



# UNIVERSITY OF RICHMOND

## Policy Manual

<b>Policy #:</b>	GOV-3104	<b>Policy Title:</b>	Interim Policy on Prohibiting and Responding to Sexual Harassment / Sexual Misconduct – Faculty and Staff
<b>Effective:</b>	08/22/2024	<b>Responsible Office:</b>	Compliance, Title IX and Non-Discrimination
<b>Date Approved:</b>	08/22/2024	<b>Approval:</b>	Vice President & General Counsel Chief Human Resources Officer
<b>Replaces Policy Dated:</b>	08/01/2023	<b>Responsible University Official:</b>	Director of Compliance and Title IX Coordinator

### **PURPOSE:**

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This policy is designed to foster compliance with [Title IX of the Education Amendments of 1972](#) (Title IX), Title VII of the Civil Rights Act of 1964 (Title VII), other applicable laws, and the University of Richmond’s prohibition against Sexual Harassment, including Sexual Misconduct (as defined in this policy). This policy sets forth the University’s grievance procedures for the prompt and equitable resolution of Formal Complaints of Sexual Harassment, including the requirements for reporting information that may reasonably constitute Sexual Harassment/Sexual Misconduct, and the University’s process for responding to reports and Formal Complaints alleging Sexual Harassment/Sexual Misconduct.

As a recipient of federal funds, the University of Richmond complies with Title IX which provides: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

This policy and related University policies and procedures are not contracts and do not confer contractual rights upon any individual. The University has the right to amend or modify this policy and related University policies and procedures from time to time, without prior notice. Additionally, this policy and related University policies and procedures are not intended to replicate or supersede local, state, or federal criminal or civil laws. University policies differ from the criminal and civil justice system and a finding of responsibility for conduct prohibited by this policy shall not be construed as a finding that any criminal or civil statute has been violated.

### **SCOPE:**

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This policy applies to the University of Richmond and its Education Program or Activity (as defined herein). It also applies to affiliates of the University. This policy sets forth the process for handling complaints of Sexual

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Harassment/Sexual Misconduct. For information on the University’s procedures for responding to sex discrimination, other than Sexual Harassment and Sexual Misconduct, see the related policies listed at the end of this policy.

## 1. Individuals Covered

This policy applies to all students, faculty, and staff of the University.

This Policy and the processes described herein are the same for all Complainants and Respondents regardless of gender, sexual orientation, gender identity or expression. This Policy and the processes described herein will be implemented without regard to an individual’s nationality or immigration status. The University, including the University Police Department, Title IX Coordinators, and Title IX Investigators, will not inquire into an individual’s immigration status when responding to a report of possible Sexual Harassment/Sexual Misconduct.

## 2. Locations Covered for Sexual Harassment/Sexual Misconduct

The Policy shall apply to conduct that occurs on the campus of the University, on or in Off-Campus Buildings or Property of the University, and at University sponsored activities (including off-campus education programs and activities), or on Public Property. The University will also address conduct that creates or may create a hostile environment under its Education Program or Activity even when some of the conduct alleged to be contributing to the hostile environment occurs outside the University’s Education Program or Activity or outside the United States.

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## **POLICY STATEMENT:**

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### ***GOV- 3104.1 – Policy***

The University of Richmond prohibits discrimination against applicants, students, faculty, or staff on the basis of race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity, gender expression,

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disability, status as a veteran or any classification protected by local, state, or federal law.<sup>1</sup>

This prohibition includes all Sexual Harassment/Sexual Misconduct occurring in any Education Program or Activity operated by the University in the United States, in compliance with Title IX, Title VII, and applicable implementing regulations.

As described in this policy, the University shall make reasonable efforts to investigate and appropriately address reports of Sexual Harassment/Sexual Misconduct. When the University has knowledge of conduct that may reasonably constitute Sexual Harassment/Sexual Misconduct, the University will take prompt and effective steps reasonably calculated to end such harassment or misconduct, eliminate any hostile environment or its effects, and prevent its recurrence.

For questions about this policy, including the application of Title IX and its implementing regulations, please contact the University’s Director of Compliance and Title IX Coordinator, Kristine Henderson, Fountain Hall, Suite 101, (804) 289- 8186, [khender3@richmond.edu](mailto:khender3@richmond.edu). Further information about the application of Title IX and its implementing regulations is available from the Assistant Secretary for Civil Rights, U.S. Department of Education, Office of Civil Rights, 400 Maryland Avenue, SW, Washington, DC, 20202-1100; 800-421-3481; [OCR@ed.gov](mailto:OCR@ed.gov); or <http://www.ed.gov/ocr>.

## ***GOV-3104.2 – Definitions***

- A. Campus.** The term “campus” includes any building or property owned or controlled by the University within the same reasonably contiguous geographic area of the University and used by the University in direct support of, or in a manner related to, its educational purposes, including residence halls and apartments and any building or property within or reasonably contiguous to the campus that is owned by the University, is frequently used by students, and supports University purposes.
- B. Complainant.** The term “Complainant” as used in this Policy refers to the individual who is alleged to be the victim of conduct that may constitute Sexual Harassment/Sexual Misconduct or Retaliation. The Complainant may or may not be the individual who makes the report of Sexual Harassment/Sexual Misconduct. A Complainant can be a person of any gender, sexual orientation, gender identity or gender expression. A Complainant need not be a University student, faculty, or staff member, but the administrative response and investigation described in this Policy will apply only if the Respondent is a University student, staff, or faculty member.
- C. Confidential Resource.** The term “Confidential Resource” means a University employee: (a) whose communications are privileged and confidential under federal or state law and who received information in the scope of their duties to which the privilege applies; or (b) designated by the University to provide services to persons relating to Sexual Harassment/Sexual Misconduct who receives information while providing such services. A list and contact information for the University’s Confidential Resources is available [here](#).
- D. Consent.** The term “Consent” means clear and unambiguous agreement to engage in sexual activity as evidenced by words or actions that demonstrate a knowing and voluntary willingness to engage in mutually agreed upon sexual activity. Consent cannot be gained by force, duress, intimidation, coercion, ignoring objections, or taking advantage of another’s incapacitation. Consent cannot be

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<sup>1</sup> The statement set forth in this paragraph may not be altered or amended without the approval of the University of Richmond Board of Trustees.

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inferred from silence or any other lack of active resistance. Consent cannot be inferred from the way a person is dressed. Consent cannot be assumed from the fact of spending money on another person (e.g., buying a meal on a date).

Prior Consent does not imply consent to future sexual acts. A current or prior consensual dating or sexual relationship, alone, does not imply consent to sexual activity or preclude a finding of Sexual Misconduct. In addition, consent to one type of sexual act does not automatically imply Consent to any other type of sexual act.

Consent may be withdrawn at any time through clear words or actions such as walking or running away, pushing the other party away, or attempting to physically stop the other party. Once a person withdraws consent, sexual activity must stop, regardless of the extent or nature of the sexual behavior that has occurred up to the moment that consent is withdrawn. For example, if one individual clearly says “no” and the other continues penetration or another form of sexual contact, it is Sexual Misconduct.

Consent cannot be given by the following persons:

- o Individuals who are mentally incapacitated at the time of the sexual contact in a manner that prevents them from understanding the nature or consequences of the sexual act involved, including incapacitation as a result of alcohol or drug use;
- o Individuals who are asleep, unconscious or otherwise physically helpless; and
- o Minors.

The following definitions are applicable to determining whether Consent has been given:

1. Incapacitation. Incapacitation is defined as the physical and/or mental inability to make informed, rational judgments that prevents an individual from giving valid Consent. Incapacitation may be caused by a permanent or temporary physical or mental impairment. Incapacitation may also result from the consumption of alcohol or the use of drugs.

The use of alcohol or drugs may, but does not automatically, affect a person’s ability to Consent to sexual contact. The consumption of alcohol or drugs may result in Incapacitation if the nature and degree of the intoxication go beyond the stage of drunkenness, intoxication, or reduced inhibition to the point where the individual is unable to make knowing, informed decisions or to understand the nature and consequences of the sexual act. In such case, the person cannot consent to sexual activity, regardless of their words or actions.

A person violates this policy if they have sexual contact with someone they know or should know is incapacitated or has reached the degree of intoxication that results in Incapacitation. The test of whether an individual should know about another’s Incapacitation is whether a reasonable, sober person would know about the Incapacitation. A Respondent cannot rebut a Sexual Misconduct charge merely by arguing that they were drunk or otherwise impaired and, as a result did not know that the other person was incapacitated.

A person who is passed out or unconscious is incapacitated and, therefore, is not able to Consent.

2. Coercion. Coercion is unreasonable, inappropriate pressure to engage in sexual activity. Coercive behavior is different than romantic or seductive behavior because coercive behavior involves inappropriate or unreasonable pressure to obtain Consent from another person for sexual activity.

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Continued pressure to engage in sexual activity after the other person makes it clear that they do not want to engage in, want to stop, or do not want to go further with sexual activity can be Coercion.

3. **Physical Force.** Physically restraining a person against their will, using violence or the threat of violence, or using a weapon or threatening to use a weapon constitutes physical force. An example of Physical Force includes using bodyweight to hold someone in place.
  4. **Threats.** Threats cause a person to do something that they would not have done without the threat. Examples of Threats include, but are not limited to:
    - “If you do not have sex with me, I will harm someone close to you.”
    - “If you do not do what I want, I will tell people that you are gay.”
    - “If you do not hook up with me, I will tell people you are a whore.”
    - “If you stop hooking up with me, I will kill myself.”
  5. **Intimidation.** Intimidation is defined as an implied threat. Examples of Intimidation include use of body size to block an exit, breaking or smashing items, or using looks or gestures to create fear.
- E. Education Program or Activity.** The phrase “Education Program or Activity” means all of the operations of the University. For purposes of this policy, conduct that occurs under the University’s Education Program or Activity includes but is not limited to conduct that occurs at locations, during events or under circumstances over which the University exercised substantial control over both the Respondent and the context in which the conduct took place. It also includes a building owned or controlled by a recognized student organization and conduct that is subject to the University’s Standards of Student Conduct. The University will address conduct that creates or may create a hostile environment under its Education Program or Activity even when some of the conduct alleged to be contributing to the hostile environment occurs outside the University’s Education Program or Activity or outside the United States.
- F. Formal Complaint.** The term “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment/Sexual Misconduct against a Respondent and requesting that the University investigate the allegations of Sexual Misconduct.
- G. Hostile Environment.** A “Hostile Environment” means unwelcome conduct based on sex that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe and/or pervasive that it limits or denies a person’s ability to participate in or benefit from the University’s Education Program or Activity.
- H. Hostile Environment Harassment.** The term “Hostile Environment Harassment” means unwelcome conduct on the basis of sex that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe and/or pervasive that it limits or denies a person’s equal access to participate in or benefit from the University’s Education Program or Activity or equal access to the benefits or privileges of employment. Determining whether a Hostile Environment has been created is a fact-specific inquiry.
- I. Off-Campus Buildings or Property of the University.** The term “off-campus buildings or property of the University” includes any building or property owned or controlled by the University or a student organization officially recognized by the University, that is used in direct support of, or in relation to, the University’s educational purposes, and frequently used by students.

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- J. Public Property.** The term “public property” includes streets, sidewalks, or parking facilities within the campus or immediately adjacent to and accessible from Campus.
- K. Quid Pro Quo Harassment.** “Quid Pro Quo Harassment” occurs when a faculty or staff member of the University, an authorized agent of the University or another person authorized by the University to provide aid, benefit or services under the University’s Education Program or Activity, explicitly or impliedly conditions a provision of such aid, benefit or service on an individual’s participation in unwelcome sexual conduct.
- L. Respondent.** The term “Respondent” as used in this Policy refers to the individual who has been alleged to have been engaged in conduct that may constitute Sexual Harassment/Sexual Misconduct. A Respondent can be a person of any gender, sexual orientation, gender identity or gender expression.
- M. Responsible Employees.** The term “Responsible Employee” means an employee of the University who is not a Confidential Resource and who has the authority to institute corrective measures or take action to redress alleged Sexual Harassment, including Sexual Misconduct and Sexual Violence, who has been given the duty of reporting acts of Sexual Harassment and Sexual Misconduct, to the Title IX Coordinators, has responsibility for administrative leadership, teaching, or advising, or is a person whom a student could reasonably believe has the authority to take action. A list of University employees designated as Responsible Employees is available [here](#).
- N. Retaliation.** The term “Retaliation” means intimidation, threats, coercion, or discrimination against any individual by the University, a University student, faculty, or staff member, or anyone else authorized by the University to provide aid, benefit, or service under the University’s Education Program or Activity, for the purpose of interfering with any right or privilege secured by Title IX or this policy or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in any investigation or formal resolution process.
- O. Sexual Harassment.** The term “Sexual Harassment” means conduct on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation or gender identity, that constitutes Quid Pro Quo Harassment, Hostile Environment Harassment, or Sexual Misconduct, all as defined in this policy.
- P. Sexual Misconduct.** The term “Sexual Misconduct” means Dating Violence, Domestic Violence, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Assault, Incest, and Stalking as defined in this policy.
1. Dating Violence The term “Dating Violence” means violence, including sexual or physical abuse, or the threat of such abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. Dating Violence does not include conduct that falls within the definition of Domestic Violence.
  2. Domestic Violence. The term “Domestic Violence” means conduct that would constitute a felony or misdemeanor crime of violence under Virginia law committed by: (a) a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Virginia; (b) a person with whom the Complainant shares a child in common; (c) a person who is cohabitating or has cohabitated with the Complainant as a spouse or intimate

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partner; (d) a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Virginia; or (e) any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of Virginia.

3. **Incest**. The term “Incest” means nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by applicable state law.
  4. **Non-Consensual Sexual Contact**. The term “Non-Consensual Sexual Contact: means any sexual contact that occurs without Consent. Sexual contact means physical contact committed with the intent to sexually molest, arouse or gratify any person, where one person intentionally touches another's intimate parts or clothing directly covering such intimate parts or causes a person to touch their own intimate parts or clothing directly covering such intimate parts. Examples of sexual contact include, but are not limited to, the intentional touching of a person's genitalia, groin, breast, or buttocks or the clothing covering any of those areas, or using force to cause the person to touch their own genitalia, groin, breast, or buttocks. Non-Consensual Sexual Contact may also be referenced as fondling.
  5. **Non-Consensual Sexual Intercourse**. The term “Non-Consensual Sexual Intercourse” means any act of sexual intercourse that occurs without Consent. Sexual intercourse is defined by penetration (anal, oral, or vaginal), however slight, by a penis, tongue, finger, or inanimate object. Non-Consensual Sexual Intercourse may also be referred to as rape.
  6. **Sexual Assault**. The term “Sexual Assault” means Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, and Incest. It also includes an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
  7. **Stalking**. The term “Stalking” means engaging in a course of conduct directed at a specific person (including surveillance, repeated phone calls, emails, text messages, social media messages, use of other technology or in-person contact) that would cause a reasonable person to fear for their own safety or the safety of others or to suffer substantial emotional distress. Any act that constitutes stalking under Virginia law is also prohibited under this Policy.
    - a. *Course of Conduct*. A course of conduct means two or more acts, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, another person, or interferes with another person's property.
    - b. *Substantial Emotional Distress*. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Q. Sexual Violence**. The term “Sexual Violence” means any physical sexual act or acts perpetrated against a person's will or against a person incapable of giving consent. Examples of Sexual Violence include Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, and Sexual Assault.
- R. Student**. The term “Student” includes all persons who have gained admission to the University and all persons taking courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies.
- S. Supportive Measures**. The term “Supportive Measures” means individualized measures offered as appropriate and as reasonably available to a Complainant, Respondent, or witness, without fee or charge,

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designed to: (1) restore or preserve the individual’s equal access to the University’s Education Programs and Activity or equal access to the benefits or privileges of employment; (2) protect the safety of the individuals or the campus community; or (3) provide support during an investigation, formal resolution process, or alternative resolution process under this policy. Supportive Measures are non-disciplinary and non-punitive and should not unreasonably burden the other party.

**T. Title IX Coordinator.** The term “Title IX Coordinator” refers to the University’s Title IX Coordinator, its Deputy Title IX Coordinators, and/or any designees appointed by the Title IX Coordinator or Deputy Title IX Coordinator(s).

## ***GOV-3104.3 – Roles and Responsibilities***

### **A. The Title IX Coordinator**

The University’s Title IX Coordinators are responsible for ensuring the University’s compliance with Title IX. This policy sets forth the obligations of the appropriate Title IX Coordinator upon receipt of information that may reasonably constitute Sexual Harassment or Sexual Misconduct or a Formal Complaint.

For more information on the role of Title IX Coordinators at the University, see the University’s [Title IX Coordinators Policy](#).

### **B. The University of Richmond Police Department**

The University of Richmond Police Department (URPD) is a full-service law enforcement agency accredited by the Commission on Accreditation for Law Enforcement Agencies and the International Association of Campus Law Enforcement Administrators.

URPD responds to all reports of criminal activity occurring on campus including incidents of Sexual Assault, Domestic Violence, Stalking, and Dating Violence. URPD enforces Virginia law and will coordinate certain investigations with the Commonwealth Attorney. In response to a call for service, URPD will dispatch an officer to assist the victim with filing an incident report. URPD notifies the University’s Title IX Coordinators of any report of Sexual Misconduct. The detectives from the URPD will investigate a report of criminal Sexual Misconduct occurring on the University’s campus or will assist students, faculty, and staff in reporting to other law enforcement agencies if the misconduct occurs off campus.

URPD is the designated reporter under the Jeanne Clery Disclosure of Campus Security Policy (“Clery Act”) and Campus Crime Statistics Act for the University of Richmond, issues Timely Warnings, and maintains the University’s crime log.

### **C. Human Resources Office**

The University’s Human Resources Office serves as an important source of information, support, and guidance to faculty and staff involved in a Formal Complaint or an alternative or formal resolution process under this policy. This office plays a crucial role in implementing this policy when allegations of Sexual Harassment/Sexual Misconduct involve faculty or staff members.

Geraldine Sullivan, Chief Human Resource Officer and Deputy Title IX Coordinator for Employees can be reached at (804) 289-8747.



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## *GOV-3104.4 – Reporting Sexual Harassment/Sexual Misconduct*

A. **Required Reporting.** All Responsible Employees are required to notify the Title IX Coordinator when the Responsible Employee has information about conduct involving a University student, faculty or staff member that may reasonably constitute Sexual Harassment/Sexual Misconduct. Additionally, the University strongly encourages all members of the campus community to promptly report potential Sexual Harassment/Sexual Misconduct.

B. **How to Report.** Information that may reasonably constitute Sexual Harassment/Sexual Misconduct should be reported as follows:

- *Students:* For matters involving Students as the subject of and the person engaging in the alleged Sexual Harassment/Sexual Misconduct, contact Tracy Cassalia, Deputy Title IX Coordinator for Students, at (804) 289-8464, [tcassali@richmond.edu](mailto:tcassali@richmond.edu). For matters involving a student and a faculty or staff member as either the subject of or the person engaging in alleged Sexual Harassment/Sexual Misconduct, contact Tracy Cassalia, as noted above, and she will coordinate with the Chief Human Resources Officer and Deputy Title IX Coordinator for Employees.
- *Faculty and Staff:* For matters involving faculty or staff as the subject of and person engaging in alleged Sexual Harassment/Sexual Misconduct, contact Geraldine Sullivan, Chief Human Resources Officer and Deputy Title IX Coordinator for Employees at (804) 289-8166, [geraldine.sullivan@richmond.edu](mailto:geraldine.sullivan@richmond.edu)

Information may also be provided to Kristine Henderson, Director of Compliance and Title IX Coordinator at (804) 289-8186, [khender3@richmond.edu](mailto:khender3@richmond.edu).

While the University encourages people to report concerns regarding alleged Sexual Harassment/Sexual Misconduct directly to the individuals listed above, reports may also be made via the University's Ethics and Compliance Helpline or the [online report form](#).

C. **Reporting to URPD.** All members of the University community are encouraged to report Sexual Misconduct that may constitute a crime to the URPD. Reports to URPD can be made by calling 8911 (from a campus phone) or (804) 289-8911. Members of the campus community may also contact Eric Beatty, Major, University Police at 804-289-8723, for general information about reporting options and the University's policies and procedures.

A Complainant may speak with a URPD detective before deciding whether to file a police report. A Complainant may file a report with URPD even if they have not decided whether to pursue a criminal investigation. Reporting an incident is a separate step from choosing to pursue a criminal investigation and prosecution. A Complainant who files a report with URPD, or another local law enforcement agency, is not required to continue with criminal proceedings.

The criminal investigation is independent from any investigation undertaken by the Title IX Coordinators under this Policy. However, URPD and the Title IX Coordinators will collaborate to the extent possible and will seek to avoid unnecessary burdens on the Parties.

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## *GOV-3104.5 – Immediate Actions, Help, and Resources*

### **A. Immediate Actions**

Any individual who has experienced Sexual Misconduct that may constitute a crime, is encouraged to do the following as promptly as possible, in order to preserve evidence that may assist in proving that the alleged offense occurred or may be helpful in obtaining a protective order:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence. Do not wash clothes or use the toilet. Put all clothing you were wearing at the time of the incident in a paper bag, not in a plastic bag. All physical evidence should be provided to police as soon as possible.
- Contact URPD by calling 8911 (from a campus phone) or (804) 289-8911. URPD can assist in contacting other local law enforcement agencies for incidents occurring off campus. On campus, a blue light emergency phone will connect callers directly to the [URPD](#) dispatcher.
- Get medical attention as soon as possible. A medical examination will provide any necessary treatment and collect important evidence. Injuries may not be immediately apparent.
  - It is important to seek immediate and follow-up medical attention for several reasons:
    - To assess and treat any physical injuries that may have sustained.
    - To determine the risk of sexually transmitted diseases or pregnancy and take appropriate medical measures.
    - To gather evidence that may aid criminal prosecution.
- A special hospital exam (PERK: Physical Evidence Recovery Kit) should be performed by an emergency department. Individuals can receive the exam at St. Mary's Hospital or through the Virginia Commonwealth University Health System.
  - The hospital emergency departments follow national standards for survivor care, sexual assault exams, and evidence collection procedures.
  - Anyone concerned about anonymity, can speak with hospital personnel regarding options for confidentiality. Inform the triage nurse of this request for anonymity upon arrival to an emergency room. There are many resources available to individuals that may assist with PERK exam costs, and medical personnel will provide more information. At the hospital, individuals may choose to undergo a PERK exam even if they are unsure whether they want to report the Sexual Misconduct to the police and want time to think about it. Hospital nurses will collect the evidence without revealing the identity of the individual to the authorities. The evidence will be held for at least two years before being discarded. The individual must contact the storage facility in writing for an extension beyond that point.

### **B. Counseling and Emotional Support Resources**

#### **1. On-Campus Resources**

- *Employee Assistance Program.* All employees have access to the University's Employee Assistance Program (EAP) offered through the University's insurance provider, Cigna. The EAP provides personal advocates who will work with employees and their household family members to help resolve issues they may be facing, connect them with mental

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health professionals, and direct them to a variety of helpful resources in the community. EAP can be reached 24 hours a day, seven days a week at 1-877-622-4327 or by logging onto the MyCigna website using the employer ID ‘richmond’. This resource is available to employees only.

- *Onsite Behavioral Health Counselor.* The Behavioral Health Counselor will assist employees in an environment to support and foster personal well-being. The Behavioral Health Counselor will also help employees’ access EAP services. Confidential appointments are available on Wednesdays from 10:00 am – 2:00 pm. The Onsite Behavioral Health Counselor can be reached at 804-240-8628.
- *URPD Victim/Witness Services.* The University of Richmond Victim/Witness Assistance Program is operated out of the University Police Department, which is located on the ground floor of the Special Programs Building and may be contacted by calling (804) 289-8715, 24 hours a day, seven days a week. University of Richmond Detectives serve as liaisons between the City of Richmond and the County of Henrico courts systems. Detectives assist victims to obtain services to include counseling and psychological support, guidance to area resources, and assistance through the court process.

## 2. Off-Campus Resources

- *Greater Richmond Regional Hotline.* The Greater Richmond Regional Hotline, available at (804) 612-6126, is a crisis response system for people across the region impacted or affected by domestic, intimate partner, and/or sexual violence.

Calling the hotline will connect callers to a local specialist who can offer support and information about resources and experts in the Richmond area. The hotline is available 24 hours per day, seven days a week and is open to survivors and supporters. The YWCA, Safe Harbor, and other area organizations, sponsor the hotline.

- *Safe Harbor.* [Safe Harbor](#) supports those who are experiencing or have experienced domestic and/or sexual violence. Safe Harbor offers comprehensive services for survivors of sexual and/or intimate partner violence including: a [24-hour helpline](#) at (804) 612-6126, children/youth services, community education and training, counseling, court advocacy, emergency shelter, and hospital accompaniment.
- *Virginia Anti-Violence Project.* The [Virginia Anti-Violence Project](#) offers support for lesbian, gay, bisexual, transgender, queer, and questioning survivors of sexual assault and/or intimate partner violence as well as hate-motivated violence. Virginia’s 24/7 LGBTQ+ Helpline can be reached by calling 1-866-356-6998.

## C. Other Available Resources

### 1. Transportation

The University Police are always available to transport victims of Sexual Misconduct to the hospital. To ask for transportation, call the University Police dispatcher at (804) 289-8715 and ask for immediate assistance. Members of the University Richmond Police Department are considered Responsible Employees and have an obligation to report information regarding Sexual Misconduct to the Title IX Coordinator.

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## *GOV-3104.6 – Initial Process for Addressing Notice or a Formal Complaint of Sexual Harassment/Sexual Misconduct*

### **A. Formal Complaints of Sexual Harassment or Sexual Misconduct.**

1. Formal Complaints by Members of the Campus Community. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, and must contain the Complainant's physical or digital signature.
2. Formal Complaints by the Title IX Coordinator. Under certain circumstances, the Title IX Coordinator may file a Formal Complaint even if the Complainant has elected not to do so. In those circumstances, the Title IX Coordinator will seek to balance a Complainant's request for confidentiality with the need to protect members of the campus community. Factors considered by the Title IX Coordinator will include the following:
  - The seriousness of the alleged Sexual Harassment/Sexual Misconduct;
  - Circumstances indicating increased risk of additional acts by the Respondent;
  - The Complainant's reasonable safety concerns regarding the initiation of a Complaint;
  - The basis for the Complainant's request not to proceed;
  - Prior complaints against the Respondent;
  - Any history of the Respondent's arrests;
  - Threats from the Respondent;
  - The involvement of multiple alleged perpetrators;
  - Any pattern of perpetration via drugs or alcohol at a given location or by a given group;
  - The age of Complainant; and
  - The ability of the University to gather relevant evidence.

The Title IX Coordinator may consult with the Sexual Misconduct Review Subcommittee and other University officials when considering these factors.

If the Title IX Coordinator determines that the alleged conduct presents an imminent and serious threat to the health or safety of the Complainant or another individual, or that the alleged conduct prevents the University from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate the Formal Complaint.

If the Title IX Coordinator decides to initiate a Complaint under this subsection, the Title IX Coordinator will notify the Complainant in advance and will use reasonable efforts to address reasonable concerns about the Complainant's privacy, safety, or the safety of others, including by providing Supportive Measures.

### **B. Initial Response**

The Title IX Coordinator will respond to reports of Sexual Harassment/Sexual Misconduct, regardless of whether the report is made directly by the Complainant, by another student, faculty member, staff

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member, or other third party. The Title IX Coordinator will respond to all Formal Complaints as set forth in this policy.

1. Outreach To Complainant. Upon receipt of a Formal Complaint or notice of conduct that reasonably may constitute Sexual Harassment/Sexual Misconduct within the scope of this policy, Title IX Coordinator will contact the Complainant if their identity is known in writing and offer to meet with the Complainant. The purpose of this meeting is to advise the Complainant of their rights and options under this policy and it is not intended to gather information as part of the investigation of a Complaint. When the Title IX Coordinator meets with the Complainant, the Title IX Coordinator will provide the following information:
  - The Complainant’s rights under this policy and other relevant University policies;
  - The University’s obligation to treat both the Complainant and the Respondent equitably;
  - The University’s obligation to investigate promptly a Formal Complaint of Sexual Harassment/Sexual Misconduct under this policy;
  - The Complainant’s reporting rights, including the right to pursue or not to pursue criminal action;
  - The importance of the collection and preservation of evidence;
  - The importance of seeking appropriate medical attention;
  - The available options for pursuing a protective order;
  - The Complainant’s right to participate or decline to participate in any investigation;
  - That the Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the formal resolution process;
  - That the University prohibits Retaliation as described in this policy;
  - The Complainant’s right to an advisor of their choosing and to have the advisor present at all meetings with the Title IX Coordinator, the investigator and during a formal or alternative resolution process;
  - Information about the formal resolution and alternative resolution processes and University procedures for pursuing a Formal Complaint;
  - The availability and type of Supportive Measures; and
  - The process for handling requests for confidentiality or requests to not move forward with a Formal Complaint.

The Title IX Coordinator will provide the Complainant time to consider their rights and options and to determine whether the Complainant wishes to move forward with the filing of a Formal Complaint.

2. Outreach to the Respondent. Following receipt or initiation of a Formal Complaint, the Title IX Coordinator will contact the Respondent in writing and offer to meet with the Respondent. The purpose of this meeting is to advise the Respondent of their rights and options under this policy and it is not intended to gather information as part of the investigation of a Complaint. When the Title IX Coordinator meets with the Respondent, the Coordinator will provide the following information:

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- The Respondent’s rights under this policy and other relevant University policies;
  - The University’s obligation to treat both the Complainant and the Respondent equitably;
  - The University’s obligation to investigate promptly a Formal Complaint of Sexual Harassment/Sexual Misconduct under this policy;
  - The importance of the collection and preservation of evidence;
  - The Respondent’s right to participate or decline to participate in any investigation;
  - That the Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the formal resolution process;
  - That the University prohibits Retaliation as described in this policy;
  - The Respondent’s right to an advisor of their choosing and to have the advisor present at all meetings with the Title IX Coordinator, the investigator and during a formal or alternative resolution process;
  - Information about the formal resolution and alternative resolution processes and University procedures for pursuing a Formal Complaint;
  - The availability and type of Supportive Measures; and
  - The Complainant’s right to pursue a criminal complaint, in addition to their rights under this policy.
3. Written Notice of Allegations, Procedures and Rights. Upon initiation of a Formal Complaint, the Title IX Coordinator shall provide written notice to the Complainant and Respondent, if their identities are known, that sets forth the information listed below. This written notice shall be provided with sufficient time for the Complainant and Respondent to prepare for an interview. If the Title IX Coordinator has reasonable concerns for the safety of any person as a result of providing the written notice described in this section, the Title IX Coordinator may reasonably delay providing the notice in order to address the safety concerns appropriately. Reasonable concerns must be based on an individualized safety and risk analysis and not on speculation or stereotypes. If additional allegations of Sexual Harassment/Sexual Misconduct arise in the course of an investigation, that are not included in the original Formal Complaint, or a consolidated Formal Complaint under this policy, the Title IX Coordinator shall update this notice. The content of the written notice shall include:
- a. A description of the conduct alleged in the notice or Complaint to constitute Sexual Harassment/Sexual Misconduct;
  - b. The identities of the Complainant and Respondent, to the extent known;
  - c. The date(s) and location(s) of the conduct alleged to constitute Sexual Harassment/Sexual Misconduct, to the extent known;
  - d. Other sufficient information known at the time that would allow the Complainant and Respondent to respond to the allegations;

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- e. A copy of or link to this policy and all related University policies setting forth the process for investigation and formal and alternative resolution of the allegations or Formal Complaint;
  - f. A statement that the Complainant and Respondent have the right to an advisor of their choice who may, but is not required to be an attorney, and to have the advisor present at all meetings with the Title IX Coordinator or the investigator and during any formal or alternative resolution process;
  - g. A statement that lying to University officials, including during an investigation or formal resolution process, may result in discipline up to and including termination;
  - h. A statement that Retaliation is prohibited under this policy and related University policies; and
  - i. A statement that the Complainant and Respondent are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence as provided in this policy.
4. Notification to the University Police. The Title IX Coordinator will notify the URPD of any report that may be required to be included in the crime log and disclosed under the Clery Act. Unless the Complainant wishes to make a police report, their name or other personally identifiable information will not be included in the report to the URPD, although law enforcement members of the Sexual Misconduct Review Subcommittee, described herein, may have access to identifying information. In addition, the name of a Complainant or Respondent are never published in the University's crime log, included in any timely warning message, or as part of the annual Campus Security Report required by the Clery Act.

Whether a report comes directly from a Complainant, the Title IX Coordinator or another source, the URPD may determine that a serious or continuing threat possibly exists and may release either an "emergency notification" or a "timely warning" to the campus community. Emergency notifications must be issued immediately upon confirmation of a significant emergency or dangerous situation, and timely warnings must be issued if the crime is considered by the institution to represent a serious or continuing threat. The name of the Complainant or Respondent or other personally identifiable information will never be included in emergency notifications or timely warnings. The Title IX Coordinator will attempt to notify the Complainant in advance if an emergency notification or a timely warning is going to be distributed. The Title IX Coordinator will also attempt to notify the Respondent if they have been notified of the Formal Complaint prior to issuance of an emergency notification or a timely warning.

5. Review By The Sexual Misconduct Review Subcommittee of the Threat Assessment Team. To the extent required under Virginia law, the Sexual Misconduct Review Subcommittee receives reports from the Title IX Coordinators regarding alleged violations of this policy. The Sexual Misconduct Review Subcommittee is a subcommittee of the University's Threat Assessment Team.

The membership of the Sexual Misconduct Review Subcommittee includes:

- The Title IX Coordinator;
- The Chief or Assistant Chief of the University Police Department (or a designee who shall be a sworn police officer of the University Police Department);
- The Vice President for Student Affairs (or a designee who shall be a member of the Student Development Division); and

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- Such other members of the University’s Threat Assessment Team as the Title IX Coordinator deems appropriate.

The Sexual Misconduct Review Subcommittee will convene within 72 hours of receiving the report of an incident from the Title IX Coordinator to review the information provided by the Title IX Coordinator. The responsibilities of the Sexual Misconduct Review Subcommittee include:

- Providing advice and guidance to the Title IX Coordinator regarding the investigation, appropriate Supportive Measures, and available resources for the involved individuals; and
- Determining if the disclosure of information regarding the incident, including personally identifiable information, is necessary to protect the health or safety of the Complainant or other individuals, consistent with applicable privacy laws, Title IX regulations, and this policy. If the subcommittee, or the representative from the, determines this disclosure is necessary, the representative from the URPD will immediately disclose the information, including personally identifiable information about the individuals involved, to the appropriate law enforcement agency. The Title IX coordinator will notify the Complainant in advance of any disclosure that is made.

The Sexual Misconduct Review Subcommittee will have the access to law enforcement, criminal history, education, personnel, and health records relevant to the report of Sexual Harassment/Sexual Misconduct to the extent necessary to assess any potential risk to members of the campus community and fulfill the Subcommittee’s legal responsibilities, and as permitted by applicable law.

The Sexual Misconduct Review Subcommittee when appropriate will conduct an individualized safety and risk analysis to determine if there is an imminent and serious threat to the health or safety of a Complainant or any students, employees, or individual arising from the allegations of Harassment/Sexual Misconduct and consequently, administrative leave, as described in this policy, is warranted.

After its initial meeting regarding a report, the Sexual Misconduct Review Subcommittee will reconvene upon the request of the Title IX Coordinator to provide guidance regarding a pending investigation or report or to assess and respond to potential risks or threats associated with the reported incident.

- C. Supportive Measures.** The Title IX Coordinator shall offer and coordinate Supportive Measures for Complainants and, where appropriate, Respondents and witnesses upon receipt of information about conduct that may reasonably constitute Sexual Harassment/Sexual Misconduct.
1. Types of Supportive Measures. The type of Supportive Measure(s) offered and coordinated may vary based upon the circumstances of a specific matter and the reasonable availability of the Supportive Measures. Supportive Measures include, but are not limited to, those listed [here](#).
  2. Purpose / No Unreasonable Burden. Supportive Measures shall be designed to: (i) protect the safety of a Complainant, Respondent, witness, or the campus community; or (ii) provide support to a Complainant, Respondent, or witness during an investigation, formal resolution process, or alternative resolution process. Supportive Measures are not used for punitive or disciplinary reasons. Supportive Measures should not unreasonably burden either the Complainant or the Respondent.



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## 3. Modification, Termination, or Continuation of Supportive Measures.

- a. The Title IX Coordinator may modify Supportive Measures during or after an investigation, formal resolution process, or alternative resolution process, consistent with subsection 2, above.
- b. The Title IX Coordinator may continue some or all Supportive Measures after conclusion of an investigation, formal resolution process or alternative resolution process as the Title IX Coordinator deems reasonably appropriate.

## 4. Confidentiality of Supportive Measures. The University will maintain the confidentiality of the Supportive Measures provided to a Complainant, Respondent, or witness unless the disclosure is necessary to implement the Supportive Measure(s), to restore or preserve the Complainant's or Respondent's access to the University's Education Program or Activity or equal access to the benefits or privileges of employment, or one or more of the exceptions to the confidentiality requirement set forth in this policy apply. The Title IX Coordinator may consult with the Office of Disability Services to ensure that any Supportive Measure offered is implemented in a manner consistent with applicable disability laws and regulations.

## 5. Exceptions to the Confidentiality Requirement. The University may disclose information about Supportive Measures provided to a Complainant or Respondent in the following circumstances:

- a. When the Complainant or Respondent, as applicable, has consented to such disclosure;
- b. When reasonably necessary to carry out the purposes of this policy;
- c. When such disclosure is required by federal law or regulation or by a federal grant or funding agreement, consistent with Title IX, is required by state or local law, or when permitted under applicable privacy laws.

**D. Administrative Leave.** The University may place an employee Respondent on Administrative Leave from employment responsibilities during the pendency of an investigation, formal resolution process, or alternative resolutions process, consistent with other applicable University policies and handbooks.

**E. Consolidation of Formal Complaints.** When the allegations of Sexual Harassment/Sexual Misconduct arise out of the same facts or circumstances, the Title IX Coordinator may consolidate two or more Formal Complaints of Sexual Harassment/Sexual Misconduct: (1) against the same Respondent(s); (2) against multiple Respondents; or (3) when the Complainant and Respondent initiate Formal Complaints against each other.

## **F. Dismissal of a Formal Complaint**

### 1. Basis for Dismissal of a Formal Complaint. The Title IX Coordinator may dismiss a Formal Complaint at any time prior to a final determination under formal resolution process or an agreement under an alternative resolution process for any of the following reasons:

- a. The Title IX Coordinator is unable to identify the Respondent after taking reasonable steps to do so;
- b. The Respondent is not participating in the University's Education Programs or Activity;
- c. The Respondent is not employed by the University;
- d. The Complainant voluntarily withdraws, in writing, any or all of the allegations in the Complaint, the Title IX Coordinator does not initiate a Complaint under this policy, and the Title IX Coordinator

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determines that without the withdrawn allegations, the conduct described in the remaining allegations, if any, would not constitute Sexual Harassment/Sexual Misconduct under this Policy even if proven; or

- e. The Title IX Coordinator determines that the conduct alleged in the Complaint, even if proven, would not constitute Sexual Harassment/Sexual Misconduct under this policy, provided that the Title IX Coordinator has made reasonable efforts to clarify the allegations with the Complainant.
2. Time Frame for Decision. The Title IX Coordinator shall make a decision as to whether to dismiss the Formal Complaint within thirty (30) days of receipt of information indicating a potential basis for dismissal as set forth in Section 3104.6(F)(1) of this policy. This time frame may be extended on a reasonable, case-by-case basis for good cause. The Title IX Coordinator will notify the Complainant and Respondent, in writing, of the extension and the reason for the extension.
3. Notice to Complainant and Respondent. The Title IX Coordinator shall promptly notify the Complainant, in writing, of the dismissal of a Formal Complaint and the basis for such dismissal. If the dismissal occurs after the Respondent has been notified of the Formal Complaint, the Title IX Coordinator shall notify the Respondent, in writing, of the dismissal of a Formal Complaint and the basis for such dismissal at the same time that the Complainant is notified. Such notice shall include the rights of the Complainant and Respondent to file an appeal of the dismissal and the basis for such appeal as set forth in this policy.
4. Supportive Measures and Steps to Prevent Sexual Harassment or Sexual Misconduct. If the Title IX Coordinator dismissed a Formal Complaint, the Title IX Coordinator shall:
  - a. Offer appropriate Supportive Measures to the Complainant;
  - b. Offer appropriate Supportive Measures to the Respondent if the dismissal occurs after the Respondent has been notified of the Formal Complaint; and
  - c. Take other appropriate, prompt, and reasonable steps designed to prevent Sexual Harassment/Sexual Misconduct from continuing or recurring.
5. Appeal of Decision to Dismiss Formal Complaint. A Complainant has a right to appeal the dismissal of a Formal Complaint on the grounds set forth in this policy. If the dismissal occurs after the Respondent has been notified of the Formal Complaint, then the Respondent also has a right to appeal the dismissal of the Formal Complaint on the grounds set forth in this policy.
  - a. *Grounds for Appeal*. The grounds for an appeal are as follows:
    - i. A procedural irregularity that would change the outcome of the decision to dismiss the Formal Complaint;
    - ii. The appealing party has identified and proffered new evidence that was not reasonably available at the time the Formal Complaint was initiated or the decision to dismiss was made that would change the outcome of the decision to dismiss the Formal Complaint; or
    - iii. The Title IX Coordinator or the investigator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome of the decision to dismiss the Formal Complaint.

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## b. *Process for Appeal.*

- i. The Complainant or the Respondent may file an appeal with the Director of Compliance, or their designee, (the “Appellate Officer”) within five (5) business days of being notified of the Title IX Coordinator’s decision to dismiss the Formal Complaint.
- ii. The appeal must be in writing and must be emailed to the Appellate Officer, with a copy to the Title IX Coordinator. The appeal must state the grounds for the appeal and may include a statement in support of the party’s appeal or a statement challenging the decision to dismiss the Formal Complaint.
- iii. The Title IX Coordinator will notify the parties, in writing, when an appeal is filed and, if the Respondent has not previously been notified of the Formal Complaint, the Title IX Coordinator will notify the Respondent of the allegations in the Formal Complaint.
- iv. The Appellate Officer will respond promptly to such an appeal and shall render a decision in writing within thirty (30) days of receipt of the appeal. This time frame may be extended on a reasonable, case-by-case basis for good cause. The Appellate Officer will notify the Complainant and Respondent, in writing, of the extension and the reason for the extension.
- v. The Appellate Officer will provide the Complainant and the Respondent with a copy of the decision at the same time.

## ***GOV – 3104.7 - Investigation, Formal and Alternative Resolution Process for Complaints of Sexual Harassment / Sexual Misconduct***

### **A. Overall Requirements**

1. **Prompt and Equitable Process.** This policy is intended and shall be implemented in a manner that provides a prompt and equitable resolution process for Formal Complaints of Sexual Harassment/Sexual Misconduct. This policy shall be applied in a manner that treats Complainants and Respondents equitably.
2. **Conflicts of Interest.** The Title IX Coordinator, the investigator, the Appellate Officer, and the decision-maker involved in the University’s formal resolution process or alternative resolution process shall not have a conflict of interest or a bias for or against complainants or respondents generally or the Complainant or Respondent involved in the Complaint under investigation or adjudication.
3. **Presumption.** In implementing this policy and any investigation, formal resolution process or alternative resolution process, there shall be a presumption that the Respondent is not responsible for the alleged Sexual Harassment or Sexual Misconduct until a determination is made at the end of a formal resolution process or Respondent voluntarily acknowledges their responsibility as part of an alternative resolution process.
4. **Privacy.** The Title IX Coordinator, the investigator, the Appellate Officer and others involved in the investigation, formal resolution process, and alternative resolution process will take reasonable steps to protect the privacy of the Complainant, the Respondent and any witnesses during the process. The commitment to privacy, however, shall not be implemented in a manner that restricts the ability of the Complainant and Respondent to obtain and present evidence, including by speaking to witnesses,

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consulting with family members, Confidential Resources, or advisors, or otherwise preparing for an investigation, formal resolution process, or alternative resolution process.

5. **Objective Evaluation.** The investigator and the decision-maker in a formal resolution process under this policy shall objectively evaluate all evidence that is relevant and not impermissible (as defined below), including both inculpatory and exculpatory evidence. The investigator or the decision-maker may engage in credibility assessments but shall not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness.
  - a. *Relevant Evidence, Testimony and Questions.* Evidence, testimony, and questions are considered to be relevant when they are related to the allegations of Sexual Harassment/Sexual Misconduct set forth in a Formal Complaint or otherwise under investigation or subject to adjudication in a formal resolution process. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sexual Harassment/Sexual Misconduct occurred. Evidence is relevant when it may aid a decision-maker in determining whether the alleged Sexual Harassment/Sexual Misconduct occurred.
  - b. *Impermissible Evidence, Testimony, and Questions.* The investigator and the decision-maker in a formal resolution process shall exclude and shall not consider evidence, testimony and questions that are impermissible under this policy, regardless of whether they are relevant. The following evidence, testimony and questions are impermissible:
    - i. Evidence or testimony or questions that seek to elicit information that is protected under a privilege as recognized by federal or state law, unless the person to whom the privilege is owed has voluntarily waived that privilege;
    - ii. Evidence or testimony or questions that seek to elicit information regarding records made or maintained by a physician, psychologist or other health care professional in connection with the provision of treatment, unless the person to whom the privilege is owed has voluntarily waived that confidentiality; or
    - iii. Evidence or testimony or questions that seek to elicit information regarding the Complainant's sexual interests or prior sexual conduct, unless: (a) evidence of prior sexual conduct is offered to provide that someone other than the Respondent committed the alleged conduct; or (b) the evidence, testimony or questions relate to specific incidents of the Complainant's sexual conduct with the Respondent that is offered to provide consent to the alleged Sexual Harassment/Sexual Misconduct. However, the fact of prior consensual sexual conduct between the Complainant and Respondent does not, but itself, demonstrate or imply the Complainant's consent to the alleged conduct at issue or preclude a determination of responsibility.

## **B. Investigation of Complaints of Sexual Harassment or Sexual Misconduct**

1. **Assignment of Investigator.** Upon receipt of a Formal Complaint and provided that the Complainant and Respondent have not agreed to an alternative resolution process, the Title IX Coordinator shall conduct the investigation or will engage a qualified and trained designee to conduct the investigation. The investigation will be conducted in a prompt, objective, and thorough manner.
2. **Burden of Gathering Evidence.** The University shall have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sexual Harassment/ Sexual Misconduct occurred. Neither the Complainant nor the Respondent have such a burden.

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3. Opportunity to Present Witnesses and Evidence. The investigator shall provide the Complainant and the Respondent with an equal opportunity to notify the investigator of fact witnesses, expert witnesses, and to provide inculpatory and exculpatory information to the investigator that is relevant and not impermissible under this policy. The investigator shall contact the fact witnesses identified by the Complainant and Respondent and shall interview all relevant witnesses who agree to participate in the investigation.
4. Notice of Meetings. The Title IX Coordinator or the investigator shall provide the Complainant, Respondent, and any witness with written notice of the date, time, location (if not virtual), participants and purpose of each meeting with the investigator. Such notice shall be provided with sufficient time for the Complainant, Respondent, or witness to prepare to participate in the meeting.
5. Advisors/Other Persons. The Complainant and the Respondent may be accompanied by the advisor of their choice during all meetings with the investigator. The advisor may, but is not required to be, an attorney. Neither the Complainant or Respondent may have a person other than their advisor present during meetings with the investigator.
6. Written Investigative Report. The investigator shall review all evidence gathered during the investigation and shall determine what evidence is relevant and what evidence is impermissible, regardless of its relevance. The investigative report shall not include evidence that is either irrelevant or impermissible. The investigative report shall include, as appendices, all relevant and permissible evidence and transcripts of interviews with the Complainant, Respondent and witnesses, which may be redacted to exclude statements that are irrelevant or impermissible under this policy.
7. Access and Response to the Investigative Report and Evidence.
  - a. *Access to Preliminary Report.* The Title IX Coordinator shall provide both the Complainant and the Respondent, and their respective advisors, with access to the preliminary investigative report and its appendices containing relevant and permissible information.
  - b. *Other Evidence.* Upon written request, the Complainant and the Respondent may inspect and review any evidence gathered during the investigation which is not included in the preliminary investigative report but which is directly related to the allegations in the Formal Complaint, including evidence upon which the University does not intend to rely in a formal resolution process and inculpatory or exculpatory evidence obtained by the investigator from any source.
  - c. *Response to Investigative Report.* The Complainant and Respondent will have ten (10) days from the date that access to the preliminary investigative report and any other evidence was provided to submit a written response to the preliminary investigative report and evidence which the investigator will consider prior to completion of the final report. This time frame may be extended by the Title IX Coordinator on a reasonable, case-by-case basis for good cause. The Title IX Coordinator will notify the Complainant and Respondent, in writing, of the extension and the reason for the extension.
  - d. *Access to Final Report.* The Title IX Coordinator shall provide both the Complainant and the Respondent, and their respective advisors, with access to the final investigative report and its appendices. Access shall be provided at least ten (10) days prior to a hearing under the formal resolution process.
8. Time Frame for Investigation. The time frame for the investigation will generally be 60 to 120 days, depending upon the complexity of the investigation. This time frame may be extended on a reasonable,

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case-by-case basis for good cause. The Title IX Coordinator will notify the Complainant and Respondent, in writing, of the extension and the reason for the extension.

## 9. Coordination with Pending Criminal Investigations

Except in very unusual circumstances, the Title IX investigation or formal resolution process will not be delayed because of a pending criminal investigation. When an incident is reported to both the University Police and the Title IX Coordinator, they will share information to the extent possible and as appropriate and will seek to avoid unnecessary burdens on the Complainant or Respondent.

In certain situations, law enforcement officials may request that the Title IX Coordinator temporarily suspend an investigation or formal resolution process while law enforcement officials gather evidence in a criminal investigation. The Title IX Coordinator will comply with such requests, but will promptly resume the investigation or formal resolution process as soon as they are notified that the law enforcement officials have completed gathering evidence. The suspension of the investigation or formal resolution process under these circumstances will not limit the availability of Supportive Measures or other assistance and support to a Complainant, Respondent, or witness.

## C. Alternative Resolution

1. Purpose of Alternative Resolution. Alternative resolution is a voluntary process for resolving a Formal Complaint of Sexual Harassment/Sexual Misconduct and is an alternative to the formal resolution process described in this policy. Alternative Resolution is not available for Formal Complaints alleging that a student was subjected to Sexual Harassment or Sexual Misconduct by an employee of the University. Both the Complainant and the Respondent must agree, in writing, to participate in an alternative resolution process. The alternative resolution process is designed to eliminate the reoccurrence of the prohibited conduct and provide a remedy that meets the needs of both the Complainant and Respondent while maintaining the safety of the campus community. Alternative resolution provides an opportunity for the Complainant and Respondent to discuss the Complaint and the alleged conduct and to communicate their feelings and perceptions regarding the conduct, the impact of the conduct, and their wishes and expectations regarding their conduct in the future.

If a mutually agreeable resolution is reached through the alternative resolution process, the matter will be closed and there will be no formal sanction imposed, unless the Respondent voluntarily agrees to accept a sanction.

2. Role and Discretion of the Title IX Coordinator. The Title IX Coordinator may offer the Complainant and the Respondent the option of pursuing an alternative resolution process at any time following the initiation of a Formal Complaint and prior to a final determination as to whether Sexual Harassment/Sexual Misconduct occurred under the formal resolution process. The Title IX Coordinator is not required to offer the option of alternative resolution and shall use their discretion to determine whether alternative resolution is appropriate under the circumstances. In making this determination, the Title IX Coordinator shall consider, among other factors, whether the alleged conduct would present a future risk of harm to others. If the Title IX Coordinator decides to offer the option of alternative resolution, the Title IX Coordinator shall make such offer in writing.
3. Options for Alternative Resolution. The Title IX Coordinator will discuss with the Complainant and Respondent the options for alternative resolution, which may include, among other options, the following:

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- a. A discussion between the Complainant and Respondent facilitated by a University administrator approved by the Title IX Coordinator; or
- b. Mediation conducted by a neutral, third-party mediator.

The facilitator or mediator assigned to the matter shall not be the same person who conducted or would conduct an investigation or the decision-maker in a formal resolution process.

4. Notice of Alternative Resolution. If the Complainant and Respondent agree to participate in an alternative resolution process, the Title IX Coordinator shall provide each party with a written notice that contains the following:
    - a. The allegations at issue;
    - b. A description of the alternative resolution process and its requirements;
    - c. A statement that the Complainant and Respondent each have the right, at any time prior to agreeing to a resolution, to withdraw from the alternative resolution process and initiate or continue a formal resolution process;
    - d. A statement that the parties' agreement to a resolution at the conclusion of the alternative resolution process precludes initiating or resuming a Formal Complaint or the formal resolution process arising out of the same allegations;
    - e. The potential terms that may be requested or offered in an alternative resolution agreement, including notice that an alternative resolution agreement is binding only on the parties; and
    - f. That the University will maintain the confidentiality of information shared during the alternative resolution process, to the extent permitted by law, and that such information shall not be used in a subsequent formal resolution process.
  5. Alternative Resolution Agreement. At the conclusion of the alternative resolution process, the agreement of the parties, if any, will be documented in a formal, written resolution agreement that must be approved by the Title IX Coordinator and then signed by the Complainant and Respondent. The alternative resolution agreement is binding only on the Complainant and Respondent.
  6. Termination of the Alternative Resolution Process. The University, the Complainant or the Respondent may, at any time prior to the conclusion of the alternative resolution process, elect to end such proceedings and pursue the formal resolution process instead. In such cases, statements or disclosures made by the parties in the course of the alternative resolution may not be considered in the subsequent formal resolution process.
- D. Formal Resolution Process.** If the parties have not agreed to or have terminated an alternative resolution process, as described in Section 3104.7(C) of this policy, and if the Formal Complaint has not been dismissed by the Title IX Coordinator pursuant to Section 3104.6(F) of this policy, the Formal Complaint will be adjudicated through the University's formal resolution process.
1. Student as the Respondent. If the Respondent is a student at the University, the Formal Complaint will be adjudicated under the process set forth in the University's [Standards of Student Conduct](#), Appendix A.
  2. Staff Member as Respondent. If the Respondent is a staff member of the University, the Formal Complaint will be adjudicated under the process set forth in Appendix A of this policy.

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3. Faculty Member as Respondent. If the Respondent is a faculty member of the University, the Formal Complaint will be adjudicated under the process set forth in the [Faculty Handbook](#).
4. Requirements for All Adjudication Processes. Regardless of the status of the Respondent, the formal resolution process for all Formal Complaints of Sexual Harassment/Sexual Misconduct shall meet the requirements set forth in this Section 3104.7(D)(4) and to the extent that there is a conflict between the requirements of this section and another University policy, handbook or the Standards of Student Conduct, the terms of this section shall govern.
  - a. *The Decision-Maker*. The decision-maker shall not be the Title IX Coordinator or the investigator.
  - b. *Questioning by Decision-Maker*. The decision-maker shall have the ability to question the Complainant, the Respondent, and all witnesses to adequately assess their credibility, to the extent credibility is in dispute and relevant to evaluating one or more allegations of Sexual Harassment/Sexual Misconduct.
  - c. *Questioning by the Parties' Advisors*. The advisors for the Complainant and Respondent shall be provided the opportunity to ask relevant questions and follow-up questions of the other party and all witnesses, including those challenging credibility.
  - d. *Standard of Proof*. The decision-maker shall use the preponderance of evidence standard of proof to determine whether Sexual Harassment/Sexual Misconduct occurred.
  - e. *Relevant and Not Impermissible Evidence*. The decision-maker shall consider only evidence and testimony that is relevant and not impermissible, as described in this policy.
  - f. *Notice of Determination and Right of Appeal*. The decision maker shall notify the Complainant and the Respondent, in writing, of the determination as to whether Sexual Harassment/Sexual Misconduct occurred. Such notice shall be provided to the Complainant and Respondent at the same time and shall include the following:
    - i. Identification of the allegations potentially constituting Sexual Harassment/Sexual Misconduct;
    - ii. A description of the procedural steps taken from the initiation of the Formal Complaint through the determination following the hearing;
    - iii. The findings of fact supporting the determination of the decision-maker;
    - iv. Conclusions regarding the application of the University's policies, including the Standards of Student Conduct, to the facts;
    - v. A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any sanctions imposed on the Respondent, and any remedies provided to the Complainant to restore or preserve access to the University's Education Program and Activity or access to the benefits or privileges of employment; and
    - vi. The process and basis for filing an appeal.
  - g. *Imposition of Sanctions*. The University shall not impose disciplinary sanctions on a Respondent unless there is a determination following the conclusion of the formal resolution process that the Respondent engaged in conduct prohibited by this policy, or the Respondent voluntarily agreed to such sanctions as part of an alternative resolution process. Additionally, the University shall not



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impose any disciplinary sanction for making false statements solely on the basis of the decision-maker's determination that Sexual Harassment/Sexual Misconduct occurred.

- h. *Role of the Title IX Coordinator.* If the decision-maker determines that Sexual Harassment/Sexual Misconduct occurred, the Title IX Coordinator, as appropriate, shall:
  - i. Coordinate the provision and implementation of remedies to the Complainant and any other person that the University identifies as having had equal access to the University's Education Program or Activity or equal access to the benefits or privileges of employment limited or denied by the Respondent's conduct;
  - ii. Coordinate, in collaboration with other University officials, the imposition of sanctions against the Respondent, including the notification to the Complainant of any such sanctions, to the extent legally permissible; and
  - iii. Take other appropriate, prompt, and effective steps intended to ensure that Sexual Harassment/Sexual Misconduct does not continue or recur within the University's Education Programs or Activity.

## E. Confidentiality

Obligations of the University. The University will use reasonable efforts to maintain the confidentiality of personally identifiable information obtained in the course of responding to a Formal Complaint under this policy except as permitted in this policy or permitted or required by applicable law.

## F. Retaliation

### 1. Retaliation Is Prohibited

The University prohibits Retaliation, in any form, against an individual who reports, in good faith, an actual, potential or suspected violation of this policy. As used in this policy, reporting "in good faith" means the individual making the report has a reasonable basis to believe that there has been or may have been a violation of this policy. Individuals who make frivolous or false reports shall not be deemed to be acting in good faith.

The University also prohibits Retaliation, in any form, against an individual who initiates a Complaint, participated in or refused to participate in an investigation, informal or formal resolution process, served as a witness in an investigation or hearing, or sought or initiated Supportive Measures under this policy.

2. Response to Alleged Retaliation. The University will respond to information about conduct that reasonably may constitute Retaliation or to a complaint alleging retaliation in accordance with the procedures and requirements set forth in this policy.

## RELATED POLICIES:

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GOV-3101 Policy Prohibiting Discrimination

GOV-3108 Interim Policy on Prohibiting and Responding to Sex Discrimination – Students

GOV-3107 Interim Policy on Prohibiting and Responding to Sex Discrimination – Faculty and Staff

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GOV-3106 Policy Prohibiting and Responding to Discrimination Based on Protected Status- Faculty and Staff

GOV-3102 Policy Prohibiting and Responding to Discrimination Based on Protected Status – Students

GOV-3105 Title IX Coordinator’s Policy

[Standards of Student Conduct](#)

SEC-2006 [Timely Warning Policy](#)

[Faculty Handbook](#)

## **POLICY BACKGROUND:**

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The 2024 version of this policy has been revised to narrow its scope to reports or Formal Complaints of Sexual Harassment and Sexual Misconduct. The University’s procedures for responding to reports or complaints of sex discrimination and discrimination and harassment based on protected status are set forth in the University’s Policies Prohibiting and Responding to Discrimination Based on Protected Status. At the time this policy update was finalized, there were two federal court injunctions temporarily enjoining the implementation and enforcement of Title IX regulations issued by the Department of Education in April 2024. As a result, the 2020 version of the Title IX regulations remain applicable to this policy. This policy was reviewed to ensure continued compliance with the 2020 Title IX regulations, Title VII and its implementing regulations, and the Clery Act and its implementing regulations. It was also updated to include certain procedures set forth in the 2024 Title IX regulations that were not in conflict with the 2020 regulations.

The August 2020 version this policy includes major revisions to be in compliance with the Final Rule for Non-Discrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance (Title IX) issued from the Department of Education on May 19, 2020.

The August 2021 version of this policy makes the August 2020 interim policy final.

Minor revisions made to the policy in September 2021; revised policy effective 10/1/21.

The revision for the 2022-23 school year including updating the Domestic Violence definition to reflect the reauthorization of the Violence Against Women’s Act (VAWA) and minor revisions to correct drafting errors.

Non-substantive revisions made for 2023-2024 school year to update links and contacts made in August 2023.

## **POLICY CONTACTS:**

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Director of Compliance and Title IX Coordinator Deputy Title IX and Non-Discrimination Coordinator for Students

Chief Human Resource Officer & Deputy Title IX Coordinator for Faculty & Staff

**APPENDIX A**

**Formal Resolution Process for Staff Respondents**

**A. Rights and Responsibilities of the Parties.** The Complainant and Respondent shall be afforded the following rights and responsibilities throughout the formal resolution process:

1. **Hearing.** The parties have the right to a live hearing, conducted in accordance with the procedures set forth in this Appendix. At the discretion of the Hearing Officer, the hearing may be conducted with all parties, advisors, and witnesses physically present in the same location or any or all parties, advisors, and witnesses may appear virtually with technology enabling participants to simultaneously see and hear each other. The hearing will be recorded and a transcript of the hearing shall be made available to the parties for inspection and review.
2. **Evidence.** The parties have the right to a hearing based on reliable evidence presented during the hearing process, including reasonable inferences drawn from such evidence, and reasonable determinations by the fact finder as to the credibility of witness testimony. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility shall rest with the University and not the parties to the hearing.
3. **Advisors.** The parties each have the right to the services of an advisor of their choice at a hearing and during any appeal. The parties are responsible for presenting their own information, and therefore, advisors are not permitted to present evidence, make oral arguments or statements or raise objections during a hearing. The advisor will be responsible for conducting cross examination on behalf of the party they are advising during the hearing. An advisor may request a brief recess of the proceedings to provide advice to the Respondent.

Each party should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the Hearing Board hearing, as delays normally will not be allowed due to the scheduling conflicts of an advisor.

If a party does not have an advisor present at the hearing, the University will provide an advisor of the University's choice, at no cost or fee to the party to conduct cross-examination on behalf of the party. Such advisor may be, but is not required to be, an attorney.

4. **Right Not to Participate.** Each party has the right to not participate in any meetings, proceedings, interviews or the hearing. The Hearing Board cannot draw an inference about the determination regarding responsibility based solely on the party's absence at a hearing or refusal to submit to cross examination
5. **Notice of Hearing.** The Hearing Officer shall prepare and deliver to the parties a notice of hearing. Such notice may be delivered to each party in person, by electronic mail, by U.S. Mail, or by campus mail. The date of the hearing shall not be less than seven (7) business days from the date of such notice. The time frame for conducting the hearing may be extended by the Hearing Officer, for good cause and upon

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written notice to the Respondent and Complainant setting forth the reason for the extension. The notice of hearing shall include:

- a. The name of the Complainant and Respondent;
  - b. The date, time, and location of the Hearing;
  - c. A description of the alleged sexual harassment/sexual misconduct at issue;
  - d. The date, and place of the alleged sexual harassment/sexual misconduct (if known);
  - e. The name of the Hearing Officer;
  - f. The names and titles of the voting members of the Hearing Board;
6. Objections to Investigative Report. Each party has the right to provide the Hearing Officer or their designee with their respective objections to the final Title IX investigative report prior to the hearing to be included in the hearing record.
7. Witnesses.
- a. *Witness Lists.* Each party has the right to call expert and/or fact witnesses at the hearing whose testimony is relevant to the issues before the Hearing Board and not otherwise impermissible under this policy and provided the lists of such witnesses is submitted to the Hearing Officer or their designee as specified in Section B(2) of this appendix. Each party has the right to access the list of witnesses that the Hearing Board and/or the other party intend to call at the hearing.
  - b. *Witness Statements.* If a non-party witness is not available or willing to testify at the hearing, such witness may submit a written statement. The parties will be provided an opportunity to review, but not copy, any written witness statements three (3) business days prior to the hearing. In order to ensure the confidentiality of the hearing and to protect the privacy rights of the parties and other witnesses, the Respondent/Complainant shall not copy, reproduce, disseminate or disclose to anyone other than their advisor any such witness statements and shall return such witness statements to the Hearing Officer at the conclusion of the hearing. Following the hearing, the Hearing Officer shall permit the Respondent/Complainant to have access to such witness statements to the extent needed for any appeal conducted under this policy.
8. Documentary, Electronic, and Other Evidence. Each party has the right to offer documentary, electronic and other evidence that is relevant to the issues before the Hearing Board and not otherwise impermissible. Subject to applicable privacy laws, each party has the right to review all documentary, electronic, and other evidence that the Hearing Board and/or the other party intend to present at the hearing. Neither party shall copy, reproduce, disseminate, or disclose to anyone, other than their advisor, any such evidence and shall return such evidence to the Hearing Officer or their designee at the conclusion of the hearing.

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9. Attendance at the Hearing. Each party and their respective advisors have the right to attend the entire hearing except for the deliberations of the Hearing Board and the verbal notifications of the outcome by the Hearing Officer to the to the other party.
10. Questions for Witnesses. Each party has the right to submit to the Hearing Officer a list of questions that the party wishes the Hearing Officer to ask any witness who gives oral testimony. If a party chooses to submit their initial list of questions to the Hearing Officer or their designee, they should be submitted two (2) business days prior to the commencement of the hearing. Notwithstanding the foregoing, the advisor for each party may, directly, orally, and in real time, ask the other party and any witnesses called by the other party or the Hearing Board, relevant and not otherwise impermissible questions and follow-up questions, including those challenging credibility. The Hearing Board shall use their reasonable discretion in determining the relevance or appropriateness of any proposed question submitted by a party or posed by an advisor on behalf of a party and the Hearing Officer shall not be obligated to ask or permit all of the questions proposed by the party or their advisor. The Hearing Board shall comply with this policy in determining the relevance of proposed questions and explaining any ruling on relevance. Where appropriate, a party may request a brief recess of the hearing to prepare such questions. The Hearing Officer, in their reasonable discretion, may grant or deny such request.
11. Failure to Attend Hearing. Each party has the responsibility to attend the scheduled hearing. If a party, without valid excuse or authorization from the Hearing Officer, fails to attend the hearing as scheduled, the Hearing Board may proceed in the party's absence to a determination of the matter, and if appropriate, impose sanctions. If a party's advisor fails to attend the hearing as scheduled, the University will appoint an advisor of its choice, at no cost or fee, to the Respondent for the sole purpose of conducting cross-examination on behalf of such party. If a party's advisor fails to attend the hearing, the hearing will be recessed until such time that the University can provide an alternative advisor on behalf of such party.
12. Notice of Outcome. Each party has the right to written notice of the outcome of the Hearing Board hearing, and the notice shall be provided to the Respondent and the Complainant simultaneously by 5:00 PM on the fifth (5<sup>th</sup>) business day following the conclusion of the hearing. The Hearing Officer in their discretion can extend this timeline for good cause and with written notice to the parties. The notice of outcome shall include a description of the appeal rights of the Respondent and Complainant under this appendix. The parties also has the right to written notice of any change in the outcome or sanctions imposed and notice as to when such outcome and sanctions shall be deemed final.

## **B. Hearing Procedures.**

1. Appointment of Hearing Board. The Title IX Coordinator shall select three (3) members of the University Hearing Board pool to serve on a Hearing Board to consider the charges against the Respondent. The Hearing Board will also include a qualified, non-voting Hearing Officer, who shall be responsible for the orderly conduct of the hearing and who agrees, in writing, to maintain the

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confidentiality of the proceedings. The Title IX Coordinator shall use reasonable efforts to ensure that the Hearing Board members and Hearing Officer have no bias for or against the Complainant or Respondent in the case at hand or complainants or respondents generally. The Respondent and the Complainant have the right to petition that any member of the Hearing Board or the Hearing Officer be removed on the basis of bias or conflict of interest.

## 2. Pre-Hearing Submission Deadlines.

- a. Submission of Witness Lists. The Respondent and Complainant shall provide the Hearing Officer or their designee their respective lists of witnesses by 5:00 p.m. on the seventh (7) business day before the hearing.
- b. Submission of Documentary, Electronic, and Other Evidence. The Respondent and Complainant shall submit copies of all documentary, electronic, or other evidence to the Hearing Officer or their designee by 5:00 p.m. on the fourth (4<sup>th</sup>) business day before the hearing.
- c. Statement of Objections to the Title IX Investigative Report. The Complainant and Respondent shall provide the Hearing Board with their respective objections to the final Title IX investigative report, if any, by 5:00 pm on the fourth (4<sup>th</sup>) business day before the hearing.
- d. Access to Other Party's Pre-Hearing Submissions. Upon receipt of a pre-hearing submission from either the Complainant or the Respondent, the Hearing Officer or their designee shall provide the other party with access to such submission as soon as reasonably possible and in no event, later than one (1) business day following the submission.
- e. Hearing Board Witnesses, Documentary, Electronic, and Other Evidence. The Hearing Officer or their designee shall provide the Respondent and Complainant with access to the list of witnesses to be called by the Hearing Board and any documentary, electronic, or other evidence not included in the investigative report at least third (3) business days prior to the hearing.
- f. Removal of Hearing Board Member. A party seeking the removal of a Hearing Board member must submit a written petition to the Title IX Coordinator four (4) business days prior to the scheduled hearing stating the reasons for such request. The Title IX Coordinator shall respond to such request, in writing, within two (2) business days of receipt of the request.
- g. Questions for Witnesses. The Respondent and Complainant may submit their respective lists of questions for witnesses to the Hearing Officer or their designee at least two (2) business day prior to the commencement of the hearing.
- h. Notification of Advisor for Purposes of Cross-Examination. The Respondent or Complainant shall notify the Title IX Coordinator ten (10) business days in advance of the hearing if they need the University to provide an advisor for purposes of cross-examination at the hearing.
- i. Request for Hearing to Occur via Video Conferencing. The Respondent, Complainant, or Title IX Coordinator has the right to request the hearing before the Hearing Board be conducted via video conferencing. The Hearing Officer, Hearing Board, Complainant, Respondent and any witnesses

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must be able to see and hear the party or witness providing testimony. The request for the hearing to occur via video conferencing must be made ten (10) business days in advance of the hearing.

- j. Extension of Submission Deadlines. The Hearing Officer may extend the time frame for submitting evidence, witness lists, and witness questions, at their sole discretion, and only for good cause. If timelines are extended, the Hearing Officer or their designee shall provide written notice to the parties.

### 3. Pre-Hearing Procedures.

- a. The Respondent shall be afforded the opportunity to meet (in person, by telephone or videoconference) with the Hearing Officer or their designee prior to the hearing. The purpose of this meeting is to advise the Respondent of the hearing procedures and their rights in connection with the hearing. The Respondent's advisor is permitted to attend this meeting.
- b. The Complainant shall be afforded the opportunity to meet (in person, by telephone or videoconference) with the Hearing Officer prior to the hearing. The purpose of this meeting is to advise the Complainant of the hearing procedures and their rights in connection with the hearing. The Complainant's advisor is permitted to attend this meeting.
- c. The Hearing Officer shall review all written materials prior to submission to the University Hearing Board to ensure that the hearing record does not contain irrelevant, unfairly prejudicial, or inadmissible information. The Hearing Officer will call these matters to the attention of the Hearing Board for a determination on relevancy and permissibility.

### 4. The Hearing Record.

- a. The Hearing Officer or their designee shall create a hearing record comprising the following:
  - i. The investigative report with its attachments; and
  - ii. The documentary, electronic, and other evidence submitted by the Hearing Board, the Complainant (if applicable), and the Respondent (if applicable).
- b. The Hearing Officer or their designee shall provide the Hearing Board, the Complainant, and the Respondent with access to the hearing record two (2) business days prior to the hearing.
  - i. The Hearing Officer or their designee shall ensure that there are sufficient copies of the hearing record available during the hearing for all Hearing Board members, the Respondent and their advisor, the Complainant and their advisor and for testifying witnesses to use during their testimony.
  - ii. The Hearing Officer or their designee shall convene one or more pre-hearing meetings of the members of the Hearing Board to review the charge(s), to go over the contents of the hearing record, and to answer any procedural questions. This meeting shall be held at least one (1) business day prior to the hearing.

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## 5. General Rules for Conducting the Hearing.

- a. *Closed Hearing.* Hearing Board hearings are closed to the public. The Hearing Officer will control admission of persons to the hearing. Any person not a party or witness in the hearing will be prohibited from attending the hearing. The Complainant and Respondent, and their respective advisors, shall have the right to attend the entire hearing, except for the deliberations of the Hearing Board.
- b. *The Hearing Officer.* The Hearing Officer shall preside over and conduct the hearing and has the authority described herein.
  - i. The Hearing Officer may appoint a recording secretary or other staff member as needed. The Hearing Officer shall also arrange for the preparation of a transcript of the hearing, excluding the deliberations of the Hearing Board. The hearing will be audio recorded.
  - ii. The Hearing Officer may order any person in attendance that does not conduct themselves in an orderly and respectful manner to leave. Obstructive, contemptuous, disruptive or noisy conduct in the presence of the hearing board by any person, including the Respondent, the Complainant, a witness, or an advisor, may result in that person being removed from the hearing. If a party's advisor is removed from a hearing pursuant to this section, the hearing will be recessed until such time that the University can provide an alternate advisor of the University's choice at no cost or fee to the party, in order to conduct cross examination on behalf of that party;
  - iii. The Hearing Officer shall advise the Hearing Board in its duties to control the questioning of the Respondent, the Complainant, and any witnesses by Hearing Board members, the Respondent or their advisor, and the Complainant or their advisor to protect witnesses from improper or irrelevant questions, insulting treatment, and unnecessary inquiry into their private affairs.
  - iv. The Hearing Officer may exclude witnesses from the hearing room except when they are testifying.
- c. *General Procedural Rules of the Hearing Board.*
  - i. All members of the Hearing Board must be present throughout the hearing.
  - ii. If a member of the Hearing Board must leave before the hearing is complete with good cause, the Hearing Officer may at their sole discretion recess the hearing and reconvene the hearing within one (1) business day.
  - iii. If a voting member disqualifies themselves or for good cause they must withdraw from the hearing, the Hearing Officer or their designee shall select a replacement from the Hearing Board Pool. The Hearing Officer shall, after consultation with the Respondent and the Complainant in open session, provide the replacement with a summary of all prior proceedings.
  - iv. No person shall address the Hearing Board or submit questions to the Hearing Officer for any witness (including the Respondent, the Complainant or an advisor) without first being recognized by the Hearing Officer.



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## 6. Order of the Hearing.

- a. *Summary of Allegations and Respondent's Plea.* The Hearing Officer shall read a summary of the alleged sexual harassment/sexual misconduct at issue and the Respondent shall state whether they accept or deny responsibility for such alleged conduct.
  - i. In the absence of a response, the Respondent shall be deemed not to have accepted responsibility for the alleged misconduct.
  - ii. If the Respondent does not accept responsibility for the alleged sexual harassment/sexual misconduct, evidence, and/or witness testimony admitted by the Hearing Board shall be presented that support or refute such allegation.
  - iii. If the Respondent accepts responsibility for the charge(s), evidence, witness testimony, admitted by the Hearing Board shall be presented that will assist the Hearing Board in determining a recommended sanction.
- b. *Standard of Evidence.* The Hearing Officer shall remind all parties that the standard of evidence is preponderance of the evidence, or the greater weight of the evidence presented at the hearing. It is that evidence that the finders of fact find most persuasive. A preponderance, or the greater weight of the evidence, is a matter of quality, not quantity. The testimony of one witness who is found to be credible can, for example, be greater than the weight of two witnesses who have no first-hand knowledge or poor recollections of the event in question.
- c. *Opening Statements.* The Respondent and Complainant shall be provided an opportunity to make an opening statement.
- d. *Procedures for Oral Testimony / Presentation of Evidence.*
  - i. The Title IX Coordinator shall not testify as a witness.
  - ii. The investigator may be called to testify as a witness.
  - iii. The Respondent, the Complainant and all witnesses shall testify under oath or affirmation.
    - i. The members of the Hearing Board shall be given the opportunity to ask questions of the Respondent, Complainant, and all witnesses.
    - ii. The Hearing Officer will ask questions submitted by the party calling the witness.
    - iii. The advisor for the Respondent and Complainant shall conduct cross-examination on behalf of their respective party. Advisors shall have the opportunity to cross examine the other party, witnesses called by the other party, and witnesses called by the Hearing Board. Any party or witness may choose not to offer evidence or submit to cross-examination at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in cross-examination. The Hearing Board can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Hearing Board may not draw inference solely from a party's or witness's absence from the hearing or

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- refusal to submit to cross-examination. The advisor cannot yell, berate or talk over the party/witness when conducting cross-examination.
- iv. The members of the Hearing Board shall have the opportunity to ask questions of the parties and all witnesses.
  - iv. The members of the Hearing Board shall direct the Hearing Officer to call witnesses and/or present evidence.
  - v. The Respondent and Complainant shall have the opportunity to testify, present evidence, and call witnesses.
- e. *Closing Statements.* Prior to the initial deliberations by the Hearing Board, the Respondent and Complainant shall be given the opportunity to make a closing statement to the Hearing Board. This statement shall not address the impact of the incident, the investigation or the hearing, on the Respondent or Complainant.
  - f. *Hearing Board Deliberations.* The Hearing Officer will excuse all parties so that the members of the Hearing Board may deliberate in private on the issue of responsibility for the charges at issue.
  - g. *Initial Notification to the Parties.* After deliberations on the issue of responsibility are completed, the Hearing Officer shall meet separately with the Respondent and Complainant to notify them of the decision of the Hearing Board on the issue of responsibility.
  - h. *Impact Statements.* If the Hearing Board finds the Respondent responsible for the charges at issue, the hearing will be reconvened after the notice required herein. The Respondent and Complainant will each have an opportunity to make an impact statement to the Hearing Board regarding the issue of sanctions and the impact of the conduct on them.
  - i. *Deliberations on Sanctions.* The Hearing Officer will excuse all parties so that the members of the Hearing Board may deliberate in private on the issue of sanctions.
  - j. *Initial Notification of Sanctions.* After deliberations on the issue of sanctions are completed, the Hearing Officer shall meet separately with the Respondent, to notify the Respondent of the sanctions recommended by the Hearing Board and the effective date of such sanctions. The Hearing Officer will meet separately with the Complainant and notify them of the sanctions that relate directly to their complaint.
  - k. *Written Notification of Finding and Sanctions/Appeal Rights.* The Hearing Officer will also provide information to the Respondent and Complainant related to written notification of the decision and appeal rights.
  - l. *Adjournment.* The Hearing Officer will adjourn the hearing.

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## 7. Deliberations of the Hearing Board.

- a. The voting members of the Hearing Board shall deliberate in private and reach a decision based only upon the evidence introduced at the hearing. The Hearing Officer is present during the deliberation, but does not have a vote.
- b. The members of Hearing Board shall not make any finding of fact that is not supported by the evidence presented at the hearing. In making findings of fact the members of the Hearing Board shall apply the preponderance of evidence standard.
- c. If a majority of Hearing Board members find the Respondent responsible for the alleged sexual harassment/sexual misconduct, the recommendation of the Hearing Board shall be that the Respondent be found responsible.
- d. If the Respondent is found responsible, the recommended sanction generally shall be determined in accordance with Section D of this appendix. The Hearing Officer will notify both parties of the agreed upon sanction.
- e. The Respondent and Complainant have the right to a written notice of outcome and sanctions (if applicable) of the Hearing Board hearing including:
  - i. Identification of the allegations;
  - ii. A description of the procedural steps taken from the receipt of the formal complaint through the determination including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding the application of this Policy to the facts;
  - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
  - vi. A listing of all relevancy determinations made during the hearing;
  - vii. Disciplinary sanctions (if any) imposed on the Respondent;
  - viii. Remedies (if any) that will be provided to the Complainant designed to restore or preserve equal access to the University's Education Program or Activity; and
  - ix. The basis and procedures for an appeal.

The written notice of outcome shall be furnished to the Respondent and the Complainant simultaneously.

8. Advice and Assistance for the Hearing Officer and Hearing Board. At any time during the formal resolution process, the Hearing Officer and the Hearing Board may seek advice and assistance from the Title IX Coordinator, the University's General Counsel, or their designee. Such advice and guidance shall generally be limited to procedural matters, interpretative matters, or legal matters and shall not go to the ultimate issues of responsibility or the appropriate sanction.

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**C. Sanctions.** In cases where there is a finding of responsibility for sexual misconduct or sexual harassment by the Hearing Board, that same Board will make a determination regarding appropriate sanctions in accordance with the [University's Progressive Discipline Policy](#).

## **D. Appeal of Findings**

1. Grounds for Appeal. The Respondent or a Complainant, may only appeal a finding of the Hearing Board on the following grounds:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time of the determination regarding responsibility was made that could affect the outcome of the matter;
  - c. The Title IX Coordinator, investigator(s), or Hearing Board member(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Respondent or Complainant that affected the outcome.
2. Filing an Appeal. A Complainant or Respondent wishing to appeal the findings of the Hearing Board, must file a written appeal with the Executive Vice President and Chief Operating Officer of the University, with a copy to the Title IX Coordinator. The appeal must be filed within five (5) working days from the date the Complainant and Respondent were notified of the findings and sanctions.

The appeal must include the following:

  - The basis for the appeal, which must be detailed and consistent with the grounds for appeal set forth above; and
  - Any factual information supporting the basis for the appeal.
  - Both the Complainant and the Respondent will be provided a reasonable and equal opportunity to submit a written statement in support of or challenging the appeal.
3. Appeal Committee. The appeal will be considered by an Appeal Committee of three or more members of the University Hearing Board pool. The Respondent and, where applicable, the Complainant, has the right to petition that any member of the appeal committee be removed on the basis of bias or conflict of interest. The Executive Vice President and Chief Operating Officer shall respond to such request, in writing.

The committee may elect to seek additional information from the Title IX Coordinator, the Respondent or the Complainant's supervisor and any other person(s) it deems necessary for a full review of the facts. The committee will make a recommendation based upon a standard of clear and convincing evidence to the Executive Vice President for Business and Chief Operating Officer. The decision of the Executive Vice President and Chief Operating Officer to approve, disapprove, or modify the recommendation shall be final.

The decision on a request for an appeal shall be made within thirty (30) days of the receipt of the appeal, unless there is good cause for a reasonable extension of this time period. In which event, the Title IX Coordinator shall provide written notice to the Respondent, and the Complaint setting forth the reason for the extension.

## GOV-3104 – Interim Policy on Prohibiting and Responding to Sexual Harassment / Sexual Misconduct –Faculty and Staff

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Upon reaching a decision on a request for an appeal, the Executive Vice President and Chief Operating Officer shall provide written notification of their decision to the Respondent, the Complainant, and to the Title IX Coordinator.