, internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University.

Factors that will be considered when determining geographical jurisdiction include, but are not limited to whether the University funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred.

Sexual harassment that occurs outside of the University's Title IX geographical scope will be addressed as sexual/gender-based misconduct under this or other University policies. The University reserves the right to determine the appropriate policy under which to investigate complaints.

RETALIATION

University of Memphis employees and students are strictly prohibited from retaliating, intimidating, threatening, coercing, or otherwise discriminating against any individual for exercising their rights or responsibilities under any provision of this policy. Retaliation will result in disciplinary measures, up to and including separation from the University. Anyone who believes they have been retaliated against because they have exercised their rights under this policy should immediately make a report to the Office for Civil Rights Compliance and Title IX.

THE IMPORTANCE OF CONSENT/THE IMPACT OF ALCOHOL & OTHER DRUGS

Although defined above, it is important for all to understand the significance of consent. Consent is an affirmative decision to engage in mutually acceptable sexual activity given by clear actions or words. It is an informed decision made freely and actively by all parties. Relying solely upon nonverbal communication can lead to miscommunication. For example, silence or an absence of resistance does not imply consent. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during a sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue. Parties should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn at any time. Being intoxicated does not diminish one's responsibility to obtain consent.

The use of alcohol or other drugs can have unintended consequences. Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. A person who is incapacitated is unable to give consent. The perspective of a reasonable person similarly situated to the complainant and, in consideration of the context of the behavior, will be the basis for determining whether one should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high is never an excuse for sexual harassment.

CONSENSUAL RELATIONSHIPS

The prior existence of a consensual relationship does not preclude a complainant from filing a complaint alleging a violation of this policy. Circumstances change and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of policies.

For more information regarding the University's position on consensual relationships refer to [HR5055 - Nepotism and Personal Relationships Policy](#), and [GE2021 - Conflict of Interest](#).

IMMEDIATE ASSISTANCE AND PRESERVATION OF EVIDENCE

- A. **Safety:** The University recognizes that deciding whether to report sexual harassment, sexual assault, dating/domestic violence, or stalking (to the University and/or to the police) and deciding how to proceed if and when a report has been filed (including deciding whether and when to pursue a University complaint) can be a decision-making process that unfolds over time.

Whatever steps a complainant ultimately decides to take, in the immediate aftermath of

sexual harassment, sexual assault, domestic violence, dating violence or similar events, the most important thing is for the complainant to get to a safe place.

- B. **Seeking Medical Attention:** When a feeling of safety has been achieved, the complainant should seek medical attention, regardless of his or her decision to report the crime to the police. It is very important for the complainant of sexual assault to seek medical attention immediately. Such screening, at the option of the complainant, may include screening for sexually transmitted diseases pregnancy date rape drugs, emergency contraception, and psychological comfort and counseling and treatment for any physical injuries. Forensic rape kits and examinations can only be obtained at:

Shelby County Rape Crisis Center

1060 Madison Avenue

Memphis, TN 38104

(901) 222-3950

<https://www.shelbycountyttn.gov/737/Crime-Victims-Rape-Crisis-Center>

A complainant has the right to accept or decline any or all parts of a medical exam. However, critical evidence may be lost or missed if not collected or analyzed.

- C. **Physical Evidence:** Valuable physical evidence can be obtained from the complainant and the complainant's clothing. A complainant should make every effort to save anything that might contain the offender's DNA. Therefore, a complainant should not:
- a. Bathe or shower;
 - b. Wash his/her hands;
 - c. Brush his/her teeth;
 - d. Use the restroom;
 - e. Change clothes;
 - f. Comb hair;
 - g. Clean up the area where the incident took place; or
 - h. Move anything the offender may have touched

Even if the complainant has not yet decided to report the crime, receiving a forensic medical exam and keeping the evidence safe from damage will improve the chances that the police can access and test the stored evidence at a later date should the complainant decide to prosecute.

- D. **Other Evidence:** Complainants reporting sexual harassment or sexual/gender-based misconduct are encouraged to preserve verbal, written and photographic evidence by saving notes, emails, text messages, instant messages, social networking pages, other communications, pictures, logs or other copies of documents that might be useful to investigators.

REPORTING SEXUAL HARASSMENT & SEXUAL/GENDER-BASED MISCONDUCT

The University of Memphis is committed to providing a variety of accessible means to encourage complainants, witnesses and bystanders to report incidents of sexual harassment. In addition to making a report to a Campus Security Authority as defined in this policy, a complaint can be filed directly with the following University offices:

Title IX Coordinator

Office for Civil Rights Compliance and Title IX
156 Administration Building
(901) 678-2713
<http://www.memphis.edu/ocrctix/> /

University Police Services

Main Campus: 100 Zach Curlin Parking Garage
901-678-HELP (emergency); 901-678-3848 (non-emergency)
Police@memphis.edu

Lambuth Campus

731-425-1942 (emergency)
Lambuthpolice@memphis.edu

Electronic Complaint form

<https://www.memphis.edu/ocrctix/complaint.php/complaint.php>

Email Written Complaints

ocr@memphis.edu@memphis.edu

Office of Legal Counsel

201 Administration Building
(901) 678-2155
legal@memphis.edu

ALL CAMPUS SECURITY AUTHORITIES, AS DEFINED IN THIS POLICY, HAVE A DUTY AND RESPONSIBILITY TO REPORT ANY INCIDENT OF SEXUAL HARASSMENT OR SEXUAL/GENDER-BASED MISCONDUCT THAT THEY RECEIVE OR OF WHICH THEY BECOME AWARE TO THE OFFICE FOR CIVIL RIGHTS COMPLIANCE AND TITLE IX.

Even those who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual harassment or sexual/gender-based misconduct to the Title IX Coordinator or a Campus Security Authority. Public awareness events or other forums, including social media and class discussions, in which students disclose incidents of sexual harassment are not considered reports or notice to the University of sexual harassment or sexual/gender-based misconduct for purposes of triggering its obligation to investigate any incident(s).

DISCIPLINARY AMNESTY FOR COMPLAINANTS AND WITNESSES

Anyone who is under the influence of alcohol or drugs during an incident of sexual harassment or sexual/gender-based misconduct should not be reluctant to seek assistance for fear of being sanctioned. The Office of Student Accountability will generally not pursue disciplinary violations against a student (or against a witness) for minor violations of the code if the student is making a good faith report of sexual misconduct. This practice only applies to amnesty from violations of the University's Code of Student Rights and Responsibilities.

It does not grant amnesty for criminal, civil, or legal consequences for violations of federal, state, or local law. Further, excluded from this grant of immunity are all students accused of encouraging or voluntarily participating in the sexual misconduct incident.

Employee actions will be evaluated on a case by case basis to determine if any amnesty will be granted.

PRIVACY & CONFIDENTIALITY

The University of Memphis encourages complainants to report sexual harassment and sexual/gender-based misconduct so they can get the support they need and so that the University can respond appropriately. As such, reports to the Office for Civil Rights Compliance and Title IX, University Police Services, or a Campus Security Authority are not confidential. Additionally, all reports of sexual harassment or sexual/gender-based misconduct made to University Police will be referred to the Title IX Coordinator for review and investigation even if the complainant declines to pursue criminal charges. The University shall not share personally identifiable information with law enforcement without the complainant's consent, or unless the complainant has also reported the incident to law enforcement.

The University of Memphis will keep reports as private as possible and will only disclose information to the extent necessary to provide interim and supportive measures or to fully investigate the complaint. The provisions below detail the confidentiality options available to individuals.

- A. **Confidential Resources:** The following resources hold statutorily protected confidentiality that prohibits the release of an individual's information without that individual's express consent (except under limited circumstances that pose an imminent danger to the individual or to others.):
 - a. The University considers reports made to the University's Victim Services Coordinator as confidential and protected from disclosure during any internal investigation. (These individuals are considered Campus Security Authorities for the purpose of the Clery Act and have an obligation to report crimes under the Clery Act. No personally identifiable information will be included in the report.)

- b. Reports to professional licensed counselors (including the University's Counseling Center) or to professional medical healthcare providers (including the University's Student Health Center) are confidential to the extent allowed by law.

Counselors and doctors will maintain confidentiality of any such reports unless required by law or court order to disclose information. For example, Tennessee's mandatory reporting law related to abuse of minors, imminent harm to others, or subpoenas for testimony may require disclosure of all information received. Counselors and doctors, acting in their capacity as a healthcare provider, affiliated with the University of Memphis, may assist the party in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules.

In some cases, providing requested assistance might require the counselor or doctor to reveal identifying information to other individuals. Written permission from the complainant to reveal the minimum information necessary to arrange requested assistance will be obtained prior to disclosure. Any person who speaks to a counselor or doctor and chooses not to disclose the sexual harassment or authorize a report to be made on their behalf must understand that a request for confidentiality may prevent the University from pursuing disciplinary action against the alleged respondent(s).

- B. **Parallel investigations with local law enforcement:** Some forms of sexual harassment or sexual/gender-based misconduct may be criminal in nature, and a complainant may choose to file a report with law enforcement. If a complainant makes a report to University Police alleging that any degree of rape has occurred on University property, University Police is required to notify the Memphis Police Department. In the case of an alleged rape, University Police will lead the investigation and will cooperate in every respect with the investigation conducted by the Memphis Police Department. T.C.A. § 49-7-129.
- C. **Requests for No Action:** If a complainant discloses an incident to a Campus Security Authority or the Office for Civil Rights Compliance and Title IX but requests that no investigation be conducted or disciplinary action taken, the University will weigh that request against its obligation to provide a safe, non-discriminatory environment for all students, including the complainant. However, if the University honors the request that no action be taken the complainant should understand that the University's ability to meaningfully respond and implement corrective action may be limited.

The Title IX Coordinator will evaluate a complainant's request for no action and will consider a range of factors, including the increased risk that the alleged respondent could commit additional acts of sexual harassment, sexual/gender-based misconduct or other misconduct; whether there have been other sexual harassment or sexual/gender-based misconduct complaints about the same alleged respondent; whether the alleged respondent has a history of arrests or records from a prior school indicating a history of

misconduct; whether the alleged respondent threatened further sexual harassment, sexual/gender-based misconduct or other misconduct against the complainant or others; whether the sexual harassment, sexual/gender-based misconduct was committed by multiple perpetrators; whether the sexual harassment, sexual/gender-based misconduct was perpetrated with a weapon; whether the complainant is a minor; whether the University possesses other means to obtain relevant evidence of the alleged sexual harassment or sexual/gender-based misconduct; or whether the complainant's report reveals a pattern of perpetration at a given location or by a particular group. The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary actions. If none or only a limited number of these factors is present, the University will make best efforts to respect the complainant's request that no action be taken. If the University determines that it cannot accommodate the complainant's request, the Title IX Coordinator will inform the complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.

A complainant or respondent will not be required to participate in any investigation or disciplinary proceeding.

SUPPORTIVE MEASURES

All parties are entitled to supportive measures regardless of whether a complaint is filed or whether an investigation is conducted. Parties may also request supportive measures as an accommodation. Examples of such supportive actions include, but are not limited to:

- Restrictions on contact between the complainant and the respondent;
- Exclusion from areas of campus;
- Providing an escort to ensure that the complainant or respondent can move safely between classes, meeting and activities;
- Ensuring that the complainant and respondent do not attend the same classes or other necessary appearances;
- Moving the complainant or respondent to a different residence hall;
- Providing counseling services;
- Providing medical services;
- Providing academic support services such as tutoring;
- Arranging for the complainant or respondent to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant's academic record.

EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

In situations that require immediate action to address safety or other concerns, the University will take any reasonable administrative action that is appropriate. Students may be subject to

Emergency Removal pending the outcome of the investigation under the appropriate circumstances. Emergency Removal will only be exercised after an individualized safety and risk analysis determines that an imminent risk of the physical health or safety of any person, arising from the sexual harassment allegations.

Similarly, in appropriate circumstances and consistent with University Human Resource policies, employees may be placed on administrative leave pending the outcome of the investigation.

In such situations, the Office for Civil Rights Compliance and Title IX, in conjunction with the Dean of Students, Human Resources, and the Office of the Provost are responsible for implementing the interim measure(s) after consultation with the Office of Legal Counsel.

COMPLAINT RESOLUTION

All proceedings will include a prompt, fair, and impartial investigation. Complainants and respondents will be treated with respect before, during, and after the conclusion of the process. The University shall provide the respondent and complainant equitable rights during the investigative and institutional hearing processes as further described in this policy. All respondents are presumed not responsible for violations of this policy until a finding has been made at the conclusion of the grievance process.

All proceedings within the sexual harassment and sex/gender-based misconduct grievance process (investigations, meetings, hearings, and disciplinary actions) shall be conducted by officials who do not have a conflict of interest or bias for/against the complainant or the respondent. Both the complainant and respondent may object to the impartiality of any University official involved in the grievance process by submitting written notice to the University's Title IX Coordinator. In cases where the objectivity of the Title IX Coordinator is questioned, the complaint may be submitted to the University's Office of Legal Counsel. It will be the responsibility of the Title IX Coordinator (or Legal Counsel when the Title IX Coordinator is the concerned party) to determine if there is evidence that suggests that the concern has merit and to identify a suitable alternative University official to serve. Both the complainant and respondent will be informed of any such actions.

- A. **Reporting Title IX Sexual Harassment:** Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment). Only the victim of sexual harassment or the Title IX Coordinator may file a formal complaint whether in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- B. **Reporting Sexual/Gender-Based Misconduct:** Any person may report or file a complaint of sexual/gender-based misconduct. Upon receiving a report, the Office for Civil Rights Compliance and Title IX will evaluate the report to determine if the alleged conduct meets the definition of sexual/gender-based misconduct; and if so, will proceed as

described below. If the conduct, as alleged, does not constitute sexual/gender-based misconduct but implicates another University policy, the report will be forwarded to the appropriate University office for further action.

- C. **Complaint/Report Evaluation:** Upon receipt of a formal Title IX sexual harassment complaint or a sexual/gender-based misconduct report, the University will provide parties with a written notice of the grievance process, including the informal resolution process(es), and written notice of the allegations potentially constituting sexual harassment or sexual/gender-based misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.
- a. The Title IX Coordinator will evaluate formal Title IX complaints to determine whether the conduct as alleged could qualify as a Title IX violation. Matters not meeting the Title IX jurisdictional requirements will be dismissed for Title IX purposes and will proceed as a sexual/gender-based misconduct complaint if applicable.
 - b. The Title IX Coordinator may consolidate Title IX sexual harassment complaints or sexual/gender-based misconduct complaints when the allegations are against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondent, or by one (1) party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.
 - c. The University may dismiss a Title IX sexual harassment complaint or sexual/gender-based misconduct complaint upon notice from a complainant that s/he would like to withdraw the complaint, when the respondent is no longer enrolled, employed or affiliated with the University, or where there is insufficient evidence to reach a determination. Written notice of any dismissal and reasons for dismissal will be provided to both the complainant(s) and respondent(s). Either party may appeal the University's dismissal of a formal complaint.
- D. **Informal Resolution:** At any time prior to a determination regarding responsibility, the parties may opt to participate in an informal resolution. The Office Civil Rights Compliance and Title IX may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, as long as the parties provide their voluntary, written consent to the informal resolution process. Informal resolution is not available in cases where physical violence is alleged or where the complainant is a student and the respondent is an employee.

The University will not require the parties to participate in an informal resolution process. For purposes of Title IX sexual harassment, the University may not offer an informal resolution process unless a formal complaint is filed.

- a. In order to facilitate the informal resolution process the University will provide the parties with:
 - i. A written notice disclosing the allegations;

- ii. The requirements of the informal resolution process including the circumstances under which the parties are prohibited from re-filing a formal complaint with respect to the same allegations; and
- iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

- b. At any time prior to agreeing to an informal resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

- E. **Investigation:** The Office for Civil Rights Compliance and Title IX will investigate all Title IX sexual harassment complaints and all sexual/gender-based misconduct complaints. Any party whose participation is invited or expected, will be provided written notice of the date, time, location, participants, and purpose of all investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Prior to completion of the investigative report, each party and the party's advisor, if any, will receive, in an electronic format or a hard copy, the evidence collected by the investigator that is directly related to the allegations. The parties will have ten (10) business days to submit a written response to be considered by the investigator prior to completion of the investigative report.

After the elapse of ten (10) business days or receipt of the parties' written responses, whichever is longer, the investigator will issue an investigative report that fairly summarizes the investigation including relevant evidence. The investigator will not make any findings as to the credibility of the parties or witnesses nor will the investigator make a recommendation regarding whether a violation of this policy occurred.

- F. **Hearings:** All hearings conducted pursuant to this policy will be live and in real time. No sooner than ten (10) business days after the issuance of the final investigative report, the University will conduct a hearing regarding the allegations of sexual harassment or sexual/gender-based misconduct. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion or the request of a party, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

At least ten (10) business days prior to the hearing the parties will be provided with the date, time and location of the hearing, access to or copies of the investigative file, and names of all witnesses expected to appear at the hearing. The parties will also be provided with the names of the hearing officer for review and to enable parties to raise any objections as to the officer's objectivity.

At the conclusion of the hearing, the hearing officer will deliberate to determine if

University policy was violated. The hearing officer will evaluate responsibility using a preponderance of the evidence standard.

Within fifteen (15) days of the conclusion of the hearing, the hearing officer will notify the parties, Title IX Coordinator, and the applicable office as determined by the respondent's status with the University, of their decision in the form of a written determination. The determination will be provided simultaneously to both parties.

The University reserves the right to conduct hearings during any official University breaks, including but not limited to the summer months.

- G. **Advisors:** The complainant and respondent shall be provided with the same opportunities to have an advisor, of their choosing, present during any proceeding at which their presence is required or expected such as meetings with staff, the Investigator, informal resolution proceedings or hearings. The advisor's role in any meeting is limited to quietly conferring with their advisee through written or verbal communication.

During hearings, the advisor's role is to ask the other party and any witnesses all relevant questions and follow up questions, including those challenging credibility. Cross examination of the opposing party MAY NOT be conducted by the parties themselves. If a party does not have access to an advisor, the University will provide one for the purpose of conducting cross examination on the party's behalf.

Parties should notify the Office for Civil Rights Compliance and Title IX of their choice of advisor as soon as possible. Advisors are expected to follow the University's rules of decorum throughout each stage of the grievance process. Failure to follow the rules of decorum will result in the advisor being barred from further participation in that stage of the process.

- H. **Appeals:** Within ten (10) days following the Office for Civil Rights Compliance and Title IX's dismissal of a Title IX formal complaint, a report or complaint of sexual/gender-based misconduct or the receipt of the hearing officer's determination of responsibility, the parties will be provided with notice of their appeal rights which are dependent on whether the complaint was investigated as a Title IX sexual harassment complaint or a sexual/gender-based misconduct complaint.
- a. If the matter was investigated as a Title IX sexual harassment complaint, either party may appeal only on the following bases:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; and
 - iii. The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of

the matter.

- b. If the matter was investigated as a sexual/gender-based misconduct complaint, the parties will be notified of their appeal rights in accordance with applicable law.

Within ten (10) days of receipt of an appeal, the University will notify the non-appealing party that an appeal has been filed and provide both parties with the name of the individual hearing the appeal. Either party may raise objections as to the appeal officer(s)' objectivity. Within a reasonable time, the appeal officer (s) will issue a written appeal decision describing the result of the appeal and the rationale for the result. The written appeal decision will be provided simultaneously to both parties.

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