

## UNIVERSITY POLICY



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### Sexual Misconduct Policy

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**Organizational Part:** Seven – Human Resources  
**Chapter:** One – University Policies  
**Policy Type:** Institution Wide  
**Responsible Office:** Student Affairs  
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#### POLICY STATEMENT

Consistent with federal laws known as Title IX, the Clery Act and the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Butler University is committed to having an educational and working environment free from sex discrimination in any form, including sexual harassment, misconduct, and violence.

#### REASON FOR POLICY

This Policy, in compliance with legal obligations, defines prohibited conduct and outlines procedures for reviewing, investigating, and resolving complaints of sex discrimination, sexual harassment, sexual misconduct, domestic violence and stalking involving students, faculty and staff (collectively “Employees”), and visitors, contractors, and vendors (collectively “Third Parties”). No Division, Department, and/or College is permitted to develop and/or adopt procedures that contradict, modify, or supplement this Policy. Because this Policy is to satisfy compliance obligations, all decisions made under this Policy are final and are not subject to additional review, appeals, or governance under any other policy or procedure, including faculty grievance process.

The person responsible for implementing this policy is the Title IX Coordinator. If circumstances require, the Title IX Coordinator may designate another person to implement the policy.

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#### POLICY APPROVAL

Board of Trustees

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## SCOPE OF POLICY

### A. To Whose Conduct Does the Policy Apply?

1. Students (those enrolled in any courses in any format at the University or those having a continuing relationship with the University such as those eligible and/or applying for reenrollment and/or readmission or those involved in an appeal or grievance process);
2. Employees (all persons legally defined as employees of the University);
3. Third Parties (visitors, contractors, vendors).

### B. Where and When Does This Policy Apply?

1. This policy applies to prohibited conduct where:
  - a. The conduct occurs on campus or other property owned or controlled by the University;
  - b. The conduct occurs in the context of a University employment or education program or activity, including but not limited to a University-sponsored study abroad, research, online, or University-approved internship programs; or
  - c. The conduct occurs outside the context of a University employment or education program or activity but has continuing adverse effects that create a hostile environment for students or employees while on campus or other property owned or controlled by the University or in any University employment or education program or activity.
2. Time for making a report
  - a. The University encourages all individuals to report violations of this Policy immediately. Making a report to the University does not automatically result in an Administrative Investigation Process. Individuals who have experienced sexual misconduct may make a report to the University and communicate that they do not wish to move forward with the Administrative Investigation Process outlined in this policy. Please see **REQUESTS FOR NO UNIVERSITY ACTION** for additional information.
  - b. All individuals should note that the University's ability to effectively investigate alleged violations of this Policy may be limited as time passes.
  - c. For information on making a report, please see **REPORTING A VIOLATION TO THE UNIVERSITY and REPORTING TO LAW ENFORCEMENT.**

## PROHIBITED CONDUCT AND RELATED DEFINITIONS

Butler University prohibits all forms of sexual misconduct. **Sexual Misconduct** includes sex- or gender-based discrimination and harassment, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking.

**Retaliation** is also prohibited under this Policy. Please see below for additional information.

### A. SEX- OR GENDER-BASED DISCRIMINATION AND HARASSMENT

Sex- or gender-based discrimination and harassment is unwelcome conduct based on sex, gender, sexual orientation, gender identity, or gender expression, including verbal, nonverbal, or graphic acts of aggression, intimidation, or hostility, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with, limits, or prevents an individual from participating in or benefitting from the University's education or employment programs and/or activities.

Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. The University will consider the totality of known circumstances, including but not limited to:

1. The frequency, nature, severity, location, duration, and context of the conduct, and
2. Whether the conduct implicates concerns related to academic freedom or protected speech.

This Policy distinguishes sex- and gender-based discrimination and harassment from unwelcome conduct of a sexual nature. Unwelcome conduct of a sexual nature is addressed under the definition of **SEXUAL HARASSMENT**, below.

*Sex- or gender-based discrimination and harassment that is alleged to have occurred in a teaching or classroom setting may present different issues from those occurring in other environments. See Appendix A for the procedures specific to the handling of those reports.*

### B. SEXUAL HARASSMENT

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, electronic or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

1. **Quid Pro Quo:** Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual; or
2. **Hostile Environment:** A "hostile environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:
  - a. The frequency, nature, severity, location, duration and context of the conduct;
  - b. Whether the conduct implicates concerns related to academic freedom or protected speech.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

*Sexual harassment that is alleged to have occurred in a teaching or classroom setting may present some different issues from those occurring in other environments. See Appendix A for the procedures specific to the handling of those reports.*

### **C. SEXUAL ASSAULT**

**Sexual Assault is:**

#### **1. Nonconsensual Sexual Contact**

Touching of the breasts, buttocks, groin or genitals of another, whether clothed or unclothed, intentionally touching another with any of these body parts, and/or making another person touch you or themselves with or on any of these body parts without consent.

#### **2. Nonconsensual Sexual Penetration**

- a. Penetration, no matter how slight, of the vagina or anus with any body part or object without consent, and/or
- b. Any contact between the mouth of one person and the genitalia of another person without consent.

### **D. CONSENT**

Consent is voluntary words or actions mutually understood by each party to be agreement or permission to engage in a specific sexual act at a specific time.

Consent cannot be inferred from silence, passivity, or the absence of resistance, nor can it be inferred from the existence of a current or prior relationship or from consent given previously. The party who initiates sexual activity is responsible for obtaining consent for that activity.

Consent can be withdrawn at any time by any party. Once consent is withdrawn, sexual activity must cease immediately.

**There is no consent if any of the following are present:**

#### **1. Force**

- a. The use of physical violence that would reasonably overcome an individual's freedom to choose whether to participate in sexual activity.

#### **2. Intimidation or Threat**

- a. Express or implied threat of immediate or future physical, emotional, reputational, financial, or other harm to an individual or others that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

**3. Coercion**

- a. Unreasonable pressure to engage in sexual activity.
  - i. When evaluating reasonableness, the University will consider the totality of known circumstances, including, but not limited to, duration, frequency, isolation, and intensity.

**4. Incapacitation**

- a. An individual is incapacitated when they are unable to understand the who, what, when, where, why, and how of the situation due to the use of alcohol and/or other drugs, mental or physical disability, being asleep or unconscious, and/or age (as defined by Indiana state law).
- b. There is no consent when:
  - i. The individual who initiated the sexual activity knew of the other party's incapacitation, or
  - ii. A reasonable person in the same situation would have known of the other party's incapacitation.

**E. SEXUAL EXPLOITATION**

Sexual Exploitation is purposely or knowingly doing any of the following:

1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity;
2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants;
3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person's intimate parts (including genitalia, groin, breasts or buttocks)) in a place where that person would have a reasonable expectation of privacy;
4. Recording or photographing private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
5. Disseminating or posting images of private sexual activity and/or a person's intimate parts without the consent of all subjects or participants;
6. Prostituting another person; or
7. Exposing another person to a sexually transmitted infection or virus without the other's knowledge.

**F. DATING VIOLENCE**

Dating violence is violence or the threat of violence committed by an individual toward another with whom they have a current or previous relationship of a romantic or intimate nature. The existence of a romantic or intimate relationship will be determined based on the following factors:

1. Length of the relationship,
2. Type of relationship,
3. Frequency of interaction between the people involved in the relationship.

## **G. DOMESTIC VIOLENCE**

Domestic violence is violence or the threat of violence committed by an individual toward another who:

1. Is a current or former spouse,
2. Is or has cohabitated with the individual as an intimate partner, or
3. Has a child in common with the individual.

## **H. STALKING**

1. Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.
  - a. Course of Conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. Substantial emotional distress means significant mental suffering or anguish.
  - c. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

## **G. RETALIATION**

Retaliation is material adverse action taken against a person for making a good faith report of prohibited conduct or participating in this process. Material adverse action limits or denies an individual's ability to participate in or benefit from the University's educational or employment opportunities and/or activities. Vague criticisms, stray remarks, and petty slights are generally not considered sufficient to constitute a materially adverse action.

Even where there is a finding of not responsible, retaliation is prohibited. A good faith pursuit of civil, criminal, or other legal action, even in response to an initial report under this Policy, does not constitute retaliation.

Reports of retaliation may be consolidated into an ongoing Administrative Investigation Process at the discretion of the Title IX Coordinator.

Individuals who experience retaliation are encouraged to report the retaliatory conduct as soon as possible. Making a report to the University does not automatically result in an investigation of the alleged retaliatory conduct. An individual can request no University action. Individuals should note that the University's ability to effectively investigate alleged acts of retaliation may be limited as time passes.

## REPORTING PROHIBITED CONDUCT

### A. REPORTING A VIOLATION TO THE UNIVERSITY

A person who has experienced sexual misconduct has the option of making a report to the University. Under this Policy, an individual reported to have experienced sexual misconduct is referred to as the **Complainant**. An individual alleged to have violated this Policy is referred to as the **Respondent**.

If someone wishes to make a report of sexual misconduct to the University, they can do so by contacting the Title IX Coordinator via online report, phone call, or email. The online report form and contact information for the Title IX Coordinator can be found at [www.butler.edu/sexual-misconduct](http://www.butler.edu/sexual-misconduct).

A report of sexual misconduct may result in formal resolution through the Administrative Investigation Process. Please see THE ADMINISTRATIVE INVESTIGATION PROCESS for information regarding investigations.

Complainants may make a report to the University and communicate that they do not wish to move forward with the Administrative Investigation Process outlined below. Please see **REQUESTS FOR NO UNIVERSITY ACTION AND/OR NO ADMINISTRATIVE INVESTIGATION PROCESS** for information about how the University addresses such requests. Complainants also have the option to pursue informal resolution of a report of sexual misconduct. Please see **INFORMAL RESOLUTION** for additional information.

### B. EMPLOYEE REPORTING OBLIGATIONS

Most University employees, including student employees, have an obligation to report to the University when an individual makes them aware of sexual misconduct. Those employees are referred to as **responsible employees**, defined below.

Some University employees do not have an obligation to report sexual misconduct. Those employees are referred to as **confidential employees**, defined below.

#### 1. Responsible Employees

- a. Under Title IX, responsible employees include those who:
  - i. Have the authority to take action or redress sexual misconduct, or
  - ii. Have a duty to report sexual misconduct to appropriate school officials, or
  - iii. A student could reasonably believe has this authority or duty.
- b. Responsible employees at Butler University include:
  - i. Those who offer course instruction, whether in-person or online, including full-time and part-time faculty, adjuncts, and Teaching Assistants,
  - ii. Advisors,
  - iii. Coaches and athletics staff who interact with students,
  - iv. Student Affairs staff members, except those designated as confidential employees, below,
  - v. Residence Life staff members, including Resident Assistants,
  - vi. Those who work in offices or areas that interface with students.
- c. Responsible employees are required to report to the Title IX Coordinator when they are made aware of an incident of sexual misconduct.

- d. Privacy and Confidentiality
  - i. Responsible employees may not promise confidentiality to a person who shares information related to an incident of sexual misconduct. Responsible employees must inform that person of their obligation to report to the University.
  - ii. Responsible employees must keep information related to a report of sexual misconduct as private as possible, sharing only with those at the University who have a legitimate need to know.

## 2. Confidential Employees

- a. Those employees whose professional licenses or codes of conduct require confidentiality do not have an obligation to report when they are made aware of sexual misconduct. The University also has the ability to designate certain employees as confidential.
- b. Confidential employees at Butler University are:
  - i. Counselors at Counseling and Consultation Services,
  - ii. Health Services staff members,
  - iii. Pastoral counselors in the Center for Faith and Vocation,
  - iv. The Sexual Assault Response and Prevention Specialist, when acting in their advocacy role.
    - a) **Note:** this staff member does have an obligation to provide certain information to the University for federal reporting purposes. They will not disclose a Complainant's identity to either law enforcement or the University without Complainant's consent.

## C. REPORTING TO LAW ENFORCEMENT

A Complainant also has the option of making a criminal report to the appropriate law enforcement agency. Incidents alleged to have occurred on campus should be reported to the Butler University Police Department (BUPD). Incidents alleged to have occurred off campus should be reported to the appropriate local law enforcement agency.

The Complainant has the right to pursue both the University's Administrative Investigation Process and the criminal process simultaneously. The Complainant may also choose to pursue either the Administrative Investigation Process or the criminal process exclusively. The Complainant's decision regarding pursuit of the criminal process does not impact the Administrative Investigation Process.

The Administrative Investigation Process is distinct from the criminal process. Any investigation conducted by the University will be conducted independently and separately from any investigation conducted by law enforcement. The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this Process are being investigated. Actions that take place in the criminal process, including placing, reducing, or dismissing charges, and/or plea agreements, will not determine the resolution of the University process. This information may be considered in the course of the Administrative Investigation Process, if determined to be relevant.



If a Complainant wishes to pursue a criminal complaint exclusively, the Complainant may request in writing that the Title IX Coordinator temporarily defer the Administrative Investigation Process. In most cases, the Complainant's wishes will be respected. However, the University may continue the Administrative Investigation Process where the allegation leads the University to believe that the Respondent may be an imminent threat to the safety of the Complainant, other students or faculty/staff members.

#### **D. IMMUNITY**

The University seeks to remove any barriers to reporting sexual misconduct or participating in the Administrative Investigation Process. Any student, whether the Complainant or a witness, who makes a report of sexual misconduct or participates in an investigation under this Policy will generally be offered immunity from being disciplined for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. The University may encourage educational or therapeutic remedies for those individuals.

This limited immunity does not protect any student organization from discipline if information is learned through the course of an investigation under this Policy pertaining to unregistered parties or other violations.

### **UNIVERSITY RESPONSE TO REPORTS OF SEXUAL MISCONDUCT**

#### **A. INITIAL DETERMINATION**

Upon receiving a report of sexual misconduct, the Title IX Coordinator or designee will evaluate the information available and determine whether the report alleges conduct that falls under the purview of this Policy.

If the Policy applies to the alleged conduct, there are several options for resolving the report. The Complainant will be provided the opportunity to share their wishes regarding resolution with the University. The Complainant may request that the report be resolved formally, through an Administrative Investigation Process; informally, through mediation or other means; or that the University take no action. Processes related to each option are outlined below.

The Title IX Coordinator or designee will reach out to the Complainant and invite them to meet. Complainant is not required to meet with the Title IX Coordinator or to respond to the outreach. A Complainant's choice not to respond to or meet with the Title IX Coordinator will be treated as a request for no University action. The University's response to such requests is outlined below.

Both on- and off-campus resources are available to Complainants, regardless of whether the conduct alleged falls under the jurisdiction of the Policy. The Title IX Coordinator can assist with connecting Complainant to those resources if Complainant wishes.

If it is determined that a report of sexual misconduct will be resolved either formally or informally, the Title IX Coordinator will meet with the Respondent before the process begins. In this meeting, the Title IX Coordinator will explain the process and make the Respondent aware of their rights and the resources available to them.

*Sexual or gender-based harassment that is alleged to have occurred in a teaching or classroom setting may present some different issues from those occurring in other environments. See Appendix A for the procedures specific to the handling of those complaints.*

## **B. INTERIM SUSPENSION**

The University may impose an interim suspension on an employee or student pending the completion of the Administrative Investigation Process when there is reasonable cause to believe that the individual's continued presence on campus would pose a significant risk of substantial harm to the safety or security of others in the campus community. While on interim suspension, an individual's ability to be present on University property and participate in University-related activities will be limited.

When a report of sexual misconduct indicates that interim suspension may be appropriate, the Title IX Coordinator will refer reports to the appropriate decisional authority for consideration. The appropriate decisional authority is determined by the status of Respondent, as described below.

### **1. Interim Suspension of Students**

- a. The Vice President of Student Affairs (VPSA) or designee has the sole discretion to place a student on interim suspension and to determine the conditions of such suspension.
- b. Notice of interim suspension will be provided to the student in writing. Upon receipt of such notice, the student will be expected to vacate University property immediately in accordance with the terms of the interim suspension.
- c. The student may petition the VPSA or designee for reinstatement within five (5) calendar days of receiving notice of the interim suspension. This petition must be made in writing and must articulate why the student does not pose a significant risk of substantial harm to the safety or security of others in the campus community. The VPSA or designee may choose to uphold the interim suspension, modify its terms, or lift it entirely.
- d. Failure to comply with the terms of an interim suspension may result in further disciplinary action.

### **2. Interim Suspension of Staff**

- a. The Associate Vice President of Human Resources (AVPHR) or designee has the sole discretion to place a staff member on interim suspension and to determine the terms of such suspension.
- b. Notice of interim suspension will be provided to the staff member in writing. Upon receipt of such notice, the staff member will be expected to vacate University property immediately in accordance with the terms of the interim suspension.
- c. The staff member may petition the AVPHR or designee for reinstatement within five (5) calendar days of receiving notice of the interim suspension. This petition must be made in writing and must articulate why the staff member does not pose a significant risk of substantial harm to the safety or security of others in the campus community. The AVPHR or designee may choose to uphold the interim suspension, modify its terms, or lift it entirely.

- d. Failure to comply with the terms of an interim suspension may result in further disciplinary action.

### **3. Interim Suspension of Faculty**

- a. The Provost or designee has the sole discretion to place a faculty member on interim suspension and to determine the terms of such suspension.
- b. Notice of interim suspension will be provided to the faculty member in writing. Upon receipt of such notice, the faculty member will be expected to vacate University property immediately in accordance with the terms of the interim suspension.
- c. The faculty member may petition the Provost or designee for reinstatement within five (5) calendar days of receiving notice of the interim suspension. This petition must be made in writing and must articulate why the faculty member does not pose a significant risk of substantial harm to the safety or security of others in the campus community. The Provost or designee may choose to uphold the interim suspension, modify its terms, or lift it entirely.
- d. Failure to comply with the terms of an interim suspension may result in further disciplinary action.

## **C. REQUESTS FOR NO UNIVERSITY ACTION AND/OR NO ADMINISTRATIVE INVESTIGATION PROCESS**

A Complainant may request that the University take no action in response to a report of sexual misconduct or that the report be resolved informally, without an Administrative Investigation Process. The University will generally work to honor Complainant's wishes but will evaluate such requests on a case-by-case basis. In some cases, the University may not be able to honor Complainant's request due to its obligation to provide a safe, non-discriminatory environment for all in the University community.

The University will decide whether to honor Complainant's wishes based on the following factors:

1. The seriousness of the alleged conduct;
2. The Complainant's age;
3. Information indicating a pattern of behavior by the Respondent;
4. Aggravating circumstances such as the use of a weapon, force, threats, intimidation, multiple assailants, etc.; and/or
5. Other risks to the University community.

Complainant will be notified in writing of the University's decision. If the University decides to honor Complainant's request for no University action, Complainant has nine (9) months from the date of notice to request that the matter be reopened and referred to an Administrative Investigation Process. If the University decides to honor Complainant's wishes for an informal resolution, that resolution will proceed as outlined in this Policy. Should the University decide that it is necessary to move forward with an Administrative Investigation Process, Complainant may, but is not required to, participate in the process.

## **D. INFORMAL RESOLUTION**

A Complainant may request that the sexual misconduct report be resolved informally, using one of the following options.

### **1. Mediation**

Mediation is a voluntary process. The Title IX Coordinator will determine if mediation is appropriate based on the conduct at issue and agreement of Complainant and Respondent. The Title IX Coordinator will appoint a mediator to talk to each party about possible resolution and remedies. The Title IX Coordinator will keep records of any resolution that is reached. Failure to abide by the agreement may result in disciplinary action. Mediation does not require the parties to be in the same room at the same time working to resolve the report. Rather, the mediator may work with each party separately toward a mutually agreeable resolution.

Mediation can take place at any point in time after a complaint is made but should typically be completed within thirty (30) calendar days of the report. Anyone participating in mediation can stop that process at any time and request an Administrative Investigation Process.

### **2. Other Methods of Informal Resolution**

The Complainant may work with the Title IX Coordinator to determine other, appropriate methods of informal resolution. The Title IX Coordinator may provide examples of these methods in the initial intake meeting with Complainant.

### **3. Advisors**

- a. Complainant and Respondent may each select one advisor of their choice. This advisor may be internal or external to the University. The advisor may not be someone whose University responsibilities create a conflict of interest.
- b. Advisors are permitted to be present in all phases of the informal resolution but may not participate directly. The advisor may whisper or write notes to their advisee, but they may not interrupt, speak on behalf of the Complainant/Respondent, or otherwise interfere. If an advisor violates these parameters, the advisor's participation may be limited.

## **E. INTERIM MEASURES**

The Dean of Students or designee will, as requested by Complainant or Respondent and as necessary, coordinate the provision of interim measures during the Administrative Investigation Process. If there is a finding of not responsible, then the interim measures will be removed unless the parties voluntarily agree to continue them.

Interim measures may include University Administrative No Contact Orders, altering the housing situation of a student or resident employee, adjusting work arrangements, providing campus escorts, and offering adjustments to academic deadlines, course schedules, dining arrangements, co-curricular activities, etc.

### **1. University Administrative No Contact Orders**

Unless otherwise stated in writing, a person who is issued an Administrative No Contact Order by the University may not have contact with specific individuals for a period of

time, either directly, indirectly, or through third parties.

- a. "Third parties" include friends, family, attorneys, and other individuals acting on behalf of a person who has been issued a No Contact Order.
- b. "Contact" includes but is not limited to email, social media, instant messaging, text messaging, phone calls, voicemail, or face-to-face contact. Unintentional contact is not considered a violation of the Administrative No Contact Order.

Individuals are encouraged to report violations of Administrative No Contact Orders promptly to the Title IX Coordinator. Alleged violations of the Administrative No Contact Order may result in disciplinary action.

Administrative No Contact Orders are separate and distinct from court actions, such as Protective Orders and Restraining Orders. Questions about these should be directed to local law enforcement.

#### **F. FORMAL RESOLUTION: THE ADMINISTRATIVE INVESTIGATION PROCESS**

A Complainant may request that a report of sexual misconduct be resolved formally. The University may also determine that it is necessary to move forward with the formal resolution process outside of Complainant's wishes (please see **REQUESTS FOR NO UNIVERSITY ACTION**, above).

Formal resolution of sexual misconduct reports takes place within the **Administrative Investigation Process**, detailed below.

##### **1. Consolidation of Investigation**

The Title IX Coordinator has the discretion to consolidate multiple reports into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident.

##### **2. Appointment of Investigator**

The Title IX Coordinator will appoint an investigator to conduct a thorough, impartial, and equitable investigation of the report. The investigator may be internal or external to the University and must be appropriately trained to conduct sexual misconduct investigations.

Once an investigator has been appointed, the Title IX Coordinator will notify each party in writing. Complainant and Respondent each have the opportunity to challenge the appointment of the investigator for lack of impartiality. This challenge must be submitted to the Title IX Coordinator in writing within three (3) calendar days of notice of the appointment and must include a justification. The Title IX Coordinator will evaluate the challenge and determine whether it would be appropriate to appoint an alternate investigator. Each party will be notified when a challenge is submitted and will be advised of the outcome of the challenge.

##### **3. Advisors**

- a. Complainant and Respondent may each select one advisor of their choice. This advisor may be internal or external to the University. The advisor may not serve as a witness in the matter, nor may they be someone whose University

responsibilities create a conflict of interest (e.g. someone who has a role in the Administrative Investigation Process).

- b. Advisors are permitted to be present in all phases of the Administrative Investigation Process but may not participate in the process directly. The advisor may whisper or write notes to their advisee, but they may not interrupt, speak on behalf of the Complainant/Respondent, or otherwise interfere with the Process. If an advisor violates these parameters, the advisor's participation may be limited.

#### **4. Investigation Timeline**

The University aims to complete all investigations within a reasonable time period, which may be modified as necessary by the Title IX Coordinator. Delays may occur when the University is closed, during academic breaks or for other good reason. The parties will be notified of any delay in or modification to the timeline.

#### **5. Investigation**

- a. The investigator will conduct the investigation in an appropriate manner in light of the circumstances of the case. The investigator has sole discretion to determine what information to consider and what witnesses to interview.
- b. Complainant and Respondent will each be provided the opportunity to meet with the investigator separately. Should a party choose not to provide information to the investigator, the investigation will proceed without the benefit of their participation.
- c. Each party will also be afforded the opportunity to:
  - i. Identify witnesses who have information relevant to the alleged incident;
    - 1. The investigator will make a good faith effort to contact and interview each witness they have determined to be relevant to the investigation.
    - 2. Witnesses who can only speak to the character of a party are not considered to be relevant.
    - 3. Should a witness choose not to respond to outreach or provide the investigator with information, the investigation will proceed without the benefit of their participation.
  - ii. Provide documentation relevant to the alleged incident.
- d. The investigator has discretion to meet with any additional witnesses and review any additional documentation they determine to be relevant to the alleged incident.
  - i. This includes, but is not limited to:
    - 1. Consultation with experts,
    - 2. Site visits,
    - 3. Review of police reports and related documentation.
- e. Information related to the sexual history of either party will not be considered, except in the limited circumstance where information related to the sexual history between the parties may be relevant to the determination of consent. In that circumstance, sexual history between the parties may be considered only with regard to patterns of communicating and obtaining consent. Consent will not be assumed based solely on evidence of any prior or subsequent sexual history.
- f. Evidence of sexual or other relevant behavior so distinctive and so closely

resembling either party's version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be considered. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, this information may be deemed relevant to assessing the credibility of the parties.

- g. Information related to the prior misconduct of either Complainant or Respondent will not be considered relevant to the investigation. Respondent's prior misconduct may be considered only if it becomes necessary to assign a sanction.

## 6. Investigation Reports

- a. Upon completion of the investigation, the investigator will prepare a **Preliminary Investigation Report**. The report may include the following:
  - i. Summaries of the investigator's meetings with Complainant, Respondent, and witnesses,
  - ii. Descriptions of the documentation submitted by the parties and/or obtained by the investigator,
  - iii. Identification of material facts in dispute and material facts not in dispute,
  - iv. Definitions of prohibited conduct and related terms under this Policy that the investigator has determined to be relevant to the case,
  - v. A preliminary recommendation regarding the outcome of the case (i.e. responsible or not responsible), applying the preponderance of the information (more likely than not) standard, and
  - vi. An appendix containing raw materials gathered in the investigation (e.g., incident reports, documentation submitted by the parties, etc.)
- b. **Report Review**
  - i. Complainant and Respondent will each be provided the opportunity to review the Preliminary Investigation Report for seven (7) calendar days. Each party may submit a response to the Report within this seven-day period.
  - ii. The investigator will provide each party with any response submitted by the other party. The parties will then have three (3) calendar days to provide any final response to the investigator. This is the last opportunity either party will have to provide information related to the case.
- c. At the end of the final response period, the investigator will prepare a **Final Investigation Report**. The report may include the following:
  - i. Summaries of the investigator's meetings with Complainant, Respondent, and witnesses,
  - ii. Descriptions of the documentation submitted by the parties and/or obtained by the investigator,
  - iii. Parties' responses to the Preliminary Report,
    - 1. The investigator has sole discretion to determine whether and to what extent the parties' responses will be incorporated into the Final Report.
  - iv. Identification of material facts in dispute and material facts not in dispute,
  - v. Definitions of prohibited conduct and related terms under this Policy that

- the investigator has determined to be relevant to the case,
- vi. An assessment of credibility regarding the information provided in the course of the investigation, and
  - vii. A final recommendation regarding the outcome of the case (i.e. responsible or not responsible) applying the preponderance of the information standard.
    - 1. If the recommendation is a responsible finding, the investigator will also provide recommendations for appropriate sanctions.

## 7. Determination of Outcome

- a. The investigator will submit the Final Investigation Report to the Title IX Coordinator or designee for a determination of responsibility and assignment of sanctions, if applicable.
  - i. The determination of responsibility will be made using the preponderance of the information standard.
- b. The Title IX Coordinator or designee makes the final (subject to appeals, if any) decision regarding responsibility and assignment of appropriate sanctions and/or remedies when applicable.
- c. The Title IX Coordinator or designee will inform Complainant and Respondent of the outcome in writing within ten (10) calendar days of receiving the Final Report.

## 8. Sanctions and/or Remedies

- a. If Respondent is found responsible, appropriate sanctions and/or remedies will be assigned. Factors considered when assigning sanctions include but are not limited to:
  - i. Aggravating and mitigating circumstances,
  - ii. Respondent's conduct history,
  - iii. The need for the sanctions/remedies to:
    - 1. Bring an end to the misconduct,
    - 2. Prevent the future recurrence of the misconduct, and/or
    - 3. Remedy the effects of the misconduct on the Complainant and the campus community.
- b. **Sanctions and Remedies: Students**
  - i. **Standing Sanctions**
    - 1. The following sanctions impact a student's standing with the University. When a student is found responsible for violating this Policy, one of the following standing sanctions must be assigned:
      - a. **Warning Letter:** A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure, or directive will result in more severe sanctions or remedial actions.
      - b. **Probation:** A written reprimand providing for more severe conduct sanctions in the event that the student or organization is found in violation of any University policy, procedure, or directive within a specified period of time.
      - c. **Suspension:** Termination of student status for a definite



period of time, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their time at the University. This sanction will not be noted on the student's official transcript.

- d. **Dismissal:** Permanent termination of student status, revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted on the student's official transcript.
  - e. **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a report pending, or as a sanction if the student is found responsible for an alleged violation while a student.
2. Only one standing sanction may be assigned in a case.
  3. Standing sanctions are assigned progressively. If a student has been assigned a standing sanction previously, the standing sanction for any subsequent violation(s) of this Policy must be greater, absent mitigating circumstances.

ii. Educational Outcomes

1. For every standing sanction except dismissal, educational outcomes may be assigned. These outcomes may include, but are not limited to:
  - a. Restitution
  - b. Assessment by a university-approved licensed psychologist, physician or healthcare provider
  - c. Exclusion from co-curricular activities
  - d. Administrative No Contact Order

c. **Sanctions and Remedies: Employees**

- i. When an employee is found responsible for violating this Policy, one of the following sanctions must be applied:
  1. **Warning Letter:** A warning is a formal method of informing an employee of a violation of University rules, guidelines, and/or policies. Additional violations will initiate the progressive disciplinary process.
  2. **Demotion:** A reduction in rank or status.
  3. **Suspension with pay:** Temporary removal of an employee from performing their work duties.
  4. **Suspension without pay:** Temporary removal of an employee from performing their work duties and from receiving pay.
  5. **Termination:** If the nature of the violation is so problematic and/or harmful to the campus community that a warning or a suspension is not appropriate, the University's recommendation will be to terminate employment.

6. Other sanctions/remedies that the Title IX Coordinator may deem appropriate.

d. **Sanctions and Remedies: Contractors and Visitors**

- i. When a contractor or visitor is found responsible for violating this Policy, one of the following sanctions must be applied:
  1. **Warning Letter:** A warning is a formal method of informing a contractor or visitor of a violation of University rules, guidelines, and/or policies.
  2. **Trespass:** Individuals or groups may be formally banned or trespassed from University property or sponsored events.
  3. **Termination:** Contractor agreement may be terminated.
  4. Other sanctions/remedies that the Title IX Coordinator may deem appropriate.

e. **Failure to Complete Sanctions**

- i. Respondent's failure to complete sanctions (or remedies and corrective actions) by the date specified may result in further disciplinary action.

**9. Appeals**

Either party may appeal the Title IX Coordinator or designee's decision to the appropriate appellate official. The appropriate appellate official is determined by the status of the Respondent. If Respondent is a student, the appellate official will be the Associate Vice President for Diversity, Equity, and Inclusion/Diversity Officer or designee<sup>1</sup>. If Respondent is a staff member, the appellate official will be the Associate Vice President of Human Resources or designee. If Respondent is a faculty member, the appellate official will be the Provost and Vice President for Academic Affairs or designee.

*Sexual or gender based harassment that is alleged to have occurred in a teaching or classroom setting may present some different issues from those occurring in other environments. See Appendix A for the procedures specific to the handling of those reports.*

All appeals must be submitted in writing to the appropriate appellate official within **seven (7) calendar days** of the delivery of written notice of outcome. The written appeal must include explanation of the grounds for such appeal.

Grounds for appeals are limited to the following:

- a. Procedural error or omission that significantly impacted the outcome of the case, and/or
- b. Availability of new information that could substantially impact the outcome of the case. This evidence must not have been available at any point during the process prior to appeal.

The appellate official will then review the appeal request to determine whether it is (1) timely

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<sup>1</sup> The Associate Vice President for Diversity, Equity and Inclusion will assume their responsibilities in November, 2018. Until that time, the "designee" will be Dr. Frank Ross, Vice President for Student Affairs.

and (2) based on one of the grounds listed above. If the appeal fails to meet these criteria, it will not go forward, and the original outcome will stand. If part, but not all, of an appeal meets the criteria, only the appealable issues will move forward. Any non-appealable issues will be redacted from the appeal before it is shared.

The appellate official will provide written notice of their initial determination to each party. If any portion of the appeal moves forward, the other party will be provided the opportunity to review the appeal and submit a response. A response must be submitted to the appellate official within **seven (7) calendar days** of the delivery of notice of the initial appellate determination.

Appeals are not intended to be a full rehearing of the case. The appellate official will confine their analysis to review of the written documentation related to the case and information contained in the appeal. In making a decision regarding the appeal, the appellate official may select one of the following outcomes:

- a. Uphold the original finding of responsibility and/or original assignment of sanction(s), or
- b. Set aside the original finding and:
  - i. Impose a new decision regarding responsibility and/or sanctions, OR
  - ii. Send the case back to an investigator or Title IX Coordinator/designee for further review.

The appellate official will provide notice of outcome of the appeal to each party within ten (10) calendar days of the conclusion of the seven-day response period.

*In any case in which the appellate official is the Respondent or should for any other reason be disqualified to act, the President or designee will appoint an individual to assume the appellate official's role in this process.*

## **10. Withdrawal or Resignation while a Case is Pending**

### **a. Students**

- i. Should a Respondent withdraw from the University while a case is pending, that case will continue.
  1. Respondent may continue to participate in the case. If they choose not to participate, the case will proceed without the benefit of their participation.
  2. Respondent's transcript may reflect that the student withdrew while a case regarding their alleged violation of the Sexual Misconduct Policy was pending.
  3. A hold may be placed on Respondent's University account to prevent re-enrollment and release of official transcripts.
  4. Respondent's ability to return to the University will depend on the outcome of the case. In cases where there is a responsible finding and the standing sanction assigned is dismissal, Respondent will not be permitted to return. In cases where there is a responsible finding and the standing sanction is anything less than dismissal, Respondent will not be permitted to return

unless all sanctions and educational outcomes have been satisfied.

- ii. Should a Complainant withdraw from the University while a case is pending, the case may continue.

**b. Employees**

- i. Should an employee Respondent resign while a case is pending, the employee's record will reflect a resignation with a case regarding their alleged violation of the Sexual Misconduct Policy pending. The employee Respondent will not be eligible for rehire.

**G. RECORDS**

In implementing this Policy, records of all complaints, investigations, and resolutions will be kept by the Title IX Coordinator. Decisions finding a student responsible for violations of this Policy will be noted in their student conduct file. Decisions findings an employee responsible for violations of this Policy will be noted in their personnel file. Student records will be kept at least seven (7) years.

**HISTORY/REVISION DATES**

Board of Trustees Approval  
Revision

June 9, 2017  
August 20, 2018

## Harassment in Teaching or Classroom Setting

Sexual or discriminatory harassment that is alleged to have occurred in a teaching (including advising) or classroom setting may present different issues than allegations of these forms of harassment occurring in other environments. This is because there are times when the subject matter, the words being used or even touching is necessary and appropriate in the scope of teaching the course. It is for this reason that a different procedure for investigation and resolution of sexual or discriminatory harassment allegations in teaching or classroom settings is followed.

**Initial action:** Upon receipt of a report of harassment in a teaching or classroom setting, the Title IX Coordinator or designee will alert the liaison, appointed by the Provost (“Provost’s Liaison”) to the new matter. If the Title IX Coordinator and the Provost’s Liaison determine that, treating the report as accurate, the allegations do not constitute possible violation of the University’s Sexual Misconduct Policy (“Policy”), the matter will be closed. If they determine that the report should move forward, they will consider whether the matter should be handled through the formal resolution process or is appropriate for handling through an informal process, both of which are described below. The Title IX Coordinator (copying the Provost’s Liaison) will send an initial letter to the faculty member who is the subject of the complaint (Respondent) outlining the nature of the complaint, the name(s) of the Complainant(s) (unless proceeding anonymously) and the approximate timeframe in which the actions allegedly occurred.

**Informal Resolution:** If both Complainant and Respondent request to resolve the issue by a method less formal than the administrative investigation, and the Title IX Coordinator agrees, the matter may proceed to a facilitated mediation or another method of informal resolution. If an agreed-upon resolution is reached by the parties and approved by the Title IX Coordinator, the resolution will be documented and the matter concluded. If no agreement is reached and approved or if any participant chooses to end the informal process, the administrative investigation will go forward.

**Formal Investigation:** If a formal investigation is required, the Title IX Coordinator will assign an investigator (“Investigator”). The Investigator, with the Provost’s Liaison, will interview the Complainant, the Respondent (faculty), and witnesses suggested by the Complainant and the Respondent. In classroom settings, particularly in larger classes, it may be duplicative to interview the entire class. Rather, the Investigator and the Provost’s Liaison will determine the appropriate number of witnesses who should be interviewed.

During each interview, the Investigator and the Provost’s Liaison may question the party or witness. The Investigator’s focus is on whether the alleged harassment is more likely than not to have occurred. The Provost’s Liaison will focus on a pedagogical explanation for the conduct in question.

After the interviews are completed, the Investigator and the Provost’s Liaison will analyze:

1. Whether there was discriminatory conduct; and
2. If so, whether the conduct was related to a valid pedagogical method.

The University supports the academic freedom of the faculty member, and the Investigator will defer to the Provost’s Liaison’s determination that the alleged discrimination is explained by a valid pedagogical reason.

If the recommendation of the Investigator and the Provost's Liaison is that harassment has occurred, the Investigator's report, provided to the Title IX Coordinator, will address the facts supporting the conclusion. The Title IX Coordinator, in consultation with the Dean of the College or Library, will determine appropriate sanctions, if any. The Title IX Coordinator will communicate the outcome to the parties.

The Provost's Liaison will address, separate from the Investigator's report, any facts learned that are concerning from a teaching, scholarship or research standpoint and will submit that report to the Provost's office.

**Timeline:** The University aims to complete all investigations within a reasonable time period. Delays may occur when the University is closed, during academic breaks, or for other good reason.

**Retaliation:** Retaliation is material adverse action taken against a person for making a good faith report of prohibited conduct or participating in this process. Material adverse action limits or denies an individual's ability to participate in or benefit from the University's educational or employment opportunities and/or activities. Vague criticisms, stray remarks, and petty slights are generally not considered sufficient to constitute a materially adverse action. Even where there is a finding of "not responsible," retaliation is prohibited.

Reports of retaliation may be consolidated into an ongoing investigation at the discretion of the Title IX Coordinator.

Individuals who experience retaliation are encouraged to report the retaliatory conduct as soon as possible. Making a report to the University does not automatically result in an investigation of the alleged retaliatory conduct. An individual can request no University action. Individuals should note that the University's ability to effectively investigate alleged acts of retaliation may be limited as time passes.

**Appeals:** Either party may appeal the Title IX Coordinator's decision to the Provost and Vice President of Academic Affairs ("Provost"). A review of the matter will be prompt and narrowly tailored to stated appeal grounds. Dissatisfaction with the outcome of the investigation is not grounds for appeal. Grounds for appeals are limited to the following:

1. A procedural error or omission occurred that significantly impacted the outcome of the process (e.g., substantiated bias, material deviation from established procedures, etc.).
2. To consider new evidence, unknown or unavailable during the original investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

All requests for appeal consideration must be submitted in writing, asserting the reason for the appeal, to the Provost within fourteen (14) calendar days of the delivery of the written determination of the Title IX Coordinator. The Provost or designee will review the appeal request to determine if the appeal is timely and based on the grounds listed above. If the appeal fails to meet the criteria, the Provost or designee will advise the party appealing that the appeal will not go forward, and the original finding and sanction will stand. If part but not all of an appeal meets the criteria, only the appealable issues will go forward.

If the appeal is allowed to go forward, the Provost or designee will provide a copy of the appeal to the other party, who may respond to the appeal within seven (7) calendar days from receipt of the appeal. Non-appealable issues will be redacted.

Appeals granted based on new evidence should normally be remanded to the original investigator for reconsideration of the recommendation to the Title IX Coordinator. Other appeals may be remanded to the investigator and/or Title IX Coordinator at the discretion of the Provost or designee.

For appealable issues, the Provost or designee will appoint an appeal panel of three (3) individuals representing Student Affairs, the Provost's office and Human Resources. The appeal panel will follow these guidelines:

- Appeals decisions are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Sanctions imposed by the Title IX Coordinator are implemented immediately unless the Provost stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeal panel, by a majority vote, will render a written decision on the appeal to all parties within fourteen (14) calendar days from the date on which the appeal was submitted to the appeal panel.
- All parties will be informed of the decision on appeal.

Once an appeal is decided, the outcome is final. Further appeals are not permitted.

**In any case in which the Provost is the Respondent or should for any other reason be disqualified to act, the appeal will be submitted to the President or President's designee, who will assume the Provost's role in this process.**