**AACOM**

**Model Nondiscrimination and Harassment**

**Policy and Grievance Procedures**

**For Students, Faculty and Employees**

This Model Policy may be used and adopted by AACOM’s member schools. The Model Policy is based on the new Title IX Regulations that went into effect on August 14, 2020.

The name of the member school should replace the bracketed information [Institution]. All other information provided in [bracket and highlighted in yellow] should be replaced with language specific to the member school. The brackets should be deleted prior to implementing the final policy. The information contained in this Model Policy may need to be amended to ensure that it complies with and is in coordination with other policies and procedures of an individual member school, including student codes of conduct and other policies affecting students and employees.

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**[Institution]’s**

**Nondiscrimination and Harassment**

**Policy and Grievance Procedures**

1. **Purpose and Scope**

[Institution] (“[Institution]”) is committed to equal opportunity and providing a safe and non-discriminatory educational and working environment for its students, trainees, faculty, staff, and other members of [Institution] community. [Institution] seeks to provide community members with an environment that is free from discrimination and harassment, including sexual misconduct, on the basis of race, color, religious belief, national origin, sex, sexual orientation, pregnancy, marital status, gender, gender identity, social condition, political ideas, status as victim of domestic violence, disability, veteran status, genetic information, age, or any other legally protected characteristic.

[Institution’s] *Nondiscrimination and Harassment Policy and Grievance Procedures* (“Policy”) reflects its educational mission and institutional values to maintain its adherence to all federal and state civil rights laws prohibiting discrimination, harassment and retaliation in employment and educational programs. The Policy applies to all of Institution’s education programs and activities, including academic programs, scholarship and loan programs, as well as its educational policies, admissions policies, and employment policies. The Policy also applies to all employment decisions, including, but not limited to, those affecting the hiring, promotion, transfer, demotion or termination; recruitment; compensation and benefits; and opportunities.

In accordance with [Institution]’s obligations under federal, state and local law, [Institution] will also provide reasonable accommodations to veterans and individuals with disabilities.

This Policy has been developed to comply with the revised Title IX regulations issued by the U.S. Department of Education in 2020. The Policy applies to conduct that occurred on or after the effective date of the regulations (August 14, 2020).

1. **Policy Statement**

# Policy Against Discrimination, Harassment and Retaliation

It is [Institution]’s Policy that it will not tolerate discrimination or harassment on the basis of any of the following “Protected Classes”: race, color, religion, national origin, sex, sexual orientation, pregnancy, marital status, gender, gender identity, disability, status as victim of domestic violence, veteran status, genetic information, age, or any other characteristic protected against discrimination and/or harassment by federal, state or local law in its programs, services and activities.

This Policy applies to all [Institution]’s education programs, services and activities, including, but not limited to, admission and employment. It is [Institution]’s Policy to provide equal employment opportunities to all qualified persons, which may include, but are not limited to, recruitment, hiring, selection, compensation, benefits, job assignment, transfer, promotion, training, discipline, discharge and all other terms, conditions, and privileges of employment.

[Institution] also will not tolerate retaliation, in any form, against a person who reports, complains about, provides testimony or information, or who otherwise participates in good faith in any investigation, proceeding or hearing under this Policy.

Any member of [Institution]’s community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of [Institution]’s community on the basis of actual or perceived membership in the Protected Classes listed above is in violation of the Policy prohibiting discrimination.

[Institution] will promptly and equitably respond to Reports and Complaints of misconduct prohibited by this Policy in a fair, thorough, and impartial manner that respects the due process rights of all participants, protects the safety and welfare of students, employees, and the community, and restores or preserves equal access to [Institution]’s education programs, services and activities.

For the purposes of this Policy, the individual who is reported to have experienced prohibited conduct is referred to as the “Complainant.” The “Respondent” is the individual who is reported to have committed the prohibited conduct.

This Policy does not establish contractual rights, in whole or in part, between [Institution] and any individuals, including, but not limited to, students, trainees, faculty, staff, and/or other members of [Institution]’s community.

# Policy on Disability Discrimination and Reasonable Accommodations

It is [Institution]’s policy to comply with all applicable state and federal disability laws and regulations, including Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. [Institution]’s Policy prohibits discrimination against qualified individuals with disabilities in employment and educational programs and activities.

A person with a disability is defined as an individual who (1) has a physical or mental impairment that substantially limits a major life activity, (2) has a record of a substantially limiting impairment, or (3) is regarded as disabled by the institution, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

[Institution] provides reasonable accommodations in the form of reasonable modifications to policies, practices, or procedures in order to make its programs, services, and activities accessible to qualified individuals with disabilities unless the modification would fundamentally alter the nature of program, service, or activity of [Institution]. These accommodations will be made in a timely manner and on an individual and flexible basis [and in accordance with [Institution]’s *Reasonable Accommodation Policies and Procedures*.]

# The Equity Coordinator

[Institution]’s [Name and title of the individual at the campus that coordinates/oversees discrimination and equity issues] (hereafter referred to as the “Equity Coordinator”) is responsible for administering this Policy and coordinating [Institution]’s compliance with all federal, state, and local laws, as well as any other applicable [Institution] policies and procedures, regarding discrimination, harassment, and retaliation. The Equity Coordinator thus serves as [Institution]’s Title IX Coordinator, and as Coordinator for [Institution]’s efforts to comply with the other applicable laws listed in this Policy.

The Equity Coordinator is responsible for coordinating [Institution]’s response to all Reports and Complaints regarding possible misconduct under this Policy, as well as monitoring outcomes, assessing the campus climate, and addressing any patterns of systemic problems that arise during the review of such Reports or Complaints. The Equity Coordinator is also responsible for coordinating the effective implementation of supportive measures, and implementing remedies arising from this Policy.

Reports or Complaints of alleged Policy violations should be promptly made internally to the Equity Coordinator. The following person has been designated to handle inquiries regarding this Policy:

[Name]

[Title]

[Address]

[Email Address]

[Phone Number]

Inquiries regarding this Policy may be made internally to the Equity Coordinator or externally to the Office for Civil Rights (“OCR”), U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202[.](http://www.ocr.gov/) Local OCR Contact Information can be found at: <https://ocrcas.ed.gov/contact-ocr>.

For employment related matters, inquiries may be made internally to the Equity Coordinator or externally to the Equal Employment Opportunity Commission (“EEOC”), 131 M Street, NE, Washington, DC, 20507. Local EEOC Contact Information can be found at: <https://www.eeoc.gov/contact-eeoc>.

All Reports and Complainants are acted upon in a timely manner and every effort is undertaken, to the extent permitted by law, to maintain confidentiality and privacy, as discussed below

1. **Entities Affected**

# Persons Covered

This Policy applies to misconduct by or against all members of [Institution]’s community, including, but not limited to, students, trainees, faculty, staff and other employees. The Policy also applies to misconduct by third parties, such as visitors, vendors, contractors, suppliers, guests, patients/clients or any other individual not employed by [Institution]. The Policy applies to applicants for admission to or employment with [Institution].

# Locations Covered

With the exception of alleged or reported “Title IX Sexual Harassment” (defined below), this Policy applies to conduct that:

1. Occurs on campus or on other [Institution] property;
2. Occurs in a program, service or activity of [Institution];
3. Occurs in services provided by a third party to [Institution];
4. Impedes equal access to any [Institution] education program, service or activity or adversely impacts the education or employment of a member of [Institution] community, regardless of where the conduct occurred;
5. Occurs on [Institution]-owned or operating computing hardware, networks, websites, or between or among [Institution] email accounts;
6. Occurs in any other online postings or other electronic communications by students or employees occurring outside of [Institution]’s control when those online behaviors have continuing adverse effects on, or create a hostile environment for, any [Institution] student, employee, applicant, or third party in any [Institution] employment or education program, service or activity; and/or
7. Occurs off-campus and the conduct has continuing adverse effects on, or creates a hostile environment for, any member of [Institution] community in any [Institution] employment or education program, service or activity. Off-campus discriminatory or harassing speech by employees may be regulated by [Institution] when such speech is made in an employee’s official or work-related capacity and/or when such speech causes a disruption to the educational or work environment.

For allegations or reports of “Title IX Sexual Harassment,” this Policy only applies to conduct that occurs in an education program, service or activity, which includes conduct:

1. on campus or on other [Institution] property;
2. in the context of any [Institution] education program, service or activity; and
3. in any other location, event, or circumstance over which [Institution] exercises substantial control over both the Respondent and the context in which the alleged violation of this Policy occurs.

# Prohibited Conduct

This Policy prohibits discrimination and harassment in employment and education on the basis of actual or perceived membership in a Protected Class as listed above. [Institution] also prohibits retaliation as described below. The following conduct is prohibited under this Policy:

1. Discrimination

Actions that deprive or limit access to education or employment, benefits or other opportunities and/or treat an individual differently on the basis of an individual’s actual or perceived membership in a Protected Class.

1. Harassment
2. *Harassment (other than “Title IX Sexual Harassment”)*

Any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise. Harassment can be divided into two types of conduct:

* + *Quid Pro Quo Harassment –* Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment, academic standing, or participation in any aspect of [Institution]’s program, service or activity or is used as the basis for [Institution]’s decisions affecting the individual.
  + *Hostile Environment –* Exists when the conduct is sufficiently severe, pervasive, or persistent that it interferes with, limits, or deprives an individual from participating in or benefiting from [Institution]’s education or employment programs and/or activities.

Whether conduct is sufficiently severe, pervasive, or persistent is determined both from a subjective and objective perspective. A hostile environment can be created by oral, written, graphic, or physical conduct. A determination of a hostile environment considers the totality of the circumstances and includes: 1) the degree of interference; 2) the type, frequency, and duration of the conduct; 3) the relationship between the Respondent and the Complainant; 4) the nature and severity of the conduct; 5) whether the conduct was directed at more than one person; 6) whether the conduct arose in the context of other discriminatory conduct; and 7) whether the conduct implicates concerns related to academic freedom or protected speech. A single instance may be sufficient for a finding of a hostile environment if the conduct is serious enough to reasonably support such a finding, particularly if the conduct is physical.

Sexual harassment is not limited to those circumstances in which the harasser only harasses members of the opposite sex.

1. *Title IX Sexual Harassment*

Conduct on the basis of sex that is:

1. Taken against a person in the United States;
2. Occurs in an education program, service or activity of [Institution];
3. Reported by or on behalf of a Complainant who, at the time of the filing of a Report or Complaint, was participating in or attempting to participate in an education program, service or activity of [Institution]; and
4. Satisfies one or more of the following:
5. *Quid Pro Quo Harassment --* An employee conditioning the provision of an aid, benefit, or service of [Institution] on an individual’s participation in unwelcome sexual conduct;
6. *Hostile Environment -* Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to [Institution]’s education program, service or activity; or
7. *Violence Against Women (VAWA) categories: “Dating Violence” “Domestic Violence,” Sexual Assault,” or “Stalking*,” as defined by this Policy.

* **Dating Violence:** *Dating Violence* is defined according to 34 U.S.C. 12291(a)(10) in VAWA. This misconduct is violence committed by a person: (1) who is or has been in a social relationship of a romantic or intimate nature with the person subjected to such violence, and (2) where the existence of such a relationship is determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior and may take the form of threats, assault, property damage, violence, or threats of violence to one’s self, a sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.
* **Domestic Violence:** *Domestic Violence* is defined according to 34 U.S.C. 12291(a)(8) in VAWA. This misconduct is a crime of violence committed by any person (including a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with, or has cohabitated with, the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim) against a person who is protected under the domestic or family violence laws of the state or the jurisdiction in which the crime was committed. Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior and may take the form of threats, assault, property damage, violence, or threats of violence to one’s self, a sexual or romantic partner, or to the family members or friends of the sexual or romantic partner.
* **Sexual Assault:** *Sexual assault*is defined according to 20 U.S.C. 1092(f)(6)(A)(v) of the Clery Act. This misconduct is an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI). This misconduct includes rape, fondling, incest, and statutory rape. Rape is defined as any sexual penetration, no matter how slight, of the vagina or anus or any bodily opening with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Fondling is defined as the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity. Incest is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. Statutory Rape is defined as sexual intercourse with a person who is under the statutory age of consent.
* **Stalking:** *Stalking* is defined according to 34 U.S.C. 12291(a)(30) of VAWA. This misconduct includes 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. A “course of conduct” consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through a third party, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical treatment of professional counseling. This definition incorporates the concept of cyber-stalking, which employs the use of the internet, social media, blogs, texts, cell phones, or other similar devices or forms of communication.

1. Retaliation

Intimidation, threats, coercion, adverse actions, or discrimination against any individual for the purpose of interfering with any right or privilege secured by applicable civil rights law and/or this Policy, or because the individual has made a Report or Complaint, testified, assisted,

provided information, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under applicable civil rights law and/or this Policy.

Retaliation includes intimidation, threats, coercion, adverse actions, or discrimination, including charges against an individual for code of conduct violations that do not involve discrimination or harassment, but arise out of the same facts or circumstances as a “Title IX Sexual Harassment” Report or Complaint for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

Retaliation does not include good faith actions lawfully pursued in response to an allegation of a violation of this Policy, or charging an individual with a code of conduct violation for making a materially or deliberately false statement or accusation in the course of a proceeding under this Policy, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Retaliation can be committed by or against any individual or group of individuals, including a Respondent or Complainant. Retaliation is still prohibited even when there is a finding of no responsibility for the allegation.

# Related Definitions

* **Actual Notice:** Notice of violations of this Policy or allegations of violations to this Policy to the Equity Coordinator or an Official with Authority (as defined below). Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of [Institution] with actual knowledge is the Respondent. “Notice” as used in this paragraph includes, but is not limited to, a Report or a Complaint made to the Equity Coordinator.
* **Advisor:** Advisor means an individual chosen by a party or appointed by the institution to accompany the party to meetings related to the investigation and resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.The Advisor may be, but is not required to be, an attorney. [Institution] may not limit the choice or presence of Advisor for either the Complainant or Respondent in any meeting or proceeding under this Policy; however, the Advisor’s role (except for the purpose of conducting cross examination at the hearing) is limited to quietly conferring with the party, and the Advisor may not address any other participant or Hearing Officer. [Institution] may ask the parties to identify their Advisors, if chosen by the parties, prior to any meeting.
* **Complaint:** A document filed by a Complainant, or signed by the Equity Coordinator, that alleges a potential violation of this Policy and requests that [Institution] investigate the allegation or allegations. The phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by [Institution]) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal Complaint.
* **Consent:** Words or actions demonstrating a knowing, willful, unambiguous, and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent is determined based on the totality of the circumstances. Consent to some sexual contact (such as kissing and fondling) cannot be presumed to be consent for other sexual activity (such as sexual intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Silence, passivity, or the absence of resistance alone is not consent. It is important to not make assumptions regarding whether a person has consented to a sexual act. A person can withdraw consent at any time during sexual activity by expressing in words or actions that she/he no longer wants the act to continue, and, if that happens, the other person must stop immediately. Consent cannot be obtained by force, threat, duress, coercion, misuse of professional authority/status, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another.
* **Incapacitation:** A state where an individual lacks the physical and/or mental ability to make informed, rational judgments and decisions (*e.g.,* to understand the “who, what, when, where, why, or how” of her/his sexual interaction). Incapacity could result from mental disability, involuntary physical restraint, and/or from the consumption of alcohol or other incapacitating drugs. A person can be intoxicated without being incapacitated.
* **Mandatory Reporter**: An employee of [Institution] who has an obligation to refer Complaints or Reports of prohibited behavior under this Policy to the Equity Coordinator. All [Institution] employees are considered mandatory reporters under this Policy.
* **Official with Authority (“OWA”):** An employee of [Institution] with the authority to take corrective action on behalf of [Institution] in response to Actual Notice of possible violations of this Policy. This term includes the Equity Coordinator, senior [Institution] officials, and all employees in supervisory positions.
* **Protected Class:**  Refers to race, color, religion, national origin, sex, sexual orientation, pregnancy, marital status, gender, gender identity, disability, status as victim of domestic violence, veteran status, genetic information, age, or any other characteristic protected by federal, state or local law.
* **Remedies:** Measures taken by [Institution] that are intended and designed to restore access or preserve equal access to [Institution]’s programs, services and activities. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non- punitive and need not avoid burdening the Respondent.
* **Report**: Any Report to the Equity Coordinator, and/or other OWA as defined above of information that could constitute a potential violation of this Policy. The term “Report” includes Complaints.

# Supportive Measures

Upon receipt of a Report or Complaint under this Policy, the Equity Coordinator will offer supportive measures, as appropriate and as reasonably available, to the Complainant and/or to the Respondent. Supportive measures are non-disciplinary, non-punitive, individualized services that must be offered without fee or charge to the Complainant and/or the Respondent before or after the filing of a Complaint or where no Complaint has been filed. Such measures are designed to restore or preserve equal access to [Institution]’s programs, services and/or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or [Institution]’s educational environment, and/or deter discrimination or harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The Equity Coordinator is responsible for coordinating the implementation of supportive measures. Upon receipt of a Report or Complaint under this Policy, the Equity Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant’s wishes with respect to supportive measures with or without the filing of a Complaint, and explain to the Complainant the process for filing a Complaint.

Supportive measures may be provided or imposed regardless of whether disciplinary action is sought by a potential Complainant or [Institution]. A potential Complainant or Respondent may request a supportive measure, or [Institution] may choose to impose supportive measures at its discretion to restore or preserve equal access to [Institution]’s programs, services and/or activities, ensure the safety of all parties, the broader [Institution] community, and/or the integrity of the process.

[Institution] will maintain the confidentiality of any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of [Institution] to provide the supportive measures.

[Institution] will promptly address any violation of the supportive measures. [Institution] will take immediate and responsive action to enforce a previously implemented restriction if such restriction is violated.

*Emergency Removal and Administrative Leave:* On an emergency basis, the Equity Coordinator in cooperation with appropriate [Institution] officials may recommend placing a student on interim suspension, impose administrative leave for an employee, or otherwise remove a student or employee Respondent from or deny access to campus facilities, and/or all or part of [Institution]’s programs, services or activities during the pendency of [Institution]’s procedures under this Policy. Prior to such removal, [Institution] must undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of conduct prohibited by this Policy that would justify a Respondent’s removal.[[1]](#footnote-1)

[Institution]’s Coordinator will provide the Respondent with written notice of an opportunity to appeal the removal decision immediately following the removal. The written appeal request should state the reasons why the Respondent believes the removal should be overturned. The appeal request must be received by the Equity Coordinator within five (5) Calendar Days of the notification of the issuance of an interim suspension. The Equity Coordinator will provide the appeal to the appropriate [*Institution’s President/Vice Provost*] who will review the appeal to determine whether the decision was supported. The appeal determination shall be sent to the Respondent within five (5) Calendar Days of receipt of the initial appeal request. The appeal determination is final.

During an interim suspension, a student Respondent may be denied access to [Institution]’s campus, facilities, or events. As determined by the Equity Coordinator, this restriction includes classes, access to campus housing or dining facilities, and/or all other [Institution] activities or privileges for which the student might otherwise by eligible. Similarly, alternative coursework option may be pursued to ensure as minimal impact as possible on the Respondent and the Complainant. An interim suspension of a student Respondent may be enforced until the final disposition of the allegation has been made by the appropriate [Institution] official or hearing entity.

In the event that a Respondent employee is accused of a violation, which also constitutes grounds for immediate dismissal as defined pursuant to other employee policies, processes, and procedures, the Equity Coordinator, in consultation with Human Resources, may recommend placing the employee on unpaid leave until such time as the matter is resolved. In the event that a Respondent employee is accused of a violation which does not constitute grounds for immediate dismissal under other employee policies, processes, and procedures, but the continued presence of the employee is disruptive to the work environment, the Equity Coordinator, in coordinator with Human Resources, may recommend placing the employee be placed on paid or unpaid leave pending resolution of the matter. During temporary paid or unpaid leave, an employee may be denied access to [Institution]’s campus, facilities, or events. At the discretion of the Equity Coordinator in consultation with Human Resources, alternative work options may be pursued to ensure as minimal an impact as possible on the Respondent employee and the Complainant or the potential Complainant.

# Reporting

[Institution] encourages strongly the prompt reporting of all incidents of prohibited conduct under this Policy. Any person may report a violation or alleged violation of this Policy (whether or not the person reporting is the person alleged to be the victim of conduct that may constitute prohibited conduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Equity Coordinator, or by any other means that results in the Equity Coordinator receiving the person’s verbal or written Report. Such a Report or Complaint may be made at any time (including during non-Calendar hours) in person or by using the telephone number or electronic mail address, or by mail to the office address, listed for the Equity Coordinator.

Where [Institution] receives a Report or Complaint or otherwise has Actual Notice of a possible violation of this Policy, [Institution] will take steps to understand what occurred and respond appropriately. With or without a Complaint, [Institution] will provide supportive measures to the Complainant and/or the Respondent, as appropriate.

Reports (including but not limited to Complaints) of violations of this Policy, including discrimination, harassment, and/or retaliation, should be promptly made to the Equity Coordinator, any Official with Authority to Take Corrective Action, and/or any Mandatory Reporter. Any member of [Institution] community may contact law enforcement, but no potential Complainant is required to do so.

Any individual may make an anonymous Report. Depending on the extent of information available about the incident or the individuals involved, however, [Institution]’s ability to respond to an anonymous Report may be limited. The Equity Coordinator will review the anonymous Report and determine appropriate steps.

* 1. Reporting to Law Enforcement

[Institution] strongly encourages all individuals to report any conduct that may be considered criminal to local law enforcement, in addition to reporting to [Institution], and to preserve evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order. Reports to [Institution] and criminal reports may be made simultaneously; however, the processes are separate. Upon request to Institution, [Institution] will assist an individual in notifying law enforcement authorities.

* 1. Reporting to [Institution]

Individuals are encouraged to contact the Equity Coordinator to make Reports or file Complaints of possible violations of this Policy. Subject to [Institution]’s obligation to redress violations, every effort will be made to maintain the privacy and confidentiality of those initiating a Report. All employees who receive a Report or Complaint under this Policy must promptly refer the Report or Complaint to the Equity Coordinator.

The Equity Coordinator and/or investigator(s) will keep the parties timely informed of the status of any investigation and inform the parties of any extensions of time to complete the process and the reason(s) for the extensions.

A Complainant will be informed that they may pursue a criminal complaint with the appropriate law enforcement agency (if applicable), pursue a Complaint through this Policy, or pursue both processes consecutively and concurrently. A Complainant may withdraw a Complaint or involvement from [Institution] process at any time. If a Complainant pursues a criminal complaint, [Institution] may temporarily defer the investigation and/or resolution process for a reasonable time to allow law enforcement to complete their factual finding. [Institution] will maintain documentation of the date of deferral. [Institution] may continue its investigation where it has reason to believe that the Respondent may be an imminent threat to the safety of the Complainant and/or other individuals. [Institution] will provide written notice to the Complainant and Respondent when it resumes its investigation and resolution process as appropriate.

Amnesty for Complainants and Witnesses: [Institution] encourages reporting of prohibited conduct under this Policy and seeks to remove any barriers to making a report. [Institution] recognizes that an individual who has been consuming alcohol or using drugs at the time of an incident may be hesitant to make a report because of potential consequences for that conduct. To encourage reporting, an individual who makes a good faith report of prohibited conduct under this Policy that was directed at them or another person, or participates in an investigation as a witness, will not be subject to disciplinary action by [Institution] for a conduct or policy violation that is related to and revealed in the report or investigation, unless [Institution] determines that the violation was serious and/or placed the health or safety of others at risk. Amnesty does not preclude or prevent action by police or other legal authorities.

* 1. Confidential Resources

If a Complainant or potential Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

* On-campus Victim Advocate
* On-campus licensed professional counsellors
* On-campus Health Center providers and staff
* Off-campus (non-employees)
  + - Licensed professional counselors or other medical providers
    - Local rape crisis counselors
    - Domestic violence resources
    - Local or state assistance agencies
    - Attorneys

# Conflicts of Interest or Bias

Both parties have a right to an investigation and resolution process free of conflicts of interest or bias by any [Institution] employee or official or any other designated individual involved in the process, including the Equity Coordinator, investigator, hearing officer, appeal decision-maker, board member, or any other person designated by [Institution] to conduct the complaint evaluation and/or investigation and/or adjudication and/or facilitate an informal resolution process. [Institution] employee or other individual involved in the process must not have and should disqualify themselves in a matter or proceeding in which the member’s impartiality might reasonably be questioned, including but not limited to instances where:

* + The individual has a personal bias or conflict of interest concerning a participant in the process, or has personal knowledge of disputed facts concerning the matter;
  + The individual has a personal bias or prejudice against Complainants or Respondents generally;
  + The individual was directly involved in the matter in controversy, or a subordinate whom the member previously supervised is involved in the matter, or the member was a witness to the matter;
  + The individual or a person in their family is related to a participant in the process; or
  + The individual is in the same Department or Work Unit as a participant in the process.

Failure of an employee or official of [Institution] to disqualify themselves or notify the Equity Coordinator of potential conflicts of interest is considered a violation of this Policy.

A Complainant or potential Complainant and the Respondent have the opportunity to object to the participation of any [Institution] official or employee or designated individual involved in the process (including the Equity Coordinator, investigator, Hearing Officer, or individual(s) designated to facilitate [Institution]’s Informal Resolution process) on the grounds of bias or conflict of interest. Any concerns about bias or a conflict of interest may be raised with the Equity Coordinator. Any concerns about bias or a conflict of interest of the Equity Coordinator may be raised with [*Institution’s President/Vice Provost*]. The investigation or proceeding will be temporarily suspended and the Equity Coordinator or another appropriate official who is not the subject of the objection will evaluate whether the objection is substantiated. The parties will be notified in writing of the findings within five (5) Calendar Days. If [Institution] employee or officials or other designated individual is found to have a bias or conflict of interest against either party, the individual will be removed from the matter and (when necessary) replaced. The investigation or proceeding will resume immediately upon a finding of no bias or conflicts, or upon the replacement of [Institution] employee or official or other designated individual, whichever is first.

# Privacy and Confidentiality

Every effort is made by [Institution] to preserve the privacy of Reports, Complaints and information shared under the Policy. The scope and extent of the privacy and confidentiality vary depending on the nature of the information and the role of the individual the information is reported to. If an individual wants to keep the details of any incident(s) of discrimination, harassment and/or retaliation confidential, the individual may speak to a Confidential Resource as outlined this Policy. Information shared with a Confidential Resource does not constitute a Report filed with [Institution].

1. Maintenance and Privacy of Records

[Institution] will maintain a record of all Reports of discrimination, harassment and/or retaliation and related evidence, documents, records, and information pertaining to the investigation and resolution of the Complaints. These will be maintained in accordance with applicable policies, procedures and legal requirements. [Institution] reserves the right to designate which [Institution] officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (“FERPA”).[[2]](#footnote-2)

1. Privacy of Information

In all cases, privacy of information about Complaints and investigations will be maintained to the extent required by law and to the extent possible given [Institution]’s obligations under the law and under this Policy. [Institution] will, to the extent permitted by law, keep confidential the identity of any individual who has made a Report or filed a Complaint under this Policy, 2) any Complainant, 3) any individual who has been reported to be the perpetrator of a Policy violation, 4) any Respondent, 5) and any witness, except as may be permitted by the FERPA, or as required by law, to carry out the purposes of any arising investigation, hearing, or judicial proceeding.

Information about the allegations will be shared with only a small group of officials that have a “need to know” the information. This may include individuals who are involved in the Institution’s response to the Complaint, which includes, but is not limited to: [*Local or Campus Police Departments/[Institution’s] Threat Assessment Team/Human Resources*]. Information will be shared as necessary with investigators, hearing panel members, decision-makers, advisors, witnesses, and the parties. The circle of people with this knowledge will be kept as limited as possible to preserve the parties’ rights and privacy.

At the beginning of the investigation process, the Equity Coordinator will inform the Complainant and the Respondent about [Institution]’s confidentiality standards and privacy measures. [Institution] does not restrict the ability of either party to a Complaint to discuss an investigation with other individuals.

The potential Complainant may request that the Equity Coordinator not share his/her name (or other identifiable information) with the Respondent, or that the Equity Coordinator take no action in response to a Report. A request for confidentiality may limit [Institution’s] ability to respond. The Equity Coordinator will evaluate a request for confidentiality or no action on a Complaint. The Equity Coordinator will make this determination on whether to respect a request for confidentiality or no action on a Complaint consistent with the following considerations: 1) the seriousness of the conduct; 2) the respective ages and roles of the Complainant and the Respondent; 3) whether there have been other complaints against the Respondent; and 4) the right of the Respondent to receive notice and relevant information before disciplinary action is sought. A Complainant will be informed of whether the request for confidentiality will be granted. .

# Investigation and Resolution Process

The following sets forth the procedures for [Institution]’s response to a Complaint or Report of an alleged violation or violations of this Policy. [Institution] affirms its commitment to the fair, equitable, and impartial resolution of all Reports and/or Complaints made under this Policy.

[Institution] will ensure that the Equity Coordinator, investigators, Hearing Officer(s), Appeal Decision-maker(s), other decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of [Institution’s] education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. [Institution} will ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant. [Institution] will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Process A (below) explains the procedures for any Report of an alleged violation or violations of the Policy (not including Reports of “Title IX Sexual Harassment”) that is received by the Equity Coordinator or a member of the faculty, staff, or other employee, with the exception of a Confidential Resource as provided in the Policy.

Process B (below) explains the procedures for Reports of “Title IX Sexual Harassment.”

# Student Withdrawal or Employee Resignation While Charges Pending

Should a student decide to voluntarily withdraw and/or not participate in the investigation and/or hearing, the process may proceed in the student’s absence to completion.

Should an employee Respondent resign while an investigation is pending, the process may be completed based on the information available. [Institution]’s records will reflect the employee’s resignation. If the investigation concludes that the preponderance of the evidence did not support that the employee Respondent violated a [Institution] policy, [Institution]’s response to any future inquiries regarding employment references for that individual may include that information. Information provided regarding employment references for any employee Respondent who resigns while an investigation is pending will also reflect that the employee resigned while an investigation was pending.

The Equity Coordinator or the investigator will take appropriate action to address the effects of the prohibited conduct upon the victim and the community.

# Sanctions/Disciplinary Actions and Remedies

Factors considered when determining a sanction or other disciplinary action may include, but are not limited to:

* The nature, severity of, and circumstances surrounding the violation;
* An individual’s disciplinary history;
* Class standing (hours earned) where necessary to determine the impact of the sanction on the Complainant, Respondent, or [Institution] community. The academic records of the parties shall not be considered in determining sanctions;
* Previous allegations involving similar conduct;
* Completion of required training related to this Policy;
* The need for sanctions to bring an end to the discrimination, harassment, and/or retaliation;
* The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation; and
* The need to remedy the effects of the discrimination, harassment, and/or retaliation on the victim and the community.

The following are the possible sanctions that will be imposed upon individuals who are found to be responsible for specific violations of this Policy. The sanctions listed below may be imposed singularly or in combination and second or subsequent offenses will receive more severe sanction. Possible sanctions include, but are not limited to:

* + **Warning:** Notice, in writing, that continuation or repetition of this Policy violation may be cause for additional disciplinary action.
  + **Censure:** A written reprimand for violating this Policy. This conduct status specifies a period of time during which the individual’s good standing with [Institution] may be in jeopardy. The student is officially warned that continuation or repetition of the prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from [Institution]. The employee is officially warned that continuation or repetition of the prohibited conduct may be cause for additional conduct action including probation, suspension, or expulsion from [Institution].
  + **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. For students, privileged activities may include, but are not limited to, elected or appointed offices, student research, athletics, some student employment, and study abroad. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other [Institution] Policy violations may result in further disciplinary action.
  + **Restitution:** Repayment to [Institution] or to an affected party for damages (amount to be determined by [Institution]) resulting from a violation of this Policy. To enforce this sanction against students, [Institution] reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.
  + **Removal from Campus Housing:** Students may be removed from [Institution] housing and/or barred from applying for campus housing due to disciplinary violations of this Policy.
  + **Suspension:** Temporary exclusion from [Institution]’s premises, attending classes, and other privileges or activities for a specified period of time, generally not to exceed one term, as set forth in the suspension notice. Notice of this action will remain in the individual’s conduct file and will be permanently recorded on a student’s academic transcript. Conditions for readmission may be specified in the suspension notice.
  + **Expulsion:** For students, permanent termination of student status and exclusion from [Institution]’s premises, privileges, and activities. This action will be permanently recorded on the student’s academic transcript. For employees, termination of employment, including permanent exclusion from [Institution]’s premises and other privileges or activities. Notice of this action will remain in the employee’s conduct file.

**Revocation of Admission and/or Degree:** For students, admission to, or a degree awarded by, [Institution] may be revoked for fraud, misrepresentation in obtaining the degree or violation of [Institution] policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

* + **Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned.

All parties are expected to comply with sanctions within the time frame specified by the sanctioning body. Failure to follow or complete the sanctions by the date specified – whether by refusal, neglect, or any other reason – may result in additional sanctions or disciplinary action under [Institution] Policy.

# Records

The Equity Coordinator or the investigator shall maintain detailed records of each matter, including individuals involved, investigative steps taken, documentation received, individuals interviewed, decisions reached, and reason(s) for the decisions reached. Complaints and information gathered in the course of an investigation will be kept private to the extent permitted by law.

For allegations of “Title IX Sexual Harassment,” [Institution] will maintain records for a period of seven (7) years of:

* Each sexual harassment investigation including any determination regarding responsibility and any recording or transcript of the hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to [Institution]’s education program, service or activity;
* Any appeal and the result therefrom;
* Any informal resolution and the result therefrom; and
* All materials used to train Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. [Institution] will make these training materials publicly available on its website.
* Records of any actions, including any supportive measures, taken in response to a Report or Complaint of “Title IX Sexual Harassment.” [Institution] will, in each instance, document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its educational programs or activities. If [Institution] decides not to provide a Complainant with supportive measures, then [Institution] will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit [Institution] in the future from providing additional explanations or detailing additional measures taken.

# Disabilities Accommodation in the Resolution Process

[Institution] is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at [Institution]. Anyone needing such accommodations or support should contact [Name, Title], who will review the request and, in consultation with the person requesting the accommodation, and the Equity Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

# Implementation

The Equity Coordinator coordinates the orientation, dissemination, implementation and supervision of the Policy and its compliance.

# Interpretation

[Institution] reserves the right to interpret this Policy and the procedures outlined herein and any vagueness or ambiguity deemed to exist in any part of this document.

The provisions of this Policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract.

# Effective Date

This Policy becomes effective at the moment of the [*Governing Body/Board of Trustees*] approval and the signature of the [*Secretary of this Board*].

# Amendments

The [*Governing Body/Board of Trustees*] may amend this policy at any time with or without prior notice.

**Process A**

**Grievance Procedures for Allegations of Discrimination and Harassment**

**(not including “Title IX Sexual Harassment”)**

The procedures outlined in Process A apply to all allegations of harassment or discrimination on the basis of a Protected Class status, as described in Section 5, involving students, trainees, faculty, staff, other employees, and third parties. The procedures below do not apply to the qualifying allegations of “Title IX Sexual Harassment,” involving students, trainees, faculty, staff, or other employees.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (*i.e.,* vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures elaborated in the respective student, faculty, and staff codes of conduct and handbooks.

[Institution] will use the preponderance of the evidence standard to determine responsibility for any alleged violation of this Policy.

In all investigations and determinations of responsibility, [Institution] will conduct an objective evaluation of all relevant evidence.

[Institution] generally will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

* + - 1. **Formal Resolution Process**

1. *Filing a Complaint*

A Complaint may be filed with the Equity Coordinator or any person with the authority to take corrective action on behalf of [Institution]. The Complaint may be filed in person, by mail, or by electronic mail by using the contact information required to be listed for the Equity Coordinator provided in this Policy.

In some instances, a Complaint may be signed by the Equity Coordinator, which alleges a potential violation of this Policy and requests that [Institution] investigate the allegation or allegations. Where the Equity Coordinator signs a Complaint, the Equity Coordinator is not a Complainant and must comply with the requirements of these procedures.

In all cases, [Institution] will give consideration to the potential Complainant with respect to whether and/or how a Complaint is initiated and/or pursued.

*2. Timeframe for Investigation and Resolution Process*

[Institution] strives to complete all investigations, hearings, and appeals within reasonably prompt timeframes. [Institution]’s goals are to complete investigations and hearings within 90-120 Calendar Days, including, if applicable, completion of the appeals process within 30 Calendar Days after receipt of the appeal and completion of the informal resolution process within 30 Calendar Days. These processes may be temporarily delayed or extended for a limited time frame for good cause. Good cause may include considerations such as the absence of a party, a party’s Advisor or witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. The Equity Coordinator will provide written notice of any delays and/or extensions to the parties and describe the reason(s) for the delays and/or extension.

*3. Intake Meeting*

Upon receipt of a Report or Complaint, the Equity Coordinator will promptly contact the Complainant for an intake meeting to inform the Complainant of the availability of supportive measures with or without the filing of a Complaint, consider the Complainant’s wishes with respect to supportive measures, and explain to the Complainant the process for filing a Complaint. If the potential Complainant is unknown, the Equity Coordinator will make reasonable efforts to identify the likely potential Complainant and reach out to that person. During the intake meeting, the Equity Coordinator will seek to get a basic understanding of the reported conduct in order to appropriately assess key facts to determine how to proceed. Follow-up intake meetings will be had as necessary.

*4. Initial Determination*

The Equity Coordinator will make an initial determination as to whether the reported conduct, if true, could constitute a violation of this Policy. This determination will be made based on information in the Report or Complaint as well as information provided by the potential Complainant during the intake meeting(s).

If the reported conduct alleges a violation of this Policy, [Institution] will proceed to an investigation. If the reported conduct does not appear to allege a violation of this Policy, the Equity Coordinator will close the matter if no Complaint has been filed or dismiss the Complaint if a Complaint has been filed.

The Equity Coordinator will promptly provide written notice to the potential Complainant of its determination to close or dismiss a Complaint or any allegations therein, the reason(s) therefore, and the appeal process available for closures and dismissals.

The Equity Coordinator will assign an impartial investigator(s), who may be an external investigator, to conduct an investigation. Upon notice of the assignment of the investigator(s), the parties will have seven (7) calendar days to raise any objections to the Equity Coordinator regarding the ability of the investigator to conduct an impartial investigation.

The parties may have the option of using formal or informal resolution procedures under this Policy. Under both options, the Equity Coordinator and/or the investigator(s) will meet with the Complainant and the Respondent separately to discuss the Complaint and the process.

[Institution] may consolidate Complaints as to allegations of violations of this Policy 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 arise out of the same facts or circumstances.

*5. Notice of the Investigation to the Parties*

The Equity Coordinator will notify the Complainant (or potential Complainant) and Respondent, in writing and simultaneously, of its decision to proceed to investigation of any alleged violation of this Policy.

In the course of the investigation, the Equity Coordinator and/or investigator will provide notice of any additional allegations to the parties if [Institution] decides to investigate allegations about the Complainant or Respondent that are not otherwise provided in the initial written notice.

1. Informal Resolution

At any time prior to reaching a determination regarding responsibility, the Equity Coordinator and/or investigator may offer and facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Informal Resolution is a voluntary, structured interaction between or among the parties that is designed to reach an effective resolution to a Report or Complaint made under this Policy. [Institution] recognizes that Informal Resolution options may, if implemented in concert with Coordinator values and legal obligations, be an appropriate means of addressing some forms of possible Prohibited Conduct reported under this Policy.

Informal Resolution is not appropriate for all forms of possible Prohibited Conduct under this Policy and the Equity Coordinator retains the discretion to determine which cases are appropriate for Informal Resolution. The Equity Coordinator will determine if Informal Resolution is appropriate based upon: 1) the willingness of the parties to participate in Informal Resolution; 2) the nature of the conduct at issue; and 3) the susceptibility of the conduct to Informal Resolution.

Participation in the Informal Resolution process is voluntary, and [Institution] will not require the parties to participate in an informal resolution process to resolve allegations of Prohibited Conduct under this Policy. The Equity Coordinator and/or investigator must obtain the parties’ voluntary, written consent to the informal resolution process. Both a Complainant and a Respondent can request to end this type of resolution and pursue an investigation at any time.

Information shared or obtained during Informal Resolution will be treated as confidential to the extent permitted by law and will not result in subsequent disciplinary actions by [Institution],unless additional action is deemed necessary to fulfill [Institution]’s legal obligations.

The Equity Coordinator will keep records of any resolution that is reached, and failure to abide by the resolution may result in appropriate responsive actions.

1. Investigation Process

All investigations will be prompt, adequate, thorough, reliable, and impartial, incorporating applicable investigation techniques, including, but not limited to, interviewing relevant parties and witnesses and obtaining available relevant evidence. [Institution] will provide periodic status updates, as appropriate, to the parties.

When investigating a Complaint and throughout the procedures under this Policy for discrimination, retaliation and non-Title IX harassment, [Institution] will—

* Provide an equal opportunity for the parties to present witnesses and evidence.
* Provide the parties with the same opportunities to have others present during the procedures under this Policy.
* [Institution] investigations may be delayed for a reasonable time when criminal charges based on the same conduct that initiated the investigative process are being investigated by law enforcement officials. [Institution] will proceed under this Policy regardless of the outcome of the law enforcement investigation or whether criminal charges are or are not filed. [Institution]’s process is separate and distinct from the criminal justice process.

1. Investigation Report
2. *Preliminary Investigation Report*

Once the investigation is complete, the investigator will prepare a Preliminary Investigation Report. The Preliminary Investigation Report is a written report that fairly summarizes relevant evidence gathered during the course of the investigation and includes the investigator’s determination as to whether the preponderance of the evidence supports that Respondent has violated this Policy.

The Preliminary Investigation Report will be provided in electronic format or in a hard copy to the parties and their Advisors for review. The parties must respond to the Preliminary Investigation Report within ten (10) Calendar Days of receipt. The parties may provide: 1) a written response to the information and findings in the Preliminary Investigation Report, including the provision of additional clarifying information; 2) identification of new witnesses; and/or 3) submission of new evidence. The investigator will review any responses provided and consider whether the responses establish a basis for additional investigation and/or for altering any information or findings in the Preliminary Investigation Report.

1. *Final Determination*

The investigator will issue a Final Determination that will include: the Preliminary Investigation Report; the parties’ responses to the Preliminary Investigation Report (if applicable); the investigator’s determinations regarding the parties’ responses (if applicable); and the investigator’s finding(s) as to whether the preponderance of the evidence supports that Respondent has violated this Policy. The Final Determination may also, if applicable, describe possible sanctions or discipline to be imposed on the Respondent or remedies to be provided for the Complainant. The Final Determination will be simultaneously provided to both parties and will be provided to the Hearing Officer.

**Process B**

**Grievance Procedures for Allegations of “Title IX Sexual Harassment”**

The procedures in Process B apply only to allegations of “Title IX Sexual Harassment” (as defined in in the Policy) involving students, trainees, faculty, staff, and other employees. If other polices are invoked, such as policies on Protected Class harassment or discrimination, the procedures in Process A shall apply. Process A may also apply to sexual harassment when jurisdiction does not fall within Process B, as determined by the Equity Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (*i.e.,* vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures elaborated in the respective student, faculty, and staff codes of conduct and handbooks.

When [Institution] has actual notice of possible “Title IX Sexual Harassment” in an education program, service or activity of [Institution] and against a person in the United States, it will respond promptly in a manner that is not deliberately indifferent, including by following the requirements of the procedures described in Process B to provide appropriate supportive measures and/or conduct an investigation of the Complaint. [Institution] will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility has been made against the Respondent, and by following the investigation and resolution process described in this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

[Institution] recognizes, and will advise the parties, that there is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the investigation and resolution process.

[Institution] will use the preponderance of the evidence standard to determine responsibility for any alleged violation of this Policy.

In all investigations and determinations of responsibility, [Institution] will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person’s status as a Complainant, Respondent, or witness.

[Institution] will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

1. Formal Resolution Process
2. *Filing a Complaint*

A Complaint may be filed with the Equity Coordinator or any person with the authority to take corrective action on behalf of [Institution]. The Complaint may be filed in person, by mail, or

by electronic mail by using the contact information required to be listed for the Equity Coordinator provided in this Policy.

In some instances (such as where a complaint is made anonymously or the Complainant requests that his or her name not be identified), a Complaint may be signed by the Equity Coordinator and allege a potential violation of this Policy and request that [Institution] investigate the allegation or allegations. Where the Equity Coordinator signs a Complaint, the Equity Coordinator is not a Complainant and must comply with the requirements of these procedures.

In all cases, [Institution] will give consideration to the potential Complainant with respect to whether and/or how a Complaint is initiated and/or pursued.

1. *Timeframe for Investigation and Resolution Process*

[Institution] strives to complete all investigations, hearings, and appeals within reasonably prompt timeframes. [Institution]’s goals are to complete investigations and hearings within 90-120 Calendar Days, including, if applicable, completion of the appeals process within 30 Calendar Days after receipt of the appeal and completion of the informal resolution process within 30 Calendar Days. These processes may be temporarily delayed or extended for a limited time frame for good cause. Good cause may include considerations such as the absence of a party, a party’s Advisor or witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. The Equity Coordinator will provide written notice of any delays and/or extensions to the parties and describe the reason(s) for the delays and/or extension.

1. *Intake Meeting*

Upon receipt of a Report or Complaint, the Equity Coordinator will promptly contact the Complainant for an intake meeting to inform the Complainant of the availability of supportive measures with or without the filing of a Complaint, consider the Complainant’s wishes with respect to supportive measures, and explain to the Complainant the process for filing a Complaint. If the potential Complainant is unknown, the Equity Coordinator will make reasonable efforts to identify the likely potential Complainant and reach out to that person. During the intake meeting, the Equity Coordinator will seek to get a basic understanding of the reported conduct so that it can appropriately assess key facts to determine how to proceed. Follow-up intake meetings will be had as necessary.

1. *Initial Determination*

The Equity Coordinator will make an initial determination as to whether the reported conduct, if true, could constitute “Title IX Sexual Harassment” as defined in this Policy. This determination will be made based on information in the Report or Complaint as well as information provided by the potential Complainant during the intake meeting(s). If the reported conduct could constitute a policy violation, [Institution] will proceed to an investigation. If the reported conduct does not appear to allege a violation of this Policy, the Equity Coordinator

will close the matter if no Complaint has been filed or dismiss the Complaint if a Complaint has been filed.

[Institution] will dismiss the Complaint as a “Title IX Sexual Harassment” Complaint if, at the time of the filing of the Complaint, the Complainant was no longer enrolled or employed by [Institution] and/or if the alleged conduct did not occur in [Institution]’s education program, service or activity, or did not occur against a person in the United States. As appropriate, [Institution] may address the allegation(s) under another provision of this Policy or under any other applicable law or regulation.

[Institution] may also dismiss the Complaint or any allegations therein, if at any time during the investigation, hearing or appeal if:

* A Complainant notifies the Equity Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations therein;
* The Respondent is no longer enrolled or employed by [Institution]; or
* Specific circumstances prevent [Institution] from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

The Equity Coordinator will promptly provide written notice to the potential Complainant of its determination to close or dismiss a Complaint or any allegations therein, the reason(s) therefore, and the appeal process available for closures and dismissals.

An impartial investigator(s), who may be an external investigator, will be assigned by the Equity Coordinator to conduct an investigation to determine if the Policy may have been violated. Upon notice of the assignment of the investigator(s), the parties will have seven (7) calendar days to raise any objections to the Equity Coordinator regarding the ability of the investigator to conduct an impartial investigation.

The parties have the option of using formal or informal resolution procedures under this Policy. However, informal resolution is not an option for Complaints of “Title IX Sexual Harassment” made by a student or students against an employee. Under both options, the Equity Coordinator and/or the investigator(s) will meet with the Complainant and the Respondent separately to discuss the Complaint and the process.

[Institution] may consolidate Complaints as to allegations of violations of this Policy 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 arise out of the same facts or circumstances.

1. *Notice of the Investigation to the Parties*

The Equity Coordinator will notify the Complainant (or potential Complainant) and Respondent, in writing and simultaneously, of its decision to proceed to investigation of any alleged violation of this Policy.

The written notification to the Complainant and to the Respondent will include the following, where known at that time:

* A description of this Policy and the Process B grievance procedures, including any available Informal Resolution processes.
* A description of the allegations potentially constituting a violation of this Policy, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting a violation of this Policy, and the date and location of the alleged incident, if known.
* Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the procedures in this Policy.
* The date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
* Notice to the parties that they may have an Advisor of their choice, who may be, but is not required to be an attorney.
* Notice to the parties of [Institution]’s student or employee code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the procedures under this Policy.

Notice to the parties that they may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a Complaint.

[Institution] will provide the Respondent with sufficient time to review the notice and prepare a response before any initial interview.

If in the course of the investigation [Institution] decides to investigate allegations about the Complainant or Respondent that are not otherwise provided in the initial written notice, the Equity Coordinator and/or investigator will provide notice of any additional allegations to the parties.

1. Informal Resolution

At any time prior to reaching a determination regarding responsibility, the Equity Coordinator and/or investigator may offer and facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Informal Resolution is a voluntary, structured interaction between or among the parties that is designed to reach an effective resolution to a Report or Complaint made under this Policy. [Institution] recognizes that Informal Resolution options may, if implemented in concert with [Institution]’s values and legal obligations, be an

appropriate means of addressing some forms of possible Prohibited Conduct reported under this Policy.

Informal Resolution is not appropriate for all forms of possible Prohibited Conduct under this Policy and the Equity Coordinator retains the discretion to determine which cases are appropriate for Informal Resolution. The Equity Coordinator will determine if Informal Resolution is appropriate based upon: 1) the willingness of the parties to participate in Informal Resolution; 2) the nature of the conduct at issue; and 3) the susceptibility of the conduct to Informal Resolution.

Participation in the Informal Resolution process is voluntary, and [Institution] will not require the parties to participate in an informal resolution process to resolve allegations of Prohibited Conduct under this Policy. Both a Complainant and a Respondent can request to end this type of resolution and pursue an investigation at any time.

The Equity Coordinator and/or investigator must obtain the parties’ voluntary, written consent to the informal resolution process. The Equity Coordinator and/or investigator will provide the parties with written notice disclosing: 1) the allegations; 2) the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming an investigation arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal resolution process; and 3) any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared.

Under Process B, Informal Resolution, even if voluntary, will not be used unless and until a Complaint is filed with the appropriate [Institution] official and will not be used to address allegations that an employee sexually harassed a student. In addition, [Institution] does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Complaints of “Title IX Sexual Harassment” under this Policy.

Each party may be accompanied by an Advisor at any meetings related to the Informal Resolution process. Information shared or obtained during Informal Resolution will be treated as confidential to the extent permitted by law and will not result in subsequent disciplinary actions by [Institution],unless additional action is deemed necessary to fulfill [Institution]’s legal obligations.

The Equity Coordinator will keep records of any resolution that is reached, and failure to abide by the resolution may result in appropriate responsive actions.

1. Investigation Process

All investigations will be prompt, adequate, thorough, reliable, and impartial, incorporating applicable investigation techniques, including, but not limited to, interviewing relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information. The Complainant and Respondent have equal procedural rights throughout the investigation and resolution of a Complaint. [Institution] will provide periodic status updates, as appropriate, to the parties.

When investigating a Complaint and throughout the procedures under this Policy, [Institution] will—

* Ensure that the burden of proof and the burden of gathering evidence rest on [Institution] and not on the parties;
* Not access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless [Institution] obtains that party’s voluntary, written consent to do so for the procedures under this Policy;
* Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
* Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
* Provide the parties with the same opportunities to have others present during the procedures under this Policy, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice.
* Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
* Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal Complaint, including the evidence upon which [Institution] does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
* Prior to completion of the investigative report, send to each party and the party’s Advisor, if any, the evidence subject to the parties’ inspection and review in an electronic format.
* Make the evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
* [Institution]’s investigations may be delayed for a reasonable time when criminal charges based on the same conduct that initiated the investigative process are being investigated by law enforcement officials. [Institution] will proceed under this Policy regardless of the outcome of the law enforcement investigation or whether criminal charges are or are not filed. [Institution]’s process is separate and distinct from the criminal justice process.
* The Complainant’s or potential Complainant’s sexual predisposition and prior sexual behavior are generally not relevant and will not be considered as evidence. However, either party’s prior sexual behavior may be offered as evidence under the following limited circumstances:
* To provide that someone other than the Respondent committed the conduct alleged by the Complainant; or
* To prove consent by offering specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent. As noted, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent.

1. Investigation Report
   * 1. *Preliminary Investigation Report*

Once the investigation is complete, the investigator will prepare a Preliminary Investigation Report. The Preliminary Investigation Report is a written report that fairly summarizes relevant evidence gathered during the course of the investigation. The Preliminary Investigation Report will include the investigator’s recommended findings as to whether the evidence supports that Respondent has violated this Policy.

The Preliminary Investigation Report will be provided in electronic format or in a hard copy to the parties and their Advisors for review at least fifteen (15) Calendar days prior to a hearing. The parties must respond to the Preliminary Investigation Report within ten (10) Calendar Days of receipt. The parties may provide: 1) a written response to the information and findings in the Preliminary Investigation Report, including the provision of additional clarifying information; 2) identification of new witnesses; and/or 3) submission of new evidence. The investigator will review any responses provided and consider whether the responses establish a basis for additional investigation and/or for altering any information or preliminary findings in the Preliminary Investigation Report.

* + 1. *Final Investigation Report*

The investigator will complete and issue a Final Investigation Report that will include: the Preliminary Investigation Report; the parties’ responses to the Preliminary Investigation Report (if applicable); the investigator’s determinations regarding the parties’ responses (if applicable); and the investigator’s recommended finding(s) as to whether the preponderance of the evidence supports that Respondent has violated this Policy. The investigator’s recommended finding(s) is not binding upon the Hearing Officer. The Final Investigation Report will be simultaneously provided to both parties and will be provided to the Hearing Officer.

1. Hearing Process

[Institution] will provide a live hearing for both parties. The Hearing Officer will determine whether the evidence supports a finding of “Responsible” under the Policy using the preponderance of the

evidence standard. The Hearing Officer will also determine any applicable sanctions or discipline for violations of the Policy.

* + 1. *Hearing Officer*

[Institution] will appoint a qualified and trained Hearing Officer. The Hearing Officer will not be the same person(s) as the Equity Coordinator, the investigator(s) or the Appeal Decision-maker.

* + 1. *Pre-Hearing Procedures*

The Equity Coordinator will notify both parties in writing of the date, time, and location of the hearing at least five (5) Calendar Days prior to the hearing. The Equity Coordinator will also contact and separately discuss with the Complainant and Respondent the hearing and sanctioning/disciplinary process.

The Complainant and Respondent shall submit to the Equity Coordinator any information they wish to present at the hearing, the name of their Advisor, a list of questions, if desired, and a list of possible witnesses at least two (2) Calendar Days prior to the hearing.

A Respondent or Complainant may request to postpone the hearing for good cause. The Respondent or Complainant shall submit to the Equity Coordinator a written request for postponement, including the reason(s) for the request, no later than five (5) Calendar Days prior to the scheduled hearing unless an unforeseen circumstance occurs. The Equity Coordinator will forward the request to the Hearing Officer, who may accept or deny the request, after considering the nature of the request and the incident at issue.

* + 1. *Hearing Procedures*

All hearings will be held in accordance with the following procedures:

1. Live hearings may be conducted with all parties physically present in the same geographic location or, at [Institution]’s discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Both the Complainant and the Respondent may choose to request that the live hearing occur with the parties located in separate rooms with technology enabling the participants simultaneously see and hear the party or the witness answering questions each as one another.
2. Both the Complainant and the Respondent are entitled to have one Advisor or support person present. If a party does not have an Advisor present at the live hearing, [Institution] will provide without fee or charge to that party, an Advisor of [Institution]’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party at the hearing. An Advisor may be dismissed if he/she attempts to directly participate in the proceedings or is otherwise disruptive, in the judgment of the Hearing Officer.
3. Both the Complainant and the Respondent may rebut unfavorable inferences.
4. Both the Complainant and the Respondent may provide an impact statement.
5. Opportunity for Cross-Examination
   * + 1. Each party’s Advisor must be permitted to ask the other party and any witnesses all relevant questions and follow up questions, including those challenging credibility.
       2. Cross-examination must be conducted directly, orally, and in real time by the party’s Advisor and never by a party personally, notwithstanding the discretion of [Institution] to otherwise restrict the extent to which Advisors may participate in the proceedings.
       3. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
       4. If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.
6. Hearing Record

[Institution] will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties, upon request to the Equity Coordinator for inspection and review.

1. Written Determination

Both the Complainant and the Respondent shall be simultaneously provided with a written determination, which will include:

* + - * Identification of the allegations, names of the parties, and name of the investigator;
      * A description of the procedural steps taken from the receipt of the Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
      * Findings of fact to support the determination;
      * Conclusions, using the preponderance of the evidence standard, regarding the application of the Policy to the facts;
      * A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions [Institution] imposes on the Respondent, and whether remedies designed to restore or preserve equal access to [Institution]’s programs and activities will be provided by [Institution] to the Complainant; and
      * [Institution]’s appeal procedures and the permissible bases for the Complainant and Respondent to appeal.

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

# F. Appeals of Title IX Sexual Harassment Dismissals or Written Final Determinations

The Respondent and/or the Complainant may appeal to the Equity Coordinator [Institution]’s closure or dismissal of a Complaint or allegations therein, or the Hearing Officer’s written determination of responsibility. The Equity Coordinator will forward any appeals to a qualified and trained Appeal Decision-maker. Either party may also appeal the sanctions or discipline imposed by the Hearing Officer. The Appeal Decision-maker will not be the same person as the Equity Coordinator, the investigator(s), the Hearing Officer or the decision-maker(s) that reached the determination regarding dismissal.

[Institution] will implement the appeal procedures equally for both parties. A request for an appeal must be submitted in writing to the Equity Coordinator for consideration by an Appeal Decision-maker within seven (7) calendar days of the issuance of the written determination.

When an appeal is filed by one party, [Institution] will notify the other party in writing that an appeal has been filed. Upon notice of the assignment of the Appeal Decision-maker, the parties will have seven (7) calendar days to raise any objections to the Equity Coordinator regarding the ability of the Appeal Decision-maker to conduct an impartial appeal. [Institution] will provide both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

An appeal must be based on one or more of the following grounds:

* **Procedural Error:** A procedural error occurred that affected the outcome of the investigation, including the findings and/or sanctions or discipline. A description of the error and its impact on the outcome of the case must be included in the written appeal.
* **New Evidence:** New evidence that was not reasonably available at the time that the determination of responsibility, closure or dismissal was made and that could affect the outcome of the case, including the findings and/or sanctions. Information that was known to the Complainant or Respondent during the investigation, but which they chose not to present, is not new evidence. A summary of this new evidence and its potential impact on the investigation findings and/or sanctions must be included in the written appeal.
  + **Conflict of Interest or Bias:** The Equity Coordinator, investigator(s), the Hearing Officer, or any other employee or individual designated by [Institution] to participate in the complaint evaluation, investigation and/or resolution process had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The role of the Appeal Decision-maker regarding appeals is limited. Appeals are not intended to be a full rehearing of the Complaint. Appeals are confined to a review of the statements submitted by the parties and the investigative and hearing record for the grounds stated above, including but not limited to evidence presented at the hearing and documentation pertinent to the grounds for appeal. The Appeal Decision-maker will dismiss the appeal if one or more of the three permitted reasons for an appeal are not asserted.

The Appeal Decision-maker will simultaneously notify both parties in writing of that outcome, including the result of the appeal and the rationale for the result. The decision shall be final.

1. This provision may not be construed to modify any rights under the Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act. [↑](#footnote-ref-1)
2. FERPA statute, 20 U.S.C. 1232g; FERPA regulations, 34 C.F.R. part 99. [↑](#footnote-ref-2)