



## **ANA G MENDEZ UNIVERSITY STUDENT CONSUMER INFORMATION Title IX – Sexual Misconduct Policy**

### **Introduction**

Ana G. Mendez University (the “University”) is committed to protecting the safety, health, and well-being of its students, employees, and all people who come into contact with the University community. In support of this commitment, and as required by Title IX of the Education Amendments of 1972 (“Title IX”) and other applicable federal and state laws, the University has created this policy that prohibits Title IX Sexual Misconduct, as well as Retaliation against an individual for making a good faith report under this policy.

### **Purpose**

The University will take prompt and equitable action to address allegations of Title IX Sexual Misconduct, to prevent its recurrence, and to remediate its effects.<sup>1</sup> The University also conducts prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.

### **Scope**

This policy applies to the University’s Education Programs and Activities, including at its Dallas, Orlando, Tampa, and Miami Lakes campuses and Main campus encompassing the online campuses. This policy also informs the campus community of the University’s procedures for reporting incidents of Title IX Sexual Misconduct, and for the investigation and remediation of such reports.

This policy supersedes all prior policies and guidance relating to the topics discussed herein. It applies to all members of the University community, including students, faculty, staff, visitors, guests, applicants for admission or employment, contractors, vendors, and others engaged in business with the University (collectively referred to as “Covered Parties”). The protections in this policy apply regardless of race, color, ethnicity, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

Like the University’s Annual Security Report, this policy is designed to comply with Title IX and the Jeanne Clery Disclosure of Campus Security policy and Campus Crime Statistics Act (the “Clery Act”), and the implementing regulations and guidance issued in connection with such laws. This policy also is designed to comply with

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<sup>1</sup> The University also will respond promptly and equitably to reports of sex-based discrimination that do not include an allegation of Title IX Sexual Misconduct in accordance with the grievance policies and procedures articulated in the Student Handbook and Employee Handbook, as applicable.

applicable state laws and standards. The definitions of key terms used in this policy are included in the final section titled “Glossary of Terms.”

This policy, as it may be amended from time to time, is available on the University’s website at <https://agmu.edu/en/student-right-to-know>. Notice of the policy’s availability is distributed to all prospective students and employees prior to enrollment or employment, as applicable. In addition, the policy is distributed annually to all current students and employees and is featured in the University’s training and outreach efforts relating to sex-based discrimination.

### **Title IX Sexual Misconduct and University Sexual Misconduct**

This policy applies to Title IX Sexual Misconduct. Title IX Sexual Misconduct is a particular form of sexual misconduct defined in regulations published by the U.S. Department of Education under Title IX. These regulations, which took effect August 14, 2020, require institutions to use specific definitions and processes when addressing alleged misconduct that constitutes Title IX Sexual Misconduct. These regulations also make clear that alleged misconduct falling outside of the specific definition of Title IX Sexual Misconduct is not covered by the Title IX regulations and should not be treated as such.

Conduct that is prohibited by Anti-Discrimination and Anti-Harassment Policy and but does not fall within the definition of Title IX Sexual Misconduct or meet Title IX’s jurisdictional requirements is “University Sexual Misconduct.”

The specific policies and procedures the University follows will depend on whether the alleged misconduct constitutes Title IX Sexual Misconduct or University Sexual Misconduct. Any alleged sexual misconduct will be treated as Title IX Sexual Misconduct unless and until a determination is made by the University that it does not qualify as Title IX Sexual Misconduct. If the University determines that the alleged misconduct does not constitute Title IX Sexual Misconduct, but does qualify as University Sexual Misconduct, from that point forward it will be treated as University Sexual Misconduct and will be addressed by Anti-Discrimination and Anti-Harassment Policy.

If the alleged misconduct includes a combination of Title IX Sexual Misconduct and University Sexual Misconduct, the University may follow the policies and procedures that apply to Title IX Sexual Misconduct for purposes of investigating and resolving the entire incident.

### **The University’s Title IX Coordinator**

The University’s designated Title IX Coordinator is responsible for administering this policy and ensuring that the campus community is educated regarding the various obligations detailed herein. In fulfilling their role, the Title IX Coordinator oversees the University’s management of reports and complaints that involve allegations of Title IX Sexual Misconduct, monitor outcomes of policy and training efforts, identify, and address any patterns, and assess effects on the campus climate. In addition, the Title IX Coordinator carries out training for students and employees, assist individuals who have experienced Title IX Sexual Misconduct, including on an emergency basis, oversee the provision of accommodations and interim measures, and carry out monitoring and advising activities. Contact information for the University’s Title IX Coordinator is set out below:

<b>Title IX Coordinator</b>	
<b>Name</b>	Luz Velazquez
<b>Title</b>	Director of Operations (Compliance and Safety)
<b>Street 1</b>	5575 S. Semoran Blvd. Ste. 505

<b>Street 2</b>	Orlando
<b>State</b>	Florida
<b>Zip</b>	32822
<b>Phone</b>	(407)207-3363 ext. 1865
<b>Email</b>	Invelazquez@uagm.edu

Individuals may contact a Title IX Coordinator for a number of purposes, including to:

- Ask questions regarding the information or procedures set out in this policy.
- Ask questions about Title IX or the related regulations of the U.S. Department of Education.
- File a Formal Complaint or otherwise make a report of alleged Title IX Sexual Misconduct or Retaliation.
- Seek information or training about students’ rights and courses of action available to resolve reports or complaints that involve potential sex discrimination.
- Notify the University of an incident or other issue that may raise potential concerns under this policy.
- Obtain information about available resources (including confidential resources) and support services.

Questions about Title IX or the related regulations of the U.S. Department of Education also may be referred to the Department of Education’s Office for Civil Rights at 400 Maryland Avenue, SW, Washington DC 20202 or (800) 421–3481.

**The University’s Campus Deputy Title IX Coordinator**

Contact information for the University’s campus Deputy Title IX Coordinator is set out below:

Campus	Position	Address	Phone
TBC	Academic and Retention Counselor	3655 W Waters Ave. Tampa FL 33614	(813)932-7500 Ext. 8714
SFC	Academic and Retention Counselor	15201 NW 79th Ct, Miami Lakes, Florida, 33016	(954)885-5595 Ext. 8521
MOC	Academic and Retention Counselor	5601 S. Semoran Blvd, Ste. 55 Orlando FL 32822	(407)207-3363 Ext. 1815
DAC	Director of Students Affairs	3010 N. Stemmons Fwy, Dallas TX 75247	(469)341-7300 Ext.
MC/Online English	Director of Students Retention	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822	(407)563-6501 Ext. 5812
MC/Online Spanish	Director of Retention	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822	(787)751-0178 Ext. 7018

**The University’s Campus Security**

Contact information for the University’s campus security is set out below:

Campus	Position	Phone	Address
TBC	<ul style="list-style-type: none"> <li>• Campus Director</li> <li>• Administrative Coordinator</li> <li>• Security officer</li> </ul>	(813)932-7500 Ext.8703 Ext. 8700 Ext. 8735	3655 W Waters Ave. Tampa FL 33614
SFC	<ul style="list-style-type: none"> <li>• Campus Director</li> <li>• Administrative Coordinator</li> <li>• Security officer</li> </ul>	(954)885-5595 Ext. 8503 Ext. 8501 Ext. 8563/8562	15201 NW 79th Ct, Miami Lakes, Florida, 33016
MOC	<ul style="list-style-type: none"> <li>• Campus Director</li> <li>• Administrative Coordinator</li> <li>• Security officer</li> </ul>	(407)207-3363 Ext. 1803 Ext. 1801 Ext. 1819	5601 S. Semoran Blvd, Ste. 55 Orlando FL 32822
DAC	<ul style="list-style-type: none"> <li>• Campus Director</li> </ul>	(469)341-7300 Ext. 5314	3010 N. Stemmons Fwy, Dallas TX 75247

	<ul style="list-style-type: none"> <li>• Bursar</li> <li>• Security officer</li> </ul>	Ext. 5305 Ext. 5323	
MC Online English	<ul style="list-style-type: none"> <li>• Vice Chancellor of Online Operations</li> </ul>	(407)563-6501 Ext. 5801	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822
MC Online Spanish	<ul style="list-style-type: none"> <li>• Vice Chancellor of Institution Effectiveness</li> </ul>	(787)751-0178 Ext. 7050	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822

## Procedure Relating to Title IX Sexual Misconduct

### Prohibition against Title IX Sexual Misconduct and Retaliation

As required by Title IX and other applicable federal and state laws, the University strictly and expressly prohibits Title IX Sexual Misconduct in any educational, extracurricular, athletic, or other program or activity that it operates. This prohibition extends to all aspects of the University’s operations, including admission and employment, and applies to Title IX Sexual Misconduct committed by or against members of the University community.

The University also strictly and expressly prohibits Retaliation. Reports of Retaliation will be investigated, and such conduct may result in disciplinary action independent of the sanction(s) or interim remedies imposed in response to allegations of Title IX Sexual Misconduct.

Covered Parties are encouraged to report any acts of Title IX Sexual Misconduct or Retaliation that violate this policy to the University’s Title IX Coordinator (reporting options and obligations are discussed in more detail below).

### Emergency and Medical Assistance for Individuals who have Experienced Title IX Sexual Misconduct

If any Covered Party believes that he or she has experienced Title IX Sexual Misconduct, it is important to (1) to locate a place of safety and (2) to obtain any necessary medical treatment. In instances involving physical assault or injury, the University strongly encourages the individual to obtain a medical examination immediately to determine the extent of any injuries and to ensure the preservation of evidence.<sup>2</sup> It is important to understand that time is a critical factor for evidence collection and preservation, and that preserving evidence may be necessary to prove that a form of Title IX Sexual Misconduct occurred, or to obtain a protection order.

Below is a brief list of emergency and medical assistance providers within a reasonable distance of the University that provide a medical forensic examination at no charge. If any individual requires assistance obtaining emergency and medical assistance, the University’s Title IX Coordinator can assist. In addition, the University’s Title IX Coordinator can provide information for additional resources, as well as information regarding rights and options for moving forward.

Emergency and Medical Assistance Providers			
Campus	Name of Organization	Address	Telephone No.
TBC	Urgent Care Advent Health	4001 W Linebaugh Ave, Tampa, FL 33624	<a href="tel:8136446991">(813)644-6991</a>
SFC	Urgent Care/Miami Lakes	14701 NW 77 Ave., Ste 100Miami Lakes, Florida 33014	(786)662-0700
MOC/MC	Advent Health Care Conway	5810 S Semoran Blvd, Orlando, FL 32822	(407)207-0601
DAC	Concentra Urgent Care	2920 N. Stemmons Fwy, Dallas TX 75247	(214)638-2331

<sup>2</sup> A hospital, with the individual’s permission, will collect physical evidence by conducting a medical examination. Hospitals are required by law to preserve such evidence for a minimum period of time. Consenting to an examination does not obligate the individual to pursue criminal charges.

Information for sexual assault crisis centers is set forth below:

Sexual Assault Crisis Centers				
Campus	Name of Organization	Address	Telephone No.	Website
TBC	Crisis Center of Tampa Bay	24/7 crisis service	Line 211	<a href="https://www.crisiscenter.com/what-we-do/sexual-assault-services/">https://www.crisiscenter.com/what-we-do/sexual-assault-services/</a>
SFC	Bayan health system/Dade County	Offers different services and location	24 hrs. crisis hotline (305)774-3616	<a href="https://banyanhealth.org/locations/">https://banyanhealth.org/locations/</a>
	Henderson Behavioral Health/ Broward County	Offers all services, different location	24/7 crisis service access mobile response team (adults & youth) (954)463-0911 centralized receiving center (walk-in services for 18 yrs. and above) (954)606-0911	<a href="http://www.hendersonbh.org/locations/">www.hendersonbh.org/locations/</a>
MOC/MC	Angels for Kids on Call Contact Person: Elizabeth Valencia	518 Peachtree Rd, Orlando Fl. 32804	407-730-7983	<a href="http://www.angelsforkidsoncall.net/">www.angelsforkidsoncall.net/</a>
DAC	Mosaic Family Services Inc. (shelter for Domestic Violence)	12225 Greenville Ave, Ste 800 Dallas TX 75243	214-821-5393	<a href="mailto:home@mosaicervices.org">home@mosaicervices.org</a>

### Reporting Incidents of Title IX Sexual Misconduct to the University

Any person may report Title IX Sexual Misconduct (or any other form of sex discrimination) to the University, without regard to whether the person reporting is the person alleged to be the victim. While most employees are required to report alleged Title IX Sexual Misconduct to the University's Title IX Coordinator, the University encourages students and other individuals to do so as well.

Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information below, or by any other means that results in a Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours. Contact information for the University's Title IX Coordinator is located above in the "Introduction and Overview" section of this document.

In the event that an individual, for any reason, does not wish to make a report with one of the University's Title IX Coordinator, he or she is encouraged to make a report to one of the individuals listed below.

Campus	Title	Address	Phone
TBC	Campus Director	3655 W Waters Ave. Tampa FL 33614	(813)932-7500 Ext.8703
SFC	Campus Director	15201 NW 79th Ct, Miami Lakes, Florida, 33016	(954)885-5595 Ext. 8503
MOC	Campus Director	5601 S. Semoran Blvd, Ste. 55 Orlando FL 32822	(407)207-3363 Ext. 1803
DAC	Campus Director	3010 N. Stemmons Fwy, Dallas TX 75247	(469)341-7300 Ext. 5314
MC/Online English	VC of Online Operations	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822	(407)563-6501 Ext. 5801
MC/Online Spanish	VC of Institution Effectiveness	5575 S. Semoran Blvd, Ste 502 Orlando FL 32822	(787)751-0178 Ext. 7050

There is no time limit or deadline for reporting Title IX Sexual Harassment to the University under this policy. However, individuals are encouraged to report alleged Title IX Sexual Harassment as soon as possible in order to maximize the University's ability to obtain evidence, conduct a consistent, transparent grievance process.

## Legal Confidentiality and Privacy of Reports Made to the University

There is an important distinction between “Legal Confidentiality” and “Privacy.” Legal Confidentiality may only be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials (*e.g.*, licensed mental health counselors, medical providers, or pastoral counselors). In contrast, an individual who is required by policy or law to report incidents of Title IX Sexual Misconduct can only offer Privacy, meaning that they will not disclose information learned from a reporting individual or bystander any more than is necessary to comply with legal and policy obligations. Information reported to University employees will be treated as Private will be relayed only as necessary for the University to investigate and, if applicable, seek a resolution. Individuals wishing to speak with a University employee who is able to offer Legal Confidentiality, in accordance with applicable laws and regulations, may contact the following individual(s) who is the University’s liaison to AGMU Legal Counsel:

Legal Confidential Resource	
<b>Title</b>	VP of Administration and Operations
<b>Street</b>	5575 S. Semoran Blvd., Ste. 502
<b>City/State</b>	Orlando, FL.
<b>Phone</b>	(407)563-6501

Prior to making a report, individuals seeking Legal Confidentiality are encouraged to verify with any individual that he or she can indeed offer Legal Confidentiality.

### Reporting Title IX Sexual Misconduct to Law Enforcement

Subsequent to securing safety and medical care, the University also encourages any individual who believes that he or she has experienced potentially criminal Title IX Sexual Misconduct to report the incident to law enforcement.<sup>3</sup> As indicated in the chart above, emergencies may be reported to local law enforcement in person or via telephone at 911. Non-emergencies may be reported to local law enforcement in person or via telephone using the contact information below. If any individual requires assistance notifying local law enforcement, the University’s Title IX Coordinator will assist.

Campus	Name	Phone
TBC	Hillsborough County Sheriff’s office	(813)247-8200
SFC	Miami-Dade Police Department	(305)698-1500
MOC	Orlando Police department	(321)235-5300
DAC	Dallas Police department	(214)744-4444
MC/Online English	Orlando Police department	(321)235-5300
MC/Online Spanish	Orlando Police department	(321)235-5300

### Anonymous Reporting of Title IX Sexual Misconduct

The University recognizes that under certain circumstances individuals who believe that they have experienced or witnessed Title IX Sexual Misconduct may wish to make an anonymous report. If the University receives a report of Title IX Sexual Misconduct from an anonymous source, the University will respond to the report of Title IX Sexual Misconduct as if the individual who experienced the Title IX Sexual Misconduct made the initial report (assuming the individual is identified). However, due to the nature of the anonymous reports, the University’s ability to take responsive action may be limited.

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<sup>3</sup> Though encouraged to do so, Covered Parties are not required to report incidents of Title IX Sexual Misconduct to law enforcement.

## **Amnesty for Individuals Reporting Sexual Harassment Involving Violations of Alcohol or Drug Policies**

The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to Title IX Sexual Misconduct, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report Title IX Sexual Misconduct to University officials. A Covered Party acting in good faith who discloses any incident of Title IX Sexual Misconduct to the University's officials or law enforcement will not be subject to action for violations of the University's alcohol or drug use policies occurring at or near the time of the commission of the Title IX Sexual Misconduct.

## **Employee Obligations upon Receiving a Report of Title IX Sexual Misconduct**

At the first report of Title IX Sexual Misconduct to any University employee, the employee must promptly report the incident to the University's Title IX Coordinator. Employees must inform the reporting individual that he or she has the right (1) to report the incident to the University's Title IX Coordinator; (2) to make a report to campus security, local law enforcement, or state police, or to choose not to report; (3) to be protected by University from Retaliation for reporting an incident; and (4) to receive assistance and resources from University.

## **Responding to and Resolving Reports of Title IX Sexual Misconduct**

When the University receives a report, the University will take appropriate steps to respond to the reported conduct and to resolve the matter promptly and equitably.<sup>4</sup> As noted in the Introduction and Overview, alleged sexual misconduct will be treated as Title IX Sexual Misconduct unless and until a determination is made by the University that it does not qualify as Title IX Sexual Misconduct. If the University determines that the alleged misconduct does not constitute Title IX Sexual Misconduct, but does qualify as University Sexual Misconduct, from that point forward it will be treated as University Sexual Misconduct and will be addressed pursuant to Anti-Discrimination and Anti-Harassment Policy.

The University will seek to complete the investigation and adjudication of a reported incident of Title IX Sexual Misconduct within 120 business days after the Investigators' first interview of the Complainant. This time frame may be extended for Informal Resolution (discussed below) and may be extended for good cause.<sup>5</sup> Any extension of timeframes, other than for Informal Resolution, and the reason for the extension, will be shared with the parties in writing. Delays should not last more than 10 business days except when law enforcement specifically requests and justifies a longer delay.

## **Initial Response and Assessment**

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<sup>4</sup> The University is deemed to have received a report of Title IX Sexual Misconduct when the University has Actual Knowledge.

<sup>5</sup> Extending for "good cause" would include extending to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for the University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

Upon receipt of a report of Title IX Sexual Misconduct, the Campus Title IX Deputy Coordinator will promptly contact the Complainant and carry out an initial response and assessment.<sup>6</sup> The primary goals of this process are to address immediate health and safety needs, to gather critical information, and to educate the Complainant regarding resources and options for moving forward. This process will include:

- Explaining which authorities are able to offer “Privacy” or “Legal Confidentiality” and the distinction between the two.
- Dialoguing with the Complainant to more fully assess the nature and circumstances of the report.
- Addressing any immediate needs for physical safety and emotional well-being.
- Encouraging medical treatment, if appropriate, and describing the importance of preserving evidence and obtaining a sexual assault forensic examination.
- Reviewing this policy and providing a copy.
- Discussing the availability of Supportive Measures and considering the Complainant’s wishes with respect to Supportive Measures, informing the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explaining to the Complainant the process for filing a Formal Complaint.
- Explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated criminal law should be addressed to law enforcement or to the district attorney.
- Discussing the Complainant’s preferences for resolution and any barriers to proceeding in accordance with those preferences.
- Advising the Complainant of the prohibition against Retaliation.

Complainants alleging student violation of this policy shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

### **Supportive Measures**

At any time following a report of Title IX Sexual Misconduct, Supportive Measures are available for both the Complainant and the Respondent. Such measures are designed to restore or preserve equal access to the University’s Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of the parties or the University’s educational environment, or to deter Title IX Sexual Misconduct. The University will maintain as Private any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such Privacy would not impair the ability of the University to provide the Supportive Measures. The following graphic sets out examples of available Supportive Measures.

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<sup>6</sup> The University will not investigate Title IX Sexual Misconduct disclosed during a public awareness event such as candlelight vigils, protests, or other public events. However, the University may use the information provided at such an event to inform its efforts for additional education and prevention efforts.



Counseling	Extensions of Deadlines and Other Course-Related Adjustments	Modifications of Work or Class Schedules	Campus Escort Services
Mutual Restrictions on Contact Between the Parties	Changes in Work	Leaves of Absence	Increased Security and Monitoring of Certain Areas of Campus

### **Administrative Leave and Emergency Removal**

The University will follow the Formal Complaint process described below before any disciplinary sanctions or other actions that are not Supportive Measures are imposed against a Respondent. However, the University may place a non-student employee Respondent on administrative leave during the pendency of the Formal Complaint process.

The University also may remove a student, student organization, or student group from University’s Education Program or Activity on an emergency basis if the University undertakes an individualized safety and risk analysis and determines, as a result of the analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Misconduct justifies removal. In the case of a student, student organization, or student group, if such a determination is made, Vice Chancellor of Student Affairs will provide written notice. In the case of an employee, if such a determination is made AVP of Administration will provide written notice to the employee. In all cases, the written notice will contain the basis for the decision, the terms of the emergency removal, and the procedure for challenging the decision.

### **Initiating a Formal Complaint of Title IX Sexual Misconduct**

A Complainant may file a Formal Complaint with the University’s Title IX Coordinator or with the Campus Title IX Deputy Coordinator at any time. The Complainant also may request that no further investigation take place, or that the matter be resolved through Informal Resolution (with the agreement of the Respondent and the University).

In furtherance of the University’s obligation to ensure a safe, non-discriminatory environment, the Formal Complaint process also may be initiated by the Title IX Coordinator, even if a Formal Complaint has not been filed by a Complainant, or a Complainant has requested that no further investigation take place. When considering whether to initiate the Formal Complaint process when a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator will consider a range of factors, including:

- Whether there have been other allegations of sexual misconduct made against the Respondent.
- Whether the Title IX Sexual Misconduct was perpetrated with a weapon or other forms of violence.
- Whether the Title IX Sexual Misconduct involved threats.
- Whether the incident represents an escalation in misconduct by the Respondent.
- Whether the Complaint reveals a pattern of sexual misconduct at a given location or by a particular group.
- Whether the University has alternative means by which to obtain relevant evidence (*e.g.*, security cameras, witnesses).

Where a Formal Complaint process is initiated without a Formal Complaint filed by the Complainant, it will be signed by the Title IX Coordinator who will not be considered a Complainant or otherwise a party.

### **Initial Review of a Formal Complaint and Procedural Determination**

The University will apply a consistent, transparent grievance process for resolving Formal Complaints. Upon receipt of a Formal Complaint, the University will conduct a prompt and careful review to confirm that the conduct alleged in the Formal Complaint constitutes Title IX Sexual Misconduct and should be resolved under this policy. If the University determines that the conduct alleged in a Formal Complaint includes a combination of Title IX Sexual Misconduct and University Sexual Misconduct, the University may continue to follow the policies and procedures in this policy for purposes of investigating and resolving the entire complaint.

If the University determines that the conduct alleged in the Formal Complaint (1) would not constitute Title IX Sexual Misconduct even if proved, (2) did not occur in the University's Education Program or Activity, or (3) did not occur against a person in the United States, the Formal Complaint will be dismissed as a Formal Complaint of Title IX Sexual Misconduct, and the Title IX Coordinator will proceed to determine whether the conduct can appropriately be adjudicated as University Sexual Misconduct.

A Formal Complaint of Title IX Sexual Misconduct or any of its allegations also may be dismissed if:

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

Following its initial review of the Formal Complaint, the Title IX Coordinator will notify the parties of the alleged conduct, and of the Title IX Coordinator's procedural determination regarding the policies under which the alleged conduct falls. As applicable, this notice will specify whether the Formal Complaint has been dismissed as a Formal Complaint of Title IX Sexual Misconduct, and whether the Title IX Coordinator has determined that conduct may be addressed as University Sexual Misconduct pursuant to Anti-Discrimination and Anti-Harassment Policy.

Either party may appeal this procedural determination on the following limited grounds:

- Procedural irregularity that affected the outcome (i.e., a failure to follow the University's own procedures);
- New evidence that was not reasonably available at the time the determination or dismissal was made that could affect the outcome; or
- The Title IX Coordinator, Deputy Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome.

Both parties may submit a written statement in support of or appealing the outcome to, in case of a student to the Vice Chancellor of Student Affairs and in the case of an employee to the AVP of Administration within 5 business days of receipt of the determination. When a statement in support or appeal is filed, the other party will be notified in writing.

Statements in support or appeal should be no more than 5 pages and must be submitted by the Complainant or Respondent (not by an advisor).<sup>7</sup> Following their review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. The decision on the appeal is final and shall be conveyed in writing to both parties.

### **Consolidation of Formal Complaints**

The University may consolidate Formal Complaints of Title IX Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Sexual Misconduct arise out of the same facts or circumstances.

### **Informal Resolution of a Formal Complaint**

After a Formal Complaint of Title IX Sexual Misconduct is filed, and at any time prior to reaching a determination regarding responsibility, a party may request that the matter be resolved through Informal Resolution. Informal Resolution is a completely voluntary process and requires the written consent of the Complainant and Respondent and the approval of the Title IX Coordinator or designee to proceed. At any time prior to reaching a resolution, any party has the right to withdraw from the Informal Resolution process and to resume the Formal Complaint process.<sup>8</sup>

Informal Resolution is not available in all situations and is subject to the approval of the Title IX Coordinator or designee. The Title IX Coordinator will consider the allegations in their totality to determine whether informal resolution is a viable option. The Informal Resolution process is not permitted in cases where the Formal Complaint alleges sexual harassment committed by an employee against a student.

Prior to engaging in the Informal Resolution process, the University will provide a written notice to the parties disclosing the allegations, the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participation in the Informal Resolution process, including the records that will be maintained or could be shared.

An Informal Resolution may include but is not limited to an educational conference for the Respondent, educational requirements for the Respondent, mediation where appropriate, and other individualized options for alternative dispute resolution depending on the situation. Informal resolutions can result in educational and/or disciplinary sanctions.

Any Informal Resolution agreement pursuant to this process will be documented and kept for seven years as required by law. However, no recording of the Informal Resolution will be made, and all statements made during the Informal Resolution may not be used for or against either party. Should the parties resume the grievance process, the hearing body and appellate officer may not consider any such statement made during Informal Resolution.

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<sup>7</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), the Title IX Deputy Coordinator or the Title IX Coordinator

<sup>8</sup> Any individual facilitating an Informal Resolution will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered to be resolved and the terms are implemented. The University will endeavor to conclude the Informal Resolution process within 45 business days of its initiation.

### **Investigation of a Formal Complaint**

Once the University has determined that all or part of the conduct alleged in the Formal Complaint constitutes Title IX Sexual Misconduct, it will promptly initiate an investigation. The investigation of a Formal Complaint of Title IX Sexual Misconduct will proceed in accordance with the following parameters:

- **Designation of an Investigator.** As a first step, the Title IX Coordinator will designate an internal or external investigator (“Investigator”) to conduct a prompt, thorough, and impartial investigation of the reported Title IX Sexual Misconduct. The Title IX Coordinator may consult with the University’s senior administrators regarding the designation of the Investigator.<sup>9</sup>
- **Initial Notice of Investigation.** The University will provide an initial, written notice to the parties who are known that includes at least the following: (1) a discussion of the applicable process, including any option for Informal Resolution; (2) a sufficiently detailed statement of allegations, which includes the identities of the parties, if known, the conduct allegedly constituting Title IX Sexual Misconduct, and the date and location of the alleged incident, if known; (3) a statement that the Respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process; (4) a statement regarding each party’s right to an advisor and to review and inspect evidence; and (5) a statement regarding any provision in the University’s Code of Conduct that prohibits the parties from knowingly making false statements or knowingly submitting false information during the Formal Complaint Process.
- **Ongoing Notice.** As the investigation progresses, the University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or other meetings, with sufficient time for the party to prepare to participate. Such notice also will include any applicable rules of order and decorum. If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that were not included in the original notice provided to the parties, the University must provide notice of the additional allegations to the parties whose identities are known.
- **Burden of Proof and Burden of Gathering Evidence.** The burden of proof and burden of gathering evidence sufficient to reach a determination is the responsibility of the University, provided that the University cannot and will not access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party’s voluntary, written consent to do so for a grievance process.
- **Fact-Finding.** The Investigator will seek to meet with all parties and witnesses separately and also will gather other evidence and information relevant to the determination as to whether or not a policy violation has occurred. The investigation may include, to the extent relevant, interviews of other witnesses and the review of pertinent documentation (*e.g.*, student or personnel files, relevant law enforcement documents).

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<sup>9</sup> Any individual designated as an Investigator will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

At all points during the fact-finding aspect of the investigation, the process will remain impartial and balanced.

- **Opportunity to be Heard.** The Complainant and Respondent will have an equal opportunity to be heard, to present inculpatory and exculpatory evidence, and to identify witnesses, including fact and expert witnesses. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- **Advisors During an Investigation.** Throughout the investigation process, the Complainant and Respondent both have the right to be accompanied and counseled by an advisor of their choice.<sup>10</sup> The parties may be accompanied by their respective advisors (at the party's own expense if the advisor is a paid advisor) at any meeting or proceeding related to the investigation and resolution of a complaint. The advisor cannot actively participate or speak on behalf of the Complainant or Respondent. The Title IX Coordinator and Investigator must be advised in writing that an advisor will be present at least 24 hours before any scheduled meeting or proceeding.<sup>11</sup> The University reserves the right to have its own legal counsel present. If any advisor's conduct is not consistent with these guidelines, or any other applicable rules of order and decorum, he or she may be excluded from the process.
- **Coordination with Local Law Enforcement.** The standards for finding a violation of this policy are different from the standards used by local law enforcement to determine whether criminal conduct may have occurred. Conduct that constitutes Title IX Sexual Misconduct under this policy may not constitute sufficient evidence of a crime, and law enforcement may choose to decline investigating or prosecuting it as a crime. In the event local law enforcement does investigate allegations of Title IX Sexual Misconduct, any such investigation is independent of any investigation by the University. The University typically will not wait for the conclusion of any criminal investigation or proceeding to commence its own investigation (or to institute any Supportive Measures), and will make its determinations in accordance with this policy.<sup>12</sup> However, the University may elect to temporarily delay its investigation to enable law enforcement to gather evidence and engage in a preliminary investigation if, for example, the University believes such delay would benefit the University's own investigation. When applicable and appropriate, the University may contact and coordinate with law enforcement.
- **Access to Evidence.** Both the Complainant and Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint. Such evidence may include redactions of personally identifiable information in accordance with the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy regulations. Prior to completion of the investigative report, the Investigator will send to each party and the party's advisor, if any, such evidence in an electronic format or a hard copy and provide the parties at least 10 business days to submit a written response, which the Investigator will consider prior to completion of the investigative report.

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<sup>10</sup> The University may require advisors to agree to a Non-Disclosure Agreement as a condition of participating in the investigation and hearing process.

<sup>11</sup> This notification should include the full name and title of the advisor of choice, as well as contact information (phone, email and address.)

<sup>12</sup> At the request of law enforcement, the University may agree to defer its investigation until after the initial stages of a criminal investigation. In such instances, the University will promptly resume its investigation as soon as it is notified by law enforcement that there is no longer a need to delay, or the University otherwise determines that it must proceed.

- **Legal Privilege:** The Investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- **Investigation Report.** The Investigator will prepare an investigation report that fairly summarizes relevant evidence. The report will be limited to a summary of the facts disclosed during the investigation and will not include conclusions as to responsibility. The Investigator has the discretion to determine the relevance of any proffered evidence and may determine what factual evidence is to be included in the investigation report.

Once the investigation is complete and the investigation report has been finalized, it will be provided to the Campus Deputy Title IX coordinator, consistent with the procedures set out below.

### **Pre-Hearing Preparations**

The Investigator will issue the investigative report to the Campus Deputy Title IX coordinator. Upon review, the Campus Deputy Title IX coordinator may accept the report as rendered or may request that the Investigator conduct additional interviews or seek out other evidence as deemed to be appropriate. The Investigator will complete any additional investigation, and any supplemental or revised report, as promptly as is reasonable. The following pre-hearing preparations also will be carried out:

- **Selection of Adjudicator.**<sup>13</sup> The Title IX Coordinator will either designate an internal adjudicator or refer the matter to an external adjudicator with appropriate experience (in either case, the “Adjudicator”).<sup>14</sup> At least 10 business days before the hearing, the parties will be provided notice of the names of any individuals with authority to make a finding or impose a sanction. The parties may request a substitution if the participation of an individual with authority to make a finding or impose a sanction poses a conflict of interest. The request will be considered by Title IX Coordinator.

The Adjudicator will conduct a hearing on the matter as described more fully below. Neither the Campus Title IX Deputy Coordinator, the University’s Title IX Coordinator, nor the Investigator, may serve as the Adjudicator.<sup>15</sup>

- **Initial Notice of Hearing.** At least 7 business days before the hearing, the Adjudicator will provide an initial, written notice to the parties that includes the following: (1) the date, time, and location of the hearing; (2) the charges to be reviewed by the Adjudicator; (3) the factual allegations concerning the violation; (4) the provisions of University’s policy alleged to have been violated; (4) the sanctions that may be imposed; and (5) the specific rules and procedures for the hearing, including any rules of order or decorum.
- **Pre-Hearing Review of Documents.** At least 10 business days in advance of the hearing, the Complainant and Respondent will each have the opportunity to review and respond to the final investigation report, including any supplemental report, and any relevant documents that will be provided to the Adjudicator. The Adjudicator will be provided with the same set of materials. Responses to the final investigative report must be submitted by the Complainant or Respondent (not by an advisor) to the Adjudicator within 10 business days. Absent a good cause showing, additional information will not be considered by the Adjudicator

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<sup>13</sup> The University may, at its discretion, designate more than one Adjudicator.

<sup>14</sup> Reasons for referring a hearing to an external adjudicator include but are not limited to the presence of a conflict of interest or if a matter presents complex evidentiary issues.

<sup>15</sup> Any individual designated as a decision-maker will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

at this juncture if such information could have been provided to the Investigator during the investigation (meaning that during the investigation it was discoverable through the exercise of due diligence).

- **List of Witnesses.** The Adjudicator will identify any witnesses that he or she wishes to hear from at the hearing based on a review of the investigation report. Also, the Complainant and Respondent each have the right to request the presence of any additional witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation. The Adjudicator may permit the participation of a witness who was not interviewed during the investigation only if the Adjudicator determines that the new witness' participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Adjudicator will refer the matter to the Investigator for additional investigation, and direct the Investigator to prepare a supplemental report, which may delay the timing of the hearing. The University cannot compel the attendance of any witness.
- **Timing.** The date, time, or location of a hearing may be changed for good cause, at the discretion of the Title IX Coordinator. Good cause may include but is not limited to: the availability of the parties; the availability of witnesses; the timing of University breaks; efforts to utilize Informal Resolution; to comply with a request by external law enforcement; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; or, to address other legitimate reasons. Any change to the date, time, or location of a hearing will be shared with the parties in writing and will include the reason for the extension. Delays should not last more than 10 business days except when law enforcement specifically requests and justifies a longer delay.

### Hearing Setting and Standards

Any hearing involving allegations of Title IX Sexual Misconduct will be carried out in accordance with the following standards, so as to ensure that it is fair, impartial and provides a meaningful opportunity to be heard:

- **Setting.** Any hearing involving allegations of Title IX Sexual Misconduct will be live. At the request of either party, the live hearing will occur with the parties located in separate rooms with technology enabling the Adjudicator and parties to simultaneously see and hear the party or the witness answering questions.
- **Advisors During the Hearing.** The Complainant and the Respondent both have the right to be accompanied and advised by an advisor of their choice at the hearing and any related meetings. The University reserves the right to have its own legal counsel present during the hearing. An Advisor must comport himself or herself in a manner that is not disruptive to the hearing and act with appropriate decorum.<sup>16</sup> Proceedings will be closed to non-participants and to the public, including friends and University personnel without an official interest in the case.
- **Standard of Evidence.** The Preponderance of the Evidence standard is used to determine whether this policy has been violated. This standard is used for Formal Complaints against students and employees alike, including faculty. Preponderance of the Evidence means that it is more likely than not that a policy violation occurred.
- **Rules of Evidence.** Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in these proceedings.

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<sup>16</sup> Whether an advisor is comporting him or herself in a manner that is not disruptive or acting with appropriate decorum to the hearing or meetings is determined in the sole discretion of the Adjudicator.

- **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- **Presumption of Non-Responsibility.** The Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Complaint process.
- **Truthful Information.** The Complainant, the Respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.
- **Rape Shield Protections: Sexual Predisposition and Prior Sexual Behavior.** Questions and evidence about a Complainant's sexual predisposition are not relevant. Questions and evidence of a Complainant's prior sexual behavior are not relevant, unless such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged conduct; or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- **Recording or Transcript.** The University will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties for inspection and review. Issues that result in no recording, a limited recording, or an inaudible recording are not considered procedural errors for the purposes of an appeal.
- **Legal Privilege.** Adjudicators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### Hearing Format and Cross-Examination

The following hearing format will apply in all adjudications involving a Formal Complaint of Title IX Sexual Misconduct:<sup>17</sup>

- The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.
- The Investigator will provide a brief statement summarizing the investigation. The Adjudicator may then pose questions to the Investigator. After the Adjudicator has concluded asking questions, the Complainant's advisor may then cross-examine the Investigator. After the Complainant's cross-examination has concluded, the Respondent's advisor may then cross-examine the Investigator.
- The Complainant may provide an opening statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent's advisor may cross-examine the Complainant.
- The Respondent may provide an opening statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant's advisor may cross-examine the Respondent.
- The Adjudicator will hear from witnesses that the Adjudicator determined to have information that is relevant to the matter, first on behalf of the Complainant and then on behalf of the Respondent. Invited witnesses may provide statements. When each witness is called, the Adjudicator may pose questions. After the Adjudicator has concluded asking questions to a witness, the Complainant's advisor may cross-examine the witness. After the Complainant's cross-examination has concluded, the Respondent's advisor may cross-examine the witness.

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<sup>17</sup> The Adjudicator has the discretion to supplement this required format with additional procedures. Any such procedures will be consistent with the required format and applied equally to all parties.



- The Complainant may provide a closing statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent's advisor may cross-examine the Complainant regarding any new statements made by the Complainant during the Complainant's closing statement.
- The Respondent may provide a closing statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant's advisor may cross-examine the Respondent regarding any new statements made by the Respondent during the Respondent closing statement.

This format ensures that during the live hearing, each party's advisor shall have an opportunity to cross-examine the other party and any witnesses. Cross-examination shall be conducted directly, orally, and in real time. Cross-examination must be conducted by the party's advisor and never by the party personally. If a party does not have an advisor to conduct cross-examination, the University will provide an advisor to that party free of charge.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a party or witness answers a cross-examination or other question, the Adjudicator must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. There may be no discussion or argument regarding relevance determinations with the Adjudicator at the hearing.

If a party or witness does not submit to cross-examination at the live hearing, the Adjudicator will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Adjudicator will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

#### **Determination and Sanctions; Notice of Outcome**

At the conclusion of the hearing, the Adjudicator will objectively weigh the evidence that has been presented and based on a preponderance of such evidence, conclude whether the Respondent violated this policy.

If the Respondent is not found responsible for violating this policy, the Adjudicator will issue a written determination (described below).

If the Respondent is found responsible for violating this policy, the Adjudicator will determine sanctions and remedies. In determining the appropriate sanctions and remedies, the Adjudicator may consider a number of factors, including:

- The nature of the conduct at issue, including whether it involved violence.
- The impact of the conduct on the Complainant.
- The impact of conduct on the University community.
- The ability of the University, going forward, to maintain a safe and respectful environment conducive to learning.
- Any previous conduct violations by the Respondent, both at the University or elsewhere, as well as any criminal convictions.

Remedies must be designed to restore or preserve equal access to the University's Education Program or Activity and need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Potential sanctions and remedies against a student for a violation of this policy include but are not limited to: reprimand or warning; educational reflection assignment; change to academic schedule or housing; disciplinary probation; postponement of degree conferral; revocation of honor awards; restriction of access to University facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension

(limited time or indefinite); or expulsion. Sanctions and remedies may be issued individually or as combination. All sanctions are applicable to individuals, student organizations, or student groups.

Potential sanctions and remedies against an employee for a violation of this policy include but are not limited to: reprimand or warning; change to teaching schedule; disciplinary probation; revocation of titles or honors; restriction of access to University facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or termination of employment. Sanctions and remedies may be issued individually, or as combination of sanctions may be imposed.

When the Respondent is both a student and an employee, sanctions may affect both their status as a student and employee.

The Complainant and Respondent will be notified simultaneously in writing (which may include email), generally within 7 business days of the hearing, of the written determination which will include:

- An identification of the allegations.
- A recitation of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- Findings of fact supporting the determination.
- Conclusions regarding the application of this policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided by the University to the Complainant.
- Procedures and permissible bases for appeal.

The written determination becomes final either on the date that the University provides the parties with the written determination of the result of any appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

### **Right to Appeal**

Either party may appeal on the following limited grounds:

- Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the University's own procedures);
- 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, Title IX Deputy Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general, that affected the outcome of the matter; or
- The sanction(s) are extraordinarily disproportionate to the violation(s) of University policy.

Each party may submit a written statement in support of or appealing the outcome to Vice Chancellor of Student Affairs and in the case of an employee to the AVP of Administration within 5 business days of receipt of the determination. Statements in support or appeal should be no more than 3 pages and must be submitted by the

Complainant or Respondent (not by an advisor).<sup>18</sup> When a statement in support or appeal is filed, the other party will be notified in writing.

Following their review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. Generally, the appeal officer may either: (i) affirm the adjudicator's determination; (ii) alter the sanctions rendered; or (iii) send the matter back to an Adjudicator for further proceedings consistent with its decision. The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 7 business days of receipt.

### **Recordkeeping**

For any report or Formal Complaint of Title IX Sexual Misconduct, the University will maintain records for 7 years that include:

- Records of any actions, including any Supportive Measures, taken in response to the report or Formal Complaint of Title IX Sexual Misconduct.
- The bases for the University's conclusion that its response was not deliberately indifferent.
- Documentation that the University took measures designed to restore or preserve equal access.
- If the University did not provide Supportive Measures, the reasons why such a response was not clearly unreasonable in light of the known circumstances.

If the report or Formal Complaint of Title IX Sexual Misconduct was subject to an adjudication pursuant to the Formal Complaint process outlined above, the University's record will also contain:

- Any determination regarding responsibility.
- Any audio or audiovisual recording or transcript.
- Any disciplinary sanctions imposed on the Respondent.
- Any remedies provided to the Complainant.
- Any appeal and the result.
- Any informal resolution and the result.

For a period of 7 years, the University also will keep all materials used to train Title IX Coordinator, investigators, adjudicators, and any person who facilitates an informal resolution process. Further, the University will make these training materials publicly available on its website.

### **Disclosure of Outcome**

The University will not share information obtained during the course of a proceeding with parties external to the University unless compelled to do so, such as by receipt of a lawfully issued subpoena. The University may share information about the proceeding internally with "school officials" with a "legitimate educational interest" consistent with FERPA. The parties to the proceeding choose whether they will disclose or discuss the outcome of a Title IX Sexual Misconduct proceeding.

### **Special Procedure Concerning Complaints against a Title IX Coordinator or Senior Administrator**

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<sup>18</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

If a report of Title IX Sexual Misconduct alleges Title IX Sexual Misconduct on the part of the Title IX Coordinator, President, or other senior administrator the VP of Administration and Operations will designate the Investigator and oversee all Supportive Measures. The investigation, adjudication, and resolution process will otherwise follow this policy.

## **Glossary of Terms**

**Actual Knowledge** means notice of Title IX Sexual Misconduct or allegations of Title IX Sexual Misconduct to the University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University.

**Consent** is informed, freely given, mutually understandable words or actions that indicate a willingness to participate in sexual activity.

Effective consent may never be obtained when there is a threat of force or violence, or any other form of coercion, intimidation, force or threat of harm. Silence or lack of resistance, in and of itself, does not demonstrate consent. A person's manner of dress does not constitute consent. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be revoked at any time by expressing in words or actions that they no longer want the sexual activity to continue. When consent is withdrawn or can no longer be given, sexual activity must stop. Consent cannot be obtained from someone legally prevented from giving consent by their age, from someone who is unable to understand or who cannot communicate a lack of consent, or someone who is Incapacitated. Voluntary intoxication is not an excuse for failure to obtain consent.

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

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute Title IX Sexual Misconduct.

**Education Program or Activity** includes locations, events, or circumstances over which the recipient exercised substantial control over both the Respondent and the context in which the Title IX Sexual Misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

**Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Title IX Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an Education Program or Activity of the University.

**Incapacitation** means the inability, temporarily or permanently, to give Consent, because an individual is mentally and/or physically helpless, asleep, involuntarily restrained, unconscious, or unaware that sexual activity is occurring. Depending on the degree of intoxication, someone under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Warning signs that a person may be approaching incapacitation may include, but are not limited to, vomiting, incoherent speech, and difficulty walking or standing up. The perspective of a sober, reasonable person in the position of the Respondent will be the basis for determining whether a Respondent should have been aware that the Complainant was incapacitated and therefore unable to Consent.

**No Contact Order** means a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

**Party** means either the Complainant or the Respondent. **Parties** means the Complainant and the Respondent.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Misconduct.

**Retaliation** means intimidating, threatening, coercing, or in any way discriminating against an individual for exercising any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

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

**Title IX Sexual Misconduct**<sup>19</sup> means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity;
3. **Sexual Assault**, as defined in 20 U.S.C. 1092(f)(6)(A)(v), which means one of the following offenses:
  - *Rape* is the 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 victim. (Note: this definition also includes offenses of sodomy and sexual assault with an object).
  - *Fondling* is the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - *Statutory rape* is sexual intercourse with a person who is under the statutory age of consent.
4. **Dating Violence**, as defined in 34 U.S.C. 12291(a)(10), which means violence committed by an individual—
  - A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence**, as defined in 34 U.S.C. 12291(a)(8), which means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated

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<sup>19</sup> In the event of a conflict between the statutes and regulations cited and the text of the policy definitions, the statutes and regulations control.

with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

6. **Stalking**, as defined in 34 U.S.C. 12291(a)(30), which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - A. fear for his or her safety or the safety of others; or
  - B. suffer substantial emotional distress.

**University Sexual Misconduct** means conduct that is prohibited by Anti-Discrimination and Anti-Harassment Policy but does not fall within the definition of Title IX Sexual Misconduct or meet Title IX's jurisdictional requirements.