

Sexual Offenses Policy and Procedures

POLICY INTRODUCTION

The University is committed to providing a learning and working environment free of discrimination, harassment or violence. Members of the Clark University (the “University”) community including students, faculty, applicants for university employment or admission to educational or university-sponsored programs or activities, or any other person employed by, contracted or volunteering with, or a guest or visitor of the University, have the right to be free from sexual harassment, violence, and discrimination. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University Sexual Offenses policy has been developed to reaffirm this expectation and to provide recourse for those individuals whose rights have been violated.

The University encourages individuals to come forward if they have experienced any form of sexual misconduct, discrimination, harassment or violence (collectively referred to as “sexual offenses.” The University will process all reports of sexual offenses, regardless of when and where the conduct occurred, to determine whether the conduct occurred in the context of an educational program or activity or had continuing effects on campus or in a university education program or activity. The University has appointed a Title IX Coordinator to oversee and manage the University’s response and resolution process of reports of sexual offenses and to ensure a fair and neutral process for the resolution of such complaints.

Note: Information contained within this policy is subject to change by the University at any time, in accordance with its Policy on Policies. The University will make reasonable attempts to timely notify the community of any changes through Web site or email postings, or other methods deemed appropriate by University administration. Any changes shall take effect upon publication on the University’s website.

I. SCOPE OF THE POLICY

The Sexual Offenses Policy covers conduct including sexual harassment, sex/gender discrimination, sexual assault, sexual violence, rape, stalking, and relationship violence (including domestic and dating violence), as well as harassment that targets a person based on gender identity, transgender identity, or gender transition. Sexual offenses can occur between any persons regardless of sex and gender identity.

This policy is applicable to Clark University students, faculty, staff, applicants for University employment or admission to educational or university-sponsored programs or activities, or any other person employed by, contracted or volunteering with the University. Guests and visitors to the University are expected to adhere to this policy but may be accorded different procedures than those outlined in this policy.

The University will take steps to respond to reports of sexual offenses and will impose sanctions on anyone who has been found to have violated this policy following an investigation and adjudication process. Resolution by the University is intended to help bring an end to harassing or discriminatory conduct, prevent recurrence, and address the effects on the Complainant and the community.

Free Speech and Academic Freedom

This Policy is intended to protect members of the University community from sexual offenses, not to regulate speech or unduly impinge on speech and expression.

Although this Policy is not intended to interfere with or impinge upon speech, expression or academic freedom, neither freedom of speech nor academic freedom are limitless and the University reserves the right to sanction speech or expressive conduct that violates this Policy, other University policies related to speech and expression, or federal or state anti-discrimination and harassment laws.

Clark University Non-Discrimination Policy

It is the policy of Clark University that each qualified individual, regardless of race, color, sex, sexual orientation, pregnancy, religion, creed, national origin, age as defined by law, or veteran or disability status, shall have equal opportunity in the education, employment or services of Clark University.

II. APPLICABLE PROCEDURES

This policy covers conduct including sexual harassment, sex/gender discrimination, sexual assault, sexual violence, rape, stalking, and relationship violence (including domestic and dating violence), as well as harassment that targets a person based on gender identity, transgender identity, or gender transition.

In addition to the conduct covered by this policy, the Title IX regulations issued by the U.S. Department of Education require the University to apply specific definitions and procedures for conduct that is specifically covered by those regulations. This policy and its procedures incorporate the definitions and procedures from those Title IX regulations, as well as the broader University definitions and related procedures.

Definitions of Prohibited Conduct and procedures pertaining to conduct defined by the Title IX regulations issued by the U.S. Department of Education may be found in Appendix A of this policy. For all other Prohibited Conduct not covered under Appendix A (Title IX Sexual Offenses Process), the definitions of Prohibited Conduct and procedures outlined below shall apply.

Determining Procedures to be Used

The procedures to be used shall be determined by the Title IX Coordinator based on the conduct alleged to have occurred, the location of the alleged conduct, and the date on which the alleged conduct occurred. When Appendix A is not applicable, the University will evaluate

complaints using the procedures outlined in Sections V - VIII below, as well as other applicable university policies.

Consolidation of Cases

In the event that the allegations under this Policy also involve allegations of a violation of a separate policy, the Title IX Coordinator shall determine whether to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Policy.

III. PROHIBITED CONDUCT

The following conduct is prohibited under this Policy:

Sexual Harassment

(Please Note: consistent with Title IX Federal Regulations, Appendix A includes a different definition of Sexual Harassment that is applicable when the Title IX Coordinator determines that a complaint falls under Appendix A and will be handled using Appendix A).

Sexual harassment” consists of any unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. This includes, but is not limited to: submission to, or rejection of, such conduct that is made either implicitly or explicitly a term or condition of employment or participation in an education program; submission to, or rejection of, such conduct that is used as the basis for employment or academic decisions affecting a student, faculty, or staff member; such conduct that has the purpose or effect of interfering with a student, faculty, or staff member’s work or academic performance; or such conduct that creates a hostile or intimidating work or academic environment and is severe, pervasive or objectively offensive.

Sexual Assault

Sexual assault is any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse by one or more persons upon another without effective consent. Sexual penetration includes vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation by mouth-to-genital contact or genital-to-mouth contact.

Sexual Exploitation

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute sexual assault, sexual misconduct, or sexual harassment. Examples of sexual exploitation include, but are not limited to: making public sexual activity with another person without that other person’s consent; prostituting another person; non-consensual video- or audio-taping of sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); voyeurism; and/or knowingly transmitting an sexually transmitted infection (STI) or HIV to another person.

Sexual Misconduct

Sexual misconduct is any intentional sexual touching of a person, however slight, with any object without effective consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another or any other bodily contact in a sexual manner. Any disrobing of, or exposure to, another person without effective consent is considered a violation of this policy.

Relationship Violence (including domestic, dating, and intimate partner violence)

Relationship violence (including domestic, dating, and intimate partner violence) is violent or controlling behavior by a person who is currently or was previously in a social relationship of a romantic or intimate nature with the Complainant. Relationship violence includes actual or threatened physical injury, sexual assault, psychological abuse, economic control, controlling/possessive behavior and/or progressive social isolation, threatening self-harm if the other partner leaves the relationship; destroying property, or monitoring a partner's calls and emails in order to manipulate or isolate.

Stalking on the Basis of Sex

Stalking is a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to a) fear for their safety or the safety of others or b) suffer substantial emotional distress. Stalking behaviors include, but are not limited to: non-consensual communication (including in-person communication, telephone calls, voice/text/email messages, social networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, or any other communications that are undesired and/or place another person in fear); following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person; surveillance and other types of observation, whether by physical proximity or electronic means; vandalism; trespassing; nonconsensual touching; direct physical or verbal threats against a person and/or their loved ones; gathering of information about a person from family friends, co-workers, and/or classmates; manipulative and controlling behaviors such as threats to harm oneself or threats to harm someone close to that person; and defamation or slander against a person.

Retaliation

The University will not tolerate retaliation in any form against any persons for their participation or involvement in the reporting, investigation, and/or resolution of matters subject to the Sexual Offenses Policy and Process. The University will take appropriate steps to prevent and/or address retaliatory conduct immediately. Retaliation includes any acts or words that constitute intimidation, threats or coercion because of that person's (1) report of Policy violation(s); (2) assistance in reporting of Policy violation(s); (3) participation in any proceeding under the policy; or (4) protest of Policy conduct, and that would also deter a reasonable person from reporting or assisting in reporting a violation of the policy, participating in any proceeding under the policy, or protesting of the Policy.

Consenting Relationships

Consensual romantic and sexual relationships between employees and undergraduate students are strictly prohibited, and these relationships between supervisors and subordinates and between employees and graduate students are strongly discouraged – and in some cases might be deemed impermissible. These relationships cause special concerns with respect to the existence or appearance of exploitation, abuse of position, or favoritism. All employees should understand that there are substantial risks in even an apparently consenting relationship where a power/authority difference exists. These relationships can and often do lead to charges of sexual harassment, hostile work environment on the basis of sex-based favoritism, or violation of our nepotism policy. Administrators and supervisors, who by virtue of their level of responsibility and authority, bear a special burden of accountability. If a consensual relationship develops, the involved individuals have an affirmative obligation to advise their supervisor and either the Title IX Coordinator or Director of Human Resources so that an assessment can be made relative to whether the relationship poses any challenges that need to be addressed to ameliorate any real or perceived adverse impact to the involved individuals or others. The University reserves the right to make employment changes and impose disciplinary measures if romantic relationships develop between employees and/or students that appear problematic.

IV. GENERAL DEFINITIONS OF THE POLICY

Advisor: An advisor is any individual who provides guidance and assistance to a Party throughout a resolution process under this policy. At the direction of a Party, an Advisor may be copied on communications with the Party, and have access to documents and materials made available to the Party. Other than in procedures outlined in Appendix A, an Advisor may not represent, speak, or act on behalf of a Party. Additionally, an Advisor may not act to impede, obstruct, delay, or undermine any steps taken under this policy.

Appeals Officer: The person charged with reviewing and making determinations regarding appeals filed in connection with the procedures used or applied under this Policy.

Complainant: The person who experienced the incident(s) of Sexual Offense.

Conduct Officer: An individual charged with making a determination regarding whether this Policy, excluding those matters handled using the procedures of Appendix A, was violated and if so, what sanctions will be applied.

Consent: Effective, clear consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions.

- It is the responsibility of the initiator of the sexual activity to ensure that they have the other person's consent to engage in sexual activity.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.
- Consent cannot be assumed because of the existence of a dating relationship between

the persons involved or due to the existence of a previous sexual relationship between the persons.

- Silence, in and of itself, cannot be interpreted as consent. Consent must be present throughout the sexual activity by all parties involved.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- The respondent or complainant's use of alcohol or other drugs does not diminish the respondent's responsibility.
- Consent may never be given by minors (in Massachusetts, those not yet sixteen [16] years of age), those who have a mental disability, those who are incapacitated as a result of alcohol or other prescription, lawful or illicit drug consumption (voluntary and involuntary), or those who are unconscious, unaware, or otherwise physically helpless.

Evidence of incapacity may be detected from context clues, such as slurred speech; bloodshot eyes; the smell of alcohol on the breath; shaky equilibrium; vomiting; outrageous or unusual behavior; and/or unconsciousness.

This Policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called "date-rape" drug. Possession, use, and/or distribution of any of these substances is prohibited, and administering one of these drugs to another person for the purpose of inducing incapacity is a violation of this Policy.

Days: Unless otherwise specified, any reference to "days" refers to University business days and does not include University holidays, closures, or weekends.

Force: The term "force" includes the use of any of the following:

- Physical force, violence, the presence or use of a weapon
- Threats or harassment
- Intimidation, abuse of real or perceived power or authority, implied threats
- Coercion or duress; this includes pressuring another person to perform or engage in sexual activity.

Incapacitation: Incapacitation is the lack of physical or intellectual capability to consent. Being incapacitated differs from being intoxicated or drunk. A person who is incapacitated cannot understand the fact, nature, or extent of sexual activity. Incapacitation may be a result of consuming alcohol, drugs or other intoxicating substances, being unconscious or asleep, and/or other factors that could alter one's faculties. It is a violation of this Policy to engage in sexual activity with a person who is incapacitated, regardless of whether the person appeared to be a willing participant.

Interim and Supportive Measures: The University may offer non-disciplinary, non-punitive individualized services, to the Complainant or Respondent before, during, or after a report is

made under this Policy. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party.

Such measures may include, but are not limited to:

- mutual restrictions on contact between the Parties;
- changes in work or housing locations
- modifications of class or work schedules
- withdrawal from a course
- academic support
- safety escorts
- counseling
- leaves of absence

Party: A Complainant or Respondent.

Relevant Evidence: Relevant evidence is evidence pertaining to an allegation that is likely to prove or disprove an allegation or fact.

Respondent: The individual accused of Sexual Offense.

Responsible Employee: Any employee of Clark University, including part-time employees and student workers. A Responsible Employee shall report to the Title IX Coordinator any information learned about an act of sexual offense. There is an expectation that all employees, regardless of position/title, will report any suspected violation of this Policy to the Title IX Coordinator, including but not limited to faculty, supervisory personnel, individual contributors, Resident Assistants, and Teaching Assistants. Failure of any of the above-referenced employees and employee categories to report a suspected violation of this Policy may be subject to disciplinary action – potentially up to and including separation and/or expulsion.

Support Person: A support person is one who provides emotional support and assistance in a proceeding under this Policy. A Support Person may not represent, speak, or act on behalf of a Party. Because of this distinction, a Support Person should not also act as an Advisor to the same Party. Additionally, a Support Person may not act to impede, obstruct, delay, or undermine any steps taken under this Policy.

V. REPORTING

Resources and Services:

Individuals who have experienced sexual offenses are encouraged to consider emergency assistance for medical treatment and preservation of evidence. It is important to preserve all physical evidence following an act of sexual offense. Physical evidence may be necessary in the event criminal prosecution is pursued. If possible, an individual should not wash, eat, drink, shower, use the bathroom, or change clothes. If clothes are changed, all clothes that were worn

at the time of the incident should not be cleaned and should be placed into a clean paper bag. Leave all sheets, towels, etc. that may bear evidence for the police to collect.

Medical Treatment:

Medical treatment is available on and off campus; however, individuals seeking to preserve evidence through forensic examination are encouraged to see a Sexual Assault Nurse Examiner at: UMass Memorial Hospital Emergency Department (119 Belmont Street, Worcester, MA 01605).

Individuals can receive confidential physical health services, including physical exams and testing for sexually transmitted infections (STIs) and pregnancy through Clark University's Health Services. Call (508) 793-7467 to schedule an appointment.

For confidential 24-hour support, counseling, and advocacy services individuals may contact Pathways for Change at (800)870-5905 (24-hr hotline).

Reporting to Police:

Individuals who have experienced sexual offenses have the right to report, or not to report, the incident to the police. Someone may choose to report to both the police and the University's Title IX office. An individual can request assistance from the Title IX Coordinator or another University Official in making a report to the police or for more information on how to obtain a court-issued protective order with police assistance. If a protective order has been issued, this information should be reported to the Title IX Coordinator and to University Police promptly.

In an emergency dial 911.

Reports can be made to the Clark University Police at: Basement of Bullock Hall; (508) 793-7575.

How to Make a Report to the University

The University encourages individuals who have experienced sexual offenses to make a report so that the University may respond, and resources and support may be provided. There is no timeframe for making a report, but the University encourages reports as close in time to the alleged incident as possible.

Anyone may report sexual offenses to the Title IX Coordinator (titleix@clarku.edu), or to any Responsible Employee. Reports may also be made using the online reporting form (<https://forms.office.com/pages/responsepage.aspx?id=PSaytapoPkW5cqoUIUEPgL-klox0slxDmnaXygYHzUIUMDVMTlhGRVBBMjNYUTcxSloyM1dJMVpPWCQIQCNOPWcu>).

A report of sexual offense involving a student or employee (faculty or staff) will be shared with the Title IX Coordinator when the report is made to any Responsible Employee of the University. The report of sexual offense should include the names of the Complainant, Respondent, and any witnesses, as well as any information known about what may have taken place including the date, time, and specific location of the alleged incident.

A report of sexual offense made to the Title IX Coordinator will not be shared with law enforcement without the Complainant's consent unless the report contains information regarding a threat to the physical safety of one or more member of the University community. To the extent possible, information reported to a non-confidential campus resource will be shared only with individuals at the University who have a role in responding to a report of sexual offense.

Anonymous Reporting

An anonymous report of sexual offense may be made through the Clark Title IX webpage online report form. An anonymous report may limit the University's ability to investigate and address sexual offense, and it may prove difficult to take disciplinary action against any individual when based solely upon an anonymous report.

Disclosing Sexual Offenses to Confidential Campus Resources

Confidential Campus Resources assist the Complainant in receiving necessary assistance and support, such as advocacy, and health or mental health services. The name(s) and other identifying information regarding a report of sexual offenses made to a confidential campus resource will not be shared with the Title IX Coordinator or any other member of the University community, unless the report contains information that includes an immediate threat of harm to oneself or others.

It is important to note that the University cannot conduct an investigation or pursue disciplinary action in response to a report that is made only to a Confidential Resource. Thus, a Complainant who makes a report to a Confidential Resource may also decide to file a complaint with the University or report the incident to local law enforcement, so that the matter may be investigated.

While maintaining a Complainant's confidentiality, Confidential Resources report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report does not include information that would directly or indirectly identify the Complainant. Such reporting helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses.

Clark University's Confidential resources include:

Counseling/Psychological Services - Confidential and free individual therapy is available to students, including education regarding normal reactions to sexual assault and relationship abuse and how to cope with distress.

Center for Counseling & Personal Growth (508) 793-7678

Medical Services - Confidential physical health services are available, including physical exams and testing for sexually transmitted infections (STIs) and pregnancy.
Health Services (508) 793-7467

Ombudsperson - A confidential, informal, and neutral service available to employees. (508) 889-2675.

Clery Act and Other Legal Obligations

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses. The Clery Act, signed in 1990, was originally known as the Crime Awareness and Campus Security Act.

In accordance with the Clery Act, the University will track all non-identifying information regarding reports of sexual offenses made to the university, including reports shared with confidential resources. At any time, if the University determines that there is a serious and immediate threat to the University community, the University Police Department, the Title IX Coordinator, and the Dean of Students may issue a timely warning to the community. Timely warnings do not include any information that identifies a Complainant. Consistent with the Commonwealth of Massachusetts Session Laws, 2020 Ch. 337, Clark University will provide an Annual Report to the Massachusetts department of education with aggregate, de-identified information including the total number of sexual offense reports reported to the Title IX Coordinator and data regarding disciplinary outcomes.

Amnesty

Individuals who make a report of sexual offenses will not be disciplined for University policy violations that occur around the time of the alleged sexual offenses, unless the conduct risks the health or safety of another or involves plagiarism, cheating or other forms of academic dishonesty.

Protection from Retaliation

Any member of the University community has the right to raise good faith concerns about or file a good faith complaint of sexual offense without fear of retaliation. It is unlawful and a violation of this Policy to retaliate against an individual for filing a complaint of sexual offense, for cooperating in a sexual offenses investigation, or for supporting someone involved in raising such concerns of misconduct. Any person who retaliates is subject to disciplinary action up to and including expulsion and/or termination by the University.

VI. RESPONDING TO A REPORT

Initial Outreach

Upon receipt of a report of sexual offenses, the Title IX Coordinator shall contact the Complainant to provide information and an invitation to meet with the Title IX Coordinator or designee to discuss options for reporting and resolving the alleged misconduct, including: (a)

information regarding available campus resources, assistance and support; (b) the right to make a report of the alleged misconduct to both the university and to law enforcement as well as the option to make no report at all; and (c) information regarding university resolution methods and procedures for addressing and resolving the alleged misconduct.

Initial Assessment of the Report and Preliminary Inquiry

Following receipt of a report of misconduct and/or a conversation with the Complainant, the Title IX Coordinator or designee will conduct an initial assessment of the report to determine: (a) whether interim protective or supportive measures are needed; (b) whether there is an immediate threat to the health and safety of an individual or the University community and if so, what steps may be taken to respond to any known threat; and, (c) the appropriate resolution method(s) based on the information known at that time regarding the alleged misconduct.

Prior to deciding the appropriate method for resolution, the Title IX Coordinator may conduct a preliminary inquiry to better understand the nature of the allegations and confirm the appropriate resolution method. This may include conversations with other University employees or students. These conversations are not interviews connected to or part of an investigation, rather these conversations are conducted simply to gather sufficient information needed for the Title IX Coordinator to determine the most appropriate method to use to resolve the report. The Title IX Coordinator will take steps as appropriate to maintain the privacy and in some instances the confidentiality of the Complainant when conducting an initial inquiry.

Where the Title IX Coordinator determines that the alleged misconduct must be handled using the process, definitions and procedures in compliance with Title IX Federal Regulations, then procedures outlined in Appendix A, will apply. All other allegations of misconduct will be handled using the procedures outlined below.

Where the Title IX Coordinator determines that the alleged misconduct, even if proven, would not constitute a violation of this Policy, the Title IX Coordinator may take steps to prevent potential future violations of this policy and respond to the report as follows:

- Refer the report to the appropriate University official for their review, response and handling in accordance with other applicable University policies and procedures;
- Work with Complainant and/or other University officials to address the alleged conduct through non-punitive means including educational conversations, facilitated conversations, training, and written communications.

Privacy

The University will keep the identities of all parties confidential to the extent possible. This means that the University will not disclose the identity of the parties, except as necessary to carry out an investigation, disciplinary process, or method of resolution (outlined in section VII

below), for the health, safety and well-being of the parties and campus community, or as permitted under state or federal law. The University cannot guarantee confidentiality, and it will not restrict the parties from discussing their personal experiences, so long as the parties avoid conduct that would constitute prohibited retaliation. Additionally, please be advised that there are certain key University administrators with a 'need to know' the identity of the parties and the facts of the case in order to implement safety plans, ensure the process is not unduly impeded, and other actions deemed necessary to safeguard the process and the University.

Academic Freedom

When an allegation implicates academic freedom, the Title IX Coordinator will consult with the appropriate university official(s) to obtain a relevant perspective regarding those aspects of the allegation connected to the tenets of academic freedom prior to the initiation of any resolution method.

Emergency Removal of a Student

If at any time the University determines that the conduct, as alleged, poses a risk of imminent, physical harm to one or more members of the University community, the University may instruct that a student Respondent be suspended, removed or reassigned, on an interim basis, from specific programs or activities. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, removal, reassignment or leave will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

Emergency Removal of an Employee

If at any time the University determines that the conduct, as alleged, poses a risk of imminent physical harm to one or more members of the University community or to the University's educational, research, scholarly, or work environment, the University may instruct that the employee be placed on administrative leave, or reassigned, pending the outcome of an investigation and hearing. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, reassignment, removal or leave will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

The decision to place any Respondent on an interim suspension, reassignment, removal or leave shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

Opportunity to Challenge Decision to Suspend or Remove

A student Respondent shall have an opportunity to challenge the decision of suspension or removal by contacting the Dean of Students within five (5) business days of the interim suspension, reassignment or leave, who will schedule a meeting during which the student may present their challenge to the decision. An employee Respondent shall have an opportunity to

challenge the decision of removal or leave by contacting the Director of Human Resources within five (5) business days of the reassignment, removal or leave, who will set up a meeting for the employee to present their challenge to the decision.

VII. METHODS OF RESOLUTION

There are three different methods that may be used to address a report of prohibited conduct: support-based resolution, agreement-based resolution, or an investigation. When appropriate, the Title IX Coordinator will incorporate the wishes of the Complainant into the decision of which resolution method to use. There may be times when the Title IX Coordinator must move forward with the investigation method against the wishes of a Complainant such as when the alleged misconduct threatens the physical health or safety of an individual or the University community.

Before making a determination to move forward against the wishes of a Complainant, the Title IX Coordinator will consider:

- whether there have been other sexual offense complaints about the same individual;
- whether the Respondent has a record indicating a history of violence;
- whether the Respondent threatened further sexual offenses or other violence against the Complainant or others;
- whether the sexual offense was committed by multiple respondents;
- whether the sexual offense was committed with a weapon;
- whether the Complainant is a minor;
- whether the University possesses other means to obtain relevant evidence of the sexual offense (e.g., security cameras or personnel, physical evidence);
- whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

A. Support-Based Resolutions

A Support-Based resolution may be used to provide support to a Complainant who does not wish to take any further steps to address their concern, and when the Title IX Coordinator determines that another form of resolution is not required, based upon the available information. When the allegations include information suggesting that the physical health or safety of an individual or the school community is at risk, a Support-Based resolution may not be sufficient.

Examples of Support-Based Resolution may include adjustments to class or work schedules, adjusted deadlines for projects or assignments, or referrals to counseling or other support services. A Support-Based Resolution does not preclude later use of another form of resolution, for example if new information becomes available and the Title IX Coordinator determines there is need for additional steps to be taken, or the Complainant later decides to pursue an Agreement-Based Resolution or Investigation.

In all cases, the steps associated with the Support-Based Resolution shall be documented and retained by the Title IX Coordinator.

B. Agreement-Based Resolution

An Agreement-Based Resolution is a process where the Complainant and Respondent each voluntarily agree to resolve the concern by mutually agreeable terms, approved by the Title IX Coordinator, that does not include an Investigation. Because an Agreement-Based Resolution does not involve an Investigation, there is not any determination made as to whether the Respondent violated this Policy, and therefore the University does not impose any discipline or sanction. An Agreement-Based Resolution will not be used in cases where the Complainant is a student and the Respondent is an employee, or in instances when significant power differentials exist between employee parties.

When appropriate, the Title IX Coordinator will take the Complainant's suggestions for resolution into consideration. If both the Complainant and the Title IX Coordinator agree to using an Agreement-Based Resolution, the Title IX Coordinator will inform the Respondent of the general nature of the reported concerns, that the Complainant wishes to resolve the complaint via an Agreement-Based Resolution, and the process for arriving at a resolution.

Both the Complainant and Respondent may propose steps or actions throughout the Agreement-Based Resolution process until a final agreement is arrived at and agreed to by all parties and approved by the Title IX Coordinator. Both Complainant and Respondent may be accompanied by an advisor or support person during the course of the resolution process. At any time prior to the conclusion of an Agreement-Based Resolution process, the Complainant, Respondent or Title IX Coordinator may decide that the reported conduct will instead be addressed by Investigation.

Agreement-Based Resolutions may include but are not limited to:

- work, academic, or program reassignment
- an agreement that the Complainant and Respondent will engage with one another only in limited and specific circumstances
- an agreement that the Complainant and Respondent will not contact one another
- completion of an educational project by the Respondent
- completion of a community service project by the Respondent
- conducting targeted prevention education and training
- an agreement to engage in a restorative justice process
- a written apology by the Respondent
- sanction or discipline agreed upon by both the Complainant and Respondent
- any other method agreed upon by the Complainant, Respondent and the Title IX Coordinator that is designed to address the reported conduct.

When the Complainant and Respondent agree to use the Agreement-Based Resolution process, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the Agreement-Based Resolution process including the circumstances under which use of the process precludes the parties from conducting an investigation arising from the same allegations;
- Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible for violating this policy as a result of participating in the Agreement-Based Resolution process, unless Respondent admits to violations of this policy;
- An explanation that each party may be accompanied by an Advisor of their choice, who may be a parent, legal guardian, friend, or attorney;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

If at any time either party does not wish to continue with the Agreement-Based Resolution process, or if the Title IX Coordinator determines that the Agreement-Based Resolution process is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through the Investigation process.

Once the final terms of an Agreement-Based Resolution have been agreed upon by both parties, in writing, the matter shall be considered closed, and no investigation or further action will be taken. Violations of the terms of an Agreement-Based Resolution may lead to an investigation and, if substantiated, to discipline or sanction.

The Agreement-Based Resolution process is generally expected to be completed within thirty (30) business days from the date the process is initiated and may be extended for good cause by the Title IX Coordinator. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of any Agreement-Based Resolution will be maintained by the Title IX Coordinator and can be shared with other offices as appropriate.

C. Investigation

An investigation is the method the University uses to establish whether the allegations contained in a report are substantiated, and, if so, to help determine the appropriate discipline. The Title IX Coordinator is responsible for overseeing the investigation process and ensuring that a trained investigator is assigned to conduct a fair, neutral investigation. Throughout the investigation process, both the Complainant and Respondent will be treated with respect and

without prejudice regarding the allegations and their involvement in the investigation process.

Evidentiary Standard

The standard used in investigation and adjudication of alleged violations of this policy is Preponderance of Evidence, meaning, when the evidence shows that it is “more likely than not” that the alleged conduct occurred. A Respondent is presumed not to have violated this Policy until the investigation and adjudication process has concluded and a preponderance of the evidence establishes it is more likely than not that a Policy violation has occurred.

Communicating the Initiation and Outcome of an Investigation

The Title IX Coordinator will communicate in writing to the Complainant and Respondent both the initiation of an investigation and the conclusion of an investigation.

Prior to the start of any investigation, the Complainant and the Respondent will each be provided with written notification of the decision to initiate an investigation. Such notification will include: the name of the Complainant(s); the name of the Respondent(s); the allegations under investigation; the date and location of the alleged conduct if known; the applicable Policy including sections of the policy; a description of the investigation process; information regarding the right to appeal the investigator’s determinations; and information regarding the University’s prohibition against retaliation. Note that if a report is anonymous, the name of the Complainant may not be readily available. The name might also be initially withheld if it is determined that a health, safety, or other compelling reason exists. However, no sanctions will be imposed without providing the respondent with the opportunity to know the available names of any Complainant(s). Should additional allegations be made as part of the same investigation, the Title IX Coordinator will communicate in writing to the Complainant and Respondent any additional allegations under investigation.

Following the conclusion of the investigation, the Title IX Coordinator will send written notification to the Complainant and Respondent communicating the results of the investigation. This notice will include a summary of the investigation process, findings from the investigation, a determination as to whether the Policy was violated, an explanation of next steps that may be taken by the University to address the findings including sanctions or discipline as appropriate, and instructions for filing an appeal.

Investigation Process

The Title IX Coordinator will assign a trained investigator (who may be an external investigator), who will gather relevant information, including interviews of the Complainant, Respondent and any relevant witnesses, and any relevant documents, materials or information. Information about an individual’s character is generally not considered relevant evidence and will rarely be gathered or considered by the investigator. It may be necessary to interview the Complainant, Respondent or witnesses more than once during the course of the investigation as new information is learned and gathered. Interviews may take place in person or virtually using appropriate technology.

During the investigation process, both the Complainant and Respondent may be accompanied by an Advisor and a Support Person of their choosing, and will be offered an opportunity to meet with the investigator, provide information and evidence pertaining to the allegations, suggest witnesses to be included in the investigation, and suggest questions to be posed of witnesses and the other Party. Once all of the evidence has been gathered and the interviews have been conducted, the investigator will share the evidence directly-related to the allegations with the Complainant and Respondent. At the direction of the Complainant and Respondent, this evidence may also be shared with their respective Advisor. The Complainant and Respondent may respond to the evidence if they choose to do so by providing written comments, requests that additional information be gathered, or by providing additional relevant evidence to the investigator. The Complainant and Respondent will be provided 10 business days to provide their written response. The Title IX Coordinator can extend this timeframe for good cause shown. Neither the Complainant and Respondent nor their Advisors shall be permitted to copy, disseminate or alter the evidence gathered by the investigator. After receiving any responses from the Complainant or Respondent, the investigator may gather more information or ask additional questions of the Complainant, Respondent and witnesses as needed, and will again share new information with the Complainant and Respondent for their review.

All individuals are expected to participate truthfully in the investigation process, whether as a Complainant, Respondent, or a witness. All employees who are witnesses in an investigation are required to participate. A determination that there is not enough evidence to support a finding shall generally not be sufficient to conclude that a party or witness made a knowingly false material statement.

Sexual History

As a general rule, the investigator will not consider the sexual history of a Complainant or Respondent. Sexual history evidence of a Complainant or Respondent that pertains to the party's reputation or character will never be considered relevant on its own. Additionally, the investigator will never assume that a past sexual relationship between the parties means that Complainant consented to the specific conduct under investigation. However, in limited circumstances sexual history may be considered by the investigator to be directly relevant to the investigation. A Complainant's sexual history might be considered relevant to determine how the parties communicated consent in past consensual encounters in order to understand whether the Respondent reasonably believed consent was given during the encounter under investigation; and evidence of specific past sexual encounters may be relevant to whether someone other than Respondent was the source of relevant physical evidence. A Respondent's sexual history might be considered by the investigator in determining pattern, knowledge, intent, motive, or absence of mistake, or to resolve another issue of importance in the investigation.

Medical and Counseling Records

Medical and counseling records are privileged and confidential documents that students will not be required to disclose in this process. Medical and counseling documents being privileged means that they cannot be shared with anyone other than the treating professional unless the patient agrees to the disclosure, in writing. Note that this privilege may potentially be waived if the patient voluntarily discloses the records on their own volition. Prior to producing medical records, Parties are encouraged to ask the investigator, the Title IX Coordinator, or their attorney/Advisor about the possible consequences of releasing this information.

Ensuring the Integrity of the Investigation Process

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from Parties, Advisors, Support Persons and any other individual whose actions disrupt or interfere with the University's investigation process.

Non-University Investigations

In the event a Party or their Advisor or another third-party to an investigation conducts a separate inquiry into the allegations under investigation by the University, the Party, Advisor or third-party will make such inquiry known to the Title IX Coordinator so that the Title IX Coordinator may notify participants in the University investigation of the additional inquiry, and so that steps can be taken to prevent disruption to the University investigation process, and ensure that participation in the University investigation is free of harassment, intimidation, bullying, retaliation or interference. Any party, witness, or third-party conducting such an investigation is required to inform anyone interviewed that their inquiry is not an official University inquiry, and must identify the individual for whom the investigation is being conducted.

Investigation Report and Timeline

Once directly-related information has been shared with the Complainant and Respondent, the investigator will determine what information is relevant to the allegations and write a report that includes the allegations under investigation, a list of individuals interviewed, a list of all relevant evidence (documents, emails, screen shots, texts, etc.) gathered, a summary of the relevant information from each interview, an analysis of the relevant information gathered, a determination regarding whether the conduct as alleged occurred, and a preliminary analysis of whether the factual findings support a determination that the Policy was violated. Following the conclusion of the investigation, the investigator shall provide the investigation report to the Title IX Coordinator who will determine the sufficiency of the investigation including whether the information contained in the report addresses the allegations and supports the investigator's findings.

The Title IX Coordinator and the investigator endeavor to complete the investigation process within 60 business days from the date of the initiation of the investigation (this timeframe excludes the time for the parties to review and comment on the investigative report). Should

the investigation timeline need to be extended, the Title IX Coordinator will notify the Complainant and Respondent in writing of the extension including the reason for the extension and the new timeline for completion of the investigation.

There may be times when the University investigates a complaint of Sexual Offense at the same time that a law enforcement agency is investigating the same matter. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding Investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding Investigation as soon as it is notified that doing so would not impede any law enforcement activities.

Determination of the Conduct Officer

Following the conclusion of the investigation, the Title IX Coordinator will forward the investigation report and any relevant information to the Conduct Officer who will make a determination regarding whether this policy was violated and if so, what sanctions will be applied.

The Conduct Officer will review the investigation report and use the investigator's findings of fact to determine whether a policy violation has occurred, and if so, what sanctions will be applied. The role of the Conduct Officer is to make a determination regarding whether the policy has been violated based on the investigator's findings of fact, and not an opportunity for the Officer to re-investigate the matter or supplant their opinion for the findings of fact established by the investigator. If the Conduct Officer determines that a hearing is necessary, or the University directs that a hearing take place, the case will follow the hearing process as outlined in Appendix A. Note that the hearing process will be followed in all cases involving a faculty Respondent.

The Conduct Officer will provide a written document to the Title IX Coordinator communicating their decision as to whether the record establishes by a preponderance of the evidence that a violation of this policy occurred including a rationale for their decision. The Title IX Coordinator will send written communication to both the Complainant and Respondent, and if requested to their respective Advisor, summarizing the investigator's findings and the findings and determination of the Conduct Officer as well as information regarding the right to appeal the Conduct Officer's decision. The Title IX Coordinator will also provide each party, with a copy of the investigation report and the determination of the Conduct Officer.

D. Appeal

Both Complainant and Respondent have the right to appeal the outcome. If a party appeals, the Title IX Coordinator will appoint a trained Appeals Officer. Appeals must be made in writing to the Appeals Officer within 7 business days following notification of the outcome from the Conduct Officer.

An appeal may be filed for one or more of the following reasons:

- A procedural error occurred that materially affected the outcome of the investigation;

- New evidence becomes available that was not reasonably available during the investigation that would materially affect the outcome of the investigation;
- An actual conflict of interest or demonstrated bias on the part of the Title IX Coordinator, Conduct Officer, or investigator.

Notification of Receipt of Appeal

The Appeal Officer will acknowledge receipt of the appeal and make the non-appealing party aware an appeal has been filed. The Appeal Officer will also provide the non-appealing party seven (7) business days to provide a written response to the appeal to the Appeal Officer. A response to the appeal is not required and a lack of response to the appeal does not indicate agreement with the appeal.

Review and Determination of the Appeal

The Appeal Officer will review the written appeal and any response to the appeal, along with any documents pertaining to the investigation and any additional supporting documents pertaining to the appeal.

The Appeal Officer will issue a written determination regarding the appeal to Complainant, Respondent and the Title IX Coordinator generally within 7 business days following the deadline to submit appeal materials. The determination of the Appeal Officer may:

- Affirm the findings/outcome of the investigation and decision of the Conduct Officer
- Return the matter to the investigator, Conduct Officer or Title IX Coordinator to review and consider any new evidence not previously available during the investigation
- Return the matter to the investigator, Conduct Officer or Title IX Coordinator to correct any procedural error that may have materially affected the outcome of the investigation and determination by the investigator

The determination of the Appeal Officer is final.

E. Discipline and Sanction

Following a determination of a violation of this Policy, the Title IX Coordinator will forward the notice of outcome of the investigation, and a copy of the investigation report to the appropriate University official for determination and implementation of sanctions designed to prevent the recurrence of the conduct. The appropriate University official is determined by the status of the Respondent as follows:

If the Respondent is a student

Conduct Officer: Director of Student Conduct or designee

Appeals Officer: Dean of Students

If the Respondent is a staff member

Conduct Officer: Director of Human Resources or designee

Appeals Officer: Executive Vice President or designee

If the Respondent is a faculty member

Conduct Officer: Dean of the Faculty or designee

Appeals Officer: Provost

When determining an appropriate sanction, consideration will be given to the Complainant's ability to freely access the benefits of their education or employment and participate in the University community.

A range of sanctions, from warning to expulsion, revocation of admission and/or degree, withholding of degree, permanent implementation of changes to work assignments or class schedules, suspension, expulsion, termination, or referral to an employee discipline process may be imposed upon any student or employee found to be responsible for sexual offenses.

The following will be considered as aggravating factors when determining discipline or sanction (this is a non-exhaustive list):

- Frequency of the misconduct
- Severity of the misconduct
- Previous conduct history of the Respondent
- Non-adherence to interim measures (e.g., no contact directives)
- Use of drugs or alcohol to facilitate the violation
- Use of force or a weapon in committing the violation
- Multiple actors committing the violation
- Ongoing threat to the Complainant or University community

The appropriate University official will consult with the Title IX Coordinator about the sanction decision prior to finalization and implementation of the sanction.

F. Remedy

Remedies may be provided to the Complainant upon a finding that the Respondent is responsible for sexual offense. Remedies shall be determined by the Title IX Coordinator. Remedies are designed to restore or preserve equal access to the University's educational programs or activities. The range of remedies include:

- Education to the individual and/or the campus community
- Permanent alteration of living arrangements
- Permanent alteration of work schedules or assignments for employees
- Permanent alteration of course schedules
- Long-term contact limitations between the Parties
- Adjustments to academic deadlines
- Policy modifications or modifications of training

G. Final Written Decision

The University will issue a Final Written Decision including its determination of responsibility, any sanctions or corrective action taken, and will provide to the Complainant any remedies designed to restore or preserve equal access to the University's education program or activity.

VIII. OTHER NON-UNIVERSITY REPORTING OPTIONS

Individuals experiencing sexual offenses or discrimination may also file a formal grievance with government authorities. These are non-university resources and deadlines may apply.

U.S. Department of Education, Office for Civil Rights (Boston Office)

5 Post Office Square, 8th Fl, Boston, MA 02109-3921

Phone: 617-289-0111

Email: OCR.Boston@ed.gov

Website: www2.ed.gov/about/offices/list/ocr/index.html

U.S. Department of Justice, Civil Rights Division

950 Pennsylvania Ave., NW, Washington, DC, 20530

Phone: 202-514-3847

Email: education@usdoj.gov

Website: <https://civilrights.justice.gov>

U.S. Equal Employment Opportunity Commission (Boston Office)

JFK Federal Bldg, 15 New Sudbury street, Room 475, Boston, MA 02203-0506

Phone: 1-800-669-4000

Website: <https://www.mass.gov/file-a-complaint-of-discrimination>

Massachusetts Commission Against Discrimination

1 Ashburton Place, Suite 601, Boston, MA 02108

Phone: 1-617-994-6000

Email: mcad@mass.gov

Website: <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

APPENDIX A

Title IX Sexual Offenses Process

The Federal Title IX Regulations require that certain allegations of sexual offenses be reviewed under specific definitions and resolved using specific procedures. The definitions of Prohibited Conduct in this Appendix are in accordance with the Department of Education's Title IX Regulations.

The procedures outlined in this Appendix will apply to alleged conduct if:

- a) at the time of filing a Formal Complaint the Complainant is participating in or attempting to participate in an education program or activity of the University;
- b) the alleged misconduct occurred on campus or in any building owned or controlled by a student organization that is officially recognized by the University, or as part of an event or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurred;
- c) the alleged misconduct occurred in the United States.

Complaints of misconduct not covered by this Appendix shall be reviewed according to Section III. Prohibited Conduct is handled in accordance with the procedures set out in Sections V - VII of this Policy, or referred to other appropriate University offices for handling under other applicable University policies or codes.

Consolidation of Cases: In the event that the allegations under this Appendix also involve allegations of a violation of a separate section of this Policy, the Title IX Coordinator shall have sole discretion to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Appendix.

I. PROHIBITED CONDUCT

Sexual Harassment: Conduct on the basis of sex committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved which is one of the following:

A University employee conditions the provision of an educational, research, scholarly or work benefit or service on an individual's participation in unwelcome sexual conduct (quid pro quo); and/or

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive, that it effectively denies a person equal access to an educational, research, scholarly or work program or activity of the University. Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of

consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns.

Sexual Assault

Sexual Assault includes forcible and non-forcible offenses.

Sexual Offenses, Forcible: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent:

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- Oral or anal sexual intercourse with another person, forcibly, and/or against that person’s will (non-consensual), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person’s will (non-consensually) or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-Forcible

The following acts are considered non-forcible offenses:

Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Massachusetts law.

Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years of age.

Sex-Based Stalking

Engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person’s safety, or the safety of others, or suffer substantial emotional distress.

For the purposes of this definition, “course of conduct” means two or more acts, including, but not limited to:

- Acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Dating Violence

Violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Massachusetts, or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Massachusetts. Allegations of child abuse under Massachusetts law shall also be referred to Children’s Protective Services or local law enforcement.

II. ADDITIONAL DEFINITIONS UNDER APPENDIX A

Actual Knowledge: The University has Actual Knowledge of a report of Prohibited Conduct when a report or Formal Complaint of Prohibited Conduct allegations is made to the University’s Title IX Coordinator or Director of Human Resources or any official with authority to institute corrective measures on behalf of the University. Any administrator, staff, or faculty who receives a report of a potential violation of this Policy will promptly forward to the Title IX Coordinator any report or information received. The mere ability or obligation to report Prohibited Conduct or to inform about how to report Prohibited Conduct, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. This standard is not met when the only University official with actual knowledge is the Respondent.

Hearing Board: Any person or persons authorized by the University to conduct a live hearing in order to determine whether, by a preponderance of evidence, a Respondent has engaged in Sexual Harassment or Sexual Misconduct as defined in Appendix A. When serving as a Hearing Board member in a particular matter, a person will not also serve as Investigator, Title IX Coordinator, or any person who facilitates an informal resolution process, and will not hear and decide appeals. The Conduct Officer is not precluded from serving as a member of the Hearing Board.

Formal Complaint: A Formal Complaint is a written document or electronic submission by the Complainant, and not by a third party on the Complainant's behalf that contains all of the following:

- Where the incident(s) occurred, if known
- What incident(s) occurred
- When the incident(s) occurred
- Identity of Respondent, if known
- A request for an investigation, and
- Complainant's digital or physical signature or some other direct indication that it is the Complainant who is filing the Formal Complaint.

A Formal Complaint may be made to the University Title IX Coordinator by US mail or email, using the contact information listed below.

Hearing Advisor: During a hearing, a Complainant and Respondent shall each have a Hearing Advisor. The role of a Hearing Advisor is limited to asking questions of the other party, and witnesses during the course of a hearing. The Hearing Advisor may not otherwise participate directly in, represent a party, impede or interfere with the hearing proceedings. The Hearing Advisor may be the same person who served as the Advisor for a Party throughout the investigation. This person may be of the Complainant's or Respondent's own choosing. However, if a Complainant or Respondent does not have a Hearing Advisor who can be present for the hearing, one will be provided by the University.

III. PROCEDURES

A. FILING AN APPENDIX A FORMAL COMPLAINT

In order to proceed to a Resolution Process under Appendix A, a Formal Complaint must be filed and signed by either Complainant or the Title IX Coordinator. A Formal Complaint differs from solely making a report to the Title IX Coordinator. A Formal Complaint results in notification to the Respondent that a report has been made, and is needed to initiate either an investigation or Alternative Resolution under Appendix A. Anyone who wishes to discuss their options for resolving a report prior to filing a Formal Complaint is encouraged to contact the Title IX Coordinator.

At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in a University program or activity or be an applicant to, or employee of, the University.

A Formal Complaint may be made to the University Title IX Coordinator by US mail or email, using the contact information listed below.

Title IX Coordinator
Email: titleix@Clarku.edu
Phone: 508-793-7194
950 Main Street Worcester, MA 01610

The Title IX Coordinator shall have the discretion to sign a Formal Complaint and initiate an investigation when a Complainant's allegations involve violence, use of weapons, serial predation, or similar factors impacting the safety of the broader University community. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become the "Complainant" for purposes of this Policy.

B. RESPONDING TO AN APPENDIX A FORMAL COMPLAINT

Following receipt of an *Appendix A* Formal Complaint, the Title IX Coordinator shall review the complaint to ensure that the complaint satisfies all of the requirements of a Formal Complaint.

If the Formal Complaint meets the requirements, the Title IX Coordinator will provide written notification to the Respondent that a Formal Complaint has been filed and the commencement of the Resolution Process, unless the Title IX Coordinator determines that the Formal Complaint should be dismissed as set forth below. In the event the University dismisses a Formal Complaint, both parties will be notified in writing of the decision and the rationale for the decision, and of the opportunity for both parties to appeal the decision as set forth in Section III of this Appendix.

Mandatory Dismissal

At any time following the submission of a Formal Complaint and prior to the commencement of a hearing, any case proceeding under this Policy will be dismissed if it is determined by the Title IX Coordinator that the conduct at issue does not meet the definitional or jurisdictional requirements of this Policy. This includes the obligation to dismiss a Formal Complaint at any time in the process if it is determined that the conduct as alleged, even if true, would not constitute a violation of this Appendix A.

Discretionary Dismissal

The University may, at its discretion and at any time during an investigation or hearing dismiss a complaint when: a) Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint; b) the Respondent is no longer enrolled or employed at

the University; or c) circumstances prevent the University from gathering evidence sufficient to reach a determination.

The University may transfer a case dismissed under this Appendix for further handling under Sections V – VII of this Policy or other appropriate University policy or code. If the investigation has already commenced at the time of dismissal, the University may use evidence already gathered during the Title IX process for the further handling of the complaint.

Emergency Removal of a Student

If at any time the University determines that the conduct, as alleged, poses a risk of imminent, physical harm to one or more members of the University community, the University may instruct that a student Respondent be suspended or reassigned, on an interim basis, from specific programs or activities. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, reassignment, removal or leave will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

Emergency Removal of an Employee

If at any time the University determines that the conduct, as alleged, poses a risk of imminent physical harm to one or more members of the University community or to the University's educational, research, scholarly, or work environment, the University may instruct that the employee be placed on administrative leave pending the outcome of an investigation and hearing. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, reassignment, removal or leave will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

The decision to place any Respondent on an interim suspension, reassignment, removal or leave shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

Opportunity to Challenge Decision to Suspend or Remove: A student Respondent shall have an opportunity to challenge the decision of suspension or removal by contacting the Dean of Students within five (5) business days of the interim suspension, who will schedule a meeting during which the student may present their challenge to the decision. An employee Respondent shall have an opportunity to challenge the decision of removal or leave by contacting the Director of Human Resources within five (5) business days of the removal or leave, who will set up a meeting for the employee to present their challenge to the decision.

C. RESOLUTION METHODS

There are two resolution methods available under this Appendix: (1) Alternative Resolution or (2) Investigation and Hearing.

1. Alternative Resolution

At any time prior to a hearing, one or both parties may request an Alternative Resolution to resolve the complaint.

An Alternative Resolution is a voluntary process whereby both Complainant and Respondent arrive at mutually agreeable terms to address the alleged conduct. Because there is no investigation and determination, the University will not impose discipline on a Respondent as part of the Alternative Resolution process. Both parties and the Title IX Coordinator must agree to the use of Alternative Resolution to resolve a complaint. A Formal Complaint alleging that an employee has engaged in Prohibited Conduct toward a student shall not be handled through the Alternative Resolution process.

If an Alternative Resolution option is requested, the Title IX Coordinator will assess whether the complaint is suitable for Alternative Resolution and will then take steps to determine if the other party is also willing to engage in Alternative Resolution. Both parties must agree, in writing, to an Alternative Resolution.

When the Complainant and Respondent agree to the use of an Alternative Resolution, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the Alternative Resolution process including the circumstances under which use of the process precludes the parties from resuming a Formal Complaint arising from the same allegations;
- Any consequences resulting from participating in the Alternative Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible for violating this policy as a result of participating in the Alternative Resolution process, unless Respondent admits to violations of this policy;
- An explanation that each party may be accompanied by an Advisor of their choice, who may be a parent, friend, or attorney;
- The date and time of the initial meeting with the Title IX Coordinator, with a minimum of two (2) business days notice;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

If either party does not voluntarily agree in writing to pursue an Alternative Resolution, or if the Complainant, Respondent, or Title IX Coordinator, at any time, determines that Alternative Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through the Investigation and Hearing Process.

Once the final terms of an Alternative Resolution have been agreed upon by both parties, in writing, the matter shall be considered closed, and no further action shall be taken.

The Alternative Resolution process is generally expected to be completed within thirty (30) business days and may be extended for good cause by the Title IX Coordinator. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of any Alternative Resolution will be maintained and can be shared with other offices as appropriate.

2. Investigation

The Title IX Coordinator is responsible for overseeing the investigation process and assigning a trained investigator to conduct a fair, neutral investigation. Throughout the investigation process, both the Complainant and Respondent will be treated with respect and without prejudice regarding the allegations and their involvement in the investigation process.

All individuals are expected to participate truthfully in any investigation process, whether as a Complainant, Respondent, or a witness. All employees who are Respondents or witnesses in an investigation are required to participate. A determination that there is not enough evidence to support a finding shall not be sufficient to conclude that a party or witness made a knowingly false material statement.

The Title IX Coordinator and the investigator shall endeavor to complete the investigation process within 60 business days from the date of the initiation of the investigation (this timeframe excludes the time the Parties take to review and comment on the investigative report). Should the investigation timeline need to be extended, the Title IX Coordinator will notify the Complainant and Respondent in writing of the extension including the reason for the extension and the new timeline for completion of the investigation.

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from Parties, Advisors, Support Persons and any other individual whose actions disrupt or interfere with the University's investigation process.

Sharing information with Law Enforcement

There may be times when the University investigates a complaint of Sexual offenses at the same time that a law enforcement agency is investigating the same matter. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its Fact-Finding Investigation while law enforcement gathers evidence. The University will promptly resume its Fact-Finding Investigation as soon as it is notified that doing so would not impede any law enforcement activities.

Sexual History

As a general rule, the investigator will not consider the sexual history of a Complainant or Respondent. Sexual history evidence of a Complainant or Respondent that pertains to the party's reputation or character will never be considered relevant on its own. Additionally, the investigator will never assume that a past sexual relationship between the parties means that Complainant consented to the specific conduct under investigation. However, in limited circumstances sexual history may be considered by the investigator to be directly relevant to the investigation. A Complainant's sexual history might be considered relevant to determine how the parties communicated consent in past consensual encounters in order to understand whether the Respondent reasonably believed consent was given during the encounter under investigation; and evidence of specific past sexual encounters may be relevant to whether someone other than Respondent was the source of relevant physical evidence. A Respondent's sexual history might be considered by the investigator in determining pattern, knowledge, intent, motive, or absence of mistake, or to resolve another issue of importance in the investigation.

Medical and Counseling Records

Medical and counseling records are privileged and confidential documents that students will not be required to disclose in this process. Medical and counseling documents are privileged, which means that they cannot be shared with anyone other than the treating professional unless the patient agrees to disclosure, in writing. Note that this privilege may potentially be waived if the patient voluntarily discloses the records on their own volition. Prior to producing medical records, Parties are encouraged to ask the investigator or the Title IX Coordinator about the possible consequences of releasing this information.

Ensuring the Integrity of the Investigation Process

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from Parties, Advisors, Support Persons and any other individual whose actions disrupt or interfere with the University's investigation process.

Non-University Investigations

In the event a Party or their Advisor or another third-party to an investigation conducts a separate inquiry into the allegations under investigation by the University, the Party, Advisor or third-party will make such inquiry known to the Title IX Coordinator so that the Title IX Coordinator may notify participants in the University investigation of the additional inquiry, and so that steps can be taken to prevent disruption to the University investigation process, and ensure participation in the University investigation is free of harassment, intimidation, bullying, retaliation or interference. Any party, witness, or third-party conducting such an investigation is required to inform anyone interviewed that their inquiry is not an official University inquiry, and must identify the individual for whom the investigation is being conducted.

Communicating the Start of the Investigation

Prior to the start of any investigation, the Complainant and the Respondent will both be provided with written notification of the decision to initiate an investigation. Such notification will include:

- The name of the Complainant(s)
- The name of the Respondent(s)
- The allegations under investigation including, if known, the date and location of the alleged conduct
- The applicable Policy including sections of the policy
- A description of the investigation process including: the identity of the investigator, the right of Complainant and Respondent to meet with the investigator with a minimum of five (5) business days notice; have an Advisor and Support Person of their choice, present throughout the investigation process including all meetings with the investigator; provide information and evidence pertaining to the allegations; suggest witnesses to be included in the investigation; suggest questions to be posed of witnesses and the other Party; review and respond to all of the evidence gathered that is directly related to the allegations, prior to the drafting of the investigation report; receive a right to a copy of the investigation report redacted to protect privacy
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the resolution process, there is a determination of responsibility
- Information regarding the prohibition against retaliation

Should additional allegations be brought forward, a revised Notice of Investigation shall be provided to both parties, in writing.

Conflict of Interest or Bias

After a Notice of Investigation is issued to Complainant and Respondent, each party may object to the participation of the designated investigator on the grounds of a demonstrated bias or actual conflict of interest. Both parties will have three (3) business days from the date of the Notice of Investigation to submit a written objection to the selection of the investigator. If the objection is substantiated, that individual shall be replaced.

Gathering Information

The Title IX Coordinator will assign a trained investigator (who may be an external investigator), who will gather information, including interviews of the Complainant, Respondent and any witnesses, and any documents, materials or information considered to be directly-related to the allegations. It may be necessary to interview the Complainant, Respondent or witnesses more than once during the course of the investigation as new information is learned and gathered.

Interviews may be conducted in person, or via video conference. The investigator shall make the interview notes available to the person interviewed for review. The interviewee will have three (3) business days to correct or comment on any statements in the interview notes. The deadline may be extended for good cause, upon request to the investigator. If the interviewee has corrections or comments to the notes, the interviewee may submit a written response within three (3) business days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee's statement. If no response is received by the deadline, their interview notes will be presumed to be accurate.

Information or evidence that is not provided to the investigator during the investigation process will not be allowed during the hearing, unless it can be clearly demonstrated that such information was not reasonably known to exist, nor available, at the time of the investigation.

Once all of the evidence has been gathered and the interviews have been conducted, the investigator will share all directly-related inculpatory and exculpatory evidence with the Complainant and Respondent. At the direction of the Complainant and Respondent, directly-related evidence may also be shared with their respective Advisor. The Complainant and Respondent will be provided at least ten (10) business days to respond to the evidence if they choose to do so by providing written comments or additional evidence, names of witnesses, or requests that additional questions be posed to the other party or witnesses to the investigator. Neither the Complainant nor the Respondent (nor their Advisors) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided or forward, post or otherwise make available the information to any individual, group, organization or agency. Any student or employee who fails to abide by this Policy may be subject to discipline. Any Advisor who fails to abide by this Policy may be subject to discipline and/or may be excluded from further participation in the process.

After receiving any responses from the Complainant or Respondent, the investigator may gather additional relevant information or ask additional relevant questions of the Complainant, Respondent and witnesses as needed.

If new relevant evidence is provided by either party, or gathered by the investigator, the newly-gathered evidence (including answers to clarifying questions) will be made available for review by each party. Each party shall have ten (10) business days in which to respond to the new evidence. Each may provide a response in writing to the investigator. The investigator may also determine that additional interviews are warranted to assess the credibility, relevance or value of the new evidence. This will be the final opportunity to provide evidence, or witness names, to the Investigator.

Information that is not provided to the investigator during the investigation and evidence review process will not be allowed during the hearing itself, nor considered in determining

whether the policy was violated unless it can be clearly demonstrated that such information was not reasonably known to, nor available to, the parties at the time of the investigation.

Investigation Report

Once the information gathered has been shared with the Complainant and Respondent, the investigator will write a report summarizing all of the relevant evidence gathered and all steps taken during the investigation process including the allegations under investigation, a list of individuals interviewed, a list of all relevant information gathered, and a summary of the relevant information from each interview. Following the conclusion of the investigation, the investigator shall provide the investigation report to the Title IX Coordinator who will determine the sufficiency of the investigation report.

Outcome of Investigation and Notice of Hearing

Following conclusion of the investigation, the Title IX Coordinator will send written notification to the Complainant and Respondent, and if requested to their respective Advisor, the conclusion of the investigation process, access to all of the relevant evidence, and a notice of hearing along with a copy of the investigation report.

The Notice of Hearing will include:

- The date of the hearing (scheduled no less than 10 business days from the date of the Notice of Hearing)
- Identity of the Board Chair
- Opportunity to provide to the Title IX Coordinator written object to the Board Chair on the basis of a demonstrated bias or actual conflict of interest within three (3) business days of receipt of the Notice of hearing
- Notice that each party has five (5) business days in advance of the hearing to submit to the Board Chair the names of witnesses they would like to have present at the hearing
- Notice that each party has three (3) business days prior to the hearing to submit to the Board chair a preliminary list of questions they wish to pose to the other party or a witness
- Names of witnesses
- Questions to be reviewed by the Board Chair to ensure relevance to the allegations
- Notice of opportunity to resolve the complaint via Alternative Resolution prior to the commencement of the Hearing

Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator shall remove the Board Chair and appoint another.

Hearing Procedures

The purpose of the hearing is to determine whether there is sufficient evidence to determine, by a Preponderance of the Evidence, that the alleged conduct alleged occurred, and, if so, whether such conduct violates the Policy. The University expects that all individuals who

participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Panel members must immediately inform the Title IX Coordinator if they have a bias or conflict of interest.

The hearing will be conducted by a neutral, trained, three-member Hearing Board chosen by the Title IX Coordinator. One member of the Hearing Board must be from an area of the University most closely aligned with the status of the Respondent. One member of the Hearing Board may be a neutral external individual. If an external individual is utilized, that person shall not cast a vote relative to the recommended outcome of a hearing unless there is a split vote between the other two Hearing Board members such that their tie-breaking vote is required. In instances where the Respondent is a student, one Board member must be from the Office of Student Affairs; where the Respondent is a staff member, one Board member must be from the Office of Human Resources or assigned by the Executive Vice President; and where the Respondent is a faculty member, one Board member must be from the Office of the Provost or assigned by the Provost.

The Hearing Board will be presided over by a trained Board Chair who will make evidentiary rulings and enforce the rules of decorum. The Board Chair shall have the authority to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. Any such limitation shall be communicated to the parties no later than three (3) business days before the hearing. Note, however, that it is expected that hearings will not exceed one (1) business day in length. The Board Chair, in consultation with the Hearing Board and Title IX Coordinator, has the discretion to determine whether to allow a hearing to exceed this length.

The University does not compel any individual to participate in a hearing. However, the Board Chair shall have the discretion whether or not to take into consideration the statements made during the investigation by any individual who does not participate in the hearing and submit to questioning and, should the Board Chair consider such statements, the Board Chair shall further have the discretion to determine the reliability of such statements, as well as what weight, if any, to give them. Additionally, the Title IX Coordinator may choose to continue with the hearing in the absence of the Complainant, Respondent or any witness.

Hearings may be conducted in person or via videoconferencing. If the Title IX Coordinator determines that a hearing by videoconference is appropriate then, prior to the hearing, the Board Chair shall have received instruction regarding the operation of any audio-visual equipment that will be used for the hearing. The Board Chair shall also provide the participants instructions regarding how to participate in the hearing and any rules or guidelines for hearing participation.

Each hearing shall be recorded by the Board Chair and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for listening

until the conclusion of the appeals process to Complainant, Respondent, their respective Advisors, Board Chair and Appeal Officer by contacting the Title IX Coordinator.

The Complainant, Respondent, and the Board Chair all have the right to call witnesses. Witnesses must have information relevant to the allegations. No party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the University's investigation. Each party shall submit to the Board Chair the names of witnesses they would like to call no less than five (5) business days in advance of the hearing.

Three (3) business days prior to the hearing, each party shall submit to the Board Chair a preliminary list of questions they wish to pose to the other party, or to a witness. If the Board Chair determines that any questions are not relevant to the allegations, the Board Chair shall explain the reason for the exclusion of the question at the hearing.

New Information at the Hearing

Information not provided to the investigator during the investigation and evidence review process will not be allowed during the hearing itself, nor considered in determining whether the policy was violated unless it can be clearly demonstrated that such information was not reasonably known to, nor available to, the parties at the time of the investigation. Should new evidence be presented at the hearing, the Board Chair shall have the authority to either exclude the evidence, or to send the matter back to the investigator for further, limited investigation.

Conflict of Interest or Bias

Complainant and Respondent may object to the participation of a member of the Hearing Board or Board Chair on the grounds of a demonstrated bias or actual conflict of interest. Both parties will have three (3) business days from the date of the Notice of Hearing to object in writing to the selection of a Hearing Board member or Board Chair. If the objection is substantiated, that individual shall be replaced.

Hearing Advisor

Each party is entitled to one Advisor at the hearing which shall be referred to as the Hearing Advisor. The role of the Hearing Advisor is to ask questions of the other party and of witnesses, but not to advocate for, or respond for or otherwise speak on behalf of, the Complainant or Respondent during the hearing. No party shall be permitted to ask questions of the other party, or of a witness. In the event that a party does not appear for the Hearing, the Advisor for that party shall appear and may question the other party, and witnesses.

A Hearing Advisor of the University's choosing shall be provided for any party who does not have a Hearing Advisor. If both parties do not have a Hearing Advisor the University may provide one Hearing Advisor to serve as the Hearing Advisor for both parties.

Hearing Participation Guidelines

The Board Chair shall have the authority to maintain order and decorum at the hearing. The Board Chair also has the authority to determine whether any questions are not relevant,

abusive, intimidating, or disrespectful, and will not permit such questions. Any party or witness who is disruptive may, at the discretion of the Board Chair, be directed to continue their participation via video conferencing. Any Hearing Advisor who is disruptive may, at the discretion of the Board Chair, be directed to continue their participation via video conferencing or removed from the hearing entirely. In the event the Board Chair removes a Hearing Advisor, the Board Chair will appoint another Hearing Advisor for the remainder of the hearing.

Any person disruptive to a hearing or who fails to follow these guidelines during the hearing, may be excluded from the process by the Title IX Coordinator or designee, and/or by a member of the Hearing Board. If this person is a student or employee, he or she may be subject to disciplinary sanctions appropriate to the disruption.

The following will apply during a hearing (note that modifications to accommodate videoconference hearings may be necessary):

- Hearings will be convened in a private room and will not be open to the public. A record of the hearing (digital audio and/or written) will be maintained by the University. No other recordings shall be made at the hearing.
- At the request of either Party, the Hearing will proceed with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.
- All Parties have a right to a fair and impartial hearing. However, a Party's failure to attend a scheduled hearing after receiving appropriate, timely notice, or a Party's failure to participate appropriately in the proceeding, are not sufficient reasons to halt the Hearing Board from rendering a decision.
- The Hearing Board will determine the order of proceedings, noting that all Parties will be provided an opportunity to ask (through their respective Advisors) and respond to questions. The Hearing Board may, at its discretion, allow for opening and/or closing statements by the Advisors.
- The Respondent is presumed not responsible for the alleged Sexual offenses unless and until the Hearing Board determines after the hearing that Respondent is responsible by a preponderance of the evidence.
- In a Hearing involving more than one Respondent or more than one Complainant, the Title IX Coordinator, or designee, in their discretion, may permit the hearings concerning each Respondent or Complainant to be conducted either separately or jointly.
- Neither the Respondent nor Complainant may question one another directly. Each Party's Advisor may ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questioning at the Hearing must be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally. Before a Complainant or Respondent answers a question, they should pause long enough to allow the Chair of the Hearing Board to first determine whether the question is relevant or otherwise not permissible, and to explain any decision to exclude a question as not relevant or permissible.

After the conclusion of the hearing, the Board will adjourn the hearing. The Board will discuss privately and will decide by majority vote if the Respondent is responsible for one or more policy violations. Decisions are made based on a “preponderance of evidence,” meaning the incident was more likely than not to have happened. Only if the Respondent is in violation of a policy would the process include sanctioning.

Following the hearing, the Board Chair will then prepare a written report. To the extent credibility determinations need to be made, such determinations shall not be based on a person’s status as Complainant, Respondent, or witness.

The Board Chair’s report will include:

- The allegations;
- Description of all procedural steps taken to date;
- Findings of fact;
- Conclusion of application of facts to the Policy; and
- Rationale for each allegation.

If the Board Chair determines that there is no finding of responsibility, the Board Chair’s report shall be provided to the Title IX Coordinator, who shall communicate the findings, along with a copy of the Board Chair’s report, to the parties, together with procedures for appeal.

If the Respondent is found responsible for violating University policy, the Hearing Board, in consultation with the Dean of Students, the Director of Human Resources, and/or the Dean of the Faculty or their respective designees, will deliberate and decide upon which sanction(s) shall be applied. The Title IX Coordinator shall be notified of the determination of sanction. The Board Chair’s report, together with the determination of the appropriate sanctions, shall be provided to the Title IX Coordinator, who shall communicate the findings and the sanction, along with a copy of the Board Chair’s report, to the parties within seven (7) business days, together with procedures for appeal. The Complainant shall also be provided with information on remedies, as determined by the Title IX Coordinator.

Determining Sanctions

The Hearing Board and Dean of Students, or designee, the Director of Human Resources, or designee, or the Dean of the Faculty, or designee, will consider the following as non-exhaustive list of aggravating factors in determining sanction(s):

- Frequency of the misconduct
- Severity of the misconduct
- Previous conduct history of the Respondent
- Non-adherence to interim measures (i.e. no contact agreements, etc.)
- Use of drugs or alcohol to facilitate the violation
- Use of force or weapon in committing the violation

- Multiple actors committed the violation
- Ongoing threat to the Complainant or University community

When determining an appropriate sanction, consideration will be given to the Complainant's ability to freely access the benefits of their education or employment and participate in the University community.

The appropriate University official will consult with the Title IX Coordinator about the sanction decision prior to finalization and implementation of the sanction.

III. APPEALS

A Party may appeal a dismissal of a Formal Complaint, or the Final Written Decision, on the following grounds:

- A procedural error occurred that materially affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Appeals must be filed within 7 business days of the dismissal of a Formal Complaint or the date of the Final Written Decision. Note that the Title IX Coordinator is also empowered to file an appeal on behalf of the University if the determination of the Hearing Board goes against the greater weight of the evidence or appears arbitrary in nature.

Notification of Receipt of Appeal

The Appeal Officer will be the Provost. If there is a conflict of interest or apparent bias, the Executive Vice President will assume the position of Appeal Officer. The Appeal Officer will acknowledge receipt of the appeal and make the non-appealing party aware an appeal has been filed, and shall provide the non-appealing party seven (7) business days to provide a written response to the appeal to the Appeal Officer. A response to the appeal is not required and a lack of response to the appeal does not indicate agreement with the appeal.

Review and Determination of the Appeal

The Appeal Officer will review the written appeal and any response to the appeal, along with any documents pertaining to the investigation and any additional supporting documents pertaining to the appeal.

The Appeal Officer will issue a written determination regarding the appeal to Complainant, Respondent and the Title IX Coordinator generally within 7 business days following the deadline to submit appeal materials. The determination of the Appeal Officer may:

- Affirm the findings/outcome of the investigator
- Return the matter to the investigator, Hearing Board or Title IX Coordinator to review and consider any new evidence not previously available during the investigation
- Return the matter to the investigator, Hearing Board or Title IX Coordinator to correct any procedural error that may have materially affected the outcome of the investigation and determination by the investigator

The determination of the Appeal Officer is final.

IV. RECORD RETENTION

All records relating to complaints and resolutions under Appendix A will be maintained for a period of seven (7) years. All other records will be maintained in accordance with the University records retention guidelines.