



UNIVERSITY OF RICHMOND

Policy Manual

Policy #:	GOV-3104	Policy Title:	Interim Policy on Preventing and Responding to Discrimination and Sexual Misconduct Involving Faculty or Staff
Effective:	08/14/2020	Responsible Office:	Compliance and Title IX
Date Approved:	08/14/2020	Approval:	Vice President and General Counsel
Replaces Policy Dated:	July 1, 2018	Responsible University Official:	Vice President and General Counsel Senior Associate Vice President for Human Resources Director of Compliance and Title IX Coordinator

PURPOSE:

This policy is designed to foster the University of Richmond's commitment to the principle that every University of Richmond student, faculty and staff member has the right to work and learn in an environment free from discrimination and harassment.

SCOPE:

This policy applies to the University of Richmond and all of its Affiliates. As used in this policy, the term "Affiliates" means organizations or entities in which the University owns a controlling interest or has the right to elect the majority of the entity's governing board.

This policy sets forth the process for handling complaints of discrimination and harassment.

Sexual Misconduct. Sexual misconduct is a type of sex discrimination. The University's [Policy Prohibiting Sexual Misconduct](#) specifies, in detail, the University's prohibition of sexual misconduct and the process by which reports of sexual harassment involving students, faculty, and staff are investigated by the University.

This policy details the process for handling complaints of sex discrimination and sexual misconduct following completion of an investigation as described in the [Policy Prohibiting Sexual Misconduct](#). This policy and the University's [Policy Prohibiting Sexual Misconduct](#) are intended to complement each other.

Academic Freedom. This policy is not intended to and shall not be used to limit or restrict, in any manner, academic freedom, including, but not limited to, the curricular or pedagogical choices of faculty members. Members of the University community are expected to promote academic freedom, including the freedom to discuss all relevant matters in the classroom; to explore all avenues of scholarship, research, and creative expression; and to speak or write as a public citizen without institutional restraint or discipline. Members of

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the University community are also expected to foster intellectual honesty and freedom of inquiry and to respect those with differing views.

If a report or complaint relates to an academic issue, including, but not limited to, the selection of course materials, the content of a course, the content of a class discussion, or course assignments and projects, the dean of the appropriate school shall evaluate the report or complaint and conduct any follow-up that may be warranted.

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POLICY STATEMENT:

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, disability, status as a veteran or any classification protected by local, state, or federal law.

The University also prohibits any form of harassment based on race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity, gender expression, disability, status as a veteran or any classification protected by local, state, or federal law. The University prohibits such harassment by all students, faculty and staff, and Affiliates of the University.

As a recipient of federal funds, the University complies with federal laws prohibiting discrimination, including Title IX of the Education Amendments of 1972 (Title IX). Title IX provides that: “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.”

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The University is committed to preventing and responding to conduct that violates its non-discrimination policy. Any individual whose conduct violates this policy will be subject to remedial action in accordance with applicable University policies and procedures.

The University of Richmond shall make reasonable efforts to investigate and appropriately address reports of discrimination and harassment (as defined in this policy). Upon receipt of a complaint, report, or information about possible discrimination or harassment, the University will respond in an effort to stop such conduct, eliminate any hostile environment, take reasonable steps to prevent a recurrence of such conduct, and address any effect that such conduct may have on the larger University community.

For questions about discrimination in education, including sex discrimination, please contact the University's Director of Compliance and Title IX Coordinator, Kristine Henderson, Puryear Hall, Suite 101, (804) 289-8186, khender3@richmond.edu or the University's Senior Associate Vice President for Human Resources and Deputy Title IX Coordinator for Employees, Carl Sorensen, Weinstein Hall, (804) 289-8166, csorensen@richmond.edu. Further information about Title IX and sexual discrimination in education 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; or at the website: <http://www.ed.gov/ocr>.

GOV-3104.2 – Definitions

Complainant: The Complainant is any individual who is alleged to be the victim of conduct that could constitute sexual misconduct or discrimination. The Complainant may or may not be the individual who makes the report of 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, alumnus, faculty, or staff member, but, in such case, the administrative response and investigation described in this Policy will apply only if the Respondent is a University student, staff, or faculty member. The University Police Department will respond to reports of crimes within the Department's jurisdiction regardless of the status of the Complainant and Respondent

Discrimination: Discrimination is inequitable treatment by the University or its Affiliates based on an individual's Protected Status, as defined in this policy, that adversely affects a term or condition of an individual's employment or limits or denies an individual's opportunity to participate in or benefit from a University program or activity.

Harassment: Harassment is unwelcome conduct directed against an individual, based on that individual's Protected Status, as defined in this policy, that is sufficiently severe, persistent **OR** pervasive such that it limits or denies an individual's employment, academic performance, or ability to participate in or benefit from University programs or activities.

Protected Status: For purposes of this policy, the term protected status means an individual's race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity, gender expression, disability, status as a veteran or any classification protected by local, state, or federal law.

Respondent: Respondent is any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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A Respondent can be a person of any gender, sexual orientation, gender identity or gender expression. The University Police Department will respond to reports of crimes within the Department's jurisdiction regardless of the status of the Complainant and Respondent

Sexual Misconduct: As used in this policy, the term sexual misconduct is defined under the [University's Policy Prohibiting Sexual Misconduct](#).

GOV-3104.3– Reporting Concerns about Discrimination or Harassment

The University strongly encourages prompt reporting of incidents that may constitute discrimination or harassment.

Any member of the University community who believes that they may have been or knows someone who may have been discriminated against or subjected to harassment, including sexual harassment, in violation of the University's policy, should report that concern or those concerns as follows:

- *Students:* For matters involving students either as the subject of the alleged discrimination or harassment or as the person alleged to be discriminating or engaging in misconduct, contact:

Tracy Cassalia, Deputy Title IX Coordinator for Students, at (804) 289-8464, tcassali@richmond.edu

For disability related concerns, contact:

Emily J. Helft, M.Ed., Ed.S., Director, Disability Services, at (804) 289- 8615, ehelft@richmond.edu

- *Faculty and Staff:* For cases involving faculty or staff as the subject of possible discrimination or harassment, please contact:

Carl Sorensen, Deputy Title IX Coordinator for Employees and Senior Associate Vice President of Human Resource at (804) 289-8166, csorensen@richmond.edu.

You may also contact:

Kristine Henderson, Director of Compliance and Title IX Coordinator at (804) 289-8186, khender3@richmond.edu.

While the University encourages people to report concerns regarding alleged discrimination directly to the individuals listed above, reports may also be made via the University's Ethics and Compliance Helpline. The Ethics and Compliance Helpline can be reached at (804) 287-1800 or by submitting an [online report](#).

Reporting Concerns about Sexual Misconduct

For more information on reporting sexual misconduct, see the University's [Policy Prohibiting Sexual Misconduct](#). Unless designated as a confidential resource under the University's [Policy Prohibiting Sexual Misconduct](#), all University employees designated as Responsible Employees are required to report incidents of possible sex discrimination and sexual misconduct to the University's Title IX Coordinators. The definition of Responsible Employees can be found in the University's [Policy Prohibiting Sexual Misconduct](#).

The University has adopted a [policy](#) that prohibits retaliation or retribution, in any form, against an individual who reports, in good faith, an actual, potential or suspected violation of this policy.

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GOV-3104.4 – The Role of the Title IX Coordinators

The University's Title IX Coordinators are responsible for ensuring the University's compliance with Title IX of the Education Amendments of 1972. Additionally, the appropriate Title IX Coordinator will investigate any report or complaint of discrimination or harassment prohibited by this policy.

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

GOV-3104.5 – Responding to a Report of Discrimination, Harassment or Sexual Misconduct

The following process applies to complaints of discrimination, harassment or sexual misconduct involving University staff or faculty members as the Respondent. For information on the process for complaints involving students as the Respondent, see the University's [Policy Prohibiting Sexual Misconduct](#) and/or the [Policy on Preventing and Responding to Discrimination Against Students](#). The Deputy Title IX Coordinator for Employees or their designee will respond to information or reports of possible discrimination regardless of whether a formal complaint is made.

For matters involving allegations of sexual misconduct including sexual harassment under Title IX: The Deputy Title IX Coordinator for Employees or their designee will ensure the process for responding to a report, including the provision of appropriate supportive measures is in accordance with the University [Policy Prohibiting Sexual Misconduct](#).

For matters involving allegations of discrimination and harassment: The Deputy Title IX Coordinator for Employees or their designee will meet with the person making the report or on whose behalf the report is made (the "Complainant") to review the Complainant's concerns, to explain the University's procedures for handling a complaint of discrimination, to determine whether an investigation is warranted and to discuss with the Complainant the options for formal and alternative resolution of the complaint.

Supportive Measures

After gathering preliminary information from the Complainant and considering any request by the Complainant for confidentiality, the Deputy Title IX Coordinator for Employees, or their designee, will determine whether supportive measures are reasonable and appropriate during the pendency of an investigation or complaint process to protect the Complainant and/or the campus. Examples of supportive measures include, but are not limited to:

- Issuing a "no contact order" or a "no trespass order;"
- Allowing the Complainant to take a paid leave of absence pending completion of the formal resolution process;
- Placing the accused individual on a paid or unpaid leave of absence pending completion of the formal resolution process; and
- Working with the supervisor for the Complainant and/or accused individual to prevent or address retaliation.

For a detailed description of other supportive measures that may be implemented in cases alleging sexual misconduct including sexual harassment under Title IX please see the [Policy Prohibiting Sexual Misconduct](#).

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GOV-3104.6 - The Process for Alternative Resolution of a Complaint for Matters not Involving Allegations of Sexual Misconduct

Purpose of Alternative Resolution

Alternative resolution provides an opportunity for the Complainant to discuss their complaint with the Respondent and to communicate their feelings and perceptions regarding the incident, the impact of the incident, and their wishes and expectations regarding protection in the future. The Respondent will have an opportunity to respond. The Complainant may, at their option, seek to resolve the matter informally, but will not be required to pursue an alternative resolution before filing a formal complaint. Additionally, a Complainant may terminate the alternative resolution process at any time and initiate a formal resolution process.

For matters involving sexual misconduct, the Deputy Title IX Coordinator for Employees or their designee shall ensure that an alternative resolution be carried out in accordance with the University's [Policy Prohibiting Sexual Misconduct](#).

Discussion with Human Resources Staff Present

The Complainant may wish to discuss their complaint with the Respondent in a discussion facilitated by a member of the University's Human Resources office. In such case, the Complainant should notify the Deputy Title IX Coordinator for Employees or their designee to pursue this option. The Deputy Title IX Coordinator for Employees or their designee will make an independent assessment as to whether alternative resolution is appropriate, given the nature of the allegation, and, if it is, will coordinate such a discussion. The Respondent will be encouraged, but not required, to participate in the alternative resolution.

If, during the course of the alternative resolution, the Respondent elects to take responsibility for the alleged conduct, the alternative resolution process will be concluded and the Human Resources staff member will propose a sanction. If both the Complainant and the Respondent agree to such proposed sanction, the complaint will be resolved without any further rights to a hearing or appeal by either party.

If the Respondent does not take responsibility for the alleged conduct, or either the Complainant or the Respondent object to such proposed sanction, the matter will be handled in accordance with the formal resolution process outlined below.

The University, the Complainant, or the Respondent may, at any time prior to the conclusion of the alternative resolution, elect to end such proceedings and initiate the formal resolution process instead. In such cases, statements or disclosures made by the parties in the course of the alternative resolution may be considered in the subsequent formal resolution.

GOV-3104.7 -The Process for Formal Resolution of a Complaint for Matters NOT Involving Allegations of Sexual Misconduct

A. Filing a Formal Complaint

A Complainant has the option to pursue a formal resolution of their complaint regarding a possible violation of this policy. As stated above, the Deputy Title IX Coordinator for Employees or their designee may require that the complaint be resolved through formal rather than alternative resolution. Additionally, as indicated above, a formal complaint is not required to initiate an investigation of a report or other

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information indicating a possible violation of this policy. A Complainant may file a formal complaint with the Deputy Title IX Coordinator for Employees. Formal complaints alleging violation of this policy should be filed in a timely manner, ordinarily within thirty (30) days of the offending conduct, or shortly after the conclusion of the alternative resolution process, usually within ten (10) working days. However, no complaint will be dismissed solely on the basis of the time it was filed.

The formal complaint must be in writing and must include the following:

- A statement that the Complainant intends for the document submitted be treated as a formal complaint;
- The date or approximate date on which the alleged behavior occurred;
- The identity of the person(s) allegedly responsible;
- A specific description for the conduct or behavior upon which the complaint is based; and
- The names of all witnesses to the conduct or behavior at issue (if any) and any evidence supporting the complaint, including attaching any tangible evidence or documentation.

The formal complaint must be signed and dated by the Complainant.

B. Confidentiality

For cases in which the Complainant wishes to keep their name, the name of the Respondent, and other information confidential or decides not to file a formal complaint under this policy, the Deputy Title IX Coordinator for Employees, or their designee will gather as much information as reasonably possible about the alleged discrimination or harassment.

The University will respond to this information as it deems necessary to protect the campus community, while seeking to respect the Complainant's request for confidentiality. The Deputy Title IX Coordinator for Employees will inform the Complainant that keeping the Complainant's name confidential or declining to identify the accused individual may limit the University's ability to thoroughly investigate and respond to the alleged violation of this policy. The Deputy Title IX Coordinator for Employees will also inform the Complainant that in some cases it may not be possible to ensure confidentiality.

For information on how requests for Confidentiality are handled in cases involving potential sexual misconduct, see the [University's Policy Prohibiting Sexual Misconduct](#).

C. Investigation

If an investigation is warranted and the person accused of the discrimination or harassment is a student, the Deputy Title IX Coordinator for Students or their designee will conduct the investigation or shall engage the University's Title IX investigator to conduct the investigation. The investigation will be conducted in a prompt, objective, and thorough manner. The time period for such investigation may vary depending upon the complexity of the investigation. In the case of an allegation of sexual misconduct, the Deputy Title IX Coordinator for Students shall ensure that the investigation is conducted in accordance with the [University's Policy Prohibiting Sexual Misconduct](#).

If an investigation is warranted and the person accused of the discrimination or harassment is a member of the faculty or staff, the Deputy Title IX Coordinator for Employees or their designee shall conduct the investigation. In the case of a faculty member, the Title IX Coordinator for Employees or

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their designee shall coordinate such investigation with the dean of the faculty member's school. If the accused individual is the dean, the Deputy Title IX Coordinator for Employees or their designee shall coordinate such investigation with the Provost and Executive Vice President for Academic Affairs.

The Deputy Title IX Coordinator for Employees or their designee will investigate all reports of possible discrimination or harassment about which he or she becomes aware, regardless of the source of the report or information. The nature and extent of the investigation will vary based on the specific circumstances of the incident, but in all cases the investigation will be prompt, fair and impartial. The time period for such investigation may vary depending on the complexity of the investigation.

As part of that investigation, the Deputy Title IX Coordinator for Employees or their designee will interview the Complainant and the Respondent and any witnesses and will gather relevant evidence.

At the conclusion of the investigation, the Deputy Title IX Coordinator for Employees or their designee, will share a summary of the investigative findings with the Complainant and the Respondent, and other appropriate officials at the University. The Deputy Title IX Coordinator for Employees or their designee will also determine based upon a preponderance of evidence whether the incident should be referred for further evaluation of potential disciplinary charges or other remedial action. The Deputy Title IX Coordinator for Employees or their designee may consult with other appropriate University officials for evaluation of potential disciplinary action or remedial action under applicable University policies and procedures.

If the Deputy Title IX Coordinator for Employees determines based upon a preponderance of the evidence, that there is not enough information to warrant an evaluation of potential disciplinary action or remedial action, he or she will close the investigation. The investigation may be reopened when and if additional evidence becomes available. Additionally, even if the Deputy Title IX Coordinator for Employees determines that there is not enough information to warrant an evaluation of potential disciplinary action or remedial action, they will evaluate and, where appropriate implement other types of supportive measures for the Complainant, the Respondent, witnesses, or other involved individuals, such as issue or continuing a "no contact" order, implementing or continuing other workplace accommodations, or facilitating access to counseling or other support services.

Additionally, in collaboration with other University officials, the Deputy Title IX Coordinator for Employees will consider and, where appropriate, implement remedial actions targeted at the broader campus community, such as increased monitoring or security at the location where the conduct occurred, creating additional education or training, and revising and publicizing the University's policies and resources.

D. Advisors

In cases involving alleged sexual misconduct, the Complainant and the Respondent each have the right to the services of an advisor of their choice. The advisor may be an attorney. The Complainant and the Respondent may have their advisors attend any appeal proceeding, as described herein, and any other related meeting, hearing, or investigative interviews.

In all other cases, the Complainant and Respondent may have an advisor who is an employee of the University present at any appeal proceeding described herein.

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The role of the advisor is to provide support, guidance, and advice to the Complainant or Respondent. Other than providing advice and guidance directly to the Complainant or Respondent, advisors are not permitted to participate in the appeal proceeding, other related meetings or interviews, including, but not limited to making oral arguments or statements, questioning witnesses, or raising objections during a proceeding. An advisor may request a brief recess of the proceedings to provide advice to the Complainant or Respondent. In matters involving allegations of sexual misconduct including sexual harassment under Title IX, the party's advisor will be responsible for all cross examination during a hearing.

GOV-3104.8 - The Process for Formal Resolution of a Complaint for Matters Involving Allegations of Sexual Misconduct

A. Filing a formal Complaint

The Deputy Title IX Coordinator for Employees or their designee will ensure the process for responding to a report, including confidentiality and the provision of appropriate supportive measures is in accordance with the [University Policy Prohibiting Sexual Misconduct](#).

B. Administrative Leave

The University may place a non-student employee respondent on administrative leave during the pendency of the formal resolution process.

C. Hearing

If the Respondent is a faculty member, the hearing process shall be governed by the provisions of the Faculty Handbook and other applicable policies and procedures.

If the Respondent is a staff member, the hearing process shall be as follows:

Appointment of Staff Hearing Board

The Deputy Title IX Coordinator for Employees or their designee shall select five (5) members of the University Hearing Board to serve on a Staff Hearing Board to consider the charges against the Respondent. The Staff Hearing Board will also include an independent, qualified third-party non-voting Hearing Officer, who shall be responsible for the orderly conduct of the hearing and who agrees, in writing to maintain the confidentiality of the proceedings. The Deputy Title IX Coordinator for Employees or their designee should use reasonable efforts to ensure that the Staff 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 Deputy Title IX Coordinator for Employees or their designee shall notify the Complainant and the Respondent of the names of the proposed Staff Hearing Board members and the Hearing Officer.

The Respondent and the Complainant have the right to petition that any member of the Staff Hearing Board or the Hearing Officer be removed on the basis of bias or conflict of interest. The party must submit a written petition to the Deputy Title IX Coordinator for Employees at least ninety-six (96) hours prior to the scheduled hearing seeking removal of a member of the Staff Hearing Board or the Hearing Officer stating the reasons for such request. The Deputy Title IX Coordinator for Employees

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or their designee shall respond to such request, in writing, within forty-eight (48) hours of receipt of the request.

D. Rights and Responsibilities of the Respondent

The Respondent shall be afforded the following rights and responsibilities throughout the hearing process:

- i. Hearing. The Respondent has the right to a live hearing, conducted in accordance with the procedures set forth in this Policy. 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 Respondent for inspection and review.
- ii. Evidence. The Respondent has 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.
- iii. Advisor. The Respondent has the right to the services of an advisor of their choice. The Respondent is responsible for presenting their own information, and therefore, advisors are not permitted to participate in any hearing before a Staff Hearing Board, including, but not limited to making oral arguments or statements or raising objections during a hearing. The advisor will be responsible for conducting cross examination on behalf of the Respondent during the hearing. An advisor may request a brief recess of the proceedings to provide advice to the Respondent.

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

If the Respondent 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 Respondent to conduct cross-examination on behalf of the Respondent. Such advisor may be, but is not required to be an attorney.

- iv. Right Not to Participate. The Respondent has the right to not participate in any meetings, proceedings, interviews or the hearing. If, however, a Respondent chooses to be absent from a hearing or attends the hearing and does not submit to cross examination, the Staff Hearing Board cannot rely on any statements made by the Respondent in reaching a determination regarding responsibility. The Staff Hearing Board cannot draw an inference about the determination regarding responsibility based solely on the party's presence at a hearing or refusal to submit to cross examination
- v. Notice of Hearing. The Hearing Officer shall prepare and deliver to the Respondent a notice of hearing. Such notice may be delivered to the Respondent 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) or more

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than twenty (20) days from the date of such notice. The notice of hearing shall include:

- a. The name and address of the Respondent;
- b. The date, time, and location of the Staff Hearing Board Hearing;
- c. A description of the alleged misconduct at issue including the specific policy section allegedly violated;
- d. The date, and place of the alleged misconduct (if known);
- e. The name of the Complainant;
- f. The name of the Hearing Officer;
- g. The names and titles of the voting members of the Staff Hearing Board;
- h. A statement that the Respondent is presumed to be not responsible for the alleged misconduct until a determination is made at the conclusion of the hearing and any appeal process that the Respondent is responsible;
- i. A statement that the Respondent may have an advisor who may be, but is not required to be, an attorney;
- j. A statement that pursuant to the University's Policy Prohibiting Retaliation making a report "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 applicable laws or regulations or University policies or that there is a reasonable possibility that such a violation may occur in the near future. Individuals who make frivolous or false reports shall not be deemed to be acting in good faith.

vi. Right to inspect evidence:

- a. The Respondent has a right to inspect and review any evidence that is obtained as part of the investigation and that is directly related to the allegations, including evidence that the University does not intend to rely on in reaching a determination regarding responsibility including both inculpatory and exculpatory evidence. Neither the Respondent nor the Respondent's advisor have a right to reproduce the evidence in any manner.
- b. The Respondent will have 10 days after receipt of the above referenced evidence to submit a written response which the investigator will consider prior to completion of the investigative report.
- c. The University will provide the Respondent and their advisor with a complete investigative report that fairly summarizes relevant evidence at least 10 days prior to a hearing by the Staff Hearing Board for review and written response. Neither the Respondent, nor their advisor will have the right to reproduce the investigative report in any manner.

vii. Witness List. The Respondent has the right to receive the list of witnesses that the Staff Hearing Board and the Complainant intend to call at a hearing. The witness list must be

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submitted to the Hearing Officer of their designee by 5:00 pm on the fourth (4th) day before the hearing.

- viii. Documentary Evidence. Subject to applicable privacy laws, including FERPA, the Respondent has the right to review all documentary evidence that the Staff Hearing Board and the Complainant intend to present at the hearing. All documentary evidence must be submitted to the Hearing Officer of their designee by 5:00 pm on the fourth day (4TH) before the hearing.

In order to ensure the confidentiality of the disciplinary hearing and to protect the privacy rights of the Respondent, Complainant, and other witnesses, the Respondent shall not copy, reproduce, disseminate, or disclose to anyone other than their advisor any such documentary evidence and shall return such documentary evidence to the Hearing Officer at the conclusion of the hearing. Following the hearing, the Hearing Officer shall permit the Respondent to have access to such documentary evidence to the extent needed for any appeal conducted under this policy.

- ix. Attendance at the Hearing. The Respondent and their advisor have the right to attend the entire hearing except for the deliberations of the Staff Hearing Board. The Hearing Officer shall have the ability to arrange for the participation of the Respondent or the Complainant in all or part of the hearing by real-time video conferencing. If the Respondent chooses to participate in the videoconference option, the Hearing Officer or their designee must be notified at least forty-eight (48) in advance of the scheduled hearing.
- x. Right to Offer Evidence and Witness Testimony. The Respondent has the right to offer evidence and oral testimony of witnesses that is relevant and reasonably related to the issues before the Staff Hearing Board
- xi. Questions for Witnesses. The Respondent has the right to submit to the Hearing Officer a list of questions that the Respondent wishes the Hearing Officer to ask any witness who gives oral testimony. If the Respondent chooses to submit their initial list of questions to the Hearing Officer or their designee, they should be submitted at least twenty-four (24) hours prior to the commencement of the hearing. Notwithstanding the foregoing, the advisor for the Respondent may, directly, orally, and in real time, ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. The Hearing Officer shall use their reasonable discretion in determining the relevance or appropriateness of any proposed question submitted by the Respondent or posed by an advisor on behalf of the Respondent and the Hearing Officer shall not be obligated to ask or permit all of the questions proposed by the Respondent or their advisor. The Hearing Officer shall comply with 34 C.F.R. §100.45(b)(6)(i) in determining the relevance of proposed questions and explaining any ruling on relevance. Where appropriate, the Respondent 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.
- xii. 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.

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- xiii. Closed Hearing. Staff 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. The Respondent shall have the right to attend the entire hearing, except for the deliberations of the Staff Hearing Board.
- xiv. Failure to Attend Hearing. The Respondent has the responsibility to attend the scheduled hearing. If the Respondent, without valid excuse or authorization from the Hearing Officer, fails to attend the hearing as scheduled, the Staff Hearing Board may proceed in the Respondent's absence to a determination of the matter, and if appropriate, impose sanctions. If the Respondent'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 the Respondent.
- xv. Notice of Outcome. The Respondent has the right to written notice of the outcome of the Staff Hearing Board hearing, and the notice shall be provided to the Respondent and the Complainant simultaneously by 5:00 PM on the fifth business day following the conclusion of the hearing. The Hearing Officer at 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 Policy. The Respondent 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.
- xvi. Privacy of the Respondent. The Respondent has the right to preservation of privacy, to the extent reasonably possible and allowed by law. The Respondent has the right not to have irrelevant prior sexual or relationship history or physical or mental health history admitted as evidence in a Staff Hearing Board hearing. The Respondent has the right not to have released to the public by University officials any personally identifiable information about the Respondent, without their consent, except to the extent such disclosure is required by applicable law, regulation, or court order.

E. Rights and Responsibilities of the Complainant.

The Complainant shall be afforded the same rights as and shall have the same responsibilities of the Respondent as outlined in this Policy.

F. Pre-Hearing Submission Deadlines.

- i. 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 fourth (4th) day before the hearing.
- ii. 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 (4th) day before the hearing.
- iii. 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 twenty-four (24) hours following the submission.

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- iv. Staff Hearing Board Witnesses, Documentary, Electronic, and Other Evidence. The Hearing Officer or their designee shall provide the Respondent & Complainant with access to the list of witnesses to be called by the Staff Hearing Board and any documentary, electronic, or other evidence not included in the investigative report at least three (3) days prior to the hearing.
- v. Questions for Witnesses. The Respondent & Complainant may submit their respective lists of questions for witnesses to the Hearing Officer or their designee at least twenty-four (24) hours prior to the commencement of the hearing.
- vi. 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.

G. Pre-Hearing Procedures.

- i. 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.
- ii. 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.
- iii. The Hearing Officer shall review all written materials prior to submission to the Staff Hearing Board to ensure that the hearing record does not contain irrelevant, unfairly prejudicial, or inadmissible information, as determined by the Hearing Officer in their reasonable discretion.

H. The Staff Hearing Board and the Hearing Officer

The Hearing Officer shall create a hearing record comprising the following: (a) the hearing written notice to the Respondent; (b) the investigative report with its attachments; (c) the documentary, electronic, and other evidence submitted by the Staff Hearing Board, the Complainant (if applicable), and the Respondent; and (e) the hearing transcript, following completion of the hearing.

1. The Hearing Officer or their designee shall provide the Complainant and the Respondent with access to the hearing record at least forty-eight (48) hours prior to the hearing.
 - i. The Hearing Officer or their designee shall convene one or more pre-hearing meetings of the members of the Staff 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 twenty-four (24) hours prior to the hearing.
 - ii. The Hearing Officer or their designee shall ensure that there are sufficient copies of the hearing record available during the hearing for all Staff Hearing Board members, the Respondent, the Complainant (if applicable), for testifying witnesses to use during their testimony.

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2. 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 as needed. The Hearing Officer shall also arrange for the preparation of a transcript of the hearing, excluding the deliberations of the Staff Hearing Board. The Hearing will be audio recorded.
 - ii. The Hearing Officer may control the admission of persons to the hearing. 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 may control the questioning of the Respondent, the Complainant, and any witnesses by Staff Hearing Board members, the Respondent or their advisor, and the Complainant or their advisor to protect witnesses from improper 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.
3. General Procedural Rules of the Staff Hearing Board.
 - i. All members of the Staff Hearing Board must be present throughout the hearing.
 - ii. If a member of the Staff 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 twenty-four (24) hours.
 - iii. If a voting member disqualifies themselves or for good cause they must withdraw from the hearing, the Hearing Officer shall select a replacement from the Staff Hearing Committee. 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 Staff 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.

I. The Hearing

1. Order of the Hearing:
 - i. The Hearing Officer shall read a summary of the alleged misconduct at issue to the Respondent and the Respondent shall state whether they accept or deny responsibility for such alleged misconduct. 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 misconduct, evidence, and/or

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witness testimony admitted by the Hearing Officer 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 Officer shall be presented that will assist the Staff Hearing Board in determining a recommended sanction.
- iv. 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 whom you find 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. The preponderance of the evidence standards is sometimes described as a “more likely than not” standard.
- v. The Respondent and Complainant shall be provided an opportunity to make an opening statement.
- vi. The members of the Staff Hearing Board shall direct the Hearing Officer to call witnesses and/or present evidence.
- vii. The Respondent and Complainant shall have the opportunity to testify, present evidence, and call witnesses.
- viii. Prior to the initial deliberations by the Staff Hearing Board, the Respondent and Complainant shall be given the opportunity to make a closing statement to the Staff Hearing Board. This statement shall not address the impact of the incident, the investigation or the hearing, on the Respondent or Complainant.
- ix. The Hearing Officer will excuse all parties so that the members of the Staff Hearing Board may deliberate in private on the issue of responsibility for the charges at issue.
- x. After deliberations on the issue of responsibility are completed, the Hearing Officer shall meet with the Respondent and Complainant to notify them of the decision of the Staff Hearing Board on the issue of responsibility.
- xi. If the Staff 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 have an opportunity to make an additional statement to the Staff Hearing Board regarding the issue of sanctions and the impact of the conduct on the Respondent.
- xii. The Hearing Officer will excuse all parties and so that the members of the Staff Hearing Board may deliberate in private on the issue of sanctions.
- xiii. After deliberations on the issue of sanctions are completed, the Hearing Officer shall meet with the Respondent, to notify the Respondent of the sanctions recommended by the Staff Hearing Board and the effective date of such sanctions. The Hearing Officer will notify the Complainant of the sanctions that relate directly to their complaint.
- xiv. The Hearing Officer will also provide information to the Respondent and Complainant related to written notification of the decision and appeal rights.

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- xv. The Hearing Officer will adjourn the hearing.
2. Procedure for Oral Testimony.
 - i. The investigator may be one of the witnesses called to testify.
 - ii. The Respondent, the Complainant and all witnesses shall testify under oath or affirmation.
 - iii. The members of the Staff Hearing Board shall be given the opportunity to ask questions of the Respondent, Complainant, and all witnesses.
 - iv. The Hearing Officer will ask questions submitted by the party calling the witness.
 - v. The advisor for the Respondent and Complainant shall conduct cross-examination on behalf of their respective party.
 - vi. The members of the Staff Hearing Board shall have the opportunity to ask questions of the parties and all witnesses.
 3. Deliberation of the Staff Hearing Board.
 - i. The voting members of the Staff 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.
 - ii. The members of Staff 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 Staff Hearing Board shall apply the preponderance of evidence
 - iii. If a majority of Staff Hearing Board members find the Respondent responsible for the alleged misconduct, the recommendation of the Staff Hearing Board shall be that the Respondent be found responsible.
 - iv. If the Respondent is found responsible, the recommended sanction generally shall be determined in accordance with the University's [Progressive Disciplinary Policy](#). The Hearing Officer will notify both parties of the agreed upon sanction.
 - v. The Hearing Officer shall write a determination regarding responsibility after the Staff Hearing Board has reached its decision that will include:
 - (1) Identification of the allegations;
 - (2) A description of the procedural steps taken from the receipt of the formal complaint through the determination including notifications the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
 - (3) Findings of fact supporting the determination;
 - (4) Conclusions regarding the application of the [Policy Prohibiting Sexual Misconduct](#) to the facts;
 - (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

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- (6) The bases and procedures for an appeal;
 - (7) The members of the Staff Hearing Board shall sign the statement, and the statement will be placed in the case file. The statement shall be furnished to the Respondent and the Complainant simultaneously.
4. Advice and Assistance for the Hearing Officer and Staff Hearing Board.

At any time during the formal resolution process, the Hearing Officer and the Staff Hearing Board may seek advice and assistance from the Deputy Title IX Coordinator for Employees or 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.

GOV-3104.9 - Sanctions

A. Staff Members

For cases involving Discrimination and Harassment:

If the accused individual is a staff member and the Deputy Title IX Coordinator for Employees, or their designee, determines that there is sufficient evidence to support a finding that the accused individual violated this policy then the Deputy Title IX Coordinator for Employees, or their designee, shall, after consultation with the accused individual's supervisor, determine the appropriate disciplinary and/or remedial action and shall notify the Respondent of the outcome in accordance with the University's [Progressive Discipline Policy](#).

For cases involving sexual misconduct including sexual harassment under Title IX:

In cases where there is a finding of sexual misconduct or sexual harassment under Title IX by the Staff Hearing Board, that same Board will make a determination regarding appropriate remedies in accordance with the [University's Progressive Discipline Policy](#).

B. Faculty Members

If the accused individual is a faculty member, sanctions shall be determined in accordance with the Faculty Handbook and all other applicable policies and procedures.

GOV-3104.10 - Appeal of Findings and/or Remedies

A. Staff Members

1. For cases involving Discrimination and Harassment:

The Respondent, or where applicable, a Complainant may appeal findings of the investigation or the recommended remedial action on the following grounds:

- A witness in the investigation lied and such witness' account was both material and adverse to the appealing party;
- New evidence of a material nature is available that was not and could not have been available at the time of the investigation;

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- The appealing party was denied their rights, as specifically set forth in University policies and procedures, during the investigation; or
- The remedial action imposed on the Respondent is disproportionate to the findings.

2. *For cases involving sexual misconduct including sexual harassment under Title IX:*

The Respondent or a Complainant, may only appeal a finding or recommended remedial action 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 affected by the outcome.

3. *Filing an Appeal*

A Complainant or Respondent wishing to appeal the findings of an investigation or the remedial action imposed against the Respondent, must file a written appeal with the Executive Vice President and Chief Operating Officer of the University. The appeal must be filed within ten (10) 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.
- In matters involving sexual harassment under Title IX, 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.

4. *Appeal Committee*

The appeal will be considered by an Appeal Committee of three or more persons to be appointed by the Executive Vice President and Chief Operating Officer of the University. In cases involving sexual misconduct or sexual harassment under Title IX, the Executive Vice President and Chief Operating Officer shall select three members of the University Hearing Board pool to serve on the appeal committee. 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 Appeal committee will meet with the Complainant and/or Respondent at a mutually convenient time.

The committee may also elect to meet separately with the Deputy Title IX Coordinator for Employees or their designee, the Respondent or the Complainant's supervisor and any other person(s) it deems

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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 Deputy Title IX Coordinator for Employees or their designee shall provide written notice to the Respondent, and the Complaint setting forth the reason for the extension.

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 Deputy Title IX Coordinator for Employees.

B. Faculty Members

The appeal process for faculty members shall be conducted in accordance with the provisions of the Faculty Handbook and other applicable faculty policies and procedures.

GOV-3104.11 - Retaliation is Prohibited

All members of the University community, including faculty, staff and students, who have a good faith concern regarding possible violations of this policy are expected to report such concerns to the Title IX Coordinators.

The University prohibits retaliation or retribution, 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.

Anyone who engages in or attempts to engage in retaliation or retribution against an individual who reports, in good faith, an actual, potential or suspected violation of this policy shall be subject to discipline in accordance with the policies and procedures of the University.

RELATED POLICIES:

GOV-3101 - Policy Prohibiting Discrimination

GOV-3102 - Policy Prohibiting Sexual Misconduct

GOV-3103 - Policy on Preventing and Responding to Discrimination and Harassment Against Students

Standards of Student Conduct

Faculty Handbook

POLICY BACKGROUND:

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

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Assistance (Title IX) issued from the Department of Education on May 19, 2020.

POLICY CONTACTS:

Director of Compliance and Title IX Coordinator

Senior Associate VP for Human Resources & Deputy Title IX Coordinator for Faculty & Staff