



## **1. INTRODUCTION**

The University of Notre Dame strives to maintain a community characterized by a respect for others. At a minimum, this means a community that is free from harassment. The University's Policy on Discriminatory Harassment, Sexual Harassment, and Other Sex-Based Misconduct ("the Policy") outlines various forms of prohibited conduct. The University will process potential violations of the Policy by University students and employees (including faculty and staff members) in accordance with the reporting and response procedures set forth below.

Section 2 outlines generally applicable procedures that pertain to Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct. Section 3 describes the procedures applicable for Alternative Resolution, which, under certain circumstances, may be available to address allegations of Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct. The procedures applicable to claims of conduct constituting Sexual Harassment under the Policy are outlined below in Section 4. The procedures applicable to claims of Discriminatory Harassment and Other Sex-Based Misconduct under the Policy for student Respondents are outlined below in Section 5.A. The procedures applicable to claims of Discriminatory Harassment and Other Sex-Based Misconduct under the Policy for staff and faculty Respondents are outlined below in Section 5.B.

Any changes to this procedures document will take immediate effect and will be applicable to all pending cases.

## **2. PROCEDURES THAT APPLY GENERALLY**

### **A. How to Report Violations of the Policy**

#### **1. Reporting to the University**

The University encourages its students, faculty, and staff to report all violations of the Policy. The University is committed to eliminating misconduct, and to do so, the University must be informed of any conduct that violates the Policy. Any person may report conduct prohibited by the Policy, in person, by mail, by telephone, by email, or by online form to the Office of Institutional Equity using the contact information listed below or by any other means that results in the Office of Institutional Equity receiving the person's report. A person may make a report at any time, including during non-business hours.

You may report to the Office of Institutional Equity by calling 574-631-0444, emailing [equity@nd.edu](mailto:equity@nd.edu), or using the online incident reporting form at [speakup.nd.edu](http://speakup.nd.edu).

The University has designated the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator, to handle all inquiries regarding its efforts to comply with and carry out its responsibilities under Title IX and other laws pertaining to equal opportunity and access. This includes the handling of alleged violations of the Policy by University students, faculty, or staff. The Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator may be contacted as follows:

Erin N. Oliver  
Assistant Vice President, Office of Institutional Equity & Title IX Coordinator  
100 Grace Hall  
University of Notre Dame  
Notre Dame, IN 46556  
574-631-0444  
equity@nd.edu

## 2. Reporting to Law Enforcement

In addition to reporting violations to the University, an individual has the option to pursue a criminal complaint with an appropriate law enforcement agency. In such cases, Complainants may (a) notify proper law enforcement authorities, including on-campus and local police (as described below); (b) be assisted by campus authorities in notifying law enforcement authorities if the Complainant so chooses; or (c) decline to notify law enforcement authorities. The University encourages members of the University community to report all violations of the Policy. If the incident occurred on Notre Dame property, the Notre Dame Police Department, a duly authorized police agency in the state of Indiana, is an appropriate agency with which to file a report. On-campus incidents may also be reported to the St. Joseph County Police Department. In the South Bend area, the local law enforcement agencies include the South Bend, St. Joseph County, and Mishawaka police departments. The Notre Dame Police Department (911 from a campus phone, or 574-631-5555 from a cell phone) can assist with contacting the appropriate agency. Reported violations of the Policy allegedly committed by a student, faculty, or staff member that are reported to the Notre Dame Police Department will also be referred to the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee), who will follow-up and investigate as appropriate. Similarly, where the University receives a report from another police agency of an alleged violation of the Policy, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) and the Notre Dame Police Department will follow-up and investigate as appropriate. The University's process and procedures are distinct from the criminal investigation as a result of the University's obligation under Title IX and other laws pertaining to equal opportunity and access to ensure that it is providing an environment free from discrimination for all members of the University community.

If a Complainant wishes to pursue a criminal complaint, the Complainant may choose to temporarily defer the University's administrative investigation by making a formal written request to the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee), which may temporarily delay the investigation and the University's ability to respond. However, the University may choose not to defer its investigation and procedures, where it determines a deferral would be inappropriate, taking into consideration the University's obligation to maintain an environment free from Sexual Harassment,

Discriminatory Harassment, and Other Sex-Based Misconduct. At any time, the Complainant may choose to rescind the deferral by making a formal written request to the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee), electing to resume the University's investigation. The University will maintain documentation of the date of deferral. Information obtained through the criminal investigation may be considered in the University's investigation. Where the University is aware that an individual is pursuing a criminal complaint, a member of the Notre Dame Police Department will request that the St. Joseph County Prosecutor's Office keep the University informed and immediately advise of its decision whether to prosecute the complaint. The University will maintain documentation of the date of the request to the Prosecutor's Office. In cases where the Prosecutor's Office declines prosecution, a member of the Notre Dame Police Department will work with the Prosecutor's Office to notify the Complainant of the Prosecutor's decision.

In addition to having the option of pursuing a criminal complaint, a Complainant may also have the option of exploring whether he or she might be entitled to an order of protection, restraining order, or other similar orders issued by a criminal or civil court. For more information about such orders, including the University's responsibilities concerning such orders, members of the University community should contact the Notre Dame Police Department or the Family Justice Center of St. Joseph County.

## **B. Group Accountability**

In addition to investigating and addressing behavior of individuals, the University reserves the right to investigate and hold accountable the collective behavior of groups of individuals, including but not limited to student clubs, organizations, teams, and residential communities.

## **C. Confidential Resources and Information About Privacy**

### **1. Confidentiality**

Notre Dame recognizes that confidentiality is important. Breaches of confidentiality compromise the University's ability to investigate and resolve claims of Policy violations. Notre Dame will attempt to protect the confidentiality of the process to the extent reasonably possible. Investigators, mediators, members of Hearing Boards or Equity Panels, and any others participating in the process on behalf of the University shall keep the information obtained through the process confidential. All other participants in the process (including the Complainant, Respondent, Advisors, and witnesses) are encouraged to respect the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

While Notre Dame is committed to respecting the confidentiality of all parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include:

- When the University is required by law to disclose information (such as in response to a subpoena or court order);
- When disclosure of information is determined by the Office of Institutional Equity and/or the department necessary for conducting an effective investigation of the claim; and

- When confidentiality concerns are outweighed by the University's interest in protecting the safety or rights of others.

## 2. Confidential Resources

If a student, staff, or faculty member wishes the details of an incident to be kept confidential, the student, staff, or faculty member can speak with:

- Counselors, including at the University Counseling Center and Wellness Center;
- Health providers, such as University Health Services and local hospitals;
- Off-campus rape crisis resources, such as S-O-S, the rape crisis center for St. Joseph County; and
- Vowed religious (priests, deacons, and religious sisters and brothers) working within Campus Ministry and who are operating in that role.

These individuals will honor confidentiality unless there is an imminent danger to the person involved or to others. In addition, disclosure during the Sacrament of Reconciliation (confession) will not be revealed by the priest for any reason, which is a sacred obligation protected by law.

## 3. Parameters of Privacy and Confidentiality for Investigations; Mandatory Reporting Obligation

In all instances and to the extent possible, the University will protect the privacy of all parties to a report of Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct. That said, with the exception of those Confidential Resources listed above, all University employees, including faculty and staff, are considered mandatory reporters. Employees who receive information about any suspected or potential Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct, whether from the student, faculty, or staff involved or from a third party, must report the information to the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee).

Employees may provide support and assistance to a Complainant, witness, or Respondent; but, mandatory reporters cannot promise confidentiality or withhold information about Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct.

## 4. Parameters of Privacy and Confidentiality Related to Crime Alerts Issued by the University

In an effort to provide timely notice to the Notre Dame community, and in the event of a serious crime that occurs on campus and poses a serious, ongoing threat to members of the Notre Dame community, a mass email Crime Alert will be sent to all students, faculty, and staff on campus and is posted on the Notre Dame Police Department website, and may also be posted in residence halls and various other buildings on campus. Crime Alerts and any updates will be drafted and disseminated in a way that protects the confidentiality of Complainants. Such alerts and updates shall not include identifying information about the Complainant in any publicly-available recordkeeping to the extent permitted by law.

## **D. Availability of Counseling, Medical and Pastoral Resources**

### **1. Counseling Resources**

#### *a. Resources Available to Students, Faculty, and Staff*

The Family Justice Center of St. Joseph County ([fjcsjc.org](http://fjcsjc.org)) is a collaboration of civil, legal, medical, and social services which supports individuals affected by domestic violence. The Family Justice Center can be reached by calling 574-234-6900 and its office is located at 533 North Niles Avenue in South Bend. S-O-S of the Family Justice Center ([fjcsjc.org/sos](http://fjcsjc.org/sos)) is staffed by trained professionals and volunteer advocates who are available 24 hours a day. The staff can provide confidential counseling and recovery services, as well as support and information about communication with the police, family and friends. S-O-S Volunteer Advocates provide emotional support and information on the phone and in person at area hospital Emergency Departments around the clock. Specially trained professionals offer confidential counseling, group therapy, information, and referrals. The S-O-S Advocate acts as a liaison between the individual and the legal process, and can accompany the individual to court, if desired. The 24-hour telephone number for the S-O-S is 574-289-4357.

The Rape, Abuse and Incest National Network (RAINN) ([rainn.org](http://rainn.org)) is an anti-sexual violence organization that partners with more than 1,100 local rape crisis centers across the country. Among its programs, RAINN has two resources available globally: (1) the National Sexual Assault Online Hotline (<https://ohl.rainn.org/online/>), a secure web-based hotline that provides live and confidential help through an interface similar to instant messaging; and (2) the National Sexual Assault Hotline (800-656-HOPE), which provides free, confidential services 24 hours a day, seven days a week.

#### *b. Additional Resources Available to Faculty and Staff*

LifeWorks, the Employee Assistance Program for Notre Dame, provides referrals to professionals who provide confidential counseling and support on a wide range of issues. The service is available 24 hours a day, seven days a week, and can be reached at 888-267-8126 or online at <https://www3.nd.edu/~hr/lifeworks/eap.shtml>.

#### *c. Additional Resources Available to Students*

The University Counseling Center, which is staffed by trained professionals and counselors, offers specialized support and assistance. Current students may seek counseling at any time, even years after the incident. The confidential services of the UCC are available to any student who may need support or assistance. The Counseling Center can be reached at 574-631- 7336 (24 hours). In addition, a Walk-In Crisis Service is available to students in Saint Liam Hall, Monday-Friday, 9 a.m. – 5 p.m. For further information, go to [ucc.nd.edu](http://ucc.nd.edu).

### **2. Medical Resources**

It is especially important for individuals who have been sexually assaulted or subjected to other Sexual Harassment, Discriminatory Harassment, or Other Sex-Based Misconduct that involves

physical contact to seek immediate and appropriate medical treatment. Such treatment is also important to preserve evidence in the event the individual later files criminal charges, or seeks to obtain an order of protection. The two hospitals in the South Bend area are St. Joseph Regional Medical Center (sjmed.com) and Memorial Hospital (qualityoflife.org). While both hospitals offer emergency care and evidence collection, St. Joseph has a specially trained sexual assault team available 24 hours a day, seven days a week. Under Indiana law, the tests and procedures at the hospitals are free of charge if treatment is sought within 120 hours of the assault. The evidence gathered in this examination will be maintained by the hospital and will not be provided to the police unless the individual reports the assault to the police. Any decision about whether or not to talk to the police is up to the individual.

Faculty and staff may visit the Notre Dame Wellness Center (574-634-9355), which is equipped to provide confidential and professional medical care to faculty and staff. Students may visit University Health Services, which is open 24 hours a day during the academic year and is equipped to provide confidential and professional medical care to students. University Health Services can be reached in Saint Liam Hall, 574-631-7567. While the Notre Dame Wellness Center and University Health Services staff are unable to perform procedures related to the collection of evidence for the purposes of pursuing criminal prosecution, they can provide assistance and support when an individual requests or requires transportation to the hospital.

### 3. Pastoral Resources

Vowed religious (priests, deacons, and religious sisters and brothers) working within Campus Ministry and who are operating in that role are confidential resources. In addition, an individual's disclosure during the sacrament of confession will not be revealed by the priest for any reason, which is a sacred obligation protected by law. Campus Ministry can be reached at 574-631-7800 or at campusministry.nd.edu.

#### **E. Direct Communication With the Alleged Offender in Cases That Do Not Involve Sexual Harassment**

In cases involving Discriminatory Harassment or Other Sex-Based Misconduct, the impacted party may speak directly with the alleged offending person to address his or her concerns and obtain an appropriate resolution, if he or she feels comfortable doing so. Sometimes, an effective manner of addressing offensive behavior is to politely and calmly advise the person, verbally or in writing, that his or her behavior or language is offensive and unwelcome, and to request that the person stop uttering such words or engaging in such behavior.

While this approach may be effective to eliminate the offensive behavior, individuals who choose to address the alleged offender directly must also promptly report the offensive behavior to the Office of Institutional Equity, which will direct the report as appropriate. Such reporting will enable the University to decide whether there is an impact to the community (such as egregious conduct or a pattern of inappropriate behavior) that warrants University to take steps to maintain a respectful environment free from harassment. An individual who directly addresses his or her concerns with the alleged offending person must also notify the Office of Institutional Equity if they did not obtain a satisfactory outcome through their discussions.

#### **F. Supportive Measures**

The following information is provided to encourage reporting to the University of conduct prohibited by the Policy. Following receipt of a report, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will promptly and confidentially contact the Complainant to discuss the supportive measures available and will consider the Complainant's wishes with regard to those supportive measures.

### 1. Interim Measures

The University offers a wide range of resources for Complainants and Respondents, to provide support and guidance throughout the initiation, investigation, and resolution of a report under the Policy. Upon receipt of a report, the University may take interim measures to address concerns regarding safety and well-being and to facilitate the parties' continued access to University programs and activities. These measures may be remedial and/or protective (designed to address safety and well-being and continued access to employment and educational opportunities). Interim measures, which may be temporary or permanent, may include no-contact directives, changes in class or work schedules, academic modifications and support, changes in University-owned living arrangements, or any other reasonably available measures that the University deems appropriate. Interim measures are available under all resolution processes and may be implemented prior to the initiation of the process. Interim measures will be administered by the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee). The University will maintain the confidentiality of any interim measures provided, to the extent practicable, and will promptly address any violation of interim measures.

The University encourages reporting of violations of interim measures as soon as possible. Individuals may report such violations in accordance with the reporting procedures outlined in Section 2.A.1, above. Upon receiving a report of any violations of the terms of Interim Measures, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will review the information to determine the appropriate means to address the alleged behavior. An individual found responsible for violating an Interim Measure may be subject to Sanctions, as defined in Section 4 below.

### 2. No Contact Orders

When the name of a Respondent has been identified, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will, where appropriate, issue No Contact Orders to both the Respondent and the Complainant.

Unless otherwise stated in writing, a Complainant or Respondent who is issued a No Contact Order by the University may not have contact, either directly, indirectly, or through third parties, with specific individuals for a specified period of time. "Third parties" include friends, family, attorneys, and other individuals acting on behalf of a Complainant or Respondent who has been issued a No Contact Order. "Contact" includes, but is not limited to, email, social media, instant messaging, text messaging, phone calls, voicemail, or direct visits. Unintentional contact and contact as outlined below in Section IV is not considered a violation of the No Contact Order.

The University encourages reporting of violations of No Contact Orders as soon as possible. Individuals may report such violations in accordance with the reporting procedures outlined in Section 2.A.1, above. Upon receiving a report of any violations of the terms of No Contact

Orders, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will review the information to determine the appropriate means to address the alleged behavior. An individual found responsible for violating a No Contact Order may be subject to Sanctions, as defined in Section 4 below.

No Contact Orders are separate and distinct from court-administered actions such as protective orders and restraining orders. Questions about court-administered actions should be directed to local law enforcement.

### 3. Assignment of a Resource Coordinator

After a report of Sexual Harassment is received by the Assistant Vice President of the Office of Institutional Equity (or designee), a Complainant will be offered a Resource Coordinator (“RC”). If a report identifies the name of a Respondent, a RC will also be offered to the Respondent. RCs are trained Notre Dame employees who will serve as resource persons to the Complainant and Respondent to identify, explain, and navigate University processes and available support services. This can include referrals to counseling, educational support, pastoral care, and medical treatment, and information about University and legal processes.

## **G. Retaliation**

The University strongly encourages the reporting of any incident of Sexual Harassment, Discriminatory Harassment, or Other Sex-Based Misconduct and takes such reports very seriously. Any actual or threatened retaliation will be addressed by the University pursuant to its Non-Retaliation Policy. Students, faculty, and staff are encouraged to report concerns about retaliation to the Office of Institutional Equity as soon as possible.

### 1. Addressing Student Concerns About Other Violations

At times, students are hesitant to report misconduct to University officials because they are concerned that they themselves, or witnesses to the misconduct, may be found responsible for other policy violations (e.g. parietals or alcohol violations). These behaviors are not condoned by the University, but the importance of addressing Sexual Harassment, Discriminatory Harassment, and Other Sex-Based Misconduct outweighs the University’s interest in addressing lesser violations. Accordingly, in these cases, the University will not refer reporting and participating students to the University Conduct Process to address lesser policy violations (e.g. parietals or alcohol violations).

Students who feel unsafe in a residence hall after parietals should leave the hall, regardless of the time, without concern for a parietals violation. A student will not be found responsible for a violation of the University’s undergraduate residence hall visitation (parietals) policy if the violation is related to an incident of Sexual Harassment, Discriminatory Harassment, or Other Sex-Based Misconduct.

## **H. Administrative Leave, Emergency Removal, and Information About Student Respondent’s Enrollment, Transcript, and Degree**

In cases involving a student or staff Respondent, the University may, after undertaking an individualized safety and risk analysis and determining that there is an immediate threat to the



physical health or safety of any individual arising from the allegations of sexual harassment justifies removal, remove a Respondent on an emergency basis from participating in some or all University activities. After any such removal, the Respondent will have an opportunity to challenge the decision. The University may place a non-student staff Respondent on administrative leave, pending any investigation under this Policy.

In cases involving a faculty Respondent, the faculty Respondent member may be removed consistent with the procedures under the Academic Articles.

Generally, in cases involving a student Respondent, the student Respondent may not withdraw or take a leave of absence from the University after the University receives a report of an alleged violation of the Policy. The University reserves the right to proceed with an appropriate resolution process regardless of a Respondent's request for a withdrawal or for a leave of absence from the University. At any time, the University may place an administrative hold on the Respondent's University academic transcript, make a transcript notification, or withhold the award of the Respondent's degree. In cases where the University permits a Respondent to withdraw from the University after receiving a report of an alleged violation of University policy (including while the resolution process is pending), this withdrawal may be considered permanent and the Respondent's academic transcript may be held or noted "withdrawal pending investigation." Even if a Respondent withdraws from the University, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) may decide to proceed with a resolution process. At the conclusion of a resolution process, the Respondent's transcript will be updated with the appropriate notation or removal of notation as prescribed by the University's Conduct Records Reporting Policy.

### **I. Requests for Anonymity and/or No University Resolution Process**

In the event that a Complainant requests anonymity or requests that a matter not be referred to the Sexual Harassment Procedures or Procedures for Discriminatory Harassment and Other Sex-Based Misconduct, or to Alternative Resolution, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will make a determination about whether the request can be granted. The decision will be based on a review of factors, including, but not limited to, patterns of behavior involving the Respondent, a group of individuals, and/or a specific location; threats of future sexual or other violence by the Respondent; the use of a weapon; whether the Complainant is a minor; and/or other risks to the University community.

If a Complainant request that a matter not be referred to the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct, or to Alternative Resolution, and the University agrees to such request, the Complainant will be notified in writing that he/she has six months from the date of the decision of the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) to request that the matter be referred back to a formal process.

If the University is able to agree to a Complainant's request for anonymity, the University's ability to meaningfully investigate the incident or impose Sanctions on the alleged Respondent(s) may be limited.

In some cases, based on this review, the University may not be able to agree to the Complainant's request in order to adhere to its obligation to provide a safe, non-discriminatory environment. If the University determines that it is unable to agree to a Complainant's request that a matter not be referred to a process outlined in these procedures, the Complainant will be notified in writing prior to the commencement of any formal process.

If the University is unable to agree to a Complainant's request for anonymity, the Complainant will be notified in writing prior to the University initiating a resolution process and the University will, to the extent possible, share information only with people responsible for handling the University's response.

## **J. Initial Assessment**

After receiving a report of Sexual Harassment, Discriminatory Harassment, or Other Sex-Based Misconduct, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will gather information about the reported conduct and respond to any immediate health or safety concerns.

The Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee), and where appropriate a Student Affairs administrator, will also assess the nature and circumstances of the report to determine whether the reported conduct is within the scope of the Policy, whether the reported conduct raises a potential Policy violation, and the appropriate manner of resolution under these procedures. This will include, when possible, a discussion of the Complainant's expressed preference for manner of resolution and any barriers to proceeding. It will also take into consideration the University's obligation to maintain an environment free from harassment.

At the conclusion of the initial assessment:

- If the report alleges conduct that falls within the Policy, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will inform the Complainant of what processes are available and the applicable procedures; or
- If the report does not fall within the Policy, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will refer the report to an appropriate entity to address the concerns or close the matter.

Depending on the content alleged in the report, the matter may be handled through the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct. In either situation, it is possible that Alternative Resolution, described in Section 3 below, may also be available.

### **1. Consolidation of Reports**

The Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) has the discretion to consolidate or separate multiple reports of Discriminatory Harassment, Other Sex-Based Misconduct, or Formal Complaints of Sexual Harassment into a single Investigation or multiple Investigations, where the allegations of a Policy violation arise out of the same facts or circumstances. Consolidation might involve multiple Complainants and

a single Respondent, multiple Respondents, and/or conduct that is temporally or logically connected. Consolidation may occur under the Sexual Harassment Procedures and the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

Where the University receives a report of alleged Sexual Harassment, along with additional report(s) of alleged Discriminatory Harassment or Other Sex-Based Misconduct, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) also has the discretion to determine whether or not to investigate and resolve the report(s) of alleged Discriminatory Harassment or Other Sex-Based Misconduct in consolidation with the alleged Sexual Harassment pursuant to the Sexual Harassment Procedures.

## 2. Moving to or from Different Procedures

If, during the course of a proceeding under the Sexual Harassment Procedures, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) determines that the conduct alleged does not constitute Sexual Harassment under the Policy or if the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) otherwise determines that the Sexual Harassment Procedures are inapplicable, the matter may be referred to the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

Similarly, if, during the course of a proceeding under the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) determines that the conduct alleged does constitute Sexual Harassment or otherwise determines that the Sexual Harassment Procedures are applicable, the matter may be referred to the Sexual Harassment Procedures.

Finally, if the requirements for participating in Alternative Resolution are otherwise met, including both parties' agreement to participate in Alternative Resolution, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) may refer the matter from either the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct to Alternative Resolution. Likewise, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) may refer a matter from Alternative Resolution to either the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct, if applicable.

## **3. ALTERNATIVE RESOLUTION**

Alternative Resolution is a voluntary, remedies-based, and educational process that is designed to allow a Respondent to accept responsibility for repairing harm and acknowledge harm to the Complainant or to the University community. The goal of Alternative Resolution is to address allegations of harmful and/or prohibited conduct, identify ways that individuals and/or the community have been impacted, and develop a resolution to address the impact and prevent future behavior.

### **A. Circumstances When Alternative Resolution May Be Appropriate**

Alternative Resolution may be available under either the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct. Alternative Resolution, however, may not be appropriate for all forms of alleged Policy violations, and the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) retains the discretion to determine which cases are or are not appropriate for Alternative Resolution.

Alternative Resolution is available only after the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) reviews the matter to confirm that it would be appropriate for Alternative Resolution.

Alternative Resolution may be used only with the voluntary, informed consent of both parties. Before obtaining such consent, the University will notify the parties of the allegations at issue and the requirements of Alternative Resolution, including any limitations on pursuing a resolution under either the Formal Proceedings of the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

At any time prior to agreeing to a resolution in Alternative Resolution, either a Complainant or a Respondent may request to end Alternative Resolution and proceed under either the Formal Proceedings of the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct, as applicable.

Alternative Resolution may also only be conducted under the supervision of University-sanctioned, trained professionals, and following a determination by the University that the matter at hand is appropriate for a restorative approach.

Alternative Resolution is not available to resolve allegations that an employee engaged in Sexual Harassment against a student.

In cases involving allegations of Sexual Harassment, Alternative Resolution is not available without the filing of a Formal Complaint.

## **B. Forms of Alternative Resolution**

Alternative Resolution may include, but is not limited to, one or more of the following approaches:

- **Mediation:** A facilitated conversation between two or more individuals, most often the Complainant, the Respondent, and/or other community members. Depending on stated interests, the participants may sometimes work towards the development of a shared agreement, although working towards an agreement is not always the intended outcome.
- **Indirect Mediation:** An indirect conversation individually with the Complainant, the Respondent, and/or other participants to discuss experiences and perspectives and explore interests while working towards meeting expressed needs. This process does not require direct interaction between the parties or the parties and other participants, but rather, independently, with a facilitator. In some cases, such as alleged sexual assaults, mediation will not be appropriate, even on a voluntary basis.

- Restorative Conference: A facilitated interaction where the individuals who have been impacted can come together with an individual(s) who assumes responsibility for addressing the impact (to the extent possible). A conference may include multiple members of the community to explore individual and community impact, harm, obligations, and opportunity for repairing them.
- Accountability Conference: A facilitated interaction between the Respondent and University faculty and/or staff designed to provide accountability, structured support, and the development of a learning plan. The focus is to balance support and accountability for an individual who has acknowledged their obligation to address impact and willingness to engage in an educational process.

Depending on the form of Alternative Resolution, it may be possible for a Complainant to maintain anonymity in Alternative Resolution.

Additional measures that may be agreed to as a result of Alternative Resolution may include:

- Educational programming and/or training;
- Regular meetings with an appropriate University individual, unit, or resource;
- Extension of a No Contact Order;
- Restriction from participation in facets of the work or educational environment;
- Restriction from participation in particular events;
- Completion of an educational plan with regular meetings with a conversation partner or other appropriate University staff or faculty member;
- Completion of a development plan with oversight from Human Resources or a supervisor, as appropriate;
- Commitment to regular conversations with Human Resources or a supervisor, as appropriate; and/or
- Counseling sessions.

### **C. Alternative Resolution Agreements**

Some forms of Alternative Resolution will result in a written agreement. Any agreements reached in Alternative Resolution must be approved by the Assistant Vice President of Institutional Equity and Title IX Coordinator (or designee).

If the Assistant Vice President of Institutional Equity and Title IX Coordinator (or designee) approves an agreement after the parties have voluntarily reached consensus as to its terms, the Respondent will be required to comply with the agreement. Failure to comply with the agreement may result in the matter being referred to the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

### **D. Referral Back to Other Procedures**

If, for any reason, no resolution is reached, the matter may be referred to the Assistant Vice President of Institutional Equity and Title IX Coordinator (or designee) for further action under the Sexual Harassment Procedures or the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

## **E. Timing**

The University will seek to complete Alternative Resolution within sixty calendar days following the decision to proceed with Alternative Resolution. The sixty calendar-day timeframe does not typically include academic break periods and may be affected by holidays or other extenuating circumstances. The University reserves the right to reasonably modify Alternative Resolution on a case-by-case basis due to the scope or complexity of the facts and circumstances at issue, or due to other extenuating circumstances. The University may extend any timeframe in this policy for good cause, including extension beyond sixty calendar days. Any modifications will be communicated to both parties.

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## **4. SEXUAL HARASSMENT PROCEDURES**

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The Sexual Harassment Procedures apply when the Respondent is a student, staff, or faculty member at the University at the time of the alleged conduct and where the conduct alleged includes Sexual Harassment under the Policy.

Following the Initial Assessment, Alternative Resolution may be available in cases alleging Sexual Harassment. In such cases, prior to engaging in Alternative Resolution, the University will provide both parties with written notice of the allegations, explain the requirements and consequences of Alternative Resolution, and obtain both parties voluntary and written consent to participate in Alternative Resolution.

### **A. Formal Complaint Requirement for Sexual Harassment Procedures**

At the conclusion of the initial assessment, if the report alleges conduct that falls within the prohibition on Sexual Harassment in the Policy, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will inform the Complainant that in order to proceed under the Sexual Harassment Procedures, a Formal Complaint, as defined in the Policy, is required.

The University will conduct an Investigation under the Sexual Harassment Procedures only upon the filing of a Formal Complaint alleging Sexual Harassment. A Formal Complaint may be initiated by only the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator or a Complainant participating in or attempting to participate in a University education program or activity. A Complainant may file a Formal Complaint in person at the Office of Institutional Equity, by mail at Office of Institutional Equity 100 Grace Hall, Notre Dame, IN, 46556, by email at [equity@nd.edu](mailto:equity@nd.edu), by contacting the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator, or [speakup.nd.edu](http://speakup.nd.edu). When a Complainant submits a Formal Complaint, he or she must include a physical or digital signature to indicate that the Complainant is the person filing the Formal Complaint.

### **B. Dismissal of Formal Complaints of Sexual Harassment**

The Department of Education requires universities to distinguish between conduct regulated by Title IX and conduct that is not regulated by Title IX but is still prohibited by University policies or codes. Under Title IX, the University must dismiss a Formal Complaint of Sexual

Harassment or the part of the allegations in a Formal Complaint of Sexual Harassment, if applicable, where the conduct alleged:

- would not constitute Sexual Harassment as defined in the Policy;
- did not occur in the University's educational programs or activities; or
- did not occur in the United States.

The University may dismiss a Formal Complaint of Sexual Harassment if:

- a Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegations therein;
- the Respondent is no longer enrolled or employed by the University; or
- the University is prevented from gathering evidence sufficient to reach a determination.

A dismissal pursuant to Department of Education Title IX Regulations, however, does not prevent the University from investigating the matter under otherwise applicable processes in these Procedures. For example, if alleged Sexual Harassment occurs at an off-campus location (*i.e.*, outside the University's educational programs or activities) or outside of the United States, the University may still investigate the matter under the Sexual Harassment Procedures. Similarly, if alleged conduct does not constitute Sexual Harassment as defined in the Policy, the University may still investigate the matter under the Procedures for Discriminatory Harassment and Other Sex-Based Misconduct.

If the University must dismiss allegations of conduct based upon the determination that the conduct does not fall under one or more provisions of the Policy, the dismissal does not preclude the University from addressing conduct in any manner the University deems appropriate under other University policies.

### **C. Notice of Investigation**

Upon receipt of a Formal Complaint of Sexual Harassment, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will provide the Complainant and the Respondent a written Notice of Investigation, containing the following information (if known):

- the conduct allegedly constituting a Policy violation, including the identities of the parties involved in the incident and the date and location of the alleged incident; and
- the alleged Policy violation(s).

This Notice of Investigation will also inform the parties of their rights under the Sexual Harassment Procedures.

If the Investigation reveals the existence of additional or different potential Policy violations, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will issue a supplemental Notice of Investigation that includes this information.

### **D. Formal Proceedings for Sexual Harassment**

Where Alternative Resolution is not pursued, a Formal Complaint of Sexual Harassment will go through the Formal Proceedings under the Sexual Harassment Procedures. These Formal Proceedings involve an Investigation and could result in Sanctions against a Respondent. When a Formal Complaint of Sexual Harassment is referred to the Formal Proceedings under the Sexual Harassment Procedures, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will appoint one or more Investigators to conduct a prompt, thorough, fair, and impartial Investigation.

As stated in Article IV/Section 2 of the University's Academic Articles regarding Academic Freedom, freedom of inquiry and freedom of expression are safeguarded by the University. The rights and obligations of academic freedom take diverse forms for the faculty, the students, and the administration; in general, however, these freedoms derive from the nature of the academic life and accord with the objectives of the University as a community that pursues the highest scholarly standards, promotes intellectual and spiritual growth, maintains respect for individuals as persons, and advances the Catholic mission. Specific principles of academic freedom supported at the University include: freedom to teach and to learn according to one's obligation, vision, and training; freedom to publish the results of one's study or research; and freedom to speak and write on public issues as a citizen.

Nothing in this policy or these procedures shall be construed to restrict academic freedom and the associated protections of tenure, or the University's educational mission. Based on the protections afforded by academic freedom, speech and other expression occurring in the context of instruction or research will not be considered prohibited conduct unless this speech or expression meets the specific definitions of Sexual Harassment, Discriminatory Harassment, or Other Sex-Based Misconduct. The University is committed to the free and vigorous discussion of ideas and issues, which the University believes will be protected by this Policy.

#### 1. Advisors

The Complainant and Respondent will each be permitted to be accompanied by an Advisor of his or her choice at each stage of the Sexual Harassment Procedures in which the party participates. For example, a party may bring his or her Advisor to his or her own Investigation interview and to a Hearing, if one occurs. An Advisor may not appear in the place of either the Complainant or Respondent.

Aside from during the Pre-Hearing Meeting and Hearing, as described below, the Advisor role is nonspeaking. While the Advisor may provide support and advice to the parties before any meeting and/or interview and during breaks in meetings and/or interviews, outside of the hearing Advisors will not be permitted to make comments, pass notes, or otherwise disrupt any part of the Sexual Harassment Procedures process. Advisors who are disruptive during an Investigation meeting and/or interview will be required to leave.

The University will not delay the scheduling of meetings and/or interviews based on the Advisor's unavailability.

With the exception of the Hearing, as described below, the University will communicate directly with the Complainant and Respondent, not through any third party.



If a party does not have an Advisor to accompany him or her at the Hearing, the Title IX Coordinator (or designee) will appoint such an Advisor of the University's choice.

## 2. Investigation

The University will provide a prompt, fair, thorough, and impartial Investigation of the Formal Complaint. Investigations are aimed at gathering all available, relevant evidence in the form of witness interviews and other information. The Investigator(s) appointed by the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will conduct the Investigation.

The University aims to complete all Investigations within sixty calendar days of the filing of a Formal Complaint. However, there may be some Investigations that cannot be completed within sixty calendar days. In such cases, the University will communicate to the Complainant and Respondent that the Investigation is going to take longer than sixty calendar days and, in doing so, will indicate when the University believes it will complete the Investigation.

In the course of the Investigation, both parties will be afforded an opportunity to provide relevant information, including an opportunity to identify witnesses and provide other relevant evidence. The Investigator will meet separately with the Complainant, Respondent, and other relevant witnesses, if any.

While both parties are encouraged to provide any information they believe may be relevant, evidence about a party's prior sexual conduct is ordinarily not considered relevant. Such information may be relevant in those instances where there was a prior sexual relationship between the parties and the information shared may be relevant to the issue of Consent or where such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged. In addition, evidence of a prior consensual dating or sexual relationship between the parties, by itself, does not imply Consent or preclude a finding of sexual misconduct.

The Investigator may also gather or request other relevant information or evidence, when available and appropriate. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information (including witness information) as promptly as possible to facilitate prompt resolution. In the course of the Investigation, information will be shared as necessary with people who need to know, such as Investigators, parties, and witnesses.

## 3. Investigative Report

At the conclusion of the information-gathering portion of the Investigation but before the completion of an Investigative Report, the Investigator will provide hard-copy or electronic access to all evidence obtained as part of the Investigation to both parties (and their respective Advisors, if any) for their review.

The parties will have ten calendar days to review and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the Investigator. Advisors are not

permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The Investigator will consider all timely responses submitted by a party.

The parties' written responses may provide the following to the Investigator:

- comment or feedback;
- additional information, including identifying additional witnesses; and/or;
- questions for the Investigator to consider asking the other party or witnesses.

Following receipt of the parties' written responses, if any, the Investigators will review all relevant information obtained and may conduct additional interviews with the parties and/or witnesses. The Investigators will then draft an Investigative Report, which will outline each of the allegations that potentially constitutes Sexual Harassment, overview the procedural steps of the Investigation, and fairly summarize the relevant evidence, both inculpatory and exculpatory, obtained during the Investigation.

The parties, along with their respective Advisors, if any, will be provided hard-copy or electronic access to review the Investigative Report and all evidence directly related to the allegation at least ten calendar days prior to the date of the scheduled Hearing. The parties may provide a written response in advance of the Hearing.

#### 4. Hearing

Upon receipt of the Investigative Report, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will convene a meeting of a Hearing Board. The Hearing Board will conduct a Hearing to determine, by a preponderance of the evidence, whether the Respondent violated any provision of the Policy.

The University will provide at least ten days written notice to Hearing participants (including each party's Advisor, if any, upon the party's signed information release for their Advisor of choice), including the date, time, location, names of all hearing participants.

Prior to the Hearing, members of the Hearing Board shall be provided a copy of the Investigative Report, along with all evidence provided to the parties and all party responses to the Investigative Report, if any.

##### a. *Constituting the Hearing Board*

The Hearing Board will be composed of a Hearing Officer and the individuals specified below, depending on the identity of the Respondent. The Hearing Officer will be selected by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator from a standing pool of Hearing Officers nominated annually by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator and approved by the Executive Committee of the Academic Council. Students may not serve as members of the Hearing Board.

Where the Respondent is a student, there will be two additional members of the Hearing Board, selected by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) from a standing pool of Student Hearing Board Committee Members.

The Student Hearing Board Committee Members shall be nominated annually by the Vice President for Student Affairs, in conjunction with the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator, and appointed by the University President.

Where the Respondent is a staff member, there will be two additional members of the Hearing Board, selected by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) from a standing pool of Staff Hearing Board Committee Members. The Staff Hearing Board Committee Members shall be nominated annually by the Vice President of Human Resources, in conjunction with the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator, and appointed by the University President. In cases where the Respondent is a staff member and the Complainant is a student, upon the student's request, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will appoint a member of the Student Hearing Board Committee to serve in an advisory role to the Hearing Board.

Where the Respondent is a faculty member, there will be three additional members of the Hearing Board. These members will be the Associate Provost for Faculty Affairs and two tenured faculty members selected by the Academic Council from a standing pool of Faculty Hearing Board Committee Members. The Faculty Hearing Board Committee Members shall consist solely of tenured faculty that do not perform a predominately administrative role for the University, nominated annually by the Executive Committee of the Academic Council, and appointed by the University President. In cases where the Respondent is a faculty member and the Complainant is a student, upon the student's request, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will appoint a member of the Student Hearing Board Committee to serve in an advisory role to the Hearing Board.

#### b. *Pre-Hearing Meeting*

At least three calendar days before the Hearing, the Hearing Officer will convene a Pre-Hearing Meeting among the parties and, if applicable, their Advisors. Each party must attend the Pre-Hearing Meeting and may be accompanied by his or her Advisor. Advisors will be permitted to participate actively in the Pre-Hearing Meeting. Either party may request alternative arrangements for participating in the Pre-Hearing Meeting that do not require physical proximity to the other party, including participating through electronic means that permit both parties to simultaneously see and hear each other. . The Hearing Officer will set the agenda for the Pre-Hearing Meeting, which may include the following:

- Proceeding structure and logistics, including the process that will be utilized for the presentation of witnesses and evidence
- Stipulations of fact, if any
- Witness lists and order
- Exhibit lists and admissibility
- Relevance of evidence
- Expected length of Hearing and other timing considerations

After the Pre-Hearing Meeting, the Hearing Board will send the parties a written summary of the meeting.

### c. *Hearing*

The Hearing is an opportunity for the Complainant and the Respondent to address the Hearing Board in person. The Complainant and the Respondent make opening and closing statements and present relevant witnesses. It is also an opportunity for the Hearing Board to hear directly from the parties and relevant witnesses and to evaluate all relevant evidence obtained during the Investigation. The Hearing Board has the discretion to determine the specific Hearing agenda.

The Complainant and the Respondent will have the opportunity to be present throughout the entire Hearing. Either party may request alternative arrangements for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means that permit both parties to simultaneously see and hear each other. Should the Complainant or Respondent fail to attend the scheduled Hearing, the Hearing will be held and a determination will be made despite his and/or her absence. If a Complainant, Respondent, or witness does not submit to cross-examination at the Hearing, however, the Hearing Board will not rely on any statement of that party or witness in reaching a determination regarding responsibility.

An excused absence from University obligations, including academic courses, will be provided to parties and witnesses in order to attend the Hearing.

Both the Complainant and the Respondent are provided the opportunity to be heard and respond to any questions of the Hearing Board. The Hearing Board will communicate directly with the Complainant and the Respondent, not through any third party. A representative may not appear in the place of a Complainant or Respondent.

Neither the Complainant nor the Respondent will be permitted to engage in direct communication with each other before, during, or immediately after the Hearing.

### d. *Role of Advisors in Hearing*

Both the Complainant and the Respondent may have an Advisor of choice present at the Hearing. If a party does not have an Advisor for the live hearing, the University will provide an Advisor of its choice to conduct cross-examination on behalf of that party. Advisors are not permitted to actively participate in the Hearing, except for communicating with the Hearing Officer about evidentiary or procedural issues and asking questions of the other party and any witnesses as described below.

### e. *Evidence and Questioning*

***Access to Evidence.*** The Hearing Board will make all relevant evidence obtained as part of the Investigation that is directly related to the allegations raised in the Formal Complaint available at the Hearing and will give each party equal opportunity to refer to such evidence.

***Privileged Information.*** No person will be required to disclose information protected under a legally recognized privilege. The Hearing Officer will not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege.

***Evidence and Other Procedural Matters.*** At the Hearing, the Hearing Officer will rule on all procedural and evidentiary matters, including those regarding privilege, relevance, exhibits, and the testimony of Hearing participants. Either a party or an Advisor is permitted to raise such issues with the Hearing Officer.

***Requirement to Participate in Investigation.*** There is a presumption that, to be considered in the Hearing, evidence or witness testimony must be part of the Investigation record. The Hearing Board has the sole discretion to permit evidence or testimony that is not part of the Investigation record to be offered in a Hearing if that evidence is relevant and was previously unknown or unavailable.

***Questioning.*** The Hearing Officer may, at the Hearing Officer's discretion, ask questions during the Hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's Advisor may ask the other party and any witnesses relevant questions, including those challenging credibility. A Complainant or Respondent will not be permitted to personally ask questions of the other party or any witnesses that participate in the Hearing. Advisors may ask questions under the following procedure: The Advisor will ask a question of the applicable participant. If the Hearing Officer determines the Advisor's question is not relevant to the allegations in the Formal Complaint, then the Hearing Officer must explain any decision to exclude a question as not relevant. If the Hearing Officer allows the question as relevant, the participant will be expected to answer it.

***Cross-Examination.*** If a party or witness does not submit to cross-examination at the Hearing, the Hearing Board will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Board, will not, however, draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or their refusal to answer cross-examination questions or other questions.

f. *Recording*

Proceedings will be recorded by the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) and may not be recorded by anyone other than the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee). The recording will be preserved for at least seven years after the conclusion of the Proceeding or as long as necessary to provide evidence should the matter be referred to legal processes.

5. Determination and Sanctions

Following the Hearing, the Hearing Board will make a written determination as to whether, based on a preponderance of evidence, a violation of the Policy has occurred and which Sanctions, if any, shall be assigned. The Hearing Board will provide its written determination to the parties simultaneously.

The written determination will include a description of the allegations potentially constituting Sexual Harassment, findings of fact supporting the determination, conclusions applying the University's Policy to the facts, the rationale for the Hearing Board's determinations, and any opposing or additional considerations.

The Respondent in the Sexual Harassment Procedures is presumed to be not responsible. This presumption may be overcome only after a Hearing where the Hearing Board concludes that the Respondent violated University policy, based on a preponderance of the evidence (*i.e.*, whether it is more likely than not a violation occurred). The Hearing Board should strive, if possible, to arrive at a unanimous decision.

Where there is a finding of responsibility for a violation of the Policy, the Hearing Board may assign one or more Sanctions, as described below. In assigning Sanctions, the Hearing Board may consider the Respondent's past disciplinary or conduct issues, if any, which will be provided by the relevant University department. In cases where a faculty member is the Respondent, only previous findings of responsibility of Sexual Harassment by the Respondent may be considered.

The assignment of Sanctions is designed to eliminate Sexual Harassment, prevent its recurrence, and remedy its effects, while supporting the University's educational mission.

Sanctions may be assigned individually or in combination. Sanctions may include, but are not limited to, the following:

- Counseling or Education
- Verbal or Written Reprimand
- Written Warning
- Participation in an University Program or Activity
- Restorative Justice Conference
- Alcohol Assessment or Education
- Substance Abuse Treatment
- Psychological Assessment
- Ban from Campus or Specific Location(s) on Campus
- Additional Sanctions for Student Respondents
  - Loss of Extra-Curricular Privileges
  - Loss of Specific Privileges within a Residential Community
  - Loss of Opportunity to Live in Campus Housing
  - No Contact Order
  - Student Disciplinary Action
    - *Disciplinary Probation*: Defined as a specified period of observation and evaluation of a student's conduct. Any violation of University or residence hall policy committed by a student on Disciplinary Probation is a serious violation and could result in dismissal from the University. A student placed on Disciplinary Probation may not participate in an international study abroad program or any other off-site University academic program during the period of probation.
    - *Dismissal with the Opportunity to Apply for Readmission*: A separation from the University which provides the student an opportunity to apply for readmission after a specified period of time and after meeting all conditions specified at the time of dismissal. An application to the University is required to seek readmission and readmission is not guaranteed. The University

reserves the right to consider in its sole discretion, as a part of a student's application for readmission, any unresolved and/or additional reports of alleged misconduct.

- *Permanent Dismissal*: A permanent separation from the University with no opportunity for readmission.
- Additional Sanctions for Faculty and Staff Respondents
  - Transfer or Reassignment to another department, position, or schedule
  - Change of Duties and/or Responsibilities
  - Loss of Opportunity for Merit Increase
  - Removal from Positions of Leadership
  - Loss of Employment Privileges
  - Faculty and Staff Corrective Action
    - Suspension
    - Demotion, including Demotion in Academic Rank
    - Revocation of Tenure
    - Termination from Employment
    - Reduction of Individual Salary or Pay

In cases where the Respondent is a tenured faculty member, and in consideration of academic freedom and the associated protections of tenure referenced in Section 4.D above, if a Sanction selected by the Hearing Board constitutes a "Severe Sanction" (as defined by the Academic Articles), the Hearing Board must make a determination that the specific Severe Sanction selected is proportionate to the misconduct for which the tenured faculty member was found responsible.

Independent of any Sanctions, the University may also take the appropriate remedial measures to protect the Complainant. The remedial measures may include the provision of counseling, training, educational programming, accommodations, and other assistance as appropriate.

## 6. Appeals

Within ten calendar days of being informed of the University's full or partial dismissal of a Formal Complaint or a determination regarding responsibility by a Hearing Board, either a Complainant or a Respondent may request an appeal from by filing a written Request for Appeal.

Third parties may not file a Request for Appeal on behalf of a Respondent or a Complainant. Failure to submit a Request for Appeal within the time specified will render the University's dismissal or the Hearing Board's determination regarding responsibility final and conclusive. Unless otherwise stated, if a Request for Appeal is filed, the University's dismissal or the Hearing Board's determination will not become effective until the appeal process is complete.

An Appeal Coordinator appointed by the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will administer the appeal process. The University will aim to resolve the appeal process within a reasonably prompt timeframe.

A Complainant and/or a Respondent must establish one or more of the following grounds for review:

- A procedural irregularity that affected the outcome of matter. The Complainant's or Respondent's Request for Appeal must describe the procedural irregularity in detail and explain how it affected the outcome of the matter.
- New evidence that was not reasonably available at the time of the determination of responsibility or the dismissal, which could affect the outcome of the matter. The Complainant's or Respondent's Request for Appeal must describe the new evidence in detail, explain why the evidence was not available prior to the dismissal or determination, and explain how it affected the outcome of the matter. Complainants or Respondents who fail to participate in the Investigation or Hearing process generally will be deemed to have waived the opportunity to present witnesses and relevant information on their own behalf. Such Complainants or Respondents generally will be deemed to have waived the opportunity to present "new evidence" through the appeal process.
- The Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee), Investigator(s), or Hearing Board member(s) had a conflict of interest and/or bias for or against Complainants or Respondents generally, or against the individual Complainant or Respondent, that affected the outcome of the matter.
- The assigned Sanction does not fall within the range of appropriate Sanctions.

To the extent that any of the foregoing grounds require an evidentiary determination, the standard of evidence shall be a preponderance of the evidence.

Requests for Appeal are screened by the Appeal Coordinator. Requests for Appeal that are not submitted by the communicated deadline, or that do not include required information concerning the specified ground(s) for review, may be denied by the Appeal Coordinator. A Complainant's or a Respondent's Request for Appeal that is submitted within the communicated deadline and that includes the required information concerning the ground(s) for review will be forwarded by the Appeal Coordinator to the other party and to the Hearing Board. The other party will have the opportunity to provide a written response to the Request for Appeal. The other party's response must be submitted within seven calendar days of receipt of the notice of the Request for Appeal. The Hearing Board will also have the opportunity to provide a written response to the Request for Appeal.

The Appeal Coordinator will then forward the Request for Appeal, any responses from the other party and/or the Hearing Board, and the case file to one of the following individuals, who will decide the appeal:

- for student Respondents, the Vice President for Student Affairs (or designee);
- for staff Respondents, the Vice President for Human Resources (or designee); and
- for faculty Respondents, a three-member advisory panel will provide a recommendation to the Provost (or designee). The panel will consist of three tenured faculty who are elected members of the Academic Council, excluding anyone who was a member of the Hearing Board. The advisory panel will forward its recommendation to the Provost (or designee). The Provost or designee will provide a recommendation to the President, to make the decision on the appeal.



The Appeal decision will be made based on a review of the Complainant's or Respondent's Request for Appeal, the case file and, where applicable, any responses from the other party and/or the Hearing Board.

In cases where a tenured faculty member asserts on appeal that any assigned Sanction that constitutes a Severe Sanction (as defined by the Academic Articles) does not fall within the range of appropriate Sanctions, in consideration of academic freedom and the associated protections of tenure referenced in Section 4.D above, the President must make a determination as to whether the specific Severe Sanction is proportionate to the misconduct for which the tenured faculty member was found responsible.

Upon review, the Vice President for Student Affairs, Vice President for Human Resources, the Provost (or designees), or the President may remand the case for additional formal proceedings, where appropriate.

The outcome of the Appeal will be communicated to the Respondent and the Complainant via written notification. The appeal decision is final and not subject to further review.

## **5. PROCEDURES FOR DISCRIMINATORY HARASSMENT AND OTHER SEX-BASED MISCONDUCT**

### **A. Student Procedures**

In cases where a student (including a student employee) is accused of engaging in Discriminatory Harassment or Other Sex-Based Misconduct under the Policy, the procedures described in this section apply.

#### **1. Initial Assessment**

After receiving a report, the Assistant Vice President and Title IX Coordinator (or designee) will gather information about the reported conduct and respond to any immediate health or safety concerns. The Assistant Vice President and Title IX Coordinator (or designee) will assess the nature and circumstances of the report to determine whether the reported conduct is within the scope of this Policy, whether the reported conduct raises a potential Policy violation, and the appropriate manner of resolution under these procedures. This will include, when possible, a discussion of the Complainant's expressed preference for manner of resolution and any barriers to proceeding. It will also take into consideration the University's obligation to maintain an environment free from harassment.

At the conclusion of the initial assessment, the University will either:

- refer the report to the Alternative Resolution process;
- refer the report to the Administrative Review process;
- refer the report to an appropriate entity to address the concerns if the conduct is not within the scope of the policy or does not raise a potential policy violation; and/or
- close the matter.

## 2. Alternative Resolution

Alternative Resolution may be available in cases alleging Discriminatory Harassment or Other Sex-Based Misconduct, so long as the University provides both parties with written notice of the allegations, explains the requirements and consequences of Alternative Resolution, and obtains both parties' voluntary and written consent to participate in Alternative Resolution as described above.

## 3. Administrative Review

Where Alternative Resolution is not pursued and an Initial Assessment determines that an investigative process is appropriate, a report of Discriminatory Harassment or Other Sex-Based Misconduct will go through an Administrative Review. In Administrative Review, the Office of Institutional Equity (or designee) will investigate complaints and determine whether or not a violation of the Policy occurred. A preponderance of the evidence standard (i.e., whether it is more likely than not a violation occurred) will be used to determine the outcome of an Administrative Review, which could result in Sanctions against a Respondent.

### a. *Support Persons*

Student Complainants and Respondents in an Administrative Review are provided the opportunity to consult with a Support Person of their choosing. The parties may be accompanied by their respective Support Person at any meeting or interview involved in an Administrative Review, but the Support Person's role is non-speaking, and a Support Person who is disruptive may be required to leave. While a Support Person may provide support and advice to the parties before any meeting or interview and during breaks in meetings or investigative interviews, he or she may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with any meetings or interviews involved in the process.

The University will communicate directly with the Complainant and Respondent throughout an Administrative Review, not through any third party. A representative may not appear in the place of either the Complainant or Respondent.

### b. *Investigation*

When a report of Discriminatory Harassment or Other Sex-Based Misconduct is referred to an Administrative Review, the Assistant Vice President of the Office of Institutional Equity and Title IX Coordinator (or designee) will appoint an Investigator to conduct a prompt, thorough, fair, and impartial Investigation.

During an Investigation, the Investigator will meet separately with the Complainant, Respondent, and relevant witnesses, if any. Witnesses are individuals the Investigator deems to have information relevant to the allegation of a Policy violation. Witnesses may not participate solely to speak about an individual's character.

The Investigator may also gather or request other relevant information or evidence, when available and appropriate. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and

other evidence. Both parties are encouraged to provide all relevant information (including witness information) as promptly as possible to facilitate prompt resolution.

After conducting interviews and gathering other relevant information, if any, the Investigator will prepare an Investigative Report. The Investigative Report will summarize relevant information obtained during the Investigation.

The Complainant and the Respondent will be afforded the ability to review the Investigative Report. The Investigator will designate a reasonable time for this review by the parties, not to exceed five calendar days. During the course of this review:

- All documents are property of the University and shall remain in the Office of Institutional Equity; however, the Office of Institutional Equity may provide alternative arrangements to review documents.
- Documents may not be photocopied, photographed, recorded or duplicated.
- Handwritten notes are allowed; cell phones, laptops, and all other electronic/recording devices will be collected.
- An individual participating as a witness may not be present during the review of documents.

#### *c. Acceptance of Responsibility*

If, after reviewing the Investigative Report, the Respondent wishes to formally accept responsibility for the alleged Policy violations, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) may decide, in his or her sole discretion, to recognize the acceptance of responsibility and forego an Equity Panel proceeding. In this situation, the Equity Panel, as described below, will be notified of the acceptance of responsibility, and, in conjunction with the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee), may assign one or more Sanctions.

#### *d. Determination*

Upon receipt of the Investigative Report, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will convene a meeting with and seek advice from a two-member Equity Panel. The members of the Equity Panel will be selected by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) and will consist of one faculty member and one non-faculty member. The Equity Panel will be selected from a standing pool of members nominated by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee), in conjunction with the Vice President for Student Affairs and the Office of the Provost, and appointed by the University President. Students may not serve as members of the Equity Panel.

Prior to the meeting, members of the Equity Panel shall be furnished with a copy of the Investigative Report and copies of any relevant information obtained by the Investigator(s). At the meeting, the Equity Panel and the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will be afforded the opportunity to ask questions of the Investigator(s). Upon request, the Complainant and the Respondent will be afforded an opportunity to meet independently with the Assistant Vice President for the Office of

Institutional Equity and Title IX Coordinator (or designee) and the Equity Panel to make a brief statement and to answer any questions that they may have.

The Complainant or Respondent are not required to attend the scheduled meeting, and the meeting will be held and a determination will be made despite a party's absence. If a party chooses to attend the meeting, however, an excused absence from University obligations, including academic courses, will be provided. A representative may not appear in the place of a Complainant or Respondent; however, parties do have the opportunity to have a Support Person of choice present at the meeting. The Support Person's role is non-speaking. The Support Person will not be permitted to make comments, pass notes, or otherwise disrupt the panel proceeding. A Support Person who is disruptive during the Equity Panel proceeding may be required to leave.

Following the meeting with the Equity Panel, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) shall make a written determination whether a violation of the Policy has occurred.

Where there is a finding of responsibility for a violation of the Policy, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) may assign one or more Sanctions, as defined in Section IV above. In assigning Sanctions, the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) may, in his or her sole discretion, consult with the Office of Community Standards.

#### *e. Appeals*

Within ten calendar days of being informed of a determination that results in a determination of not responsible or a Sanction, either a Complainant or a Respondent may request an appeal by filing a written Request for Appeal.

Third parties may not file a Request for Appeal on behalf of a Respondent or a Complainant. Failure to submit a Request for Appeal within the time specified will render the determination final and conclusive. Unless otherwise stated, if a Request for Appeal is filed, the determination will not become effective until the appeal process is complete.

An Appeal Coordinator appointed by the Assistant Vice President for the Office of Institutional Equity and Title IX Coordinator (or designee) will administer the appeal process. The appeal process will generally be resolved in a reasonably prompt timeframe.

A Complainant or a Respondent must establish one or more of the following grounds for review:

- A procedural defect in the Administrative Review that was substantial enough to have changed the determination. The Complainant's or Respondent's request must describe the procedural defect in detail and explain how it was substantial enough to have changed the determination; and/or
- The discovery of substantive new information that was unknown or unavailable to the Complainant or Respondent during the Administrative Review and was substantial enough to have changed the determination. The Complainant's or Respondent's request must describe the newly discovered information in detail, explain why the information

was not available during the Administrative Review, and explain how it was substantial enough to have changed the determination. Complainants or Respondents who fail to participate in the Investigation or Equity Panel meeting generally will be deemed to have waived the opportunity to present “substantive new information” through the Appeal process.

To the extent that any of the foregoing grounds require an evidentiary determination, the standard of evidence shall be a preponderance of the evidence.

The Complainant and/or Respondent may also appeal on the basis that the assigned Sanction does not fall within the range of appropriate Sanctions.

After receiving a Complainant’s or a Respondent’s Request for Appeal, the Appeal Coordinator will acknowledge receipt to the Complainant or Respondent via written notification. Requests for Appeal are screened by the Appeal Coordinator. Requests for Appeal that are not submitted by the communicated deadline, or that do not include required information concerning the specified ground(s) for review, may be denied by the Appeal Coordinator. Requests for Appeal that are submitted within the communicated deadline and that include the required information concerning the ground(s) for review will be forwarded by the Appeal Coordinator to the other party and the Equity Panel. The other party will have the opportunity to provide a written response to the Request for Appeal. The other party’s response must be submitted within seven calendar days of receipt of the notice of the Request for Appeal. The Equity Panel will have the opportunity to provide a response to the Request for Appeal. The Appeal Coordinator will then forward the Request for Appeal, any responses from the other party and/or the Equity Panel, and the case file to the Vice President for Student Affairs (or designee), who will decide the appeal.

The Appeal decision will be made based on a review of the Request for Appeal, the case file and, where applicable, any responses from the other party and/or the Equity Panel. Upon review, the Vice President for Student Affairs (or designee) may remand the case for additional proceedings, where appropriate.

The outcome of the Appeal will be communicated to the Respondent and the Complainant via written notification. The Appeal decision is final and not subject to further review.

## **B. Faculty and Staff Procedures**

In cases where a faculty or staff member is accused of engaging in Discriminatory Harassment or Other Sex-Based Misconduct under the Policy, the procedures described in this section apply.

### 1. Alternative Resolution

Alternative Resolution may be available in cases alleging Discriminatory Harassment or Other Sex-Based Misconduct, so long as the University provides both parties with written notice of the allegations, explains the requirements and consequences of Alternative Resolution, and obtains both parties’ voluntary and written consent to participate in Alternative Resolution as described above.

### 2. Investigation

Where Alternative Resolution is not pursued, and an Initial Assessment determines that an investigative process is appropriate, the Office of Institutional Equity and Title IX Coordinator (or designee) will appoint an Investigator to investigate allegations to determine whether or not a violation of the Policy occurred. The University will provide a prompt, thorough, fair, and impartial investigation and resolution. A preponderance of the evidence standard (i.e., whether it is more likely than not a violation occurred) will be used to determine the outcome of an investigation.

During the course of an Investigation, the University may impose interim measures to protect the integrity of the process and/or to protect the parties, where appropriate. Such interim measures may include, but are not limited to, No Contact Orders and adjustments to work schedules, locations, or assignments. Any interim measures will be administered by the Office of Institutional Equity and Title IX Coordinator (or designee).

### 3. Determination and Sanctions

The University may take the appropriate remedial measures to protect the Complainant and/or to stop any misconduct by faculty or staff members, and may impose any Sanctions, as defined in Section IV above, it deems appropriate. The remedial measures may include, but are not limited to, the provision of counseling, training, educational programming, accommodations, No Contact Orders, and adjustments to work schedules, locations, or assignments.

The University's determination as to whether a violation of the Policy occurred will be communicated to the Complainant and the Respondent in writing. The University will notify the Complainant of any remedial measures or Sanctions imposed that directly relate to the Complainant.

### 4. Appeal

#### a. *Where Respondent is a Staff Member*

In cases involving allegations of Discriminatory Harassment or Other Sex-Based Misconduct against a staff member Respondent, the Complainant or Respondent may request a review of the outcome of the Investigation by submitting a written Request for Appeal to the Vice President of Human Resources within ten calendar days of notification of the outcome of the Investigation. The Request for Appeal must state with specificity acceptable grounds for seeking a review. Acceptable grounds for review are limited to the following: (1) a procedural defect that was substantial enough to have changed the outcome; and/or (2) the discovery of substantive new information that was unknown or unavailable at the time of the investigation and was substantial enough to have changed the outcome. To the extent that the foregoing grounds require an evidentiary determination, the standard of evidence shall be a preponderance of the evidence. Except in cases of Termination from Employment, the severity of the Sanction is not considered a legitimate ground for review. The Vice President of Human Resources (or designee) will provide the parties the University's written response, and this response is final.

#### b. *Where Respondent is a Faculty Member*

In cases involving allegations of Discriminatory Harassment or Other Sex-Based Misconduct against a faculty member Respondent, the Complainant or Respondent may request that the Vice President and Senior Associate Provost review the outcome of the investigation. This request must be in writing or email, must occur within ten calendar days of notification of the outcome of the Investigation, and must state with specificity acceptable grounds for seeking a review. Acceptable grounds are limited to the following: (1) a procedural defect that was substantial enough to have changed the outcome; and/or (2) the discovery of substantive new information that was unknown or unavailable at the time of the Investigation and was substantial enough to have changed the outcome. To the extent that any of the foregoing grounds require an evidentiary determination, the standard of evidence shall be a preponderance of the evidence. The Vice President and Sr. Associate Provost (or designee) will provide a written response to the party seeking a review, and this response is final.

If a Respondent faculty member wishes to appeal the outcome of an Investigation that results in “severe sanctions,” as defined in the Academic Articles, that faculty member is entitled to the procedural protections (including the right of appeal) set forth in Article IV, Section 9 of the Academic Articles.