

## APPENDIX A

### UNIVERSITY OF VIRGINIA

#### FORMAL GRIEVANCE PROCEDURE FOR INVESTIGATING AND RESOLVING REPORTS OF TITLE IX AND/OR SEXUAL AND GENDER-BASED PROHIBITED CONDUCT (“GRIEVANCE PROCEDURES”)

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## I. INTRODUCTION

The University of Virginia (the “University”) is committed to providing a safe and non-discriminatory environment for all members of the University community. This Formal Grievance Procedure applies to the University’s prohibition of Sexual or Gender-Based Harassment, as defined by Title IX; other forms of Sexual or Gender-Based Misconduct; and Retaliation against a person for the good faith reporting of any of these forms of conduct or participation or non-participation in any investigation or proceeding under the [Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence](#) (“Sexual Misconduct Policy”). The specific forms of Prohibited Conduct are defined in the Sexual Misconduct Policy. This Appendix identifies the procedures the University follows for investigating and resolving reports of Prohibited Conduct. The University uses this Grievance Procedure to respond to, investigate, and adjudicate any such allegation and to impose disciplinary sanctions against Students and Employees found responsible for violating the Sexual Misconduct Policy.

## II. DEFINITIONS

The “**Appeals Officer**” is an employee of the University or an external Appeals Officer trained for receiving, reviewing, and responding to appeals of the Decision Maker’s Written Determination. The Appeals Officer cannot be the Title IX Coordinator, the Investigator assigned to investigate the Formal Complaint, or the Decision Maker.

A “**Complainant**” is an individual who is reported to be the subject of conduct that could constitute Prohibited Conduct under the Sexual Misconduct Policy regardless of whether such person makes a report or files a Formal Complaint.

The “**Decision Maker**” is an external professional with experience adjudicating cases of Prohibited Conduct. The Decision Maker will not be the Title IX Coordinator or the Investigator(s) assigned to investigate the Formal Complaint.

The “**Dismissal Appeals Officer**” is the University’s Associate Vice President for Equal Opportunity and Civil Rights (“EOCR”) or designee and is responsible for receiving, reviewing, and responding to appeals of dismissals under this Grievance Procedure.

The “**Final Outcome Letter**” is the written notice to the parties of the final resolution of the Formal Resolution following an appeal decision or, in the event an appeal is not filed, the Written Determination by the Decision Maker.

A “**Formal Complaint**” is a document filed in person, by mail, or by email and signed by the Complainant or Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the University investigate the allegation. A Formal Complaint cannot be filed by telephone. The Formal Complaint must include a physical or digital signature. Submission of a report through Just Report It is not a Formal Complaint. If the Title IX Coordinator signs the Formal Complaint, they are not considered a Complainant or party to the investigation. Rather, as defined above, the subject of the alleged conduct is considered to be the Complainant.

“**Formal Resolution**” is a form of resolution following the filing of a Formal Complaint that includes an investigation conducted by a neutral Investigator, a hearing before a Decision Maker, and a remedy and sanction (if applicable).

An “**Investigator**” is the individual assigned to investigate a Formal Complaint through the Grievance Procedure. The Investigator may be an employee of the EOCR team or an external investigator trained on the requirements of the University’s Grievance Procedure.

“**Prohibited Conduct**” includes the following forms of behavior defined in the University’s Sexual Misconduct Policy: (1) Title IX Prohibited Conduct including *Quid Pro Quo* Harassment, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking; or (2) Sexual or Gender-Based Prohibited Conduct including *Quid Pro Quo* Harassment, Sexual or Gender-Based Hostile Environment Harassment, Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, Sexual Exploitation, Intimate Partner Violence, Stalking, and Complicity; or (3) Retaliation.

A “**Report**” is notification to the University Title IX Coordinator, or any Responsible Employee made by any person who believes that Prohibited Conduct may have occurred. A Report is not limited by the form of the notice to the University, does not require a physical or digital signature, and may be submitted by any person.

A “**Respondent**” is any individual who has been reported to be the perpetrator of conduct that could constitute as Prohibited Conduct.

The “**Written Determination Letter**” is the written determination and rationale by the Decision Maker to the parties.

### III. EXPECTATIONS OF PARTIES

Pursuant to this Grievance Procedure, Complainants and Respondents can expect:

- Prompt and equitable resolution of allegations of Prohibited Conduct;
- Privacy in accordance with the Sexual Misconduct Policy and any legal requirements;
- Reasonably available Supportive Measures to both parties without fee or charge, as described in the Sexual Misconduct Policy and in the Resource and Information Guide ([Appendix C](#));
- Freedom from Retaliation designed to interfere with any right or privilege secured by Title IX, or as the result of making a good faith report of Prohibited Conduct or participating or declining to participate in any proceeding under the Sexual Misconduct Policy;
- The responsibility to refrain from Retaliation directed against any person to interfere with any right or privilege secured by Title IX or for making a good faith report of Prohibited Conduct or participating or declining to participate in any proceeding under the Sexual Misconduct Policy;
- The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Sexual Misconduct Policy or the Grievance Procedure;
- The responsibility to abide by any Rules of Order and Decorum adopted by the University for the purpose of the Hearing under this Grievance Procedure;
- The opportunity to request and receive reasonable accommodations for a disability or necessary language translation or interpreter services to ensure meaningful participation in any step of the proceedings under the Sexual Misconduct Policy;
- The opportunity to articulate concerns or issues about proceedings or the University's authority to investigate under the Sexual Misconduct Policy and the Grievance Procedure;
- Timely notice of any meeting or proceeding at which the party's presence is contemplated by the Grievance Procedure;
- The opportunity to choose an advisor, including the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by the Grievance Procedure;
- Written Notice of Investigation, including notice of potential Sexual Misconduct Policy violations and the nature of the alleged Prohibited Conduct;
- The opportunity to challenge the Investigator, Decision Maker, Dismissal Appeals Office and Appeals Officer for bias or conflict of interest;

- The opportunity to offer information, present evidence, and identify witnesses during an investigation;
- The opportunity to be heard, orally and/or in writing, as to the determination of a violation of the Sexual Misconduct Policy and the imposition of any sanction(s);
- Timely and equal access to any relevant and not impermissible information that will be used during Formal Resolution pursuant to the Grievance Procedure and related meetings;
- Reasonable time to prepare any response contemplated by the Grievance Procedure;
- The opportunity to request extensions for any response contemplated by the Grievance Procedure, which, if granted, would be provided to both parties;
- Written notice of any extension of timeframes for good cause;
- Written notice of the outcome of any Formal Resolution, including the determination of a violation of the Sexual Misconduct Policy, imposition of any sanction(s), and the rationale for each;
- The opportunity to appeal the dismissal of a Formal Complaint or any allegation within a Formal Complaint to a Dismissal Appeals Officer; and
- The opportunity to appeal the Decision Maker’s Written Determination to the appropriate Appeals Officer, based on the Respondent’s status (*e.g.*, faculty, staff, student), who does not have a conflict of interest or bias against the Complainant or the Respondent or for Complainants or Respondents generally.

#### **IV. INTERSECTION OF FORMAL GRIEVANCE PROCEDURES FOR DISCRIMINATION AND RETALIATION AND OTHER UNIVERSITY PROCESSES**

##### **A. OTHER FORMS OF DISCRIMINATION AND HARASSMENT**

If a Report of Prohibited Conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by the University’s [HRM-009: Preventing and Addressing Discrimination and Harassment](#) and [HRM-010: Preventing and Addressing Retaliation](#) (collectively known as the “PADHR Policies”), the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged conduct may be appropriately investigated together without unduly delaying the resolution of the Complaint of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University policy will be evaluated under the applicable policy (*e.g.*, the PADHR Policies, the [Standards of Conduct](#), [PROV-033: Restrictions on Certain Romantic or Sexual Relationships at](#)

[the University](#)), but the investigation and resolution will be conducted in accordance with this Grievance Procedure.

## B. ALTERNATIVE RESOLUTION

At any point after the Notices of Investigation are issued to the parties and before the Hearing, the parties may request to voluntarily engage in Alternative Resolution, as described in Appendix B, subject to the Title IX Coordinator's approval. **Alternative Resolution is not available where an employee is alleged to have engaged in Title IX Prohibited Conduct directed at a student.** At any point prior to the resolution of the Alternative Resolution, either party may withdraw from the Alternative Resolution process or the Title IX Coordinator may terminate the Alternative Resolution process, at which point Formal Resolution will resume. Any information gathered during the Alternative Resolution that is not independently discovered during Formal Resolution may not be considered by the Investigator or Appeals Officer.

## C. VIOLATION OF UNIVERSITY DIRECTIVES

In accordance with the Sexual Misconduct Policy, "directives of University officials" includes: 1) complying with No Contact Directives issued by the Title IX Office; or 2) failure of a Responsible Employee to report following a disclosure of Prohibited Conduct.

A student's failure to comply with the directives of University officials may result in a charge under the University Judiciary Committee's Standards of Conduct, specifically Standard 12. An employee's failure to comply with the directives of University officials pertaining to these matters may be a violation of the applicable standards of conduct and may result in disciplinary action up to and including termination. If the Title IX Office is investigating other allegations of behavior under this Grievance Procedure, the related Standard 12 or other Standards of Conduct charge will be investigated along with the other allegations of Prohibited Conduct.

## V. INITIATION/COMMENCEMENT OF A GRIEVANCE PROCEDURE

### A. FORMAL COMPLAINT BY COMPLAINANT

At any time, the Complainant may choose to file a Formal Complaint with the Title IX Office. A Complainant may not pursue Formal Resolution under this Grievance Procedure anonymously. The Title IX Coordinator will evaluate the Formal Complaint to determine whether it constitutes Prohibited Conduct. If the Title IX Coordinator determines that the Formal Complaint does not constitute Prohibited Conduct, Alternative Resolution or Formal Resolution will not be available to the Complainant; however, the Title IX Coordinator will continue to offer appropriate Supportive Measures to the Complainant; and may engage in educational conversations with the Respondent, provide targeted training to a department and/or organization, or pursue other available options to address the concern as appropriate.

### B. FORMAL COMPLAINT BY TITLE IX COORDINATOR

Upon receipt of a Report of Prohibited Conduct and when the Complainant has chosen to not file a Formal Complaint, the Title IX Coordinator will seek to honor the resolution preferences of the Complainant whenever possible. In assessing whether the Complainant's resolution preferences may be honored, the Title IX Coordinator will consider the following factors in evaluating such request(s):

- Whether the Complainant has expressed a preference that Formal Resolution of the Complainant not be initiated;
- Whether the Complainant has any reasonably safety concerns regarding the initiation of the Complaint;
- Whether there is a risk that additional acts of Prohibited Conduct may occur if a Formal Resolution is not initiated;
- The severity of the alleged Prohibited Conduct, including whether the conduct, if established, might result in the removal of a Respondent from Grounds or the imposition of another disciplinary sanction to end the alleged Prohibited Conduct and prevent its recurrence;
- The age and relationship of the parties, including whether the Respondent is an employee of the University;
- The scope of the alleged Prohibited Conduct, including whether there is information suggesting a pattern, ongoing Prohibited Conduct, or Prohibited Conduct that is alleged to have impacted multiple individuals;
- The availability of evidence to assist the Investigator in determining whether Prohibited Conduct occurred;
- Whether the University could end the alleged Prohibited Conduct and prevent its recurrence without initiating Formal Resolution under the Grievance Procedures; and
- Any other relevant information that is reasonably available.

Determination that a Complainant's Request(s) **Can** be Honored. Where the Title IX Coordinator determines that a Complainant's resolution request(s) (e.g. not to file a Formal Complaint) can be honored, the University may nevertheless take other appropriate steps designed to address an individual's safety and well-being and to preserve or restore equal access to educational opportunities for the Complainant and the University community. Those steps may include offering appropriate Supportive Measures to the Complainant; engaging in educational conversations with the Respondent; or providing targeted training to a department and/or organization.

Determination that a Complainant's Request(s) **Cannot** be Honored. If, after considering these factors, the Title IX Coordinator determines that a Complainant's request(s) (e.g. not to file a Complaint) cannot be honored (because, based on a review of the above factors, the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or another person, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity), the Title IX Coordinator may initiate a Formal Complaint.

Where the Title IX Coordinator has determined that the University must proceed with a Formal



Complaint despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve notifying the Respondent of the allegations under investigation and speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity will be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University. The Title IX Coordinator will provide information regarding the pending resolution even if the Complainant elects not to participate in the investigation or other actions.

Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (*e.g.*, where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University will only be able to respond to the report in limited and general ways that are non-punitive and non-disciplinary (*e.g.*, through the provision of Supportive Measures, targeted training or prevention programs, or other remedies tailored to the circumstances). Further, if any of the grounds detailed in [Section VII](#) of this Grievance Procedure are present, the Title IX Coordinator may dismiss the Complaint.

## **VI. WRITTEN NOTICE OF THE ALLEGATIONS AND INVESTIGATION**

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide all parties (Complainant(s) and Respondent(s)) written notice of the allegation(s), including sufficient details about the allegation(s) known at the time, and information about both the Formal and Alternative Resolution processes. The written Notice of Investigations will:

- Identify the Complainant(s) and the Respondent(s);
- Specify (to the extent known at the time) the date, time, location, and nature of the alleged Prohibited Conduct and any other relevant conduct (*e.g.*, PADHR Conduct, University Standards of Conduct, or other applicable policy);
- Identify the potential policy violation(s);
- Identify the assigned Investigator(s);
- Include information about the parties' respective expectations under this Grievance Procedure;
- Explain the prohibition against Retaliation;
- Instruct the parties to preserve any potentially relevant evidence in any format;
- Inform the parties how to challenge participation by the Investigator(s) on the basis of bias or conflict of interest;

- Provide a copy of the Sexual Misconduct Policy and the Grievance Procedure;
- Describe the Alternative Resolution process, including the circumstances under which it allows or precludes the parties from resuming Formal Resolution under this Grievance Procedure after initiating Alternative Resolution, and any consequences resulting from participating in the Alternative Resolution process, including the records that will be maintained or could be shared;
- Instruct the parties how to express preferences related to Formal and/or Alternative Resolution processes;
- State that the Respondent is presumed to be not responsible and describe the standard of evidence required to result in a finding of responsibility;
- Describe both parties' right to an advisor of their choice, which include the right to have that advisor attend any meeting or proceeding at which the party's presence is contemplated by the Grievance Procedure;
- Describe both parties' ability to have an advisor of the University's choice appointed at no cost to assist in questioning during the Hearing, if a party has not selected an advisor for the Hearing;
- Provide notice that the parties may inspect and review all relevant and permissible inculpatory and exculpatory evidence;
- State that all parties and witnesses are prohibited from making materially false statements in bad faith;
- State that both parties will receive advance, written notice of any meetings associated with this Grievance Procedure;
- Inform the parties about the prohibition of disclosing information certain information relating to Formal Resolution in some situations and the possible consequences for doing so.

The Formal Complaint will be resolved through Formal Resolution unless both parties voluntarily request and successfully complete Alternative Resolution, subject to approval by the Title IX Coordinator, as described in [Appendix B](#), or unless the Formal Complaint is dismissed under [Section VII](#) of this Grievance Procedure.

## **VII. Transcript Notation and Degree Conferral Holds**

Following the issuance of Notices of Investigation to commence Formal Resolution under this Grievance Procedure, the Title IX Office will contact the Office of the University Registrar to share the name and computing ID of any student Respondent. Upon receipt, the University Registrar will confirm the Respondent's status and anticipated graduation date.

### **A. Transcript Notation**

Pursuant to [VA Code § 23.1-900](#), the University must include a prominent notation on the academic transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from the institution while under investigation for an offense involving sexual violence under the University's Sexual Misconduct Policy.

The University will apply a notation on the academic transcript of each student Respondent at the initiation of an investigation, stating that the student is “under investigation for a violation of the Sexual Misconduct Policy.” This notation will be removed once the matter has been resolved, consistent with these procedures.

### 1. Withdrawal

If a Respondent withdraws before the conclusion of this Grievance Procedure, the Title IX Office will instruct the University Registrar to note on the transcript that the Respondent “withdrew while under investigation for a violation of the Sexual Misconduct Policy.”

The Title IX Office will direct the University Registrar to remove any such notation where (a) a Student is subsequently found Not Responsible for all alleged violations of the Sexual Misconduct Policy, and/or (b) a Respondent who has been suspended pursuant to the Sexual Misconduct Policy, has (i) completed the term of such suspension and any conditions thereof, and (ii) has been determined by the University to be in good standing pursuant to all applicable University academic and non-academic standards.

### 2. Emergency Removal

Pursuant to the Sexual Misconduct Policy, the Title IX Coordinator may remove a Respondent from the University community on an emergency basis, in the form of a temporary suspension (“Interim Suspension”), for allegations of a student who has engaged or engages in conduct which immediately threatens the health and safety of any student or other individual arising from the allegations of Prohibited Conduct. The Title IX Coordinator will simultaneously notify the Complainant and the Respondent of the following in writing: (1) the Emergency Removal; (2) the effect of the Emergency Removal; (3) the rationale for the Emergency Removal; and (4) the process to appeal the Emergency Removal. The Title IX Coordinator will issue a No Trespass Warning to the Respondent and notify the Vice President and Chief Student Affairs Officer and the Associate Vice President (AVP) for Safety & Security or their designee/s.

Upon the issuance of a Notice of Interim Suspension, the Title IX Office will inform the University Registrar, who will place notation on the Respondent’s transcript stating that the Respondent was “Interim Suspended pursuant to the University’s Sexual Misconduct Policy.”

If the Emergency Removal is appealed, and the appeal is denied, the Title IX Office will inform the University Registrar, who will withdraw the Respondent and change their status to inactive. If the Emergency Removal is appealed and the appeal is granted, the Title IX Office will inform the University Registrar, who will remove the applicable interim suspension notation on the Respondent’s transcript.

### 3. Suspension

If a Respondent is suspended as a sanction under this Grievance Procedure, the Title IX Office will inform the University Registrar upon the conclusion of any appeal. The University Registrar will be instructed to note on the transcript that the Respondent was “Suspended for a Violation of

the Sexual Misconduct Policy.”

The Title IX Office will direct the University Registrar to remove any such notation where a Student, who has been suspended pursuant to the Sexual Misconduct Policy, has (i) completed the term of such suspension and any conditions thereof, and (ii) has been determined by the University to be in good standing pursuant to all applicable University academic and non-academic standards.

#### 4. Expulsion

If a Respondent is expelled as a sanction under Formal Resolution, the Title IX Office will inform the University Registrar upon the conclusion of any appeal. The University Registrar will be instructed to note on the transcript that the Respondent was “Expelled for a Violation of the Sexual Misconduct Policy.”

This notation will remain on the Respondent’s transcript unless it is expunged.

#### 5. Expungement

Any Respondent who has had a transcript notation placed on their transcript, may, after a period of three years, submit a written request to the Title IX Coordinator to expunge the transcript notation. The written request must explain the basis upon which the petitioning student believes good cause exists to remove the transcript notation. The Title IX Coordinator will consult with appropriate University officials, which may include but is not limited to the University Registrar, the Vice President and Chief Student Affairs Officer (or designee), Threat Assessment Director, and University Counsel, and within 14 business days of receiving the written request provide a written response either granting or denying the request. If the transcript notation is removed, the Complainant that was the subject of the underlying Formal Complaint will be notified in writing.

#### B. Degree Conferral Hold

For matters that do not include allegations of Title IX Prohibited Conduct, the Title IX Office will notify any Respondent who may be eligible to have a degree conferred during Formal Resolution of the degree conferral hold and whether the hold will impact the ability of the Respondent to participate in final exercises.

The Title IX Office will direct the University Registrar to remove any such degree conferral hold: (1) if a Respondent is found not responsible for all allegations described in the Notice of Investigation once the Final Outcome is issued to the parties; (2) if a Respondent is found responsible and receives sanctions, as described in [Section XIV](#), once the Respondent has (i) completed all terms and related conditions associated with the assigned sanction, and (ii) has been determined by the University to be in good standing pursuant to all applicable University academic and non-academic standards; or (3) the Formal Complaint is resolved through successful Alternative Resolution.

### **VIII. DISMISSALS AND APPEAL OF DISMISSALS**

The University does not have the discretion to dismiss a Formal Complaint if the allegation(s) within could constitute Prohibited Conduct under the Sexual Misconduct Policy, even if the allegation(s) initially appear unsubstantiated or lacking merit. When a Formal Complaint is received and Formal Resolution has been initiated, determinations about the merits of the allegations must be reached by following the process set forth in this Grievance Procedures. Dismissal of the Formal Resolution may occur only in the following circumstances.

#### A. TITLE IX PROHIBITED CONDUCT

1. **Mandatory Dismissal.** The University shall dismiss a Formal Complaint, or any allegation(s) therein, from the Formal Resolution or Alternative Resolution process at any time during the Investigation or Hearing when the alleged conduct, even if proved:
  - Would not constitute Title IX Prohibited Conduct as defined in the Sexual Misconduct Policy;
  - Did not occur in the University’s education program or activity;
  - Did not occur against a person in the United States; or
  - The Complainant was not participating in or attempting to participate in a University education program or activity at the time the Formal Complaint was filed.
  
2. **Discretionary Dismissal.** The University may dismiss the Formal Complaint, or any allegation(s) therein, from the Formal Resolution or Alternative Resolution process, if at any time during the Investigation or Hearing:
  - A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - The Respondent is no longer enrolled or employed by the University; or
  - Specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein. “Specific Circumstances” include, but are not limited to, instances where:
    - The Formal Complaint is made many years after the Title IX Prohibited Conduct allegedly occurred;
    - A Complainant stops participating in the investigative process or refuses to participate in the process; or
    - A Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.

#### B. SEXUAL OR GENDER-BASED PROHIBITED CONDUCT

1. **Mandatory Dismissal.** The University shall dismiss a Formal Complaint, or any allegation(s) therein, from the Formal Resolution or Alternative Resolution process at any time during the Investigation or Hearing when the alleged conduct, even if proved:
  - Would not constitute Title IX Prohibited Conduct as defined in the Sexual Misconduct Policy;
2. **Discretionary Dismissal.** The University may dismiss the Formal Complaint, or any allegation(s) therein, from the Formal Resolution or Alternative Resolution process, if at any time during the Investigation or Hearing:
  1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  2. The Respondent is no longer enrolled or employed by the University; or
  3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination to the Formal Complaint or allegations therein. “Specific Circumstances” include, but are not limited to, instances where:
    - The Formal Complaint is made many years after the Title IX Prohibited Conduct allegedly occurred;
    - A Complainant stops participating in the investigative process or refuses to participate in the process; or
    - A Formal Complaint contains allegations that are precisely the same as allegations the University has already investigated and adjudicated.

### C. DISMISSAL NOTIFICATION

The Title IX Coordinator is responsible for determining when mandatory and discretionary dismissals are required or appropriate. The Title IX Coordinator may issue a dismissal of the Formal Complaint or any allegations therein at any time during the investigation or hearing. The Title IX Coordinator will promptly send written notice (“Dismissal Notification”) of any dismissal, the reason(s) for the dismissal, and an explanation of the appeal process simultaneously to the parties.

### D. APPEAL OF DISMISSAL

The Associate Vice President for Equal Opportunity and Civil Rights or designee (“Dismissal Appeal Officer”) reviews all appeals of Dismissals. Appeals may be submitted by the Complainant or, if the Respondent was notified about the dismissal, both parties for any of the following reasons.

1. Bases for Appeal

- a. Procedural irregularity that affected the outcome of the Formal Complaint. The Appeal must specify the procedural irregularity and how it affected the outcome of the Formal Complaint.
- b. New evidence that was not reasonably available at the time the Dismissal was made, that could affect the outcome of the Formal Complaint. The Appeal must specify the new evidence that was not reasonably available at the time of the dismissal and how the new evidence changed the outcome of the Formal Complaint.
- c. The Title IX Coordinator or Investigator had bias or actual conflict of interest for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the Complaint. The Appeal must specify the basis on which the party believes the Title IX Coordinator or Investigator had an actual conflict of interest or bias and how that affected or led to the Dismissal of the Formal Complaint.

## 2. Appeal Filing Timeline

An Appeal must be submitted to the Title IX Coordinator within five (5) business days from the date of the Dismissal Notification. All Appeals must be in writing and clearly cite the reasons for the appeal and provide the evidence supporting the Appeal.

The Title IX Coordinator will promptly provide the Formal Complaint, any information gathered prior to the Dismissal, the Dismissal Notification, and the Appeal and any supporting documentation to the Dismissal Appeal Officer. Simultaneously, the Appeal and any supporting documentation will be provided to the non-appealing party with an opportunity to respond. Any response to the Appeal must be submitted to the Dismissal Appeal Officer within five (5) business days of the non-appealing party's receipt of the Appeal.

The Dismissal Appeal Officer may confer with appropriate University employees in order to obtain information necessary to make a fully informed decision. The Dismissal Appeal Officer may request clarifying information from the parties and/or witnesses. Responsive material to the Dismissal Appeal Officer must be submitted in writing within the timeframe specified by the Dismissal Appeal Officer. No hearing or interviews will be conducted during the Appeal Process.

## 3. Appeal Outcome

The Dismissal Appeal Officer will issue a written determination within ten (10) business days of their receipt of the Appeal or the expiration of the deadline for the non-appealing party's written submission, if applicable. The Dismissal Appeal Officer may extend this period for good cause and upon written notification to the party or parties.

The dismissal appeal determination will provide an explanation of the basis of the appeal and the rationale for the decision. The written notice will be provided simultaneously to the parties and the Title IX Coordinator. The appeal determination is final and not subject to further appeal or review.

Regardless of any dismissal or the outcome of any subsequent appeal, Supportive Measures will remain available to the parties, and the Title IX Coordinator will identify and pursue any other appropriate and prompt effective steps to ensure that Prohibited Conduct does not continue or recur within the University's education program or activity.

## **IX. ADVISORS**

### **A. RIGHT TO ADVISOR OF CHOICE**

Throughout the Formal Resolution process, each party has the right to choose and consult with an advisor. An advisor may be any person, and may be, but is not required to be, an attorney. Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision Maker.

### **B. ROLE OF ADVISOR**

The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a Report under the Grievance Procedure. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties, submit written statements not attributed to the party, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings, except to conduct questioning as described in [Section XII.H.1](#). The University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

### **C. UNIVERSITY-APPOINTED ADVISORS FOR TITLE IX PROHIBITED CONDUCT**

Both the Complainant and the Respondent have the right to be accompanied at the Hearing by an advisor of their choosing. Pursuant to the 2020 Title IX Regulations, if a party to a matter involving Title IX Prohibited Conduct does not have an advisor present at the Hearing, the University will provide, without fee or charge to the party, an advisor of the University's choice for the sole purpose of conducting questioning under [Section XII.H.1](#).<sup>1</sup> This University-appointed advisor may be, but is not required to be, an attorney. A Hearing involving Title IX Prohibited Conduct may not proceed without the presence of an advisor for each party who is present at the hearing. If the party's chosen advisor will not conduct questioning, the University will appoint an advisor who will do so, regardless of the participation or non-participation of the party in the hearing itself.

### **D. COMMUNICATION WITH ADVISORS**

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<sup>1</sup> 34 C.F.R. § 106.45(b)(6)(i)



The Investigator(s), Title IX Coordinator, The Decision Maker, the Dismissal Appeal Officer, and the Appeals Officer will communicate directly with the party through their University-provided email address and copy the advisor on all communications.

## **X. ACCEPTANCE OF RESPONSIBILITY**

The Respondent may, at any time before the Hearing, elect to resolve the Formal Resolution process by accepting responsibility for the Prohibited Conduct (and, where applicable, violations of other University policies as described in the Notices of Investigation), in which case the Title IX Coordinator will refer the matter to the Decision Maker to determine an appropriate sanction, or to Alternative Resolution at the parties' requests. If the Respondent subsequently retracts this acceptance or Alternative Resolution is unsuccessful, Formal Resolution will be resumed.

## **XI. INVESTIGATION**

Whenever Formal Resolution is commenced, the Title IX Coordinator will designate one or more Investigators from the University's Office for Equal Opportunity and Civil Rights and/or an experienced external investigator to conduct a prompt, thorough, and impartial investigation.

### **A. PRESUMPTION OF NON-RESPONSIBILITY**

The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where the Decision Maker concludes in the Written Determination that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Sexual Misconduct Policy.

### **B. PARTICIPATION BY PARTIES AND WITNESSES**

No party or witness is required to participate in Formal Resolution, and the Investigator, Decision Maker, and Appeals Officer will not draw any adverse inference solely from a party or witness's decision not to participate. If either party or any witness declines to participate or limits the extent of their participation, it may limit the ability of the University to thoroughly investigate and resolve the Formal Complaint and may result in a dismissal under [Section VIII](#).

The parties are expected to ask and respond to questions and provide verbal or written responses on their own behalf and in a timely manner throughout the investigation. Parties have an affirmative duty to ensure that any statement submitted as part of the Grievance Procedures to the Investigator, Title IX Coordinator, Decision Maker, Dismissal Appeals Officer, and/or Appeal Officer are written by, signed, or otherwise acknowledged by the party. Statements or responses submitted by a party's advisor, which do not indicate that the statement or response is made by or submitted on behalf of the party, will not be accepted.

Generally, the statements of any witness who could have been reasonably identified to the Investigator prior to the issuance of the Final Investigation Report, or who declined to participate

in the investigation prior to the issuance of the Final Investigation Report will not be considered by the Decision Maker. If a witness is identified following the issuance of the Final Investigation Report or a previously identified witness agrees to participate following the issuance of the Final Investigation Report, the Title IX Coordinator may allow statements for good cause. In the event a statement by a witness is submitted following the issuance of the Final Investigation Report, the Investigator will provide the statement to the parties in advance of the Hearing with a condensed opportunity to respond if the statement is submitted more than ten (10) business days from the Hearing. If the statement is submitted less than ten (10) days from the hearing, the Decision Maker may allow the parties to respond to the statement at the Hearing.

#### C. TIMEFRAME FOR COMPLETION OF INVESTIGATION PHASES; EXTENSION FOR GOOD CAUSE

Typically, investigation phases will be completed within the following timeframes:

- The period from commencement of an investigation through issuance of the Preliminary Investigation Report shall not exceed sixty (60) business days.
- The period from issuance of the Preliminary Investigation Report to the issuance of the Final Investigation Report shall not exceed forty-five (45) business days.
- The period from issuance of the Final Investigation Report and the Hearing shall not exceed twenty (20) business days.
- The period from Hearing to the issuance of the Written Determination shall not exceed fifteen (15) business days.

Any of these timeframes may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; the timing of University breaks, academic reading days, or final examination; the absence of a party, a party's advisor, and/or a witness; to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation; the need for language assistance or accommodation of disabilities; or to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. This timeframe may also be impacted if a Formal Complaint is resolved through a combination of both Formal and Alternative Resolution.

#### D. OVERVIEW OF INVESTIGATION

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to identify topics about which they believe the Investigator should question the other party or any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and witnesses, and will gather other relevant, permissible, and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email, and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the

consent of the applicable party). Interviews with parties and witnesses will be recorded and transcribed for accuracy unless the interviewee objects to being recorded.

### 1. Prior or Subsequent Conduct

Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Sexual Misconduct Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance or pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. Such prior or subsequent conduct may also constitute a violation of the PADHR policy, the University's Standards of Conduct, and/or other University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

### 2. Sexual Interests or Prior Sexual History

The sexual history or sexual predisposition of a Complainant or a Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of the Complainant is generally not relevant to the determination of a Sexual Misconduct Policy violation and will be considered only when offered to prove that someone other than the Respondent committed the conduct described in the Complaint, or to prove consent in light of specific incidents of prior sexual history between the parties. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

### 3. Relevance

The Investigator has the discretion to determine the relevance of any proffered evidence or questions and to include or exclude certain types of evidence from the Preliminary and Final Investigation Reports. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait.

### 4. Privileged Information

Any information used by the Investigator that is protected by a privileged relationship recognized by Federal or State law, such as that pertaining to attorney-client communications or medical care, may not be shared or relied upon by the Investigator without written permission of the individual about whom the record pertains. Such information includes any evidence provided to a Confidential Employee, and records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment of that individual.

Medical Records obtained with the written permission of the privilege holder will be maintained in the Title IX office and not be provided directly to the parties. The parties may view Medical Records during normal business hours by arranging a time with the Investigator or Title IX Coordinator.

#### 5. Site Visit(s)

The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.

#### 6. University Provided Information

The Investigator may seek relevant information from other University offices, such as course evaluations, course syllabi and schedules, course materials, personnel records, housing records, swipe card data, etc., as appropriate for the investigation.

#### 7. Expert Consultation(s)

The Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. This section does not limit a party's ability to provide expert reports so long as such information is provided to the Investigator prior to the issuance of the Final Investigation Report and the party makes the expert available for an interview by the Investigator, at the Investigator's discretion.

#### 8. Coordination with Law Enforcement

The Title IX Coordinator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Title IX Coordinator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence.

#### 9. Preliminary Investigation Report and Attached Materials

At the conclusion of the investigation, the Investigator will prepare a Preliminary Investigation Report summarizing the relevant and permissible information gathered, to be provided to the parties simultaneously. The Complainant and the Respondent will have an opportunity to review

the Preliminary Investigation Report and all materials gathered by the Investigator that are not otherwise protected by a privileged relationship; meet with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and identify any further topics that they believe the Investigator should address with the other party or to any witness. Any such response by the parties must be submitted to the Investigator within ten (10) business days of transmission of the Preliminary Investigation Report and accompanying materials.

While extensions for good cause may be granted to both parties, upon request, such an extension may cause the University resolution to exceed the timeframe specified in these Grievance Procedures. Upon receipt of the parties' responses to the Preliminary Investigation Report, the Investigator will identify additional investigative steps requested by the parties or identified by the Investigator, and determine the extent to which such steps, if any, are relevant and the appropriate investigative strategy for addressing such requests.

Information or evidence provided to or collected by the Investigator following the issuance of the Preliminary Investigation Report may be provided to the parties prior to the Final Investigation Report, at the Investigator's discretion, with an opportunity to submit a limited response. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the designated review and response period will not be considered in the determination of responsibility for a violation of the Sexual Misconduct Policy by the Decision Maker, and will not be considered by an Appeals Officer.

#### 10. Final Investigation Report

Following the conclusion of such additional investigative steps, if any, the Investigator will prepare a Final Investigation Report, which will summarize relevant, permissible evidence gathered in relation to the specific allegations under the Sexual Misconduct Policy (and where applicable, other relevant policies).

The Investigator will deliver the Final Investigation Report and all attached materials to the Title IX Coordinator. The Title IX Coordinator will simultaneously transmit the Final Investigation Report and all attached materials, including all information submitted by the parties in response to the Preliminary Investigation Report and all information and materials gathered as additional investigative steps, which are not otherwise privileged, to both parties in an electronic format. The Title IX Coordinator will also provide the Final Investigation Report and all attached materials to the Decision Maker, once assigned.

The Complainant and the Respondent will have an opportunity to review the Final Investigation Report and all materials gathered by the Investigator that are not otherwise protected by a privileged relationship. The parties may submit a response to the Final Investigation Report and all materials that are not protected by a privilege to the Title IX Coordinator within ten (10) business days of transmission of the Final Investigation Report and accompanying materials.

#### 11. Sanctioning Statements

Within ten (10) business days of transmission of the Final Investigation Report, both parties may submit a statement to the Title IX Coordinator for consideration by the Decision Maker in determining an appropriate sanction. This statement will be provided to the Decision Maker only in the event that a decision of responsibility has been entered following the Hearing. The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant, expressing a preference about the sanction(s) to be imposed, and describing any other information the Complainant believes relevant to the issue of remedies and sanctions. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed and any other information a Respondent believes relevant to the issue of remedies and sanctions. The Title IX Coordinator will provide the parties' written sanctioning statements to the Decision Maker at the appropriate time.

## **XII. HEARING**

### **A. PURPOSE OF THE HEARING**

The Hearing is an opportunity for the parties to address the Decision Maker about issues relevant to the determination of responsibility to be made by the Decision Maker. Each party has the opportunity to be heard in opening and closing statements, and when subject to questioning, to respond to any questions of the Decision Maker. Pursuant to the 2020 Title IX Regulations, for matters involving Title IX Prohibited Conduct, the party's advisor will have the opportunity to question the other party and any witnesses. For all matters that do not involve Title IX Prohibited Conduct, the parties will have the opportunity to submit questions for the Decision Maker to pose to the other party and any witnesses.

The Decision Maker will objectively evaluate all relevant evidence necessary to independently reach a determination regarding responsibility and, if applicable, whether remedies are appropriate, and any appropriate sanction(s) under this Grievance Procedure.

### **B. STANDARD OF REVIEW**

The Respondent is presumed to be not responsible by the Decision Maker; this presumption may be overcome only where the Decision Maker concludes that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Sexual Misconduct Policy.

### **C. NOTICE OF HEARING**

The Title IX Coordinator will notify the parties in writing of the date, time, and location of the Hearing; the name of the Decision Maker; and how to challenge the participation by the Decision Maker for bias or actual conflict of interest. The Rules of Order and Decorum will be provided to the parties and advisors with the Notice of Hearing.

### **D. TIMING OF HEARING**

The Hearing will usually be scheduled as soon as possible after the date of the issuance of the Notice of Hearing, but not less than ten (10) business days after the date of the issuance of the

Final Investigation Report and typically within ten (10) business days from the date of the Notice of Hearing, subject to extension for good cause at the discretion of the Title IX Coordinator. Good cause for extension may include the unavailability of a party; the need for language assistance or accommodation of disabilities; the timing of University closures; or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing. While extensions for good cause may be granted upon request, such an extension may cause University resolution to exceed the timeframe specified in the Grievance Procedure.

Permission to postpone a Hearing may be granted provided that the request to do so is based on a compelling emergency and communicated to the Title IX Coordinator prior to the time of the Hearing.

#### E. LOCATION OF HEARING

Hearings will be conducted with all parties virtually, with technology enabling participants simultaneously to see and hear each other. Parties may request an in-person Hearing with the parties, advisors, witnesses and Decision Maker physically present in the same geographic location. Such a request should be submitted to the Title IX Coordinator in writing at least ten (10) business days prior to the Hearing. The format of the Hearing (*e.g.*, in person or virtual) is at the discretion of the Title IX Coordinator.

#### F. PRE-HEARING CONFERENCE

The Decision Maker may convene a Pre-Hearing Conference during which preliminary matters related to the Hearing are discussed and/or resolved. The parties will be provided with advance written notice of the date, time, and location of the pre-hearing conference.

#### G. PARTICIPATION IN HEARING.

##### 1. Parties

Both the Complainant and the Respondent have a right to be present at the Hearing. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed and applicable remedies or sanctions may be imposed. Neither party is required to participate in the Hearing in order for the Hearing to proceed. The Decision Maker may not draw an adverse inference based solely on a party's absence from the Hearing or refusal to answer questions posed during the Hearing.

##### 2. Advisors

While the advisor may provide support and advice to a party at the Hearing, the advisor may not speak on behalf of the party or otherwise participate in, or in any manner disrupt, the Hearing, except to conduct questioning on behalf of the party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If a party's advisor is removed from a Hearing, the University will provide that party with a different advisor to conduct questioning on behalf of that party. Pursuant to the 2020 Title IX Regulations, for matters involving Title IX Prohibited Conduct, the party's advisor will have the opportunity to question

the other party and any witnesses. For all other matters, the parties will have the opportunity to submit questions for the Decision Maker to pose to the other party and any witnesses.

### 3. Investigator or other witnesses

The Decision Maker will request the presence of the Investigator or any other witness it deems necessary to its determination. The parties also may request the presence of the Investigator or of any witness they deem relevant to the determination by the Decision Maker. If neither a party nor the Decision Maker request the presence of a witness at the hearing, then any information submitted by that witness during the investigation may be considered by the Decision Maker without questioning. Witnesses are not required to participate in the Grievance Procedure or appear at the Hearing, and any information submitted to or obtained by the Investigator during the investigation may be considered by the Decision Maker even if a witness or party elects not to participate. The Decision Maker cannot draw an inference about the determination regarding responsibility based solely on a witness's absence from the Hearing or refusal to answer questions.

## H. HEARING FORMAT

The Decision Maker has the discretion to determine the specific Hearing format. A typical hearing may include brief opening remarks by the Complainant and/or the Respondent; questioning of the parties, the Investigator(s), and any witnesses by the Decision Maker; questioning of the parties, the Investigator(s), and any witnesses by the parties' advisors; and brief concluding remarks by the Complainant and/or the Respondent.

### 1. Questioning.

The Decision Maker may ask questions and elicit information from parties, witnesses, and/or the Investigator(s) to aid the Decision Maker's findings of fact, conclusions regarding the application of the Sexual Misconduct Policy to the facts, and the determination of responsibility or sanctions.

The parties may not question each other or any witness at the Hearing. Pursuant to the 2020 Title IX Regulations, for matters involving Title IX Prohibited Conduct, the party's advisor will have the opportunity to question the other party and any witnesses, including the Investigator(s). For all matters that do not involve Title IX Prohibited Conduct, the parties will have the opportunity to submit questions for the Decision Maker to pose to the other party and any witnesses, including the Investigator(s). There is no opportunity for an advisor to pose questions to the party they are advising at the Hearing.

The Decision Maker will permit all relevant questions and follow-up questions designed to test the veracity and accuracy of those individuals' statements, including those challenging credibility.

### 2. Relevancy Determination

Before a Complainant, a Respondent, or witness answers any question, the Decision Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The University may specify a process for making objections to the relevance of questions and evidence. Where a question is relevant, but concerns a party's character or prior bad acts, the Decision Maker cannot exclude or refuse to consider the relevant evidence but may



proceed to objectively evaluate that relevant evidence by analyzing the weight or credibility that should be ascribed to that statement.

The Decision Maker should apply logic and common sense, rather than legal rules of evidence, when making a determination about a question's relevance. Questions which will be deemed irrelevant by the Decision Maker include, but are not limited to, those which seek the following:

- information protected by a legally recognized privilege;
- any party's medical, psychological, and similar records unless the party has given voluntary, written consent;
- information about the Complainant's sexual predisposition or sexual behavior.

#### I. NEW EVIDENCE OFFERED AT HEARING

In the absence of good cause, information, including the identification of witnesses that is discoverable through the exercise of due diligence, that is not provided to the Investigator during the investigation phase, in response to the Preliminary Investigation Report, or as part of the supplemental statements submitted in response to the Final Investigation Report, will not be considered during the Hearing absent good cause and at the discretion of the Decision Maker. The Decision Maker may delay the Hearing and instruct that the investigation to be reopened to consider any new evidence. Any party or witness scheduled to submit to questioning at the Hearing must have first been interviewed, or otherwise proffered a statement, to the Investigator. A party who has not previously participated in the investigation process may be limited in the evidence or statements the party may present at the hearing.

#### J. RECORDING OF HEARING

An audio or audiovisual recording, or transcript, will be created for each Hearing and made available to the parties for inspection and review upon request.

### **XIII. WRITTEN DETERMINATION**

The Decision Maker will simultaneously issue a written decision (the "Written Determination") to both the Complainant and the Respondent, with a copy to the Title IX Coordinator, within fifteen (15) business days following the Hearing (or such longer time as the Decision Maker may for good cause determine).

The Written Determination will include the following:

- identification of the allegations potentially constituting Prohibited Conduct and/or other University Policy;
- a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- findings of fact supporting the determination;

- conclusions regarding the application of the Sexual Misconduct Policy (and, if applicable, other University Policy) to the facts;
- a description of any impact or mitigation statements, or other information obtained and/or considered in determining the appropriate disciplinary sanctions and/or remedies;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- the University's procedures and permissible bases for the parties to appeal.

#### **XIV. SANCTIONS AND REMEDIES**

Where there is a finding of responsibility, the Decision Maker may impose one or more disciplinary sanctions on the Respondent and/or provide remedies to the Complainant designed to restore or preserve equal access to the University's education program or activity.

The propriety of any sanction and/or remedy is reviewed on an individual basis based on the unique facts and circumstances as found by the Decision Maker. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Sexual Misconduct Policy provides the Decision Maker with wide latitude in the imposition of sanctions and/or remedies tailored to the facts and circumstances of the Complaint, the impact of the conduct on the Complainant and University community, and accountability by the Respondent. The imposition of sanctions and/or remedies is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion from the University.

##### **A. RANGE OF POTENTIAL DISCIPLINARY SANCTIONS**

###### **1. Student Respondents**

Where disciplinary sanctions are determined appropriate by the Decision Maker, sanctions may include any of the sanctions that are available for violations of the University's Standards of Conduct as well as others that may be appropriate, including one or more of the following:

- Expulsion: Termination of student status for any indefinite period.
- Suspension: Exclusion from classes and other privileges or activities or from the University for a definite period of time.
- Suspension held in abeyance: Exclusion from classes and other privileges or activities or from the University for a definite period of time to be enforced should another violation occur.
- Restitution: Reimbursement for damages or misappropriation of property.

- **Disciplinary Probation:** Exclusion from participation in privileged or extracurricular activities for a definite period of time.
- **Reprimand:** A written reprimand for violation of the Sexual Misconduct Policy (and, if applicable, Sexual and Gender-Based Prohibited Conduct, the PADHR Policy, the Standards of Conduct, or other University policy) placed in the Student's record, including the possibility of more severe disciplinary sanctions should another violation occur within a stated period of time.
- **Informal or Formal Coaching:** A coaching session conducted by a trained staff member in the Office for Equal Opportunity and Civil Rights (EOCR), the Office of the Dean of Students, or other relevant University office.
- **Training:** An individualized training session regarding specific topic(s) relevant to the conduct at issue conducted by a trained staff member in the EOCR, the Office of the Dean of Students, and/or other relevant University office.
- **Warning Notice:** A notice, in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.
- **Revocation of Degree:** Revocation of a degree previously awarded for serious violations committed by a student prior to graduation.
- **Deferred degree conferral.**
- **Limitations on access or participation in university programs or activities.**
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.

## 2. Employee Respondents

Where disciplinary sanctions are determined appropriate by the Investigator, sanctions may include, but are not limited to, one or more of the following:

- **Termination of Employment:** The Permanent separation of employment from the University.
- **Suspension:** The temporary suspension of employment from the University.
- **Demotion:** The demotion of the Respondent from their current position to another position.
- **Removal of Administrative Appointment:** The removal of an administrative appointment at the University.
- **Transfer of Position:** The transfer of a position from one Department, School, etc. to another.
- **Progressive Disciplinary Action:** The imposition of a sanction consistent with the University's Standards of Conduct for Employees and progressive discipline process.
- **Informal or Formal Coaching:** A coaching session conducted by a trained staff member in EOCR, Human Resources/Employee Relations, the Office of the Provost, or other relevant University office.

- Training/Education: An individualized training and/or education session regarding specific topic(s) relevant to the conduct at issue conducted by a trained staff member in the EOCR, Human Resources, the Office of the Provost, or other relevant University office.

## B. RANGE OF POTENTIAL REMEDIES

In addition to disciplinary sanctions, the Decision Maker may recommend remedies designed to restore or preserve the Complainant's equal access to the University's education program or activity. Such remedies may include, but are not limited to Supportive Measures, but may also include remedies that burden the Respondent, including, but not limited to the following:

- Imposition or extension of a No-Contact Directive;
- Imposition or extension of academic, University housing and/or University employment modifications;
- Imposition or extension of increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur;
- Targeted or broad-based educational programming or training for relevant persons or groups;
- Imposition of one or more restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the University community, and identify how to prevent that Prohibited Conduct in the future (including community service and mandatory participation in training, education and/or prevention programs related to the Prohibited Conduct); and/or
- Imposition of any other remedial or protective measures that are tailored to achieve the goals of the Sexual Misconduct Policy and to promote a safe, nondiscriminatory environment.

## C. KEY CONSIDERATIONS

In determining the appropriate disciplinary sanction(s) and/or remedies, the Decision Maker will be guided by several considerations, including, but not limited to:

- The severity, persistence, or pervasiveness of the Prohibited Conduct and any related conduct under other University policy;
- The degree of violence (if any) associated with the Prohibited Conduct and any related conduct under other University policy;
- The impact of the Prohibited Conduct and any related conduct on the Complainant;
- The impact or implications of the Prohibited Conduct and any related conduct within the University community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, at the University or elsewhere, and any criminal convictions;

- Whether the Respondent has accepted responsibility for the Prohibited Conduct or any related conduct;
- The maintenance of a safe, nondiscriminatory, and respectful living, learning, and work environment; and
- Any other mitigating, aggravating, or compelling factors.

#### D. ADDITIONAL INFORMATION CONSIDERED

If the Decision Maker concludes there is sufficient evidence, by a Preponderance of the Evidence, to support a finding of responsibility, the Decision Maker will contact the Title IX Coordinator to obtain copies of information for consideration in determining appropriate disciplinary sanctions and/or remedies, including but not limited to the parties' sanctioning statements, as described in [Section XI.D.11](#) of these Grievance Procedures and information regarding the Respondent's criminal and/or University disciplinary history (if any).

At the Decision Maker's discretion, the Decision Maker may consult with appropriate University officials (including but not limited to the Vice President for Student Affairs/Chief Student Affairs Officer (or designee), Chief Human Resources Officer (or designee), Provost (or designee), Supervisor/Manager, Title IX Coordinator, EOCR Compliance Director, Faculty Employee Assistance Program ("FEAP"), Student Health, Counseling and Psychological Services, and University Counsel) regarding the appropriate disciplinary sanction and/or remedies; however, the Decision Maker must independently determine the appropriate disciplinary sanction and/or remedies and will not delegate the determination to any other University officials.

#### E. EFFECTIVE DATE OF DISCIPLINARY SANCTIONS

The determination regarding responsibility becomes final, and any sanctions imposed are effective, on the date that the Final Outcome Letter is provided to the parties, signifying the conclusion of any Appeal of the Written Determination or the date on which an Appeal would no longer be considered timely. The Title IX Coordinator will notify the parties on this date and coordinate the implementation of any disciplinary sanctions and/or remedies. Any sanction or combination of sanctions imposed upon a Respondent will be documented in the Respondent's personnel file, if an employee, or the Respondent's student records, if a student.

#### F. RELEASE OF DOCUMENTS

Under federal privacy laws, the Final Investigation Report, statements of one party that are shared with the other party in the resolution process, and any documents prepared by the University, including documents by or for the Investigator, constitute education records which may not be disclosed outside of the proceedings, except as may be required or authorized by law. The University does not, however, impose any restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Grievance Procedures, or the Final Investigation Report, Written Determination, or Final Outcome Letter.

### **XV. APPEAL**

Both parties have the right of appeal. The Appeal Officer(s) review all appeals. Any sanction issued by the Decision Maker will not take effect until the conclusion of the appeal process or the expiration for filing an appeal.

#### A. APPEALS OFFICER(S)

All Appeals Officer(s) and their designees will receive annual training on issues related to the University's obligation to address Prohibited Conduct; the scope of conduct that constitutes Prohibited Conduct; the scope of the University's education program or activity; relevancy and impermissible evidence; and on how to conduct a Discrimination Procedures Formal Resolution process that is fair and impartial, including information regarding investigations, hearings, appeals, and the Alternative Resolution Process, while avoiding prejudice of the facts at issue, conflicts of interest, and bias.

- Where the Respondent is a Student, the Appeals Officer is the Vice President for Student Affairs and Chief Student Affairs Officer or their designee.
- Where the Respondent is an Employee that reports directly to an Executive Vice President, the Appeals Officer is the Executive Vice President, or their designee.
- Where the Respondent is Academic Faculty, the Appeals Officer is the Executive Vice President Provost, or their designee.
- Where the Respondent is a staff member in the Academic Division (who does not report to an Executive Vice President), the Appeals Officer is the Executive Vice President and Chief Operating Officer, or their designee.
- Where the Respondent is a staff member in the Medical Center, the Appeals Office is Executive Vice President for Health Affairs or their designee

The Title IX Coordinator will maintain and publish a list of Appeals Officers and their designees. Where the Appeals Officer delegates their responsibility, they must inform the Title IX Coordinator of their designees on an annual basis prior to the start of the academic year to ensure adequate time to provide training.

#### B. BASES FOR APPEALS

Parties may appeal the Written Determination's determination of responsibility and/or sanctions only on the following four bases:

1. Procedural irregularity that affected the outcome of the Written Determination. The Appeal must specify the procedural provision(s) that were violated and how it affected the outcome of the Written Determination. Procedural or technical irregularities will not be sufficient to sustain an appeal unless found to have affected the outcome of the Written Determination. Examples of procedural irregularity that may be sufficient to sustain an appeal include: (1) the Decision Maker's failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence or (2) any erroneous relevance determinations made by the Decision

Maker if the relevance determination affected the outcome of the Written Determination.

2. New evidence that was not reasonably available at the time the Written Determination was issued that would change the outcome of the Written Determination. An Appeal on this basis is limited to new evidence that was not reasonably available at the time the determination regarding responsibility was made that would change the outcome of the Written Determination. The Appeal must specify the new evidence that was not reasonably available at the time of the determination, why the evidence was unknown or unavailable, and how the new evidence could affect the outcome of the Written Determination. The following **does not** constitute new evidence for purposes of an appeal:
  - Evidence submitted in response to the Preliminary Investigation Report or Final Investigation Report;
  - The identification of individuals as potential witnesses whose identities and roles were known to the parties prior to the issuance of the Final Investigation Report; and
  - A party's statement that was not provided prior to the issuance of the Written Determination.
  
3. The Title IX Coordinator, Investigator(s), or Decision Maker had bias or actual conflict of interest for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the Written Determination. The Appeal must specify the basis on which the party believes the Title IX Coordinator, Investigator(s), or Decision Maker had an actual conflict of interest or bias and how it affected the outcome of the Written Determination.
  
4. Inappropriate Disciplinary Sanction. A party (Complainant or Respondent) appealing on this basis must identify the reason(s) they believe the Decision Maker's decision related to disciplinary sanctions is inappropriate and/or not commensurate with the finding of responsibility, or the underlying facts determined by the Decision Maker, and propose an alternative disciplinary sanction or remedy the appealing party believes should be implemented. The Appeals Officer may utilize all reasonable factors in reviewing an appeal on this basis, including but not limited to the following factors:
  - whether the disciplinary sanction(s) imposed by the Decision Maker are authorized under the Sexual Misconduct Policy;
  - whether the disciplinary sanction(s) identified by the Decision Maker are sufficient to prevent recurrence of similar conduct by the Respondent or others; and
  - whether the disciplinary sanction(s) identified by the Decision Maker are commensurate with the conduct that occurred.

The Appeals Officer's determination will be specific to the circumstances of each matter and need not be identical to a disciplinary sanction(s) applied in prior, similar Complaints involving different Respondents.

### C. APPEAL TIMELINE

An Appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of transmission of the Written Determination to the parties. The Title IX Coordinator will identify the appropriate Appeals Officer.

### D. APPEAL PROCESS

All Appeals must be in writing and clearly cite the base(s) for the Appeal and the evidence supporting the appeal. Except for the basis of New Evidence, an appealing party is prohibited from submitting evidence that was not previously submitted to the Investigator or Decision Maker. If a party files an Appeal, the Title IX Coordinator will promptly notify the other party and the Appeals Officer in writing and provide the non-appealing party with a copy of the Appeal. The non-appealing party has five (5) business days to provide a written response to the Appeal; the non-appealing party is not required to submit a response to the appeal.

Upon expiration of the deadline for the non-appealing party's written submission, the Title IX Coordinator will provide the Appeals Officer: (1) the Appeal, (2) the non-appealing party's response, if provided; (3) the Final Investigation Report, (4) the Decision Maker's Written Determination; (5) any information reviewed and considered by the Investigator or Decision Maker; (6) all permissible inculpatory and exculpatory evidence submitted to the Investigator or Decision Maker; and (7) a transcript of the Hearing (collectively, the "Appeal Packet").

The Appeals Officer may confer with appropriate University employees in order to obtain information necessary to make a fully informed decision. The Appeals Officer may request clarifying information from the parties, the Investigator, and/or the Decision Maker. No hearing or interviews are permitted during the Appeal Process.

### E. APPEAL OUTCOME AND FINAL OUTCOME LETTER

The Appeals Officer will issue a determination within fifteen (15) business days of receiving the Appeal Packet, unless an extension of the timeline for good cause is identified. If additional time is needed for good cause, the Appeals Officer will provide the parties and the Title IX Coordinator with an updated response time. The Appeals Officer will provide the written notice of the appeal determination ("Final Outcome Letter"), which will explain the result of the Appeal and the rationale for the decision, simultaneously to both parties, and provide a copy to the Title IX Coordinator.

The Final Outcome Letter is final under the Sexual Misconduct Policy and is not subject to further University appeal or grievance. Nothing in the Grievance Procedure abrogates post-adjudication rights as provided by state and federal law (*i.e.*, State Grievance Procedure, under Chapter 30



(§2.2-3000 et. seq.) of Title 2.2 of the Code of Virginia; the [Office for Civil Rights](#); and the [Equal Employment Opportunity Commission](#)).

## **XVI. RECORDS RETENTION**

### **A. STUDENT RESPONDENTS**

The University shall retain all records relating to a report of Prohibited Conduct for a period of ten (10) years after the date the report was received, and the University shall retain all of such records for a period of 20 years in cases in which the Respondent was found responsible for Prohibited Conduct.

### **B. EMPLOYEE RESPONDENTS**

The University shall retain all records relating to a report of Title IX and/or Sexual and Gender-Based Prohibited Conduct, including investigation files and personnel record documentation of disciplinary or other personnel actions, in accordance with the [University's Record Retention and Disposition Schedule](#).