



## TITLE IX SEXUAL HARASSMENT POLICY

This policy is written to comply with the federal regulations on sexual harassment found in 34 CFR Part 106, including those regulations which became effective on August 14, 2020, and covers only conduct subject to those regulations. Conduct, which is not subject to the regulations effective August 14, 2020, is addressed in the Bushnell University Sexual Misconduct Policy and other policies for students and in various policies and procedures for employees and other individuals.

It is Bushnell University's policy to provide an educational environment free of all forms of sex discrimination, including but not limited to unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communications constituting sexual harassment. Sexual harassment, including acts of sexual assault, is a form of sex discrimination and is prohibited by Bushnell.

The University's goal is to foster an open and safe community where these behaviors are deemed unacceptable, where those who are affected are provided support, and where a fair and impartial grievance process is provided to all parties.

The University is firmly committed to complying with all applicable laws and governmental regulations. This commitment applies to all educational programs and activities, including admissions, financial aid, athletics, and other University programs and activities.

The University has two policies that address sexual misconduct: (1) the University Sexual Misconduct policy, and (2) this policy. These policies are inter-related and must be read together. If allegations that are the basis of a formal complaint would constitute prohibited conduct under both the University Sexual Misconduct policy and this Title IX Sexual Harassment policy, the grievance process set forth in the Title IX Sexual Harassment policy will be applied in the investigation and adjudication of all of the allegations.

This Title IX Sexual Harassment policy applies only to certain conduct defined under this policy. Conduct not falling under the scope of this policy may be addressed under other University policies. Specifically, this policy applies to forms of sexual misconduct that do not fall under the scope of the University Sexual Misconduct Policy. The University Sexual Misconduct Policy applies to complaints alleging certain conduct that would otherwise be prohibited under this policy (e.g., Quid Pro Quo Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking), but which must be dismissed under this policy because they do not meet that policy's and the federal government's jurisdictional requirements.

### **1. Designation of Title IX Coordinator**

Federal regulations require the University to designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX and 34 CFR Part 106, which employee must be referred to as the "Title IX Coordinator." The University must notify applicants for admission and employment, students, and employees of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this policy. For Bushnell University, those individuals are:

- Jocelyn Hubbs, Vice-President for Student Development, Title IX Coordinator
  - [jhubbs@bushnell.edu](mailto:jhubbs@bushnell.edu),
  - 541-684-7291,
  - office is located in Womack Hall 1<sup>st</sup> Floor
  
- Jen Little, Director of Residence Life & Student Services, Deputy Coordinator
  - [jlittle@bushnell.edu](mailto:jlittle@bushnell.edu),
  - 541-684-7252,
  - office is located in Womack Hall 1<sup>st</sup> Floor
  
- Chad Meadors, Assistant Athletics Director & Women’s Basketball Coach, Deputy Coordinator
  - [cmeadors@bushnell.edu](mailto:cmeadors@bushnell.edu),
  - 541-684-7201,
  - office is located in Morse Center Gym 1<sup>st</sup> Floor

The mailing address for each of these persons is 828 E. 11<sup>th</sup> Ave., Eugene, Oregon 97401.

The University’s Title IX Coordinator must be informed of all reports or formal complaints of violations of this policy.

## **2. Prohibited Conduct and Reporting**

a. *Prohibited Conduct.* This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described in this policy that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the University’s education program or activity, meaning (a) locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and (b) any building owned or controlled by a student organization that is officially recognized by the University; and
- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity of the University.

Allegations of sexual misconduct that do not fall under this policy because they do not constitute prohibited conduct as defined in this policy may constitute violations of the other University policies.

In determining whether alleged conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this policy can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses and will result in University discipline. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator

has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

**Prohibited conduct includes all forms of sexual harassment as defined in section 5 of this policy. Retaliation as described in section 14 of this policy is also prohibited.**

b. *Reporting.* Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, by completing the online reporting form or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the online reporting form, pertinent telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

**A complainant may always report sexual misconduct such as sexual assault or other potentially criminal activity to law enforcement by calling 911.** The University supports any complainant who wishes to file a police report and will assist the complainant with reporting if needed. Complainants are encouraged to contact local police in the jurisdiction where the incident occurred, but it is their choice whether or not to report to law enforcement. If an individual reports an alleged incident to law enforcement, the University will cooperate with any investigation to the extent permitted under applicable law.

**In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must, and students are encouraged to, immediately contact the Eugene Police Department by dialing 911.**

In non-emergency situations, employees (other than those formally designated as Confidential Resources, must promptly report suspected violations of this policy or the Title IX Sexual Harassment policy to the Title IX Coordinator. Some students with special responsibilities, including Resident Assistants (RAs), must report suspected violations of this policy or the Title IX Sexual Harassment policy to the Title IX Coordinator.

c. *Timeliness of Reporting.* Complainants and other reporting individuals are encouraged to report any violation of this policy or the Title IX Sexual Harassment policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the respondent is no longer a student or employee at the time of the report or formal complaint, the University may not be in a position to gather evidence sufficient to reach a determination as to the formal complaint or the University may not be able to take disciplinary action against the respondent. However, the University will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

d. *Amnesty.* To encourage and support the reporting of University Sexual Misconduct and Title IX Sexual Harassment, students who participate as witnesses or complainants in investigations under this

policy will not be subject to student conduct charges for conduct like under-age drinking or use of illegal drugs that may have occurred at the time of or as a result of the sexual misconduct in question.

### **3. Inquiries about this Policy**

The University hereby notifies persons entitled to a notification under section 1 of this policy that it does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and 34 CFR Part 106 not to discriminate in such a manner. The University's obligation not to discriminate in the University's education program or activity extends to admission and employment and other education programs and activities, and inquiries about the application of Title IX and 34 CFR Part 106 to the University will be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights (or designee) of the Department of Education, or both. Reports to the Assistant Secretary for Civil Rights may be made to the following location: Office for Civil Rights, Seattle Office, 915 Second Avenue, Room 3310, Seattle, WA 98174-1099, (206) 607-1600, ocr.seattle@ed.gov.

### **4. Adoption of Grievance Procedures**

As set forth in this policy, the University has adopted and published grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by 34 CFR Part 106 and a grievance process that complies with 34 CFR 106.45 for formal complaints as defined in 34 CFR 106.30. The University will provide to persons entitled to a notification under section 1 of this policy notice of its grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the University will respond.

### **5. Terminology Used in this Policy**

a. *Actual knowledge* means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator, the Dean of Students, any Vice President, and the President. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

b. *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

c. *Consent* means informed, freely and actively given, mutually understandable words or communications by a person capable of giving consent that indicate a willingness to participate in mutually agreed upon sexual activity. Consent obtained through use of force (actual or implied, immediate or future), whether that force consists of physical force, threats, intimidation, or coercion, is invalid. Consent may not be demonstrated by lack of resistance, silence, a previous relationship, or a current relationship. Intoxication may invalidate consent and does not negate the need to obtain consent. A person who is not of legal age, who is incapacitated by physical or mental illness, who is mentally or physically incapacitated, or who is unconscious or unaware, is incapable of giving consent.

d. *Employee* means a person employed by the University.

e. *Formal complaint* means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in this policy, and by any additional method designated by the University. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this policy and must comply with the requirements of this policy.

f. *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

g. *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or

(3) Sexual assault, which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v).

The following are forcible sex offences: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

**Forcible Rape—(Except Statutory Rape)** The carnal knowledge of a person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

**Forcible Sodomy—**Oral or anal sexual intercourse with another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Sexual Assault With An Object—**To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances

where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Forcible Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

The following are nonforcible sex offenses: Unlawful, nonforcible sexual intercourse:

**Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

(4) Dating violence, which means violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship is determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship. See 34 U.S.C. 12291(a)(10).

(5) Domestic violence, which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Oregon, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Oregon. See 34 U.S.C. 12291(a)(8).

(6) Stalking, which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. See 34 U.S.C. 12291(a)(30).

Sexual harassment is also referred to as “sexual misconduct” in this policy.

h. *Student* means a person enrolled in the University. Except as provided in this policy, a person who is not officially enrolled but who has a continuing academic relationship with the University is considered to be enrolled for purposes of this policy. A former student still living in University housing is also considered to be an enrolled student for purposes of this policy, unless this policy provides otherwise. Finally, a person who has been accepted for admission with the University but has not yet begun coursework is considered to be an enrolled student for purposes of this policy.

i. *Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or

activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment.

Supportive measures may include:

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

The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

## **6. General Response to Sexual Harassment**

a. *Prompt Response.* When the University has actual knowledge of sexual harassment in an education program or activity against a person in the United States, the University will respond promptly through the Title IX Coordinator or designee. For purposes of this policy, "education program or activity" includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University. The University's response will treat complainants and respondents equitably by offering supportive measures to a complainant and by following the grievance process set forth in this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

There is no time limit in which a report must be made. In fact, the University recognizes the sensitive nature of sexual misconduct and acknowledges that many reports are delayed. However, a delay in reporting may effectively prevent the University from taking action. As a result, the University encourages the prompt reporting of misconduct.

b. *Prompt Contact with Complainant.* The Title IX Coordinator or designee will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

c. *Anonymity.* Sometimes complainants request anonymity or that an investigation not be conducted. If a complainant makes such a request, the University will balance the request with its obligation to protect the complainant and provide a safe and non-discriminatory environment.

However, complainants should understand that complete anonymity cannot be guaranteed. Granting a request for anonymity may hamper the University's ability to conduct an investigation.

d. *Formal Complaint.* Once a formal complaint has been filed, the Title IX Coordinator will promptly contact the respondent to discuss the availability of supportive measures, consider the respondent's wishes with respect to supportive measures, and inform the respondent of the availability of supportive measures.

**The University will maintain a list of supportive measures and privileged and confidential resources and provide it to the complainant and the respondent.**

Supportive measures may include:

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

Several campus professionals are designated confidential resources, to whom confidentiality attaches. Confidential resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of this policy may be provided to other University officials for purposes of anonymous statistical reporting under the Clery Act.

The following are on-campus confidential resources when working in the following roles:

- Counseling Center 541-349-7471 located on the first floor of the Siefke Hall.
- Troy Dean, Campus Pastor, Pastoral Support via Office of Student Life 541-684-7345 located on the first floor of the Goodrich Hall.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a confidential resource.

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

e. *Clery Act.* Under certain circumstances, the University may be obligated to issue a timely warning notice under the Clery Act about an incident of sexual misconduct. Nothing in this policy



prevents the University from complying with this obligation and its other obligations under the Clery Act.

f. *Preservation of Evidence.* Complainants, respondents, and witnesses should consider whether there is information and evidence to collect that might be helpful to an investigator and should preserve relevant information and evidence. Such information and evidence might include receipts, text messages, pictures, videos, emails, Facebook posts or messages, Snapchats, and other social media posts.

g. *Medical Exams.* Forensic exams (commonly referred to as rape kits) are conducted at all hospital locations in the Eugene-Springfield area. More information can be gathered from these exams the sooner the exam is performed following the alleged incident. Individuals are encouraged to not bathe, shower, douche, or brush their teeth before the exam. Additionally, individuals are encouraged to maintain any physical objects such as clothing worn during an alleged incident or other relevant materials. If clothing is changed, each garment should be placed in a separate paper (not plastic) bag.

h. *Restraining Orders.* Should a student or employee obtain a restraining order against another individual, the student or employee is encouraged to share that information with the Title IX Coordinator so that the University can be prepared to assist law enforcement with the enforcement of the restraining order.

## **7. Emergency Removal (Students)**

The University may remove a respondent from the University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This section of the policy will not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

## **8. Administrative Leave (Employees)**

The University may place a non-student employee respondent on administrative leave during the pendency of its process under this policy. This section of the policy will not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

## **9. Grievance Process—In General**

a. *Equitable Treatment.* The University's grievance process will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies will be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described as "supportive measures;" however, remedies may be disciplinary or punitive in nature and need not avoid burdening the respondent. The University generally does not compel students to participate in a grievance process under this policy. However, failure to participate may affect the outcome.

- b. *Objective Evaluation of Evidence.* The University's grievance process will require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- c. *Conflict of Interest.* The University's grievance process requires that any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, decision maker(s), and appellate officers. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has a conflict of interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.
- d. *Training.* The University is obligated to ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University will ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The University will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- e. *Presumption of Non-responsibility.* The University's grievance process includes a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- f. *Prompt Time Frames.* The University's grievance process includes reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the University offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- g. *Range of Sanctions.* Following any determination of responsibility, the University may implement remedies or sanctions ranging from an educational paper to expulsion.

h. *Standard of Evidence.* The standard of evidence used is the preponderance of the evidence standard, and the same standard of evidence will be used for formal complaints against students as for formal complaints against employees, including faculty.

i. *Privileged Information.* The University does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

j. *Procedures where One Party is a Member of the University Community and the Other party is Not.* When a third party, (i.e., a non-member of the University community, which could include, for example, alumni) is a party under this policy, the University will use procedures that are generally consistent with the procedures described in this policy, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and similar considerations. In no case will a member of the University community (i.e., current student, faculty member, or staff member) be afforded lesser rights or lesser opportunities to participate in the disciplinary proceeding than the non-member of the University community.

## **10. Grievance Procedure—Investigation**

a. *Notice of Allegations.*

(1) In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. The Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.

Upon receipt of a formal complaint, the University will provide the following written notice to the parties who are known: (A) A copy of this policy. (B) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must also include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must inform the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

(2) If, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the notice, the University will provide notice of the additional allegations to the parties whose identities are known.

b. *Dismissal of a Formal Complaint.*

(1) Within 14 days of receipt of a formal complaint, the University will appoint one or more persons to investigate the allegations contained in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under this policy. However, such a dismissal does not preclude action under another provision of the Sexual Misconduct Policy or other University policy.

(2) The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(3) Upon a required or permitted dismissal, the University will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

c. *Consolidation of Formal Complaints.* The University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

d. *Investigation of a Formal Complaint.* When investigating a formal complaint and throughout the grievance process, the University will—

(1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties; provided, that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so.

(2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

(3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

(4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, except as set forth elsewhere in this policy, the advisor may not participate in the proceedings.

(5) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

(6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

(7) Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the draft report and the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator will consider prior to final completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(8) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## **11. Grievance Procedure—Hearing**

### **a. *Live Hearing.***

(1) Preferably within 60 days (excepting holidays, including but not limited to, at the University's discretion, winter break, spring break, and summer break) after the appointment of an investigator, the University will provide for a live hearing and designate one or more persons as the decision-maker(s). If there is one decision maker, that decision maker will preside at the hearing. If there is more than one decision maker, the decision makers shall determine which decision maker will preside at the hearing. The decision-maker(s) may not be the same person(s) as the Title IX Coordinator or the investigator(s). The University may also appoint a hearing facilitator to manage the administrative functions of the live hearing. The presiding decision maker will have absolute discretion with respect to administering the hearing. The presiding decision maker will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The presiding decision maker will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the decision maker(s) will be provided with and shall review the investigative report, the evidence, and any responses to the investigative report and evidence. At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely). In advance of the hearing, parties will be required to identify witnesses to be called at the hearing, as well as to provide a brief written explanation of the information each witness would be asked to provide, such that the presiding decision maker can determine their relevance. The presiding decision

maker has the discretion to exclude from the hearing evidence, witnesses, and questions deemed irrelevant. At the presiding decision maker's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol.

(2) At the live hearing, the decision-maker(s) appointed by the University must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those questions challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding section 10.d.(4) of this policy.

(3) At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

(4) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the presiding decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(5) If a party does not have an advisor present at the live hearing, the University will provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

(6) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

(7) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

(8) Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(9) The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other record of the hearing or any other recording is prohibited.

b. *Determination regarding Responsibility.*

(1) Within 21 days after the conclusion of the hearing, the decision-maker(s) will issue a written determination regarding responsibility. To reach this determination, the decision-maker(s) must apply the preponderance of the evidence standard.

(2) The written determination must include—(A) Identification of the allegations potentially constituting sexual harassment; (B) A description of the procedural steps taken from the receipt of the

formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; (C) Findings of fact supporting the determination; (D) Conclusions regarding the application of this policy to the facts; (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the imposed on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and (F) The University's procedures and permissible bases for the complainant and respondent to appeal.

(3) The Title IX Coordinator will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(4) The Title IX Coordinator or designee is responsible for effective implementation of any remedies.

If a student is found responsible for violating this policy, the case record (consisting of the investigative file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be provided to the dean of students or designee, who will determine sanctions and remedies in consultation with appropriate officials. Any sanctions and remedies will be included in the presiding decision maker's written determination, and sanctions will be subject to appeal to the extent set forth elsewhere in this policy.

If an employee is found responsible for violating this policy, the case record (consisting of the investigative file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be provided to the appropriate vice president or designee, who will determine sanctions and remedies in consultation with appropriate officials. Any sanctions and remedies will be included in the presiding decision maker's written determination, and sanctions will be subject to appeal to the extent set forth elsewhere in this policy.

## **12. Grievance Procedure—Appeals**

a. Either or both parties may appeal from a written determination regarding responsibility and from the University's dismissal of a formal complaint or any allegations therein, within seven calendar days from the date of the pertinent University action. Appeals are on only the following bases: (1) Procedural irregularity that affected the outcome of the matter; (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; (3) The Title IX Coordinator, investigator(s), decision-maker(s), or person determining the sanction and remedies had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and (4) the sanction is grossly unreasonable.

b. Appeals are decided on the basis of written materials submitted by the parties and, in the discretion of the person considering the appeal, the case file and the record at previous stages of the matter. As to any appeal, the University will: (1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (2) Ensure that the appellate officer is not

the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), the Title IX Coordinator, or the person determining the sanctions and remedies; (3) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in section 9.a. of this policy; (4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome; (5) Issue a written decision within 30 days of receipt of an appeal describing the result of the appeal and the rationale for the result; and (6) Provide the written decision simultaneously to both parties.

c. An appeal in a matter in which a student is the respondent shall be filed with the Vice President for Enrollment and Student Development. An appeal in a matter in which an employee is the respondent shall be filed with the Vice President for Administration and Finance. If the respondent is both a student and employee, the appeal may be filed with either Vice President. In any case, a copy of the appeal shall be provided to the Title IX Coordinator. Appeals should be filed by email.

d. The Vice President receiving the appeal shall designate a person to consider the appeal, who is called the “appellate officer.” The appellate officer may not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), the Title IX Coordinator, or the person determining the sanctions and remedies.

### **13. Informal Resolution**

a. The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, the University will not require the parties to participate in an informal resolution process under this section and will not offer an informal resolution process unless a formal complaint is filed.

b. At any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the University –

(1) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

(2) Obtains the parties’ voluntary, written consent to the informal resolution process; and

(3) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### **14. Retaliation**

a. *Retaliation Prohibited.*



(1) Neither the University nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this policy, constitutes retaliation.

(2) The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106 or this policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures set forth in this policy.

(3) At the University's discretion, a complaint of retaliation as set forth above may be addressed under this policy or another pertinent University policy.

b. *Specific Circumstances.*

(1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of this section.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **15. Recordkeeping**

a. The University will maintain for a period of seven years records of:

(1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education program or activity;

(2) Any appeal and the result therefrom;

(3) Any informal resolution and the result therefrom; and

(4) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The University will make these training materials publicly available on its website.

b. For each response to a report of sexual harassment, the University will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a complainant with supportive measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

**16. Miscellaneous Provisions**

a. The obligation to comply with this policy is not obviated or alleviated by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99.

b. Nothing in this policy may be read in derogation of any individual's rights under title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.