

## PART 1: DEFINITIONS, RESOURCES AND POLICY OVERVIEW

### I. INTRODUCTION

#### **A. Notice of Nondiscrimination and Policy on Statement on Sexual Harassment**

The health, safety, and well-being of all members of the Fielding Graduate University (“University”) community are the University’s primary concerns. In accordance with Title IX of the Education Amendments of 1972 (“Title IX”), its implementing regulations at 34 CFR §106, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Act/Campus Sexual Violence Act (“Campus SaVE Act”), and other applicable state, federal and local laws, the University is committed to maintaining a community free from all forms of sex discrimination, including sexual harassment, as defined in 34 CFR §106 (et seq.) In accordance with Title IX, the University does not discriminate on the basis of sex in its education programs and activities, and the University it is required by Title IX and 34 CFR §106 not to discriminate in such a manner. This requirement extends to admissions and employment, and inquiries about the application of Title IX and this part may be referred to the Title IX Coordinator, to the Assistant Secretary of the U.S. Department of Education, or both. Under Title IX, discrimination on the basis of sex includes sexual harassment which includes sexual violence.

Sexual harassment includes a broad range of behaviors that will not be tolerated in the University’s education programs or activities. The federal rules governing Title IX define sexual harassment broadly to include any of three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect:

- any instance of quid pro quo harassment by a school's employee;
- any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or
- any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

For ease of reference in this policy, any reference to “sexual harassment” includes all of the conduct noted in this definition, including sexual assault, dating violence, domestic violence and stalking as defined under both the Title IX definitions, and under VAWA.

Sexual harassment can occur between strangers, acquaintances, or people who know each other well, including those who are involved in an intimate or sexual relationship, and can be committed by anyone regardless of sex, gender, or gender identity. The University does not tolerate any form of sexual harassment.

Questions regarding Title IX and the Campus SaVE Act may be referred to the University’s Title IX Coordinator or to the U.S. Department of Education’s Office for Civil Rights.

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## **B. The Title IX Coordinator**

The University's designated Title IX Coordinator is:

Dawn Upham, Title IX Coordinator

titleixcoordinator@fielding.edu or

dupham@fielding.edu

or

Dino Ferrare, Human Resources

Director/Title IX Coordinator

dferrare@fielding.edu; 805.898.4018

The Title IX Coordinator's responsibilities include, but are not limited to:

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable policies, including this policy and the University's Non-Discrimination and Anti-Harassment Policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting or coordinating training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and
- Responding to any report or Formal Complaint regarding conduct that violates this policy. For any report of which the University has actual knowledge (and any formal complaint), the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any Formal Complaint, the Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

The Title IX Coordinator may delegate certain responsibilities under this policy to designated administrators, who will be appropriately trained.

## **C. Definitions within the Policy**

**Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or to a Campus/Executive Director.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior or conduct that is in violation of rules or policies of the University.

**Confidentiality** may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law.

**Consent** must be affirmative. Consent means a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of

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resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated.
- Consent cannot be when it is the result of any coercion, intimidation, force, threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

**Formal complaint** means 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. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator As used here, the phrase "document filed by a Complainant" means a document or electronic submission (such as by email) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint.

**Incapacitation** (or incapacity), for purposes of this policy, is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes Title IX Sexual Harassment as defined by this policy.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Retaliation** mean taking any adverse action or attempting to take adverse action, including intimidating, threatening, coercing, or in any way discriminating against an individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

**Sexual harassment** means 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 of the University 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 education program or activity; or
- (3) one of the following offenses:
  - (a) "Sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Forcible sex offenses

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means any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent; these offenses include:

- Rape: The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

Nonforcible Sex Offenses (Except Prostitution Offenses) means unlawful, nonforcible sexual intercourse; these offenses include:

- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

(b) “Dating violence” means violence committed by a person—

(i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

(c) “Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

(d) “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (i) fear for his or her safety or the safety of others; or (ii) suffer substantial emotional distress.

In addition, complaints regarding these crimes under state law, as defined in VAWA, are also investigated and adjudicated under this Title IX Policy. VAWA crimes, including sexual assault, dating

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violence, domestic violence, and stalking as defined by California state laws are outlined in the University's Annual Security Report.

[https://s16973.pcdn.co/wp-content/uploads/2021/12/Annual\\_Security\\_Report\\_2021.3.pdf](https://s16973.pcdn.co/wp-content/uploads/2021/12/Annual_Security_Report_2021.3.pdf)

**Supportive measures** means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University must maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

**Third party** refers to any individual who is not a University student, a faculty member, or a staff member (e.g., vendors, alumni/ae, or local residents).

**Witness** refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

### **D. Scope of Policy**

This Policy governs sexual harassment involving persons in the United States, and applies regardless of sex, race, national origin, disability, part-time/fulltime status, sexual orientation, gender identity, or other protected status.

Under Title IX, the University must respond when sexual harassment occurs in the school's education program or activity, against a person in the United States. "Education program or activity" includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus.

Complaints of discrimination or harassment on the basis of sex that do not involve Title IX-defined sexual harassment, or do not otherwise meet the Title IX threshold for investigation, are governed by the:

- Student Complaints and Grievances Policy, contained in the University's catalog (for students) <https://catalog.fielding.edu/content.php?catoid=8&navoid=417&hl=discrimination&returnto=search>
- Fielding Graduate University Discrimination, Harassment, and Retaliation Prevention Policy and Complaint Procedure (for employees), contained on the Fielding intranet. <https://my.fielding.edu/TechAdmin/HR/Pages/default.aspx>

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## **E. Rights of the Complainant and Respondent**

1. The Complainant may make a report to local law enforcement and/or state police;
2. The Complainant will have reports of Sexual Harassment treated seriously;
3. The Complainant will be provided with a written notice of his/her rights and options under this policy;
4. The Complainant will have the right to make a decision about whether or not to disclose a crime or violation and participate in the investigation and hearing process and/or criminal justice process free from pressure from the University;
5. Both parties will be provided a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
6. The Complainant will be treated with dignity and to receive from the University courteous, fair, and respectful referral to health care and counseling services, where available;
7. The Complainant will be free from any suggestion that s/he is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
8. The Complainant will be asked to describe the incident with as few University representatives as practicable and not be required to unnecessarily repeat a description of the incident;
9. Both parties will be protected from retaliation by the University, any student, and or their friends, family and acquaintances within the jurisdiction of the University;
10. Both parties may be accompanied by an advisor of choice who may assist and advise a Complainant or Respondent throughout the grievance process including during all meetings and hearings related to such process;
11. Both parties may exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the University;
12. Both parties will be simultaneously informed in writing of the outcome of the University's investigation;
13. All members of the University community may obtain information about health and counseling support resources from the University's Title IX Coordinator.  
Local community resources include:

<b>Agency</b>	<b>Location</b>	<b>Contact Information</b>
<b>SOAR</b>	<b>Online</b>	<b>www.mySOARonline.com</b>

Resources for employees include:

<b>Agency</b>	<b>Location</b>	<b>Contact Information</b>
<b>Anthem EAP</b>	<b>Phone</b>	<b>800-999-7222</b>

14. Both parties will be notified in writing of options for available supportive measures including changing academic, living, transportation, and working situations, the University will keep these measures confidential to the maximum extent possible;
15. The Complainant may report the incident to the University's Title IX Coordinator using any of the published contact methods, including during non-business hours;
16. Both parties will be provided a prompt, impartial, and thorough investigation of the complaint from the initial investigation to the final result in accordance with this Policy;
17. Both parties will be informed of the importance of preserving evidence;
18. Both parties will be provided confidentiality in accordance with this Policy.



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## II. RESOURCES AND REPORTING OPTIONS FOR VICTIMS OF SEXUAL HARASSMENT

### A. Immediate Medical Assistance and Counseling

If you or someone you know is or may be the victim of any form of sexual assault, the University strongly urges you to seek immediate assistance. Assistance is available 24 hours a day, 7 days a week, from the local police and Emergency Assistance – call 911:

### B. University Counseling Resources

The University does not offer campus based counseling resources. However, whether or not an official complaint of sexual harassment is made, students may be referred to various community counseling options.

Local community resources for students include:

Agency	Location	Contact Information
SOAR	Online	<a href="http://www.mySOARonline.com">www.mySOARonline.com</a>

Resources for employees include:

Agency	Location	Contact Information
Anthem EAP	Phone	800-999-7222

### C. Reporting Options:

For Complainants who wish to make a Formal Complaint, s/he should contact the Title IX Coordinator using the contact information provided in this report, or report it to a Campus/Executive Director who will coordinate a report with the Title IX Coordinator. A Complainant is always free to reach out to a faculty member, program director or other administrator regarding sexual harassment allegations, but doing so will not be considered “notice” a Formal Complaint. If a student requests to make a Formal Complaint to one of these employees, s/he will be referred to the Title IX Coordinator.

## III. REPORTING OF INCIDENTS OF SEXUAL HARASSMENT

### A. Law Enforcement Notification

If you are the victim of sexual assault, the University strongly encourages you to promptly report the incident to the police. Timing is a critical factor in collecting and preserving evidence that may assist in proving that the alleged crime occurred, or may be helpful in obtaining a protection or restraining order from the police. University representatives are available to assist you in notifying law enforcement of an incident of sexual assault and in contacting law enforcement or legal service organizations to learn about these remedies. You may also decline to notify law enforcement.

### B. University Notification

The University is committed to providing a prompt, fair, and impartial investigation and resolution to all allegations of sexual harassment. Therefore, the University also encourages the reporting of sexual harassment to the University Title IX Coordinator in a timely manner. Any incident of sexual harassment reported to another University employee, other than the Campus Director, as set forth herein, will not be

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reported to the Title IX Coordinator unless the Complainant requests to be referred to him/her for a Formal Complaint.

When the Title IX Coordinator receives a report of sexual harassment, the Title IX Coordinator will confidentially and promptly contact the Complainant and provide the Complainant with a written notice of his or her rights and options, including the availability of supportive measures and the process for filing a Formal Complaint, if one has not been filed. The Title IX Coordinator will also discuss the Complainant's wishes regarding supportive measures, regardless of whether a Formal Complaint is filed. The University will also provide information regarding existing counseling, health, mental health, victim advocacy, legal assistance (including restraining orders and "no contact" orders), visa and immigration assistance, student financial aid assistance, and other services available for victims in the community.

The Complainant reserves the right to withdraw a complaint or his/her involvement in the University's investigation or resolution process at any time. However, in such instances the University's ability to respond will be limited and Title IX may, nevertheless, require the University to complete the investigation processes for the safety of the campus community.

### **C. Reports of Sexual Harassment from Someone Other than Complainant**

If the University receives a report of alleged sexual harassment by someone other than the Complainant, from a bystander, or an anonymous source, the University's Title IX Coordinator will promptly notify the Complainant of the report, and inform the Complainant of the available resources and assistance, and will follow the process outlined in this policy.

### **D. Time for Reporting**

There is no time limit for reporting sexual harassment. Nevertheless, any member of the University community who believes that he or she has been a victim of sexual harassment is encouraged to report the alleged crime immediately in order to maximize the University's ability to obtain evidence and conduct a thorough, impartial, and reliable investigation.

Under no circumstances will the University allow an impending graduation to compromise its resolution of a sexual harassment complaint. The conferral of a degree or diploma may, therefore, be withheld, if necessary, until proper resolution of any sexual harassment allegations, provided that a hearing opportunity will be scheduled for the earliest practical date that can accommodate the parties and their witnesses.

### **E. Confidentiality**

The University understands that confidentiality is a primary concern when making a report of sexual harassment. However, certain University employees are required by state and federal law to share information from a report of sexual harassment within the University or governmental agencies. However, University employees who cannot guarantee confidentiality will maintain the privacy of the reporting individual to the greatest extent possible. The information that the reporting individual provides to a non-confidential resource will be relayed only to the Title IX Coordinator to investigate and/or seek a resolution only if the Complainant makes that request and files a Formal Complaint. When reporting crimes for the purposes of Clery Act compliance, the University will not release identifying information regarding the victim.

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*Confidentiality Rights of Complainants and Respondents.* While Complainants, Respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, Complainants and Respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this policy without the relevant party's voluntary, written consent.

### **1. Professional and Pastoral Counselors**

The University does not offer professional, licensed counselors or pastoral counselors (ordained clergy).

### **2. Other University Employees**

Under this policy, other than the Title IX Coordinator, the only University employee who has the authority to redress sexual harassment, and thus has a duty to report incidents of sexual harassment, is the President. If a report of sexual harassment is made to the President, s/he must report all relevant details about the alleged sexual harassment shared in the report to the Title IX Coordinator. The President will strive to maintain privacy and information reported, including the identities of the parties, will be shared only with those having a need to know such information in order to respond in accordance with University Policy, and in compliance with the Family Education Rights and Privacy Act (FERPA).

If a Complainant files a Formal Complaint but wishes to remain anonymous or requests that no investigation into the incident be conducted, the University will weigh that request against the University's obligation to provide a safe, nondiscriminatory environment for all members of the University community, including the Complainant. In certain circumstances, the University may not be able to honor a Complainant's request when doing so would jeopardize the University's responsibility to provide a safe, non-discriminatory environment. The Title IX Coordinator is designated to evaluate the Complainant's request and make the final determination.

### **F. University Amnesty Policy**

The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report sexual harassment to University officials. A bystander acting in good faith or reporting individual acting in good faith that discloses an incident of sexual harassment to University officials or law enforcement will not be subject to the University Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident.

[https://s16973.pcdn.co/wp-content/uploads/2021/12/Annual\\_Security\\_Report\\_2021.3.pdf](https://s16973.pcdn.co/wp-content/uploads/2021/12/Annual_Security_Report_2021.3.pdf)

### **G. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to

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restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment and campus community, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The University will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

Requests for supportive measures should be made to the University's Title IX Coordinator. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The University will provide supportive measures, provided they are reasonable and available, regardless of whether the Complainant chooses to report the crime to law enforcement, or make a Formal Complaint.

### **H. Anti-Retaliation Policy**

The University prohibits retaliation against an individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Retaliation should be reported promptly to the University's Title IX Coordinator. Reports of retaliation will be investigated in accordance with the appropriate University Policy.

## **PART 2: PROCEDURES FOR RESPONDING TO A COMPLAINT OF SEXUAL HARASSMENT**

The University is committed to providing a prompt, fair, and impartial investigation and resolution of all allegations of sexual harassment. Incidents of sexual harassment should be reported to the University's Title IX Coordinator. Any incident of sexual harassment reported to the President will be reported to the Title IX Coordinator.

### **I. INITIAL STEPS**

#### **A. Initial Report**

Upon notice of any allegation of sexual harassment, the Title IX Coordinator or his or her designee will reach out to the Complainant. At that time, the Title IX Coordinator or his or her designee will provide the Complainant with a written notice explaining the Policy for reporting sexual harassment, and identify forms of support or immediate assistance available to the Complainant (e.g., referrals to appropriate law enforcement agencies; referrals for medical treatment at local hospitals and trauma centers; information for legal assistance and victim advocacy), any supportive measures that may be appropriate concerning the Complainant's academic schedule and/or University employment arrangements, as well as the University's Grievance Process.

#### **B. Formal Complaint**

If the Complainant wishes to proceed with filing a Formal Complaint, the University will promptly respond, providing the following information to both the Complainant and the Respondent:

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(a) Written notice of the University's grievance process, including any informal resolution process, and their rights and options.

(b) Written notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in Title IX/34 CFR §106.30 including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. The written notice will:

- include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence collected as part of the investigation.
- inform the parties of the University's Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

The University seeks to resolve every report of sexual harassment within a reasonable period of time following the Formal Complaint, excluding any appeal. The University may extend any time frame for good cause, provided the Complainant and Respondent are given a written explanation as to the reason for such extension.

After issuing the notices outlined above, the Title IX Coordinator or his/her designee will schedule an individual intake meeting with each party.

### **II. INFORMAL RESOLUTION PROCESS**

Subject to the consent of the parties and the approval of the Title IX Coordinator, the University permits informal resolution processes in cases in which a Formal Complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student Complainant and a student Respondent as well as in matters involving a faculty/staff Complainant and a faculty/staff Respondent; the informal resolution process is not available in matters involving a student and an employee.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Sexual Harassment policy. The purpose of the informal resolution process is to address the conduct which has been reported by the Complainant, and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record.

The University may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be

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

The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of Title IX sexual harassment. Similarly, the University will not require, encourage, or discourage the parties from participating in the informal resolution process. The University will not offer the informal resolution process unless a formal complaint is filed.

### **III. FORMAL RESOLUTION – GENERAL TERMS**

The University is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this policy. During the grievance process, both parties (Complainant and Respondent) have equal rights to participate.

#### **A. Conflict of Interest**

All individuals who have responsibilities in administering the grievance process under this policy must be free of any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and will be trained as provided by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, Hearing Panel members, and Appeal Panel members. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has conflicting interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether or not the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

#### **B. Responsibility to Review Reports and Formal Complaints**

In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. The Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

#### **C. Presumption of Good Faith Reporting**

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

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### **D. Presumption of Non-Responsibility**

The Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

### **E. Honesty and Cooperation during Grievance Process**

The University expects all members of the campus community to be honest and cooperative in their official dealings with the University under this policy. In this regard, individuals are expected to acknowledge requests from University officials for information in a timely fashion and to make themselves available for meetings with University officials or any officials acting on behalf of the University; any student or member of the faculty or staff who fails to do so may be subject to discipline. However, parties and witnesses may choose not to attend the hearing or may choose not to participate in cross examination at the hearing.

### **F. Advisers**

Throughout the grievance process, each party may have an adviser of their choice; parties may change their adviser at any time during the grievance process. An adviser is an individual chosen by a Complainant or a Respondent to provide guidance during the grievance process. An adviser may be a member or non-member of the University community, and may be an attorney.

The role of the adviser is narrow in scope: the adviser may attend any interview or meeting connected with the grievance process, but the adviser may not actively participate in interviews and may not serve as a proxy for the party. The adviser may attend the hearing and may conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the adviser may not actively participate in the hearing.

Any individual who serves as an adviser is expected to make themselves available for meetings and interviews throughout the investigation process, as well as the hearing, as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a hearing panelist) has the right at all times to determine what constitutes appropriate behavior on the part of an adviser and to take appropriate steps to ensure compliance with this policy.

### **G. Prior Sexual Behavior**

The Complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **H. Consolidation**

The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of Title IX sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX sexual harassment arise out of the same facts or circumstances.

### **I. Emergency Removal**

In connection with this policy, whether or not a grievance process is underway, the University may summarily remove an individual from an education program or activity on an emergency basis, after undertaking an individualized safety and risk analysis, and upon the determination that the individual

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poses an immediate threat to the physical health or safety of any student or other individual (including themselves, the Respondent, the Complainant, or any other individual). In these situations, the University will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

### **IV. INVESTIGATION AND ADJUDICATION**

#### **A. Timing**

The University will seek to complete the investigation and adjudication within ninety (90) business days after the investigators' first interview of the Complainant; however, that timeline may be extended based on the circumstances. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeal, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, adviser, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with University policy, the University will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the University will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the Complainant or Respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

#### **B. Investigation**

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator will refer the matter for investigation.

##### **1. Notice of Investigation**

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this Title IX/Sexual Harassment/VAWA policy, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Title IX Sexual Harassment.
- A statement that the Respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.

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- A statement informing the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University policy.
- Information regarding the applicable grievance procedures, including the informal resolution process.
- If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the Respondent and Complainant will be informed in writing that such additional information will be included in the grievance process.

### **2. Collection of Evidence**

The investigator will collect information from each party. While the Complainant and the Respondent are not restricted from gathering and presenting relevant evidence, the investigator is responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigator during the investigation. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Hearing Panel, be excluded from consideration at the hearing. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigator will provide to a party written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time for the party to prepare to participate.

Parties will be interviewed separately and will be interviewed by the investigator. The investigator will interview witnesses as necessary and may, at their discretion, delegate witness interviews to other investigators. The investigator will record all interviews, or notes of the interviews will be taken by the investigator. Any other recording of interviews is prohibited, and violations may result in discipline.

In general, a party's medical and counseling records are confidential. The investigator will not 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 investigators obtain that party's voluntary, written consent to do so.

The investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g. attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

### **3. Case File**

After each party has been interviewed and had the opportunity to identify witnesses and other potentially relevant information and evidence, and the investigator has completed any witness interviews and any gathering of evidence, the investigator will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigator will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their adviser in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisers. The investigators will also provide an updated Notice of the Allegations, as appropriate.

Within ten (10) business days of receiving the case file, each party may respond in writing, which may include a request that the investigator collect additional evidence. If the investigator believes that further information is needed following receipt of any responses from the parties, the investigator will pursue any additional investigative steps as needed. The parties and their advisers will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigators, in electronic format or hard copy.

### **4. Investigative Report**

Following their review of the parties' responses (if any) to the case file, the investigator will create a written investigative report that summarizes all relevant evidence; the report will not contain irrelevant information.

At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisers via electronic format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. At least 48 hours prior to the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

### **C. Hearing**

A panel of three individuals ("Hearing Panel") will hear every case. The Panel may consist of members of the University community, or, if required to maintain neutrality, an unrelated third party.

The Hearing Panel will have absolute discretion with respect to administering the hearing, will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted, will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the Hearing Panel will be provided with the case file, investigative report, and any responses to the investigative report. All members of the Hearing Panel shall review the case file (including

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the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the Presiding Hearing Panelist's adjudication of responsibility.

At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the Hearing Panel can determine their relevance. The Hearing Panel has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the Hearing Panel's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

### **1. Standard of Proof**

The standard of proof under this policy is preponderance of the evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the Respondent violated this policy.

### **2. Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing**

In all proceedings under this policy, including at the hearing, the Complainant, the Respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.

If the Complainant, the Respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the Title IX Coordinator. The Hearing Panel may not draw any adverse inference in reaching a determination regarding responsibility based solely on the individual's absence from the hearing (or their refusal to be cross-examined).

Each party may make requests related to the format or the nature of their participation in the hearing. The Hearing Panel will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the Hearing Panel and the parties to simultaneously see and hear the party answering questions. As appropriate and/or at the discretion of the Hearing Panel, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

### **3. Case Presentation**

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisers to conduct cross examination of the other party and/or of relevant witnesses. A typical hearing may include brief opening remarks by the Hearing Panel; questions posed by the Hearing Panel to one or both of the parties; questions posed by the Hearing Panel to any relevant witnesses; and cross-examination by either party's adviser of the other party and relevant witnesses.

The parties' advisers will have the opportunity to cross examine the other party (and witnesses, if any). Such cross examination must be conducted directly, orally, and in real time by the party's adviser and never by a party personally. Only relevant cross examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's adviser, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### **4. Record of Hearing**

The University shall create an official record in the form of a recording or transcript of any live (or remote) hearing and make it available to the parties for inspection and review. Any other record of the hearing or any other recording is prohibited and violations may result in discipline.

#### **5. Written Determination**

Following the hearing, the Hearing Panel will consider all of the relevant evidence and deliberate regarding responsibility. The Hearing Panel shall make a determination, by a preponderance of the evidence, whether the Respondent has violated the policy. The Hearing Panel shall write a written determination, which will contain: (1) the allegations potentially constituting sexual harassment; (2) a description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other information, and the hearing); (3) findings of fact supporting the determination; (4) conclusions regarding the application of this policy to the facts; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed if there has been a finding of responsibility, and whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and (6) relevant appeal information for the parties. Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Hearing Panel for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination via electronic format.

#### **D. Disciplinary Sanctions and Remedies (to be included in the Written Determination)**

If a party is found to have violated this policy, before finalizing the written determination, the Hearing Panel will refer the matter to the appropriate University official(s) to determine sanctions and remedies. Sanctions being imposed will be included in the written determination.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the Respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's education program or activity. Any sanctions and remedies will be included in the Hearing Panel's written determination, and sanctions will be subject to appeal under this policy.

The Hearing Panel may consider a number of sanctions and remedies when a Respondent is found to have violated the Title IX/Sexual Harassment/VAWA Policy, including:

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- Suspending or expelling any student found responsible for sexual harassment
- Terminating the employment of any employee found responsible for sexual harassment
- Reprimand or warning
- Changing the Respondent's academic schedule
- Disciplinary probation
- Revocation of honors or awards
- Restricting the Respondent's access to University facilities or activities
- Community service
- Issuing a "no-contact" order or requiring that such an order remain in place
- Dismissal from or restricting or reassignment of University employment

### **E. Appeal**

Appeals under this policy will be heard by an appeal panel ("Appeal Panel") comprised of three individuals. The Appeal Panel shall decide appeals by majority vote.

Both parties have equal rights to an impartial appeal at the following junctures:

- Upon the dismissal of a formal complaint or any allegations therein.
- Upon receiving the Presiding Hearing Panelist's written determination regarding responsibility and, when applicable, sanction and remedies.

Appeals may be submitted on the following bases: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made which could affect the outcome of the matter; (3) the Title IX Coordinator or their staff, investigator(s), or any member of the Hearing Panel 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; and/or (4) the sanctions (or recommended sanctions) are not commensurate with the violation.

To appeal, a party must electronically submit a written appeal statement to the Title IX Coordinator within five (5) business days of receipt of the written determination or dismissal. The appeal shall consist of a written statement not to exceed 1500 words, outlining the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response, not to exceed 1500 words, to the Title IX Coordinator within five (5) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred.

In deciding an appeal, the Appeal Panel may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Panel also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their advisers will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

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If the Appeal Panel finds that the earlier decision should stand, the parties will be so informed and the Title IX process is concluded.

If the Appeal Panel finds that there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Hearing Panel to determine appropriate further action.

If the Appeal Panel finds that new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the Hearing Panel for appropriate further action.

If the Appeal Panel finds that the Title IX Coordinator or their staff, investigator(s), or member of the Hearing Panel, 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, the Appeal Panel will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.

If the Appeal Panel finds that the sanctions (or recommended sanctions) are not commensurate with the violation, the matter will be remanded to the Sanction Officer for reconsideration.

The Appeal Panel will seek to complete the appeal review within thirty (30) business days of receipt of the appealing party's written statement.

Unless further proceedings are necessary, the determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed (at which point the Title IX grievance process is concluded), or if an appeal is not filed, the date on which an appeal would no longer be considered timely (at which point the Title IX grievance process is concluded).

### **V. TRAINING**

The University will either provide appropriate annual training, or ensure appropriate annual training is provided by a qualified third party, to the Title IX Coordinator and President, investigators, Hearing Panel members, Appeal Panel members, and any individual who facilitates the investigation and resolution processes of this policy. Such training will cover the definition of Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes under this policy, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The University will ensure that Hearing Panel members receive training on any technology to be used at a hearing and on issues of relevance of questions and evidence, including questions and evidence about the irrelevancy of Complainant's sexual predisposition or prior sexual behavior. The University will ensure that investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant evidence. These training materials are publicly available on the University's website and will be made available for in-person review upon request. In addition, University officials with responsibilities under this policy will receive training related to intersectionality.

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## **Training Completed by Title IX Personnel**

Title IX Student Hearing Panel Training Agenda:

<https://drive.google.com/file/d/1Mi1MXt6RXPrnGLUzWkn3S82WjdhhRAij/view>

Title IX Student Hearing Panel Training Slides:

[https://drive.google.com/file/d/1M\\_nFx97UzkifSuRZOaQAJXO\\_yRjB0MLd/view](https://drive.google.com/file/d/1M_nFx97UzkifSuRZOaQAJXO_yRjB0MLd/view)

Title IX Coordinator and Investigator Training – Agenda, Speaker Bios, and Slides:

<https://drive.google.com/file/d/1MYdojxHLCZr6gQaxO3V2KKhsGGs4MwJ6/view>

## **VI. RECORD RETENTION**

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

- Each Title IX Sexual Harassment grievance process conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a hearing, any disciplinary sanction imposed on the Respondent, and remedies provided to the Complainant designed to restore or preserve access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, Hearing Panel members, Appeal Panel members, and any individual who facilitates the informal resolution process under this Title IX/Sexual Harassment/VAWA policy;
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational and working program or activity. If the University does not provide a Complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **VII. MODIFICATION AND REVIEW OF POLICY**

The University reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances. At regular intervals, the University will review this policy to determine whether modifications should be made.