

## **Sexual Harassment Policy and Related Title IX Grievance Process**

### **I. POLICY STATEMENT**

Ferris State University (“University”) is deeply committed to providing and maintaining a healthy learning and working environment for all students, staff, faculty, and other members of the University's community, free of discrimination and all forms of sexual and gender-based discrimination, harassment, and violence. Such acts corrupt the integrity of the educational process, are contrary to the mission and values of the University, and are against University policy.

Consistent with the University’s Non-Discrimination Notice and the U.S. Department of Education’s implementing regulations for Title IX of the Education Amendments of 1972 (“Title IX”) (see 34 C.F.R. § 106 et seq.), the University prohibits Sexual Harassment that occurs within its education programs and activities. As further defined herein, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty members, staff, students, contractors, guests, and other members of the University community who commit Sexual Harassment are subject to the full range of University discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (i.e., termination or dismissal); physical restriction from University property; cancellation of contracts; and any combination of the same.

The University will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the University’s education programs and activities.

### **II. SCOPE**

This Sexual Harassment Policy (“Policy”) applies to students, faculty, staff, administrators, and third parties on campus, including visitors, alumni, guests, and the agents, representatives, and employees of suppliers (the “University Community”). The University’s prohibition on Sexual Harassment extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, and student services.

This policy applies to Sexual Harassment that occurs within the University’s Education Programs and Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the University Community. This policy applies to formal complaints of conduct occurring on or after August 14, 2020.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the University’s Education Programs and Activities; such Sexual Harassment is prohibited by the University’s Policy on Non-Discrimination, the Code of Student Community Standards if committed by a student, and the Employee Dignity Policy if committed by an employee.

- a. Consistent with the U.S. Department of Education’s implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University’s Education Programs and Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is prohibited by the University’s Policy on Non-Discrimination, the Code of Student Community Standards if committed by a student, and the Employee Dignity Policy if committed by an employee.

Complaints involving allegations of sex discrimination that do not meet the definition of Sexual Harassment under this Policy are governed by the University’s Non-Discrimination Policy and are addressed through the University’s Non-Discrimination Grievance Procedures if committed by an employee or the Sexual Misconduct Resolution Process in The Code of Student Community Standards if committed by a student.

### **III. TITLE IX STATEMENT AND COORDINATOR**

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University’s educational programs and activities, including employment and admissions. Title IX and its implementing regulations also prohibit retaliation for asserting Title IX claims. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX, receive inquiries regarding Title IX, and process complaints of Sexual Harassment:

Kaitlin Zies  
Title IX Coordinator  
University Center 129E  
805 Campus Drive  
Big Rapids, MI 49307  
(231) 591-2088  
[KaitlinZies@ferris.edu](mailto:KaitlinZies@ferris.edu)

Deputy Title IX Coordinators serve an integral function in supporting the work of the Title IX Coordinator across our multiple campuses and within various constituencies. Reports of Sexual Harassment can be made directly to Deputy Title IX Coordinators, who will connect students and employees with appropriate resources as well as the Title IX Coordinator.

Deputy Title IX Coordinators also assist with training on Title IX reporting obligations, serve as a resource for questions and concerns related to Title IX policies, processes, and procedures, and connect individuals with support resources both on and off campus. Deputy Title IX Coordinators meet regularly with the Title IX Coordinator to discuss concerns related to their constituencies.

The University has designated the following positions to serve as Deputy Title IX Coordinators:

Director of Equal Opportunity  
Governmental Relations and General Counsel  
McKessy House

120 E. Cedar St.  
Big Rapids, MI 49307  
(231) 591-2152

Dean of Student Success  
Kendall College of Art and Design of Ferris State University (Kendall College of Art and Design - KCAD)  
17 Fountain St. NW  
Grand Rapids, MI 49503  
(616) 259-1113

Director of Student Services  
Extended & International Operations  
151 Fountain St. NE  
Grand Rapids, MI 49503  
(616) 643-5741

#### **IV. DEFINITIONS**

- A. “Coercion” includes intimidation, deception, and/or express or implied threats of physical, reputational, academic, financial, or emotional harm or restraint, that would reasonably place an individual in fear of immediate or future harm and that is used to persuade or compel someone to engage in sexual contact. This includes threatening to “out” someone based on sexual orientation, gender identity and/or gender expression.
- B. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- C. “Consent” is the voluntary agreement to engage in sexual contact. Additional information about how the University evaluates consent is available in section VI.
- D. “Dating Violence” is violence committed by a person –
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.

- E. “Domestic Violence” is an act of violence<sup>1</sup> 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 Michigan, 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 Michigan.
- F. “Education Programs and Activities” refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.
- G. “Force” is the use or threat of physical violence and/or strength or intimidation to overcome an individual’s freedom of will to choose whether to participate in sexual contact. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, duress or any combination of these behaviors. When determining whether or not force was involved, there is no requirement that a Complainant resist the sexual advance or request. However, resistance by the Complainant will be viewed as a clear demonstration of non-consent.
- H. “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 in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s education programs and activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.
- I. “Hostile Environment Sexual Harassment” is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s education programs and activities.

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<sup>1</sup> Domestic violence is a crime under Michigan law. Specific information about the criminal offense can be found in the Michigan penal code at MCLA § 750.81 and MCLA 750.81a.

- J. “Incapacitation” is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g. to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. Additional information about how the University evaluates incapacitation is available in section VI.
- K. “Quid Pro Quo Sexual Harassment” is 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 contact.
- L. “Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- M. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- N. “Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>2</sup>
1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
  2. “Sodomy” is 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
  3. “Sexual Assault with an Object” is using 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 his/her age or because of his/her temporary or permanent mental or physical

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<sup>2</sup> The University’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.

4. “Fondling” is 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
  5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.
  6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Michigan law.
- O. “Sexual Harassment” is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking. Sexual Harassment does not depend on the gender, gender identity, or sexual orientation of the Complainant and Respondent. Thus, Sexual Harassment can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities. This term is used throughout this policy and the Title IX Grievance Process when collectively referring to these types of conduct.
- P. “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
  - Suffer substantial emotional distress.
- Q. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University’s Education Programs and Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

## **V. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant;

the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Disseminating sexual pictures or videos of another person without consent regardless of whether the pictures or videos were obtained with consent
- Insulting, demeaning, or degrading another person on the basis of gender or gender stereotypes

## **VI. UNDERSTANDING CONSENT AND INCAPACITATION**

### **A. Consent**

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is the voluntary agreement to engage in sexual contact. Consent to engage in sexual contact must demonstrate that it meets the following four components: (1) informed, (2) freely and actively given, (3) mutually understandable words or actions, (4) indicating a clear agreement to engage in sexual contact of any kind.

It is the responsibility of the person who wants to engage in sexual contact to make sure that they have received consent from any person(s) involved. If an individual initiating sexual contact is not sure if they have received consent, they have an obligation to seek additional clarification.

Informed:

- Consent includes each person(s) having a clear and mutual understanding of the nature and scope of the sexual contact;
- Consent to one form of sexual contact does not constitute consent to all forms of sexual contact;
- Informed consent cannot be given by anyone under the legal age of consent (anyone under age 16).

Freely and Actively Given:

- Consent cannot be given by an incapacitated person(s) (see definition of incapacitation above);
- Consent cannot be achieved through force (see definition of force above), threat, deception, intimidation or coercion (see definition of coercion above).
- Consent cannot be assumed or implied by a current or previous dating or sexual relationship.

Mutually Understandable Words or Actions:

- Consent consists of clear communication (words or actions) that indicates each person(s) unambiguous willingness to engage in sexual contact from the beginning to end of each instance of sexual contact and for each form of sexual contact;
- Consent cannot be assumed or implied by silence, passivity, the lack of an objection. A person who does not physically resist or verbally refuse sexual contact is not necessarily giving consent.

Indicating a Clear Agreement to Engage in Sexual Contact:

- Consent can be withdrawn at any time through clear communication (words or actions) that indicates each person(s) is no longer willing to engage in sexual contact.
  - In the absence of a clear agreement to engage in sexual contact, consent does not exist.

B. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.



Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol of other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

## **VII. ANALYZING DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING**

Domestic Violence, Dating Violence, and Stalking (often called “intimate partner violence”) are considered to be a violation of this Policy, no matter the motivation behind them. Domestic and Dating Violence occur on a continuum and can vary in frequency and severity. Domestic and Dating Violence often take the forms of threats, assaults, or property damage.

Stalking includes cyberstalking, which is a form of stalking occurring in electronic media such as the Internet, social networks, blogs, cell phones, texts, or emails that are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Examples of stalking include: unwelcome and repeated visual or physical proximity to a person; repeated oral or written threats; unwelcomed/unsolicited written communications, including letters, cards, texts, emails, instant messages, or messages on social media or message bulletin boards.

## **VIII. ROLES AND RESPONSIBILITIES**

### **A. Title IX Coordinator**

It is the responsibility of the Title IX Coordinator to: (1) be informed of all Title IX reports at the University; (2) oversee the process of responding to Sexual Harassment complaints; (3) coordinate and supervise the provision of Supportive Measures under this policy; (4) coordinate dissemination of information and education and training programs relevant to preventing and responding to Sexual Harassment on campus; (5) identify and address any patterns or systemic problems that arise during the review of Sexual Harassment complaints; (6) assist members of the University community in understanding that Sexual Harassment is prohibited by this policy; (7) answer questions about this policy; (8) oversee revisions to this policy; (9) appoint investigators and ensure that investigators are trained to respond to and investigate complaints of Sexual Harassment; (10) ensure that employees and students are aware of the procedures for reporting and addressing complaints of Sexual Harassment; (11) implement the Title IX Grievance Process or to designate appropriate persons for implementing the Title IX Grievance Process; (12) monitor full compliance with the requirements and timelines specified in the Title IX Grievance Process; and (13) adhere to all state and federal reporting requirements on incidents of Sexual Harassment.

The Title IX Coordinator may consult with other University officials and legal counsel as necessary when carrying out their duties under this policy. It is the responsibility of administrators, deans, and other managers (i.e. those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

B. All Employees

It is the responsibility of all employees to review and comply with this policy.

C. Students

It is the responsibility of all students to review and comply with this policy.

D. The University

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that constitutes Sexual Harassment, the University will take prompt action to respond in accordance with this policy and the Title IX Grievance Process.

## **IX. REPORTING SEXUAL HARASSMENT**

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

Individuals who have experienced Sexual Harassment have the option to report the matter to law enforcement, to the University, to both, or to neither, as the individual may choose. Individuals who do not wish to report or file a Formal Complaint and pursue an investigation under these procedures may contact confidential counseling or medical resources.

A. Employees

All University employees have a duty to report Sexual Harassment, regardless of where it occurs to the Title IX Coordinator or a Deputy Title IX Coordinator when they receive a report of such conduct or witness such conduct. The report must include all known relevant details of the alleged Sexual Harassment. This reporting obligation includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role.

An employee not reporting Sexual Harassment as required by this policy may be disciplined accordingly, up to and including termination. This section does not apply to the employees who

may maintain confidentiality as described in Section IX.D of this policy. The Title IX Coordinator will ensure that all Clery reportable offenses reported to them are officially recorded with the Department of Public Safety.

University employees are also encouraged to file a complaint of Sexual Harassment when they are the victim of such conduct by contacting the Title IX Coordinator or a Deputy Title IX Coordinator.

#### B. Students and Non-Employee Members of the University Community

Students and non-employees who believe they or another member of the University Community may have been subjected to conduct that constitutes prohibited Sexual Harassment are encouraged to report such conduct to the Title IX Coordinator. Students and other persons may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section XXVII below.

Students should be aware that all employees at the University, except those designated in Section IX.D, have an obligation to report Sexual Harassment that they become aware of or witness to the Title IX Coordinator, and they may not keep such information confidential.

#### C. Third-Party & Anonymous Reporting

Any individual may make a report of an act of Sexual Harassment. The report may be made without disclosing the identities of the parties involved. However, the University's ability to respond to the third party report of Sexual Harassment may be limited by the amount of information provided.

#### D. Confidential Resources

The University encourages individuals to report Sexual Harassment of which they are subject to or become aware of immediately. However, the University realizes that complainants may desire to maintain confidentiality. An individual who wishes to talk confidentially about their situation may contact the following confidential resources:

##### Student Resources

- Personal Counseling Center: (231) 591-5968
- Birkam Health Center: (231) 591-2614
- KCAD Director of Counseling: (616) 259- 1136

##### Employee Resources

- Encompass (Employee Assistance Program): (1-800-788-8630)

Additional resources are available on the Title IX webpage at <https://www.ferris.edu/title-ix/SupportResourcesLandingPage.htm>.

Licensed counselors in these offices are able to provide confidential support, except in instances where there is an imminent threat of harm or danger for which they have a duty to warn law enforcement authorities or as otherwise required by law (such as suspected child abuse). Notwithstanding, a non-identifying report may be made to the Title IX Coordinator so that the

University can identify any patterns of Sexual Harassment on campus and, if the conduct is a crime, it can be included in the University's annual crime statistics disclosure.

Victims of sexual offenses, including sexual assault, stalking, and dating/domestic violence, may also seek help from off-campus organizations that have trained professionals able to provide assistance to victims of sexual violence. These organizations are not associated with the University and therefore disclosure will not trigger a University response. Victims may contact the following organizations for assistance:

- Women's Information Service (WISE): 1-800-364-9473: 24-hour Crisis Line
- Michigan Sexual Assault Help Line: 1-855-VOICES4

#### E. Conduct that Constitutes a Crime

In addition to making a report under this policy, the University encourages any person who believes they are the victim of a crime—including Sexual Violence, Domestic Violence, Dating Violence, or Stalking—to make a report to local law enforcement. If requested, the University will assist the Complainant in notifying the appropriate law enforcement authorities. A Complainant may decline to notify such authorities.

Unless there is a health or safety emergency, articulable threat to members of the University Community, or a state law requiring reporting (such as in the case of child abuse) the University will not contact law enforcement without the alleged victim's permission.

#### F. Emergency Reporting Options

Individual safety is paramount. Victims of sexual violence who are in an emergency situation or are uncertain about what they should do are encouraged to call 911 to request assistance from emergency personnel including law enforcement and emergency medical personnel. Local law enforcement and emergency medical personnel are trained to help victims of sexual violence and can recommend the best options to ensure preservation of evidence, ensure the victim's safety, and begin a criminal investigation into the incident.

#### G. Special Advice for Individuals Reporting Sexual Assault, Domestic Violence, Dating Violence, or Stalking

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.

- Do not launder or discard bedding where the assault occurred- preserve for law enforcement.
- Preserve all forms of electronic communication that occurred before, during, or after the assault.
- Consider contacting law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Title IX Grievance Process.
- Evidence of violence, such as bruising or other visible injuries, following an incident of sexual assault, or domestic or dating violence, should be documented by taking a photograph.

It is also important to take steps to preserve evidence in cases of Stalking to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the complainant has several options such as, but not limited to:

- Obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

The Ferris State University Department of Public Safety can assist individuals in obtaining a personal protection order (“PPO”). Individuals at the KCAD campus may go directly to the Grand Rapids Police Department to request a PPO or request assistance from KCAD staff.

## H. Amnesty for Alcohol or Drug Use By Students

Ferris State University encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many individuals as possible choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, students who in good faith report conduct prohibited by this policy, either as a Complainant or a witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol, drugs, or other minor policy violations at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk.

## X. PRELIMINARY ASSESSMENT

Upon receipt of a report made pursuant to Section IX, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of the policy specified in Section II; and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant as specified in Section XI.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

## XI. CONTACTING THE COMPLAINANT

If a report is not closed as a result of the preliminary assessment specified in Section X and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures; to discuss and consider the Complainant’s wishes with respect to such Supportive Measures; to inform the Complainant of the availability of such Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

## **XII. SUPPORTIVE MEASURES**

If a report is not closed as a result of the preliminary assessment specified in Section X, the University will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint as specified in Section XVII, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures. The University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

Supportive measures are individualized, based on the information gathered by the Title IX Coordinator, and designed to avoid depriving individuals of their educational or employment opportunities whenever possible. The University will determine the reasonableness, necessity, and scope of any Supportive Measures, which may include (but are not limited to):

- Mutual or Individual No Contact Orders: Communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in-person, telephone, electronic, or third-party communications.
- Student Academic or On-Campus Residence Modifications: These may include, but are not limited to:
  - Change of residence hall room
  - Providing an escort to ensure safe movement between classes and activities;
  - Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, providing an academic tutor, extending deadlines for assignments, rescheduling exams and assignments, providing alternative course completion options, or allowing a voluntary leave of absence
  - Providing medical services available through the Birkam Health Center
- Employment: These may include, but are not limited to:
  - Change in work assignment or schedule
  - Leaves of absence
  - Change in work location
- Emotional Support:
  - Students - Counseling and emotional support is available to any student through the Personal Counseling Center free of charge. The University will also assist in providing a referral to off campus agencies.
  - Employees - have access to Encompass (Employee Assistance Program): (1-800-788-8630)

Failure to comply with the terms of any Supportive Measures that have been implemented may constitute a separate violation of this policy.

The University will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures in question.

If a Complainant has obtained an order of protection or any other temporary restraining order or no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the Complainant may provide such information to the Title IX Coordinator. If provided, the Title IX Coordinator, in conjunction with the Ferris State University Department of Public Safety, will take all reasonable and legal action to implement the order. Forms and instructions necessary to obtain a protection order in the State of Michigan can be found online at: <https://courts.michigan.gov/Administration/SCAO/Forms/courtforms/p02.pdf>.

### **XIII. EMERGENCY REMOVAL & ADMINISTRATIVE LEAVE**

At any time after receiving a report of Sexual Harassment, the University may remove a student Respondent from the University's Education Programs and Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the University imposes an emergency removal, the University must offer to meet with the Respondent within the next business day<sup>3</sup> and provide the Respondent an opportunity to challenge the emergency removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the University may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process specified in the Title IX Grievance Process.

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

### **XIV. FORMAL COMPLAINTS**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with the provisions of the Title IX Grievance Process. The University encourages persons to make complaints of Sexual Harassment as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of. At the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the University's education programs or activities.

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<sup>3</sup> The term "day(s)" when used within this policy refers to business days (Monday-Friday), unless otherwise noted, excluding those when the University is closed.



A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in Section III above. No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation and proceed to adjudicate the matter as specified in the Title IX Grievance Process. In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

## **XV. CONSOLIDATION OF FORMAL COMPLAINTS**

The University may consolidate Formal Complaints as to allegations of 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 Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may also be consolidated with a Formal Complaint of Sexual Harassment.

## **XVI. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION**

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in Section II (i.e., because the alleged conduct did not occur in the University's Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section IV of the Title IX Grievance Process. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

## **XVII. NOTICE OF FORMAL COMPLAINT**

Within five (5) business days of the Title IX Coordinator or designee receiving a Formal Complaint, the Title IX Coordinator or designee will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the Investigating Officer, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in Section V of the Title IX Grievance Process;
- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in Section II.D of the Title IX Grievance Process;
- Notifying the Complainant and Respondent of the University's prohibitions on retaliation and false statements specified in Sections XVIII and XX of this policy;
- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

## **XVIII. BAD FAITH COMPLAINTS AND FALSE INFORMATION**

The University encourages the good faith reporting of Sexual Harassment. However, the University will not allow this policy or the Title IX Grievance Process to be abused for improper means. It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Student Code of Community Standards in the case of students and other University policies and standards, as applicable, for other persons.

## **XIX. CONFIDENTIALITY**

The University will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of

any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The University will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the University may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the University's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the University's general obligation to maintain confidentiality as specified herein, the parties of a report or Formal Complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

## **XX. RETALIATION**

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in Sections IX and XIV. Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. The University retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

## **XXI. SHARING INFORMATION**

While the University will maintain confidentiality specified in Section XIX, the University does not limit the ability of the parties to discuss the allegations at issue in a particular case.

The University requests that the parties, witnesses, and other University Community members with knowledge of the matter refrain from unnecessary disclosures of investigatory details and/or other complaint related information. Restraint of disclosure regarding details of the University's investigation provides the best opportunity for the University to obtain accurate, unbiased, uninfluenced recollections of events and/or otherwise known information from parties, witnesses, and others with knowledge of the matter.

The University recognizes the right of community members to discuss matters of public or personal concern, particularly as it may relate to receipt of external support or complaint resolution assistance by the parties. University Community members are requested to use prudent judgment regarding disclosure of complaint and/or investigation information. Disclosure of complaint and/or investigation information for the purpose of influencing and/or obstructing the University's investigation is prohibited and shall constitute grounds for disciplinary action, up to and including dismissal, termination, and/or other restricted access to the University.

## **XXII. VENDORS, CONTRACTORS, AND THIRD-PARTIES**

This Policy applies to the conduct of vendors, contractors, and third parties. Persons who believe they have been discriminated against or harassed in violation of this Policy should make a Formal Complaint. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy. Third parties who violate this Policy may be subject to sanctions by the University, including, but not limited to, loss of campus privileges, loss of future contracts, employment and enrollment.

## **XXIII. RESOURCES**

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator and Deputies are available to provide information about the University's policy and process and to provide assistance. A list of counseling, health, mental health, victim advocacy, legal assistance, and other services available both on-campus and in the community is located at the following link: <https://www.ferris.edu/title-ix/bigrapidsresources.htm>.

## **XXIV. FREE EXPRESSION AND ACADEMIC FREEDOM**

The University is committed to free expression and academic freedom. The University is equally committed to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist. Discrimination, harassment, and retaliation against members of the University community are not protected expression or the proper exercise of academic freedom. The University will consider the protections of the First Amendment and academic freedom in the investigation of reports of Sexual Harassment or Retaliation that involve an individual's statements or speech.

## **XXV. EDUCATION**

The University is committed to the prevention of Sexual Harassment through education and awareness programs. The University widely publicizes policies prohibiting Sexual Harassment within its community and engages in regular, reoccurring training on the procedures for addressing such conduct. Throughout the year, programs designed to promote awareness are presented by a variety of campus resources. Education programs include an annual overview of the University's Sexual Harassment policies for students and employees, including discussion on prohibited conduct, effective consent, bystander intervention, and the impact of alcohol and illegal drugs on Sexual Harassment. The Title IX Coordinator is responsible for coordinating ongoing training to new and existing students and employees on campus.

## **XXVI. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS**

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, Investigating Officer, hearing officer, informal resolution officer, and appeals officer.

The University retains discretion to appoint two or more persons to jointly fulfill the role of Investigating Officer, hearing officer, informal resolution officer, and/or appeals officer.

## **XXVII. EXTERNAL COMPLAINT RESOLUTION**

Complaints may be filed with the Office for Civil Rights, U.S. Department of Education at the following address:

Director, Office for Civil Rights, U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115-1812  
Telephone (216) 522-4970  
FAX: 216-522-2573; TDD: 800-877-8339  
Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

Other sources of external complaint resolution are listed in the Non-Discrimination Grievance Procedures.

## **XXVIII. REVIEW**

This policy is maintained by the University's Title IX Coordinator. The Title IX Coordinator will review this policy regularly, with the assistance of the University's Deputy Title IX Coordinators and Campus Partners. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the Title IX Grievance Process. The review will incorporate an aggregate view of reports, resolution, and climate.

## **XXIX. DISTRIBUTION**

This policy will be disseminated widely to the University Community through email communication, the University's website, inclusion in orientation programs for new employees and new students, and through other appropriate channels of communication.

## TITLE IX GRIEVANCE PROCESS

### I. GENERAL PRINCIPLES

#### A. Applicability

This Title IX Grievance Process applies to the resolution of all Formal Complaints under the Sexual Harassment Policy. The process applies to the resolution of Formal Complaints against students, faculty, administrators, staff, and third parties, and it is the exclusive means of resolving Formal Complaints of Sexual Harassment.

The University reserves the right to provide detailed investigation and hearing procedures for student and employee cases. Such procedures are required to comply with the provisions of this Title IX Grievance Process at all times.

#### B. Administration

The Title IX Coordinator shall have responsibility to oversee and administer this Title IX Grievance Process. The Title IX Coordinator may consult with other University administrators and counsel as needed. For purposes of this Title IX Grievance Process, “Investigating Officer” means the Title IX Coordinator or his/her designee. The Investigating Officer may be a third-party Investigating Officer or attorney retained for that purpose by the University.

In cases where the Respondent is an employee, the Director of Equal Opportunity has primary responsibility for the administration and oversight of the grievance process.

This Title IX Grievance Process is conducted in accordance with provisions of applicable collective bargaining agreements and in compliance with state and federal laws.

#### C. Fairness and Impartiality

The Title IX Coordinator, Deputy Title IX Coordinators, Investigating Officer, hearing officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern to the Title IX Coordinator<sup>4</sup> promptly so that the University may evaluate the concern and find a substitute, if appropriate. The standard to be used in determining whether recusal is warranted is whether the individual would be able to evaluate the case fairly and impartially given the individual’s knowledge of the matter or personal or professional relationship with any party. In cases involving allegations of Sexual Harassment, the University prohibits the use of medical experts that have an actual or apparent conflict of interest.

The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in Section IV or otherwise.

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<sup>4</sup> If the alleged conflict is with the Title IX Coordinator, the concern may be directed to the [insert appropriate administrative office or administrator.]

#### D. Presumption of Non-Responsibility

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

#### E. Training

The University will ensure that University officials acting under this policy, including but not limited to the Title IX Coordinator, Deputy Title IX Coordinators, Investigating Officers, hearing officers, informal resolution facilitators, University provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

#### F. Participation in Investigations and Adjudications

All members of the University Community are encouraged to fully cooperate with any investigation and adjudication under this Title IX Grievance Process. In the event a Complainant refuses to participate, the Title IX Coordinator may file a Formal Complaint under the circumstances specified in Section XIV of the policy. In the event a Respondent refuses to participate, the Title IX Grievance Process will be completed despite the Respondent's lack of participation and may result in a finding of misconduct *in absentia*.

#### G. Relationship with Criminal Process

Some instances of Sexual Harassment may also constitute criminal conduct. In such instances, the Complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the Complainant in doing so. The pendency of a criminal investigation; however, does not relieve the University of its responsibilities under Title IX. Therefore, while the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

## II. INVESTIGATION

#### A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, the Investigating Officer will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written investigation report, specified in Section II.E, that will be submitted to the hearing officer during the adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within Ninety (90) business days of the transmittal of the written notice of Formal Complaint as specified in Section XVII of the policy.

During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other individuals as needed.

#### B. Documentation of Investigation

The Investigating Officer will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by a summary of the Investigating Officer's notes, an audio recording, a video recording, or a transcript of the interview. The particular method utilized to record the interviews of parties and witnesses will be determined by the Investigating Officer in the Investigating Officer's sole discretion.

#### C. Content of the Title IX Investigation

During the investigation, the Investigating Officer will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), to present other inculpatory and exculpatory evidence, and to describe the effect of the alleged incident of their opportunity to benefit from the University's programs or activities. Except for circumstances where the University has determined that informal resolution may be appropriate and the parties have agreed to participate in such a process, the Investigating Officer will not concurrently interview the Complainant and Respondent and/or require the parties to discuss, mediate, or otherwise resolve the complaint.

Notwithstanding the foregoing, the Investigating Officer retains discretion to limit the number of witness interviews the Investigating Officer conducts if the Investigating Officer finds that testimony would be unreasonably duplicative, irrelevant to the allegations under investigation, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in Section VII. The Investigating Officer will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

Formal rules of evidence do not apply in any of the formal resolution processes specified below. Nonetheless, evidence that is irrelevant or whose prejudicial effect substantially outweighs its probative value may be excluded from consideration.

The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review physical evidence and/or materials, review electronic transmissions, review records and other documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. Information relevant to the investigation may include the severity, pervasiveness, and chronology of alleged conduct; the relationship, if any, existing between the parties prior to and after the



alleged conduct; patterns of conduct; consent and co-involvement of the parties; effects of drug or alcohol use; and the effect of intervening measures taken by the University.

Throughout the investigation, parties will be granted an opportunity to review and comment, in writing, any statements or evidence provided by the other party or any information independently developed by the Investigating Officer. The University will respect determinations made by the Complainant and Respondent regarding their level of participation in the investigation. However, parties shall be advised that non-participation in the process shall not preclude the University from appropriate remediation of complaints, including completing of its fact finding and imposition of corrective or disciplinary action if determined appropriate.

All parties and witnesses involved in the investigation are expected to provide complete and truthful information. University Community members are expected to comply with reasonable requests from the Investigating Officer for records, documentation, and/or other materials and to cooperate in the investigatory process, including the timely arrangement of meetings, evidence production, and following Investigating Officer directives. Employees or students who disrupt or obstruct the investigation may be subject to corrective and/or disciplinary action.

#### D. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the Investigating Officer will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) business days in which to submit to the Investigating Officer a written response, which the Investigating Officer will consider prior to completing the investigation report.

#### E. Investigation Report

After the period for the parties to provide any written response to the evidence has expired, the Investigating Officer will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the Investigating Officer will transmit a copy to the Title IX Coordinator. The investigation report will be transmitted to each party and their advisor, in either electronic or hard copy form at least ten (10) business days prior to a hearing if a hearing is required.

#### F. Adjudication Hearing Process

##### 1. Hearing Officer

Upon receipt of the final investigation report, the Title IX Coordinator or designee will promptly refer the matter to the appropriate hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy

of the investigation report and a copy of all evidence and the evidence transmitted to the parties by the Investigating Officer as specified in Section II.D.

## 2. Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator or designee, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the applicable hearing procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) business days from the date of transmittal of the written notice specified in this section.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, undue prejudice, the prohibition on the use of sexual history specified in Section VII, or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the hearing procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for purposes of conducting questioning as specified in Section II.F.

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and

- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

### 3. Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary University personnel, including the Title IX Coordinator or their designee, together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer's discretion, should be resolved before the hearing.

### 4. Issuance of Notices of Attendance

After the pre-hearing conference, the hearing officer, or a University Official acting on their behalf, will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject to appear for the hearing at the specified date and time and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

### 5. Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the applicable hearing procedures. The hearing will be audio recorded or transcribed. The audio recording or the transcript will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the hearing procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posted by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the Investigating Officer, the hearing officer, the Title IX Coordinator or designee, and other necessary University personnel. With the exception of the Investigating Officer and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to Section II.D.

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing and/or engages in other behavior that is materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to

resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the hearing procedures, when good cause exists to do so, and provided the minimal requirements specified in this section are met.

#### 6. Subjection to Questioning

In the event that any party or witnesses refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' advisors, the testimony of that party or witnesses, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this section, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

#### 7. Deliberation and Remedies

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of Section VII. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e. "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

#### 8. Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. In cases where the Respondent is a student and the hearing officer does not work in the Office of Student Conduct, the hearing officer will consult with the Office of Student Conduct. In cases where the Respondent is an employee, the hearing officer will confer with the Office of Human Resources, Director of Labor Relations, the Employee's supervisor, and General Counsel. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

The University will impose discipline commensurate with the severity or pervasiveness of the offense and the threat it poses to the community. The Code of Student Community Standards, employee collective bargaining agreements, and University policies regarding corrective and/or disciplinary action permit a range of potential disciplinary sanctions for violation of policy, including but not limited to: written or verbal counseling, written or verbal sanction, warning, educational programming, restitution, paid or unpaid leave or suspension, dismissal, termination, and/or other restriction to access, use, and/or other institutional services, privileges, or resources.

#### 9. Written Decision

After reaching a determination and consulting with the appropriate University official and Title IX Coordinator, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official as referenced in Section II.F.8 and any ongoing support measures or other remedies as determined by the Title IX Coordinator;
- A description of the University's process and grounds for appeal, as specified in Section IV.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in Section IV.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer's written determination within fifteen (15) business days of the conclusion of the hearing.

### **III. DISMISSAL DURING INVESTIGATION OR ADJUDICATION**

The University shall dismiss a Formal Complaint filed under the Title IX Grievance Process at any point during the investigation or adjudication process if the Title IX Coordinator or designee determined that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined by this policy in Section IV even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in Section II (i.e. because the alleged conduct did not occur in the University's Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

The University may dismiss a Formal Complaint filed under the Title IX Grievance Process at any point during the investigation or adjudication process if the Title IX Coordinator or designee determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator or designee written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the University, as the case may be;
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator or designee determines that a Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator or designee will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section IV. Such a dismissal would be for the purposes of the Title IX Grievance Process only. The Title IX Coordinator or designee may refer the subject matter of the Formal Complaint to other University offices, as appropriate, if the allegations could otherwise be governed by the University's Non-Discrimination Policy and addressed through the University's Non-Discrimination Grievance Procedures and/or other University policies, if committed by an employee, or through the Code of Community Standards if committed by a student. A dismissal pursuant to this Section XVI is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator or designee in the written notice of dismissal.

#### **IV. APPEAL**

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;

- The Title IX Coordinator, Investigating Officer, or hearing officer had a conflict of interest or bias for or against Complainants or Respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

The appeal must be submitted in writing, within ten (10) business days of the notice of determination or dismissal being sent by the University, and must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted grounds for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted grounds for appeal, the appeal officer, or a University Official acting on their behalf, will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within ten (10) business days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within fifteen (15) business days of an appeal being filed or the opposition statement being received, whichever is later.

## **V. ADVISOR OF CHOICE**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. They may be, but are not required to be, an attorney.

The advisor may provide support and private counsel to the party. However, except for the questioning of witnesses during the hearing specified in Section II.F, the advisor may not advocate



on behalf of a party, be actively involved in any proceedings, or directly address the Investigating Officer, hearing officer, or appeal officer. The support person/advisor must agree to maintain the confidentiality of the process.

The University reserves the right to address an advisor who fails to follow this policy and applicable provisions of the Title IX Grievance Process, in which case the party will be allowed to select a different advisor.

In the event a party is not able to secure an advisor to attend the hearing specified in Section II.F, and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in Section II.F and requests that the University provide an advisor.

## **VI. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION**

During the investigation and adjudication process, the Investigating Officer and/or adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use the following records or information unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional 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;
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege.

Notwithstanding the foregoing, the Investigating Officer and/or adjudicator may consider any such records or information otherwise covered by this section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

## **VII. SEXUAL HISTORY**

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this section.

## VIII. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint as specified in Section XVII of the policy, and before the completion of any appeal specified in Section IV, the parties may voluntarily consent, with the Title IX Coordinator's or in cases where both parties are employees, the Director of Equal Opportunity's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution as the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint;
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach an agreed resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University. A resolution reached pursuant to this section is not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator or Director of Equal Opportunity, any informal resolution process must be completed within twenty (20) business days. If an informal resolution

process does not result in a resolution within twenty (20) business days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator or Director of Equal Opportunity, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator or Director of Equal Opportunity may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

## **IX. OBJECTIONS GENERALLY**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the consider and address it, if appropriate.

## **X. RECORDKEEPING**

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

## **XI. INTERSECTION WITH OTHER PROCEDURES**

This Title IX grievance process is the exclusive means of resolving Formal Complaints alleging violations of the Sexual Harassment Policy. To the extent there are any inconsistencies between this process and other University grievance, complaint, or discipline procedures, this grievance process will control the resolution of Formal Complaints alleging violations of the Sexual Harassment Policy.

Nothing in this Title IX Grievance Process, Sexual Harassment Policy, or associated materials should be interpreted so as to limit the University's right to resolve, investigate, and/or take disciplinary action against any improper conduct of a sexual nature even though such conduct is not of the type, severity or pervasiveness that constitutes Sexual Harassment as defined in the Sexual Harassment Policy.