

Sexual Harassment Policy and Procedures

I. POLICY STATEMENT

Trevecca Nazarene University (“University”) is committed to providing and maintaining a healthy learning and working environment for all students, staff, faculty, and other members of the University’s community, free of discrimination and all forms of sexual and gender-based discrimination, harassment and violence.

Consistent with the University’s Non-Discrimination Notice and the U.S. Department of Education’s implementing regulations for Title IX of the Education Amendments of 1972 (“Title IX”) (see 34 C.F.R. § 106 *et seq.*), the University prohibits Sexual Harassment that occurs within its Education Programs or Activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

This policy prohibits Sexual Harassment meeting specific definitions according to the Title IX regulations. The University also prohibits other sexual misconduct, not falling under specific Title IX regulatory definitions. Such conduct may include Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking that occurs outside of the University’s Education Programs or Activities or outside the United States; or unwelcome conduct that does not rise to the level of Hostile Environment Sexual Harassment, as defined in this Policy, but is otherwise prohibited by the University. The term sexual misconduct is used throughout this policy as a term to refer to such conduct that may be prohibited by the University and addressed through other University procedures.

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

The University will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the University’s Education Programs or Activities.

II. SCOPE

This policy applies to students, faculty, staff, administrators, and third parties on campus, including visitors, guests, and the agents, representatives and employees of suppliers (the "University Community.") This policy applies regardless of national origin, immigration status, or citizenship status.

This policy applies to Sexual Harassment that occurs within the University's Education Programs or Activities and that is committed by a member of the University community.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the University's Education Programs or Activities. Such sexual misconduct may be prohibited by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee, and will be referred to the appropriate University administrators and procedures.¹ In addition, complaints of sex discrimination regarding materially adverse action on the basis of sex or pregnancy discrimination are prohibited by the University's Notice of Non-Discrimination.

This policy also does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University's Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee.

III. TITLE IX STATEMENT AND COORDINATOR

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

Jamie Cathcart
Title IX Coordinator
Trevecca Nazarene University
333 Murfreesboro Rd.

¹ Conduct that is initially raised through a complaint under this policy and its accompanying procedures may also be addressed under other procedures, in the University's discretion, when: (i) the conduct at issue, or some part of it, may constitute sexual misconduct irrespective of whether it constitutes Sexual Harassment under this policy; (ii) the Formal Complaint, or some part of it, has been dismissed under this policy; or (iii) a final determination of a Formal Complaint has been made under this policy and separate or additional action may be necessary to enforce University policies.

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The Title IX Coordinator is located in the Office of Human Resources, which is located in the Martin Building, ground level.

In addition to the reporting options under this policy, any person may also file a complaint of Sex Discrimination with the United States Department of Education's Office for Civil Rights by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

IV. DEFINITIONS

- A.** "Sexual Harassment" is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.
- B.** "Quid Pro Quo Sexual Harassment" is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.
- C.** "Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.
- D.** "Sexual Assault" includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.²
 - 1.** "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
 - 2.** "Sodomy" is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - 3.** "Sexual Assault with an Object" is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim,

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

including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.

4. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Tennessee law.
 6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Tennessee law.
- E.** “Domestic Violence” is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Tennessee, 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 Tennessee.
- F.** “Dating Violence” is violence committed by a person –
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.
- G.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress.

- H.** “Consent” refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.
- I.** “Incapacitated” refers to the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.
- J.** “Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- K.** “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- L.** “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- M.** “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s Education Programs or Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.
- N.** “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other

similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

- O. “Education Programs or Activities” refers to all the operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

V. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT

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

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

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

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy

- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

VI. Understanding Consent and Incapacitation

A. Consent

It is informed, freely given, and mutually understood. Consent requires an act or statement by each participant. Consent is not passive. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent.
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent.
- If a person is asleep or unconscious, there is no consent.
- Consent to past sexual activity does not imply future consent.
- Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another.
- Consent can be withdrawn by verbal or physical conduct that a reasonable person would understand to indicate a desire to stop or not engage in the sexual conduct at issue. A person is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.

The University promotes a biblical sexual ethic that reserves consenting intimate sexual expression within a marriage between a man and a woman. Intimate sexual expression outside the biblical boundary of marriage may increase the risk of miscommunication about consent and is a violation of University policy. Allegations of consensual sexual activity are handled through the student conduct policy.

Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.

Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to coercion unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. When a person makes it clear that the person does not want to engage in sexual activity, that the person wants to stop, or that the person does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive.

B. Incapacitation

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

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

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

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

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

Sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

VII. ROLES AND RESPONSIBILITIES

A. Title IX Coordinator

The Title IX Coordinator will inform the Executive Vice President for Finance and Administration of all sexual misconduct incidents. The Title IX Coordinator is part of the Office of Human Resources and reports to the Director of Human Resources.

It is the responsibility of the Title IX Coordinator to: (1) receive reports according to this policy; (2) oversee the process of responding to Sexual Harassment reports; (3) coordinate dissemination of information and education and training programs; (4) identify and address any patterns or systemic problems that arise during the review of such complaints; (5) assist members of the University community in understanding that Sexual Harassment is prohibited by this policy; (6) answer questions about this policy; (7) serve as and/or appoint investigators and ensure that investigators are trained to respond to and investigate complaints of Sexual Harassment and ensure proper training for other individuals involved in adjudication, resolution and appeal processes under this policy; (8) ensure that employees and students are aware of the procedures for reporting Sexual Harassment; (9) implement the Complaint Resolution Procedures or designate appropriate persons for implementing the Complaint Resolution Procedures; (10) monitor full compliance with the requirements and timelines specified in this policy; and (11) compile an annual report on incidents of Sexual Harassment.

The Title IX Coordinator may consult with other University officials and legal counsel as necessary when carrying out his or her duties under this policy.

B. Administrators, Deans, and Other Managers

It is the responsibility of administrators, deans, and other managers (i.e., those that formally supervise other employees) to:

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

C. All Employees

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

D. Students

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

E. The University

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that constitutes Sexual Harassment, the University will take prompt action and review the matter. If necessary, an investigation and

appropriate steps to stop and remedy the prohibited conduct will occur. The University will act in accordance with its Complaint Resolution Procedures, described below.

VIII. REPORTING SEXUAL HARASSMENT

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

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In addition to reporting to the Title IX Coordinator, any person may report Sexual Harassment to any University employee with managerial authority over other employees, including cabinet members, deans, department heads, unit supervisors, and other managers (collectively "Reporting Officials") who must promptly forward such report of Sexual Harassment to the Title IX Coordinator.

The University encourages persons to make complaints of Sexual Harassment as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

A report should include, if known: (1) the date(s) and time(s) of the alleged Sexual Harassment; (2) the names of all person(s) involved in the alleged Sexual Harassment, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the Complainant so that the University may follow up appropriately.

A. Making a Report

1. Employees

All members of the University community have a duty to report Sexual Harassment to the Title IX Coordinator when they receive a report of such conduct or witness such conduct. The report must include all known relevant details of the alleged misconduct. If an employee receives a report from an individual who asks to maintain confidentiality, the employee should tell the person that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the employee will also inform the Coordinator of the request for confidentiality.

This reporting obligation includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role.

This reporting obligation includes student employees only to the extent the student employee has a supervisory position. An employee not reporting Sexual Harassment as required by this policy may be disciplined accordingly, up to and including termination. This section does not apply to the employees who may maintain confidentiality as a result of receiving confidential reports when acting in their professional capacity requiring such maintaining such confidentiality.

University faculty and employees are also encouraged to file a complaint of Sexual Harassment when they are the victim of such conduct.

2. Students and Non-Employee Members of the University Community

Students and non-employees who believe they or another member of the University Community may have been subjected to conduct that constitutes Sexual Harassment are encouraged to file a report with the Title IX Coordinator.

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

3. Third-Party Reporting

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

4. Confidential Resources

The University realizes that victims may desire to maintain confidentiality. A victim who wishes to talk confidentially about his or her situation may contact the following confidential resources on campus:

- **Professional Licensed Counselors**: Professional licensed counselors who provide mental-health counseling to members of the University community. Counseling Services can be reached at 615-248-1346. The offices are located in the Center for Leadership, Calling and Service in the Bud Robinson Building.
- **The University Chaplain(s)**: The University chaplain(s) can be reached at 615-248-1246. The offices are located on the second floor of the Bud Robinson Building.
- **Resident Health Care Provider**: The resident health care provider in the clinic can be reached at 615-248-1261. The clinic is located on the back side of Georgia Hall.

These confidential resources will not report your circumstances to the University for investigation without your permission, unless otherwise required by law (such as when the victim is a minor). Notwithstanding, a non-identifying report may be made to the Title IX Coordinator so that the University can identify any patterns of Sexual Harassment on campus.

Victims of Sexual Harassment or other sexual misconduct may also seek help from off-campus organizations that have trained professionals able to provide assistance to victims of sexual violence. These organizations are not associated with the University and therefore disclosure will not trigger a University investigation into the incident. Victims may contact the following organizations for assistance:

- Rape and Sexual Abuse Center, 615-259-9055 (Counseling, referrals, support groups)
- Domestic Violence Intervention Center, 615-255-0711 (Counseling, advocacy, referrals, group counselors for domestic violence)
- You Have the Power, 615-292-7027 (referrals, resource information)

5. Information Provided to Complainant and Respondent

A Complainant who makes a report of Sexual Harassment to the University will be given information about this policy and the Complaint Resolution Procedures used to investigate, adjudicate and resolve complaints of Sexual Harassment, options for filing complaints with the local police, and resources that are available on campus and in the community. A person against whom a report has been filed will also be given information about the policy, Complaint Resolution Procedures, and available resources.

6. Conduct that Constitutes a Crime

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

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

7. Emergency Reporting Options

Individual safety is paramount. Victims of crime who are in an emergency situation or are uncertain about what they should do are encouraged to call 911 to request assistance from emergency personnel including law enforcement and emergency medical personnel. Local law enforcement and emergency medical personnel are trained to help crime victims

and can recommend the best options to ensure preservation of evidence, ensure the victim's safety, and begin a criminal investigation into the incident.

8. Special Advice for Individuals Making Complaints of Sexual Assault, Domestic Violence, Dating Violence, or Stalking

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

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one's mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Contact law enforcement by calling 911.
- Get medical attention - all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, University chaplain, or resident health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Complaint Resolution Procedures.

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

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

- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- pursuing disciplinary action
- requesting that no further action be taken

9. Amnesty for Alcohol or Drug Use

The University seeks to remove any barriers to reporting Sexual Harassment and sexual misconduct. The University will offer any student who reports Sexual Harassment or participates in investigation and adjudication of Formal Complaints under this policy limited immunity from being charged for policy violations out of fear that they themselves or others may be accused of violating other University policies, such as drinking or drugs at the time of the incident. The University may recommend education, therapeutic remedies or accountability options for those individuals, but no conduct proceedings or conduct record (for students) or disciplinary actions (for employees) will result. The University's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

10. Retaliation

It is a violation of this policy to engage in Retaliation. Persons who believe they have experienced Retaliation in violation of this policy should report the conduct to the Title IX Coordinator in the same manner they would report Sexual Harassment.

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

Specific examples of Retaliation include:

- Terminating a person's employment, demoting them, denying them a promotion, reducing their pay, or "writing them up" because they made a report of Sexual Harassment.
- Sending threatening text messages or social media messages to someone because they made a report of Sexual Harassment or gave a statement as a witness.
- Causing physical damage to a person's personal belongings because they made a report of Sexual Harassment or gave a statement as a witness.
- Suspending a person from an activity or limiting their involvement because they made a report of Sexual Harassment, unless appropriately determined according to the Interim Removal section of this policy.
- Publishing knowingly false information about a person because they made a report of Sexual Harassment.

11. Bad Faith Complaints and False Information

The University encourages the good faith reporting of Sexual Harassment and other sexual misconduct. However, the University will not allow this policy to be abused for improper means. It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make

a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Code of Student Conduct in the case of students and other University policies and standards, as applicable, for other persons.

If the University determines that a report was knowingly false, the report will be dismissed and the person who filed the knowingly false report may be subject to discipline, up to and including termination and/or expulsion. Such disciplinary action will not constitute prohibited Retaliation. Further, the University may take disciplinary action against any person who knowingly provides false information during the investigation and resolution of a Formal Complaint and such disciplinary action will not constitute prohibited Retaliation.

B. Confidentiality

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

While the University will maintain confidentiality specified in this Section, the University will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

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

IX. RESOURCES

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek the support of the

University's resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance.

A. Emergency Support Services

The University encourages all victims of criminal conduct to immediately seek emergency medical care and/or law enforcement. This is the best option to provide physical safety, emotional support, and medical care to the victim. It is also the best option to ensure the preservation of evidence. Contact information for emergency medical care and law enforcement are listed below:

- Metro Police Department, 615-862-8600
- Domestic Violence Unit, Metro Nashville-Davidson County, 615-880-3000 (assistance with obtaining orders of protection, short-term counseling)
- 911

If a Complainant has obtained a temporary restraining order or other no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the Complainant should provide such information to the Title IX Coordinator. The University will take all reasonable and legal action to implement the order.³

B. Campus Resources

The University's Title IX Coordinator, Associate Dean of Students for Residential Life, Director of SGCS Student Success and Advising, and Director of Human Resources can provide victims with timely information on available on-campus and off-campus resources, reporting options, and will provide guidance regarding the various reporting options, including filing a criminal complaint against the accused perpetrator. These individuals can also provide Respondents with information about on-campus and off-campus resources.

C. Counseling and Confidential Resources

The University offers counseling to individuals who have been a victim of Sexual Harassment regardless of whether the victim chooses to file a Formal Complaint. There are also several organizations and facilities that provide confidential support off-campus. The trained professionals and staff employed by these on and off-campus facilities are able to provide counseling, information, and support under legally protected confidentiality. Personal information disclosed to the professionals and staff employed by these organizations and facilities will not be shared with any member of the University staff or administration without the express consent of the victim. On and off-campus counseling and confidential resources are also available to Respondents.

X. ACADEMIC FREEDOM

³ Information about obtaining protection orders in Tennessee can be found at: <https://www.tncourts.gov/programs/self-help-center/forms/order-protection-forms>

While the University is committed to the principles of free inquiry and free expression, conduct constituting Sexual Harassment is neither legally protected expression nor the proper exercise of academic freedom. The University will construe and apply this policy consistent with principles of academic freedom. A Respondent will not be found to have committed Sexual Harassment based on expressive conduct that is protected by the principles of academic freedom specified in the Faculty Handbook.

XI. EDUCATION

The University is committed to the prevention of Sexual Harassment through education and awareness programs. Throughout the year, programs designed to promote awareness are presented by a variety of campus resources. Prevention programs include the annual overview of the University's Sexual Harassment policy during new student and new employee orientations. This program includes discussion on prohibited conduct, effective consent, bystander intervention, and the impact of alcohol and illegal drugs on Sexual Harassment and sexual misconduct. The Title IX Coordinator is responsible for providing ongoing training to existing students and employees on campus.

XII. REVIEW

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

XIII. DISTRIBUTION

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

INITIAL RESPONSE AND COMPLAINT RESOLUTION PROCEDURES

I. PRELIMINARY ASSESSMENT

After receiving a report under “Reporting Sexual Harassment,” the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of this policy (see “Scope”); and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment as defined by this policy.

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

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”)

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

II. CONTACTING THE COMPLAINANT

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

III. SUPPORTIVE MEASURES

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

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to

the Respondent prior to the Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

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

Examples of supportive measure are included in the Definitions section. Failure to comply with the terms of supportive measures may constitute a separate violation of this Policy.

Supportive measures are individualized, based on the information gathered by the Title IX Coordinator, and designed to avoid depriving a student of his or her education whenever possible. The University will determine the reasonableness, necessity, and scope of any supportive measures, which may include:

- No Contact Order: A Complainant or Respondent may request, or the University may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications.
- Academic, Employment or Residence Modifications: A Complainant or Respondent may request an academic or employment accommodation or a change in residence after a report of Sexual Harassment. An individual who requests assistance in changing their academic or living situation after an incident of Sexual Harassment will receive appropriate and reasonably available accommodations. These may include:
 - Change of residence hall room
 - Change in work assignment or schedule
 - Providing an escort to ensure safe movement between classes and activities;
 - Academic accommodations, including a change in class schedule, taking an incomplete, dropping a course without penalty, providing an academic tutor, extending deadlines for assignments, rescheduling exams and assignments, providing alternative course completion options, or allowing a voluntary leave of absence
 - Providing medical services available through the University clinic
- Emotional Support: Counseling and emotional support is available to any student through the Office of Counseling Services free of charge. The University will also assist in providing a referral to off campus agencies. Additionally, the university chaplain is available to provide emotional support as needed.

IV. INTERIM REMOVAL

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of the University's Education Programs or Activities on an temporary basis if an individualized safety and risk analysis determines

that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

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

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

V. FORMAL COMPLAINT

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with the provisions “Investigation” and “Adjudication.” At the time the Complainant submits a Formal Complaint, however, the Complainant must be participating in, or attempting to participate in, one or more of the University’s Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in “Reporting Sexual Harassment.” No person may submit a Formal Complaint on the Complainant’s behalf.

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

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation and adjudication of the matter. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party’s level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

VI. ADVISOR OF CHOICE

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

Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section and "Hearing," the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

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

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

VII. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint as specified in "Notice of Formal Complaint," and before the completion of any appeal specified in "Appeal," the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The informal process can only be used with both parties' voluntary cooperation after receiving a full disclosure of the allegations and their options for formal resolution, and with appropriate involvement by the Title IX Coordinator. Either party may terminate the informal process at any time and elevate the complaint to the formal investigation procedures. If informal resolution is reached, it will be documented in writing and signed by both parties. Because informal resolution is a voluntary and mutually agreeable process, a resolution reached via informal means cannot be appealed.

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

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

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

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

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

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

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

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

VIII. CONSOLIDATION OF FORMAL COMPLAINTS

The University may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

IX. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION

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

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in “Scope” (that is, because the alleged conduct did not occur in the University’s Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. The dismissal is a final determination unless modified or overturned on appeal.

X. NOTICE OF FORMAL COMPLAINT

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

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”

- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence.”
- Notifying the Complainant and Respondent of the University’s prohibitions on retaliation and false statements specified in Sections “Bad Faith Complaints and False Information” and “Retaliation.”
- Information about resources that are available on campus and in the community.

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

XI. INVESTIGATION

A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within thirty (30) to forty-five (45) days of the transmittal of the written notice of Formal Complaint.

The investigator may require the production of information by the parties by a certain date in order to facilitate a timely resolution, on an equal and reasonable basis. Both the Complainant and the Respondent will be given periodic updates regarding the status of the investigation, including any delays.

B. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in “Sexual History.” The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A

party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

During the investigation, the Complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The Respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. Both parties will be asked to provide the investigator with relevant documents and other evidence and to describe the effect of the alleged incident on their opportunity to benefit from the University's programs or activities.

The investigator will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, and take any other appropriate action to gather and consider information relevant to the complaint.

All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

D. Access to the Evidence

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

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

E. Investigation Report

After the period for the parties to provide any written response as specified "Access to Evidence" has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is

complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

XII. ADJUDICATION

A. Hearing Process

The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Hearing Process”).

1. Hearing Officer

The Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

2. Hearing Notice and Response to the Investigation Report

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

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

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the University’s Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;

- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for purposes of conducting questioning as specified in “Hearing.”

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

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

3. Pre-Hearing Conference

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

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

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

4. Issuance of Notices of Attendance

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

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

The University will not issue a notice of attendance to any witness who is not an employee or a student.

5. Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the University's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

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

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

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

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

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX

Coordinator, and other necessary University personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

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

Subject to the minimum requirements specified in this section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

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

6. Subjection to Questioning

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

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

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

7. Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of "Subjection to Questioning." The hearing officer will resolve disputed facts using a preponderance of the evidence (that is,

“more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

8. Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

The University will impose discipline commensurate with the severity of the offense. Individuals who are found responsible under this policy may face discipline, up to and including expulsion and/or termination of employment.

Possible disciplinary sanctions for students include written reprimand, restitution/reconciliation, restrictions, educational assignment, accountability, social probation, suspension, dismissal, and expulsion. Possible disciplinary sanctions for employees could include educational assignments, written warning, letter to file, suspension, and termination of employment.

9. Written Decision

After reaching a determination and consulting with the appropriate University official and Title IX Coordinator as required by “Discipline and Remedies,” the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official as referenced in “Discipline and Remedies”;

- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the University's process and grounds for appeal, as specified in "Appeal."

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

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer's written determination within fourteen (14) days of the conclusion of the hearing.

XIII. DISMISSAL DURING INVESTIGATION OR ADJUDICATION

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

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

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

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

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX Coordinator may

refer the subject matter of the Formal Complaint to other University offices, as appropriate. The dismissal is a final determination unless modified or overturned on appeal.

XIV. APPEAL

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

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer, or administrative officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome;

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other party appealing, whichever is later. The appeal must be submitted in writing to Jessica Dykes, Dean of Students who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

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

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

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

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at

the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

XV. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, 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 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; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;
- unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

XVI. SEXUAL HISTORY

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

XVII. PRESUMPTION OF NON-RESPONSIBILITY

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

XVIII. CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in "Appeal," or otherwise. If a material conflict of interest or material bias is determined to exist, the Title IX Coordinator shall designate another appropriate individual to administer these procedures.

XIX. OBJECTIONS GENERALLY

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

XX. RELATIONSHIP WITH CRIMINAL PROCESS

This policy sets forth the University's processes for responding to reports and Formal Complaints of Sexual Harassment. The University's processes are separate, distinct, and independent of any criminal processes. While the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

Individuals who have been charged or convicted of any sex-based crimes, occurring on or off campus, may be subject to additional University disciplinary action.

XXI. RECORDINGS

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

XXII. OTHER VIOLATIONS OF THIS POLICY

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, such as failing to abide by a supportive measure or emergency removal will be subject to review under the Student Code of Conduct for students, the Faculty Handbook for faculty, or other University policies and standards for employees.

XXIII. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL

All deadlines and other time periods specified in this policy are subject to modification by the University where, in the University's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the University's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. The University officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the University.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties "simultaneously," notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using University email addresses.

A party is deemed to have received notice upon transmittal of an email to their University email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the University, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted.

XXIV. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS

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

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

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in the University's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

XXV. RECORDKEEPING

Throughout all stages of the investigation and adjudication, the Title IX Coordinator is responsible for maintaining documentation of all proceedings conducted under this policy.

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

XXVI. TRAINING

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

XXVII. DISCRETION IN APPLICATION

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.