

# **Sex-Based Harassment and Discrimination Policy and Procedures**

## **POLICY INTRODUCTION**

The University is committed to providing a learning and working environment free of discrimination, harassment or violence. Members of the Clark University (the “University”) community including students, staff, faculty, applicants for university employment or admission to educational or university-sponsored programs or activities, or any other person employed by, contracted or volunteering with, or a guest or visitor of the University, have the right to be free from sex-based harassment, violence, and discrimination. All members of the University community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This Sex-Based Harassment and Discrimination Policy has been developed to reaffirm this expectation and to provide recourse for those individuals whose rights have been violated.

The University encourages individuals to come forward if they have experienced any prohibited conduct as defined in this Policy. The University will evaluate all reports of policy violations, regardless of when and where the conduct occurred, to determine whether the conduct occurred in the context of an educational program or activity or had continuing effects on campus or in a university education program or activity. The University has appointed a Title IX Coordinator to oversee and manage the University’s response to and resolution process of reports of policy violations and to ensure a fair and neutral process for the resolution of such reports.

Note: Information contained within this Policy is subject to change by the University at any time, in accordance with its Policy on Policies. The University will notify the community of any changes through the website or email postings, or other methods deemed appropriate by University administration. Any changes shall take effect upon publication on the University’s website. This Policy is effective as of August 25, 2025.

## **I. SCOPE OF THE POLICY**

This Policy is applicable to Clark University students, faculty, staff, applicants for University employment or admission to educational or university-sponsored programs or activities, or any other person employed by, contracted or volunteering with the University. Guests and visitors to the University are expected to adhere to this Policy but may be accorded different procedures than those outlined in this Policy.

The requirements and protections of this Policy apply equally regardless of sex, gender, sexual orientation, gender identity or expression, or other protected classes under state or federal law. All rights and procedures are equitably provided to individuals regardless of their status as Complainant, Respondent, or witness.

The University will take steps to respond to reports of policy violations and will impose sanctions on anyone who has been found to have violated this Policy following an investigation and adjudication process. Resolution by the University is intended to help bring an end to harassing or discriminatory conduct, prevent recurrence, and address the effects on the Complainant and the University community.

### Speech and Academic Freedom

This Policy is intended to protect members of the University community from sex-based harassment and discrimination, not to regulate speech or unduly impinge on speech and expression.

Although this Policy is not intended to interfere with or impinge upon speech, expression or academic freedom the University reserves the right to sanction speech or expressive conduct that violates this Policy, other University policies related to speech and expression, or federal or state anti-discrimination and harassment laws.

When an allegation implicates academic freedom, the Title IX Coordinator will consult with the appropriate university official(s) to obtain a relevant perspective regarding those aspects of the allegation connected to the tenets of academic freedom prior to the initiation of any resolution method.

### Clark University Non-Discrimination Policy

Please see [this link](#) for the most up to date version of the policy.

## **II. PROHIBITED CONDUCT**

The following conduct is prohibited under this Policy:

### **Sex-Based Harassment**

For the purpose of this definition, protected class is limited to sex, gender, sexual orientation, gender identity or expression. Sex-based harassment consists of any verbal or physical conduct against a person or persons based on their actual or perceived protected class that includes:

- (1) Conduct that based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's education program or activity (hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access the University's education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the location of the conduct and the context in which the conduct occurred; and (iv) other harassment in the University's education program or activity; or
- (2) An employee, agent, or any other person authorized by the University to provide an aid, benefit, or service under the University's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on an individual's participation in unwelcome such conduct.

### **Discrimination**

Discrimination is conduct that is directed at a specific person or persons that subjects them to

treatment that adversely affects their employment, application for employment, education, admissions, or access to University benefits, programs, or activities, because of their actual perceived membership in a protected class or association with member(s) of a protected class. For the purpose of this definition protected class is limited to sex, gender, sexual orientation, gender identity or expression.

### **Sexual Misconduct**

An incident of sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sex-based harassment, or stalking.

### **Sexual Assault**

Sexual assault is any sexual penetration (anal, oral or vaginal), however slight, with any object or sexual intercourse by one or more persons upon another without consent. Sexual penetration includes vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation by mouth-to-genital contact or genital-to-mouth contact.

### **Sexual Assault - Non-Consensual Sexual Contact**

Non-Consensual Sexual Contact is the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, or the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

### **Sexual Exploitation**

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the one being exploited or causing or attempting to cause the incapacitation of another to gain sexual advantage. Examples of sexual exploitation include, but are not limited to: public sexual activity with another person without that other person's consent; prostituting another person; non-consensual or secret photographs, videotapes, or electronic surveillance of another person who is nude or partially nude or of another person's sexual or intimate parts or sexual activity; going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex); voyeurism; knowingly transmitting an sexually transmitted infection (STI) or HIV to another person; non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness having the effect of embarrassing an individual who is the subject of such images or information; exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals.

### **Relationship Violence (including domestic, dating, and intimate partner violence)**

Relationship violence (including domestic, dating, and intimate partner violence) is violent or controlling behavior by a person who is currently or was previously in a social relationship of a romantic or intimate nature with the Complainant. Examples of relationship violence include, but are not limited to, actual or threatened physical injury, sexual assault, psychological abuse, economic control, controlling/possessive behavior and/or progressive social isolation, threatening self-harm if the other partner leaves the relationship; destroying property, or monitoring a partner's calls and emails in order to manipulate or isolate.

### **Stalking**

Stalking is engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to a) fear for their safety or the safety of others and/or b) suffer substantial emotional distress. Stalking under this Policy is prohibited if it is based on sex, gender, sexual orientation, gender identity, or expression. Stalking behaviors include, but are not limited to, non-consensual communication (including in-person communication, telephone calls, voice/text/email messages, social networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, or any other communications that are undesired and/or place another person in fear); following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person; surveillance and other types of observation, whether by physical proximity or electronic means; vandalism; trespassing; direct physical or verbal threats against a person and/or their loved ones; gathering of information about a person from family friends, co-workers, and/or classmates; manipulative and controlling behaviors such as threats to harm oneself or threats to harm someone close to that person; and defamation or slander against a person.

### **Retaliation**

Intimidation, threats, coercion, or discrimination against any person by the University, a student, an employee, a faculty member, or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege under this Policy, or because the person has reported information, made a report, complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

**Consenting Relationships** Consensual romantic or sexual relationships between University employees and undergraduate students or between supervisors and subordinates are strictly prohibited. Consensual romantic or sexual relationships between employees and graduate students are strongly discouraged, must be immediately reported, and in some cases might be deemed impermissible. These relationships cause special concerns with respect to the existence or appearance of exploitation, abuse of position, or favoritism. All employees should understand that there are substantial risks in even an apparently consenting relationship where a power/authority difference exists. These relationships can and often do lead to charges of sexual harassment, hostile work environment on the basis of sex, sex-based favoritism, or violation of Clark's nepotism policy. Administrators and supervisors, by virtue of their level of responsibility and authority, bear a special burden of accountability. If a consensual relationship develops, the involved individuals have an affirmative obligation to advise their supervisor and either the Title IX Coordinator or Human Resources (CHRO or Director of Human Resources) so that an assessment can be made relative to whether the relationship poses any challenges that need to be addressed to ameliorate any real or perceived adverse impact to the involved individuals or others. The University reserves the right to make employment changes and impose disciplinary measures if romantic relationships develop between employees and/or students that appear problematic.

## **III. GENERAL DEFINITIONS OF THIS POLICY**

**Advisor:** An advisor is any individual who provides guidance and assistance to a Party throughout a resolution process under this Policy. At the direction of a Party, an Advisor may be

copied on communications with the Party, and have access to documents and materials made available to the Party. Other than as described in the procedures outlined in Appendix A, an Advisor may not represent, speak, or act on behalf of a Party. Additionally, an Advisor may not act to impede, obstruct, delay, or undermine any steps taken under this Policy.

**Amnesty:** Individuals who make a report of policy violations will not be disciplined for conduct that violates other Universities that occurred around the time of the alleged policy violation, unless the conduct risks the health or safety of another or involves plagiarism, cheating or other forms of academic dishonesty.

**Appeals Officer:** The person charged with reviewing and making determinations regarding appeals filed in connection with the procedures used or applied under this Policy.

**Complainant:** The person who experienced the alleged incident(s) of prohibited conduct.

**Conduct Officer:** An individual charged with making a determination regarding whether this Policy, excluding those matters handled using the procedures of Appendix A, was violated and if so, what sanctions will be applied.

**Consent:** Effective, clear consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions.

- It is the responsibility of the initiator of the sexual activity to ensure that they have the other person's consent to engage in sexual activity.
- Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.
- Consent cannot be assumed because of the existence of a dating relationship between the persons involved or due to the existence of a previous sexual relationship between the persons.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent must be present throughout the sexual activity by all parties involved.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- The Respondent's or Complainant's use of alcohol or other drugs does not diminish the Respondent's responsibility to obtain consent.
- Consent may never be given by minors (in Massachusetts, those not yet sixteen (16) years of age), those who have a mental disability, those who are incapacitated as a result of alcohol or other prescription, lawful or illicit drug consumption (voluntary and involuntary), or those who are asleep, unconscious, unaware, or otherwise physically helpless.
- Consent cannot be given under duress, intimidation, threat, coercion, or force.

**Days:** Unless otherwise specified, any reference to "days" refers to University business days and does not include University holidays, closures, or weekends.

**Force:** The term “force” includes the use of any of the following:

- Physical force, violence, the presence or use of a weapon
- Threats or harassment
- Intimidation, abuse of real or perceived power or authority, implied threats
- Coercion or duress; this includes pressuring another person to perform or engage in sexual activity.

**Incapacitation:** Incapacitation is the lack of physical or mental ability to consent. Being incapacitated differs from being intoxicated or drunk. A person who is incapacitated cannot understand the fact, nature, or extent of sexual activity. Incapacitation may be a result of consuming alcohol, drugs or other intoxicating substances, being unconscious or asleep, and/or other factors that could alter one’s faculties. Evidence of incapacity may be detected from context clues, such as slurred speech; bloodshot eyes; the smell of alcohol on the breath; shaky equilibrium; vomiting; outrageous or unusual behavior; and/or unconsciousness.

**Interim and Supportive Measures:** The University may offer non-disciplinary, non-punitive individualized services, to the Complainant or Respondent before, during, or after a report is made under this Policy. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party.

Such measures may include, but are not limited to:

- mutual restrictions on contact between the Parties;
- changes in work or housing locations
- modifications of class or work schedules
- withdrawal from a course
- academic support
- safety escorts
- counseling
- leaves of absence

**Party:** A Complainant or Respondent.

**Pregnancy or related conditions:** Pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

**Relevant Evidence:** Relevant evidence is evidence pertaining to an allegation that is likely to prove or disprove an allegation or fact.

**Respondent:** The person accused of engaging in the alleged incident(s) of prohibited conduct.

**Responsible Employee:** Any employee of Clark University, including part-time employees and student workers, who has the authority to institute corrective measures on behalf of the University, or who has the responsibility for administrative leadership, teaching, or advising.

These individuals shall report to the Title IX Coordinator any information learned about an incident that may violate this Policy. For the sake of clarity, unless specifically designated as a

confidential resource (mental health professionals, healthcare providers, spiritual leaders, ombudsperson and/or confidential resource providers), all faculty members, all employees working with the division of student success, athletics, and the human resources department, and any employees with a leadership title such as president, provost, dean, vice president, director (inclusive of those titled as assistants and associates of the same) are deemed responsible employees.

There is an expectation that all employees, regardless of position/title, should report any suspected violation of this Policy to the Title IX Coordinator, including but not limited to faculty, supervisory personnel, individual contributors, Resident Assistants, and Teaching Assistants. Failure of any of the above-referenced employees and employee categories to report a suspected violation of this Policy may be subject to disciplinary action – potentially up to and including separation of employment and/or expulsion.

**Support Person:** A support person is one who provides emotional support and assistance in a proceeding under this Policy. A support person may not represent, speak, or act on behalf of a party. Additionally, a Support Person may not act to impede, obstruct, delay, or undermine any steps taken under this Policy.

## **IV. REPORTING**

### **How to Make a Report to the University**

The University encourages individuals who have experienced sex-based harassment or discrimination to make a report to the University so that the University may respond, and resources and support may be provided. There is no timeframe for making a report, but the University encourages reports as close in time to the alleged incident as possible.

Anyone may report a policy violation to the Title IX Coordinator ([titleix@clarku.edu](mailto:titleix@clarku.edu)), or to any Responsible Employee. Reports may also be made using the online reporting form (<https://www.clarku.edu/offices/title-ix/report-an-incident/>).

A report of a policy violation involving a student or employee (faculty or staff) will be shared with the Title IX Coordinator when the report is made to any Responsible Employee of the University. The report of a policy violation should include the names of the Complainant, Respondent, and any witnesses, as well as any information known about what may have taken place including the date, time, and specific location of the alleged incident.

A report of a policy violation made to the Title IX Coordinator will not be shared with law enforcement without the Complainant's consent unless the report contains information regarding a threat to the physical safety of one or more member of the University community. To the extent possible, information reported to a non-confidential campus resource will be shared only with individuals at the University who have a role in responding to a report of a policy violation.

### **Anonymous Reporting**

An anonymous report of a policy violation may be made through the Clark Title IX webpage online [report form](#). An anonymous report may limit the University's ability to address a policy violation,

provide supportive measures to the Complainant, or take action against the Respondent under this Policy.

**Resources and Services:**

Individuals who have experienced sex-based harassment or discrimination are encouraged to consider emergency assistance for medical treatment and preservation of evidence. It is important to preserve all physical evidence following an act of sexual offense. Physical evidence may be necessary in the event criminal prosecution is pursued. If possible, an individual should not wash, eat, drink, shower, use the bathroom, or change clothes. If clothes are changed, all clothes that were worn at the time of the incident should not be cleaned and should be placed into a clean paper bag. Leave all sheets, towels, etc. that may bear evidence for the police to collect.

**Medical Treatment:**

Medical treatment is available on and off campus; however, individuals seeking to preserve evidence through forensic examination are encouraged to see a Sexual Assault Nurse Examiner at: UMass Memorial Hospital Emergency Department (119 Belmont Street, Worcester, MA 01605).

Individuals can receive confidential physical health services, including physical exams and testing for sexually transmitted infections (STIs) and pregnancy through Clark University's Health Services. Call (508) 793-7467 to schedule an appointment.

For confidential 24-hour support, counseling, and advocacy services individuals may contact Pathways for Change at (800)870-5905 (24-hr hotline).

**Reporting to Police:**

Individuals who have experienced sex-based harassment or discrimination have the right to report, or not to report, the incident to the police. Someone may choose to report to both the police and the University's Title IX office. An individual can request assistance from the Title IX Coordinator or another University Official in making a report to the police or for more information on how to obtain a court-issued harassment prevention order with police assistance. If a harassment prevention order or 209A has been issued, this information should be reported to the Title IX Coordinator and to University Police promptly.

In an emergency dial 911 or (508) 793-7575 if on campus.

Reports can be made to the Clark University Police at: Basement of Bullock Hall; (508) 793-7575.

**Disclosing Policy Violations to Confidential Campus Resources**

Confidential Campus Resources are available to assist students or employees (faculty or staff) in receiving necessary assistance and support, such as advocacy, and health or mental health services. The name(s) and other identifying information regarding a report of a policy violation made to a Confidential Campus Resource will not be shared with the Title IX Coordinator or any other member of the University community, unless the report contains information that



includes an immediate threat of harm to oneself or others.

It is important to note that the University cannot address a policy violation, provide supportive measures to the Complainant, or take action against the Respondent under this Policy in response to a report that is made only to a Confidential Campus Resource. Thus, a Complainant who makes a report to a Confidential Campus Resource may also decide to make a report to the University or report the incident to local law enforcement, so that the matter may be investigated.

While maintaining a Complainant's confidentiality, Confidential Campus Resources report the nature, date, time, and general location of an incident to the Title IX Coordinator. This limited report does not include information that would directly or indirectly identify the Complainant. Such reporting helps keep the Title IX Coordinator informed of the general extent and nature of sexual offense on and off campus so the Title IX Coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses.

Clark University's Confidential Campus Resources include:

Counseling/Psychological Services - Confidential and free individual therapy is available to students, including education regarding normal reactions to sexual assault and relationship abuse and how to cope with distress.

Center for Counseling & Personal Growth (508) 793-7678

Medical Services - Confidential physical health services are available, including physical exams and testing for sexually transmitted infections (STIs) and pregnancy.

Health Services (508) 793-7467

Ombudsperson - A confidential, informal, and neutral service available to employees. (508) 889-2675.

Confidential Faculty Members-

- Professor James Córdova [jvc.confidential@clarku.edu](mailto:jvc.confidential@clarku.edu)
- Professor Andrew Stewart [als.confidential@clarku.edu](mailto:als.confidential@clarku.edu)
- Professor Kathy Palm Reed [kpr.confidential@clarku.edu](mailto:kpr.confidential@clarku.edu)

### **Clery Act and Other Legal Obligations**

The Jeanne Clery Campus Safety Act (Clery Act) requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crimes on and near their respective campuses.

In accordance with the Clery Act, the University will track all non-identifying information regarding reports of Clery Act crimes made to the University (including but not limited to sexual assault, domestic violence, dating violence and stalking crimes). At any time, if the University determines that there is a serious and immediate threat to the University community, the University Police Department, the Title IX Coordinator, and/or the Dean of Students may issue a

timely warning to the community. Timely warnings do not include any information that identifies a Complainant.

Consistent with the Massachusetts Campus Sexual Assault Law, Clark University will provide an annual report to the Massachusetts Department of Higher Education with aggregate, de-identified information including the total number of policy violations reported to the Title IX Coordinator and data regarding disciplinary outcomes.

### **Protection from Retaliation**

Any member of the University community has the right to raise good faith concerns about or file a good faith report or complaint of a policy violation without fear of retaliation. Any person who retaliates is subject to disciplinary action up to and including expulsion and/or termination by the University.

### **False Statement**

A determination that there is not enough evidence to support a finding shall generally not be sufficient to conclude that a party or witness made a knowingly false material statement.

## **V. RESPONDING TO A REPORT**

### **Initial Outreach**

Upon receipt of a report of a policy violation, the Title IX Coordinator shall contact the Complainant, if known, to provide information, resources, and an invitation to meet with the Title IX Coordinator or designee to discuss options for supportive measures and resolving the alleged policy violations, including: (a) information regarding available campus resources, assistance and support; (b) the right to make a formal complaint of the alleged policy violations to both the university and/or to law enforcement as well as the option to make no report at all; and (c) information regarding this Policy and processes.

### **Initial Assessment of the Report and Preliminary Inquiry**

Following receipt of a report of an alleged policy violation and/or a conversation with the Complainant, the Title IX Coordinator or designee will conduct an initial assessment of the report to determine:

(a) whether interim protective or supportive measures are needed; (b) whether there is an immediate threat to the health and safety of an individual or the university community and if so, what steps the university may take to respond to any known threat; and, (c) the appropriate next steps based on the information known at that time regarding the alleged policy violations.

If the Title IX Coordinator determines that the alleged policy violation falls under Appendix A, the Title IX Coordinator will apply the process, definitions, and procedures in compliance with Title IX Federal and Appendix A. All other allegations of prohibited conduct will be handled using the procedures outlined below.

If the Title IX Coordinator determines that the alleged policy violations, even if proven, would not constitute a violation of this Policy, the Title IX Coordinator will inform the Complainant in writing of their determination and the Title IX Coordinator may:

- Refer the report to the appropriate University official for their review, response and handling in accordance with other applicable University policies and procedures;
- Work with Complainant and/or other University officials to address the alleged conduct through non-punitive means including educational conversations, facilitated conversations, training, and/or written communications.

In addition, the Title IX Coordinator may dismiss the alleged policy violations if:

- Complainant notifies the Title IX Coordinator in writing that they would like to withdraw any or all alleged policy violations
- The Respondent is no longer enrolled or employed at the University
- Circumstances prevent the University from gathering evidence sufficient to reach a determination

### **Privacy**

The University will keep the identities of all parties private to the extent possible. This means that the University will not disclose the identity of the parties, except as necessary to carry out an investigation, disciplinary process, or method of resolution (outlined in section VI below), for the health, safety and well-being of the parties and campus community, or as permitted under state or federal law. The University cannot guarantee confidentiality, and it will not restrict the parties from discussing their personal experiences, so long as the parties avoid conduct that would constitute prohibited retaliation. Additionally, please be advised that there are certain key University administrators with a 'need to know' the identity of the parties and the facts of the case in order to implement safety plans, ensure the process is not unduly impeded, and take other actions deemed necessary to safeguard the process and the University.

### **Supportive Measures**

Supportive Measures may be used to provide support to a Complainant who does not wish to take any further steps to address their concern, and when the Title IX Coordinator determines that another form of resolution is not otherwise appropriate based upon the available information. When the alleged prohibited conduct information that risks the physical health or safety of an individual or the University community, a formal process may be necessary.

Examples of supportive measures may include adjustments to the Complainant's class or on campus work schedules, adjusted deadlines for projects or assignments, or referrals to counseling or other support services. Accessing supportive measures does not preclude later use of another method of resolution under this Policy, for example if new information becomes available and the Title IX Coordinator determines there is need for additional steps to be taken, or the Complainant later decides to pursue an Agreement-Based Resolution or Investigation.

In all cases, the steps associated with supportive measures shall be documented and retained by the Title IX Coordinator.

### **Emergency Removal of a Student**

If at any time the University determines that the prohibited conduct, as alleged, poses a risk of imminent, physical harm to one or more members of the University community, the University may instruct that a student Respondent be suspended, removed or reassigned, on an interim

basis, from specific University programs or activities, or placed on leave, pending the outcome of the process under this Policy. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, removal, reassignment or leave will be provided to student Respondent in writing with a rationale for the decision, and an explanation of the process for appealing the emergency removal decision.

### **Emergency Removal of an Employee**

If at any time the University determines that the prohibited conduct, as alleged, poses a risk of imminent physical harm to one or more members of the University community or to the University's educational, research, scholarly, or work environment, the University may instruct that the employee be placed on administrative leave or reassigned, pending the outcome of the process under this Policy. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an administrative leave or reassignment will be provided to employee Respondent in writing with a rationale for the decision, and an explanation of the process for appealing the emergency removal decision.

The emergency removal of an employee or student shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

### **Opportunity to Challenge Emergency Removal**

A Respondent shall have an opportunity to challenge the decision of suspension or removal by filling out the appeal form within five (5) business days of the emergency removal. The Title IX Coordinator will designate a trained staff member who will schedule a meeting with the Respondent during which the Respondent may present their challenge to the emergency removal decision.

## **VI. METHODS OF RESOLUTION**

There are two different methods that may be used to address a report of alleged prohibited conduct: (1) agreement-based resolution, or (2) an investigation.

When appropriate, the Title IX Coordinator will incorporate the wishes of the Complainant into the decision of which resolution method to use.

There may be times when the Title IX Coordinator must move forward with the investigation method against the wishes of a Complainant, such as when the alleged prohibited conduct information that risks the physical health or safety of an individual or the University community.

Before making a determination to move forward against the wishes of a Complainant, the Title IX Coordinator shall consider:

- whether there have been other reports of prohibited conduct about the same Respondent;
- whether the Respondent has a record indicating a history of violence;
- whether the Respondent threatened further prohibited conduct against the

Complainant or others;

- whether the prohibited conduct was committed by multiple Respondents;
- whether the prohibited conduct was committed with a weapon;
- whether the Complainant is a minor;
- whether the University possesses other means to obtain relevant evidence of the prohibited conduct (e.g., security cameras or personnel, physical evidence);
- whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) by the Respondent at a given location or by a particular group.

#### **A. Agreement-Based Resolution**

An Agreement-Based Resolution is a process where the Complainant and Respondent each voluntarily agree to resolve the report of alleged prohibited conduct by mutually agreeable terms, approved by the Title IX Coordinator or designee. An Agreement-Based Resolution does not involve any determination as to whether the Respondent violated this Policy, and therefore the University does not impose any discipline or sanction. An Agreement-Based Resolution will not be used if the Complainant is a student and the Respondent is an employee, or if significant power differentials exist between employee parties.

When appropriate, the Title IX Coordinator will take the Complainant's suggestions for resolution into consideration. If both the Complainant and the Title IX Coordinator agree to using an Agreement-Based Resolution, the Title IX Coordinator will inform the Respondent of the alleged prohibited conduct, that the Complainant wishes to resolve the report of alleged prohibited conduct via an Agreement-Based Resolution, and the process for arriving at a resolution.

When the Complainant and Respondent agree to use the Agreement-Based Resolution process, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation(s) of prohibited conduct;
- The requirements of the Agreement-Based Resolution process, including the circumstances under which a successful Agreement-Based Resolution process precludes the parties from an Investigation arising from the same allegations;
- Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to engage in the Agreement-Based Resolution process does not presume that the alleged prohibited conduct has occurred, and that the Respondent is presumed not responsible for the alleged prohibited conduct;
- An explanation that each party may be accompanied by an Advisor and/or Support Person of their choice, who may be a parent, legal guardian, friend, or attorney;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

Both the Complainant and Respondent may propose steps or actions throughout the Agreement-Based Resolution process until a final agreement is arrived at and agreed to by all

parties and approved by the Title IX Coordinator. Both the Complainant and Respondent may be accompanied by an advisor and/or support person during the course of the Agreement-Based Resolution process. At any time prior to the conclusion of the Agreement-Based Resolution process, the Complainant, Respondent or Title IX Coordinator may decide that the reported prohibited conduct will instead be addressed by Investigation.

Agreement-Based Resolutions may include but are not limited to:

- work, academic, or program reassignment
- an agreement that the Complainant and Respondent will engage with one another only in limited and specific circumstances
- an agreement that the Complainant and Respondent will not contact one another
- completion of an educational project by the Respondent
- completion of a community service project by the Respondent
- targeted prevention education and training
- a written apology by the Respondent
- any other method agreed upon by the Complainant, Respondent and the Title IX Coordinator that is designed to address the reported prohibited conduct. If at any time either party does not wish to continue with the Agreement-Based Resolution process, or if the Title IX Coordinator determines that the Agreement-Based Resolution process is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the report of prohibited conduct will proceed through the Investigation process.

Once a final agreement is arrived at and agreed to by all parties and approved by the Title IX Coordinator, in writing, the matter shall be considered closed, and no investigation or further action will be taken under this Policy. Violations of the terms of an Agreement-Based Resolution may lead to an Investigation and, if substantiated, to discipline or sanction.

The Agreement-Based Resolution process is generally expected to be completed within thirty (30) business days from the date the process is initiated and it may be extended for good cause by the Title IX Coordinator. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of any Agreement-Based Resolution will be maintained by the Title IX Coordinator and can be shared by the Title IX Coordinator with other offices as appropriate.

## **B. Investigation**

An Investigation is the method the University uses to establish whether the allegations of prohibited conduct contained in a report can be substantiated, and, if so, to help determine the appropriate discipline for the Respondent. The Title IX Coordinator is responsible for overseeing the Investigation process and ensuring that a trained investigator is assigned to conduct a fair, neutral investigation. Throughout the Investigation process, both the Complainant and Respondent will be treated with respect and without prejudgment regarding the allegations and their involvement in the investigation process.

## **Evidentiary Standard**

The standard used in Investigation process under this Policy is preponderance of evidence, meaning, when the evidence shows that it is “more likely than not” that the alleged conduct

occurred. A Respondent is presumed not to have violated this Policy until and unless the Investigation process has concluded and a preponderance of the evidence establishes it is more likely than not that the Respondent is responsible for a policy violation.

### **Communicating the Initiation of an Investigation**

The Title IX Coordinator will communicate in writing to the Complainant and Respondent the initiation of the Investigation process prior to the start of the Investigation.

Such notification will include:

- The name of the Complainant(s);
- The name of the Respondent(s);
- The allegations under investigation;
- The date and location of the alleged prohibited conduct if known;
- The applicable Policy and process;
- A description of the Investigation process;
- Information regarding the University's prohibition against retaliation;
- Your rights as a party during the Investigation.

Note that if a report is anonymous, the name of the Complainant may not be readily available. The name might also be initially withheld if it is determined that a health, safety, or other compelling reason exists. However, no sanctions will be imposed without providing the Respondent with the opportunity to know the available name of any Complainant(s).

The investigation may uncover additional allegations or conduct relevant to the initial allegations and should they be relevant will be covered under the scope of the investigation. Should additional allegations of prohibited conduct be made part of the same Investigation, the Title IX Coordinator will communicate in writing to the Complainant and Respondent any additional allegations under investigation.

### **Investigation Process**

The Title IX Coordinator will assign a trained investigator (who may be an external investigator), who will gather relevant information, including interviews of the Complainant, Respondent and any relevant witnesses, and any relevant documents, materials or information. Information about an individual's character is generally not considered relevant evidence and will rarely be gathered or considered by the investigator. It may be necessary to interview the Complainant, Respondent or witnesses more than once during the course of the investigation as new information is learned and gathered. Interviews may take place in person or virtually using appropriate technology. During the Investigation process, both the Complainant and Respondent may be accompanied by an advisor and/or a support person of their choosing, and will be offered an opportunity to meet with the investigator, provide information and evidence pertaining to the allegations, suggest witness to be included in the investigation, and suggest questions to be posed of witnesses and the other Party.

All individuals are expected to participate truthfully in the investigation process, whether as a Complainant, Respondent, or a witness. All employees who are witnesses in an investigation are required to participate.

### Evidence Review

Once all of the evidence has been gathered and the interviews have been conducted, the investigator will share the evidence directly-related to the allegations (and not otherwise impermissible) with the Complainant and Respondent. At the direction of the Complainant and Respondent, this evidence may also be shared with their respective Advisor. The Complainant and Respondent may respond to the evidence if they choose to do so by providing written comments or requests that additional information be gathered, or by providing additional relevant evidence to the investigator. The Complainant and Respondent will be provided 10 business days to provide their written response. The Title IX Coordinator can extend this timeframe for good cause shown. Neither the Complainant and Respondent nor their Advisors shall be permitted to copy, disseminate or alter the evidence gathered by the investigator.

After receiving any responses from the Complainant and/or Respondent, the investigator may gather more information or ask additional questions of the Complainant, Respondent and witnesses as needed, and will again share new evidence directly-related to the allegations with the Complainant and Respondent for their review.

### **Sexual History**

In cases involving sex-based or sexual conduct: evidence that relates to the Complainant's sexual predisposition or prior sexual behavior will not be disclosed, even if otherwise relevant, unless evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged conduct or evidence about specific incidents of the Complainant's prior sexual behavior with the Respondent is offered to prove consent to the alleged sex-based or sexual conduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged sex-based or sexual conduct or preclude determination that sex-based or sexual conduct occurred.

### **Privileged/Confidential Records**

Medical and counseling records are confidential documents that if disclosed, will be considered impermissible evidence without appropriate voluntary written consent of the individual. Prior to producing medical records, parties and witnesses are encouraged to ask the investigator, the Title IX Coordinator, or their advisor about the possible consequences of releasing this information. Evidence that is protected under a privilege recognized by federal or state law, or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.

### **Ensuring the Integrity of the Investigation Process**

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from parties, advisors, support persons and any other individual whose actions disrupt or interfere with the University's investigation process.

### **Non-University Investigations**

In the event a party, a participant in the Investigation process, or a third-party to the



investigation conducts a separate inquiry into the allegations or conduct under investigation by the University, the party, the participant in the Investigation process, or the third-party will make such inquiry known to the Title IX Coordinator so that the Title IX Coordinator may notify participants in the university investigation of the additional inquiry, and so that steps can be taken to prevent disruption to the university investigation process, and ensure that participation in the University investigation is free of harassment, intimidation, bullying, retaliation or interference. Any party, participant in the Investigation, or third-party conducting such an investigation is required to inform anyone interviewed that their inquiry is not an official university inquiry, and must identify the individual for whom the investigation is being conducted.

### **Sharing Information with Law Enforcement**

There may be times when the University investigates alleged prohibited conduct under this Policy at the same time that a law enforcement agency is investigating the same allegations or conduct. The University will comply with reasonable law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding investigation as soon as it is notified that doing so would not impede any law enforcement activities.

### **Investigation Report and Timeline**

Once directly-related (and not otherwise impermissible) evidence has been shared with the Complainant and Respondent, the investigator will determine what evidence is relevant to the allegations and write a report that includes the allegations under investigation, a list of individuals interviewed, a list of all relevant (and not otherwise impermissible) evidence gathered (documents, emails, screen shots, texts, etc.), a summary of the relevant information from each interview, an analysis of the relevant information gathered, findings of fact based on the evidence, and a preliminary analysis of whether the factual findings support a determination that the Respondent is responsible for violating the Policy. Following the conclusion of the investigation, the investigator shall provide the investigation report to the Title IX Coordinator who will determine the sufficiency of the investigation including whether the information contained in the report addresses the allegations and supports the investigator's findings.

The Title IX Coordinator and the investigator endeavor to complete the investigation process within 60 business days from the date of the initiation of the investigation (this timeframe excludes the time for the parties to review and comment on the investigative report). Should the investigation timeline need to be extended, the Title IX Coordinator will notify the Complainant and Respondent in writing of the extension including the reason for the extension and the new timeline for completion of the investigation.

### **Investigation and Determination**

Following the conclusion of the investigation by the investigator, the Title IX Coordinator will forward the investigation report and all directly-related (and not otherwise impermissible) evidence to the Conduct Officer who will make a determination regarding whether the Respondent is responsible for the policy violation(s) and if so, what sanctions will be applied.

When determining an appropriate sanction, consideration will be given to the Complainant's equitable access to the University's employment and/or educational programs or activities. The appropriate University official will consult with the Title IX Coordinator about the sanction decision prior determining the sanction.

The Conduct Officer will review the investigation report and evidence. Using the investigator's findings of fact and preliminary analysis of whether the factual findings support a determination that the Respondent is responsible, the Conduct Officer will determine whether the Respondent is responsible for the policy violation(s), and if so, what sanctions will be applied. The role of the Conduct Officer is to make this determination based on the investigator's findings of fact and preliminary analysis, and not an opportunity for the Conduct Officer to re-investigate the matter or supplant their opinion for the findings of fact established by the investigator. In cases where the sanction is termination or expulsion, the Conduct Officer will refer the case to a hearing and the case will follow the hearing process outlined in Appendix A.

The Conduct Officer will provide a written document to the Title IX Coordinator communicating their decision as to whether the record establishes by a preponderance of the evidence that the Respondent is responsible for the policy violation(s), and if so the sanctions that will be applied, including a rationale for their determination.

### **Communicating the Outcome of an Investigation**

The Title IX Coordinator will send a written communication to both the Complainant and Respondent, and if requested to their respective Advisor, summarizing the investigator's findings and the determination of the Conduct Officer, as well as information regarding the right to appeal the Conduct Officer's decision and sanctions. The Title IX Coordinator will also provide each party with the determination of the Conduct Officer.

### **C. Appeal**

Both Complainant and Respondent have the right to appeal the Conduct Officer's decision following an Investigation process. If a party appeals, the Title IX Coordinator will appoint a trained Appeals Officer. Appeals must be made in writing to the Title IX Coordinator within seven (7) business days following notification of the outcome from the Conduct Officer.

An appeal may be filed for one or more of the following reasons:

- A procedural irregularity that affected the outcome of the Investigation and Determination Process;
- New evidence becomes available that was not reasonably available during the Investigation and Determination Process that would materially affect the outcome of the process;
- An actual conflict of interest or demonstrated bias on the part of the Title IX Coordinator, Conduct Officer, or investigator that would materially affect the outcome of the Investigation and Determination Process.

Note that the Title IX Coordinator is also empowered to file an appeal on behalf of the University if the determination of the Conduct Officer goes against the greater weight of the evidence or appears arbitrary in nature.

#### **Notification of Receipt of Appeal**

The Title IX Coordinator will acknowledge receipt of the appeal and make the non-appealing party aware that an appeal has been filed. The Appeal Officer will also provide the non-appealing party seven (7) business days to provide a written response to the appeal to the Appeal Officer. A response to the appeal is not required and a lack of response to the appeal does not indicate agreement with the appeal.

#### **Review and Determination of the Appeal**

The Title IX Coordinator will provide the Appeal Officer with the written appeal and any response to the appeal filed by the non-appealing party. The Appeal Officer will review the written appeal and any response to the appeal, along with any documents pertaining to the Investigation and Determination Process and any additional supporting documents pertaining to the appeal.

The Appeal Officer will issue a written determination on the appeal to the Complainant, Respondent and the Title IX Coordinator generally within 7 business days following the Appeal Officer's receipt of all appeal materials. The determination of the Appeal Officer may:

- Affirm the decision and/or sanctions of the Conduct Officer
- Return the matter to the investigator, Conduct Officer or Title IX Coordinator to review and consider any new evidence not previously available during the Investigation and Determination Process
- Return the matter to the investigator, Conduct Officer or Title IX Coordinator to correct any procedural error that may have materially affected the outcome of the Investigation and Determination Process

The determination of the Appeal Officer on the appeal is final.

#### **D. Implementation of Sanctions**

Following a determination that the Respondent is responsible for the policy violation(s) and the appropriate sanctions, the Title IX Coordinator will forward sanctions to the appropriate University official for implementation of the sanctions.

#### **E. Appropriate University Official for Investigation & Determination Process**

The appropriate University official to serve as the Conduct Officer, Appeals Officer, and University official who implements sanctions is determined by the status of the Respondent as follows:

If the Respondent is a student

Conduct Officer:

Director of Student Conduct or their designee

Appeals Officer:

Dean of Students or their designee

University Official to Implement Sanctions: Dean of Students or their designee

If the Respondent is a staff member

Conduct Officer: Director of Human Resources or their designee

Appeals Officer: CHRO or their designee

University Official to Implement Sanctions: CHRO or their designee

If the Respondent is a faculty member

Conduct Officer: Dean of the College or their designee

Appeals Officer: Provost or their designee

University Official to Implement Sanctions: Dean of the College or their designee

A range of sanctions, from written warning, disciplinary warning, disciplinary probation, loss of privileges, revocation of admission and/or degree, withholding of degree, changes to work assignments, class schedules or room assignments, educational sanctions, banned from campus, suspension, dismissal from the university, expulsion, or termination may be imposed upon any student or employee found responsible under this Policy.

The following will be considered as aggravating factors when determining appropriate sanctions (this is a non-exhaustive list):

- Frequency of the violation
- Severity of the violation
- Previous conduct history of the Respondent
- Non-adherence to supportive measures (e.g., no contact directives)
- Use of drugs or alcohol to facilitate the violation
- Use of force or a weapon in committing the violation
- Multiple actors committing the violation
- Ongoing threat to the Complainant or University community

## **F. Remedies to the Complainant**

Remedies may be provided to the Complainant upon a finding that the Respondent is responsible for a violation of this Policy. Remedies shall be determined by the Conduct Officer. Remedies are designed to restore or preserve the Complainant's equitable access to the University's employment and/or educational programs or activities. The range of remedies include:

- Education to the individual and/or the campus community
- Permanent alteration of living arrangements
- Permanent alteration of work schedules or assignments for employees
- Permanent alteration of course schedules
- Long-term contact limitations between the Parties
- Adjustments to academic deadlines
- Policy modifications or modifications of training

## **VII. GOVERNMENT CIVIL RIGHTS AUTHORITIES**

Individuals experiencing sex-based harassment or discrimination may also file a formal complaint with government civil rights authorities. These are non-university resources and deadlines may apply.

U.S. Department of Education, Office for Civil Rights 400 Maryland Avenue SW

Washington, D.C. 20202-1475

Phone: 202-453-6020

Email: [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)

Website: [www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html)

U.S. Department of Justice, Civil Rights Division

950 Pennsylvania Ave., NW, Washington, DC, 20530

Phone: 202-514-3847

Email: [education@usdoj.gov](mailto:education@usdoj.gov)

Website: <https://civilrights.justice.gov>

U.S. Equal Employment Opportunity Commission (Boston Office)

JFK Federal Bldg, 15 New Sudbury street, Room 475, Boston, MA 02203-0506

Phone: 1-800-669-4000

Website: <https://www.mass.gov/file-a-complaint-of-discrimination>

Massachusetts Commission Against Discrimination

1 Ashburton Place, Suite 601, Boston, MA 02108

Phone: 1-617-994-6000

Email: [mcad@mass.gov](mailto:mcad@mass.gov)

Website: <https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

## APPENDIX A

### Title IX Policy and Procedures

Title IX requires that allegations of certain prohibited conduct be reviewed under specific definitions and resolved using specific procedures. The definitions of prohibited conduct in this Appendix A are consistent with Title IX.

The procedures outlined in this Appendix will apply to alleged prohibited conduct if:

- a) at the time of filing a Formal Complaint, the Complainant is participating in or attempting to participate in an education program or activity of the University; and
- b) the alleged conduct occurred on campus or in any building owned or controlled by a student organization that is officially recognized by the University, or as part of an event or circumstances over which the University exercised substantial control over both the Respondent and the context in which the alleged conduct occurred; and
- c) the alleged conduct occurred in the United States; and
- d) the alleged conduct occurred after August 14, 2020.

Complaints of conduct not covered by this Appendix A shall be reviewed and handled according to the Sex-Based Harassment and Discrimination Policy and Procedures. Prohibited Conduct may be referred to other appropriate University offices for handling under other applicable University policies or codes.

*Consolidation of Cases:* In the event that the allegations of prohibited conduct under this Appendix A also involve allegations of a violation of a separate policy, the Title IX Coordinator shall, in concert with applicable administrators, have the discretion to consolidate those other allegations within one investigation and hearing under this Appendix A. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Appendix A; however, all Title IX allegations shall be handled by the procedures set forth in this Appendix A.

#### I. PROHIBITED CONDUCT UNDER TITLE IX

**Sexual Harassment** is unwelcome conduct on the basis of sex that occurs on campus or other property owned or controlled by the University, or in the context of University a program or activity, and satisfies one or more of the following:

- i. An employee of the University explicitly or impliedly conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- ii. Unwelcome sex-based conduct that, based on the totality of the circumstances, is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.
- iii. The specific offenses of Sexual Assault, Intimate Partner Violence (Dating Violence and Domestic Violence), and Stalking, defined below. These terms, as defined below, should be read as consistent with their Clery Act definitions.

**Sexual Assault** means any sexual act directed against another person, without the consent of

that person, including instances where the person is incapacitated and incapable of giving consent, and includes, but is not limited to:

- i. Rape, which means sexual intercourse with another person, without the consent of that person.
- ii. Sodomy, which means oral or anal sexual intercourse with another person, including instances where that person is unable to give consent.
- iii. Sexual Assault with an Object, which means to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person without the consent of that person, including instances where the person is unable to give consent.
- iv. Non-Consensual Sexual Contact, which means the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, or the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, including instances where the victim is unable to give consent.

Sexual Assault also includes unlawful, nonforcible sexual intercourse, including incest and statutory rape. Sexual assault includes all offenses classified as forcible or nonforcible sex offenses under the uniform crime reporting system of the Federal Bureau of Investigation.

**Dating Violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Domestic Violence** includes felony or misdemeanor crimes committed by a person who (i) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the victim; (ii) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (iii) shares a child in common with the victim; or (iv) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of Massachusetts.

**Sex-Based Stalking** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to:

- Acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Retaliation** means intimidation, threats, coercion, or discrimination against any person by the University, a student, an employee, a faculty member, or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a report, complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Appendix, including in an informal resolution process.

## **II. ADDITIONAL DEFINITIONS UNDER APPENDIX A**

**Formal Complaint:** A Formal Complaint is a written document or electronic submission submitted by the Complainant to the University, and not by a third party on the Complainant's behalf, that contains all of the following:

- Where the incident(s) occurred, if known
- What incident(s) occurred
- When the incident(s) occurred
- Identity of Respondent, if known
- A request for an investigation, and
- Complainant's digital or physical signature or some other direct indication that it is the Complainant who is filing the Formal Complaint.

A Formal Complaint may be made to the University Title IX Coordinator by U.S. mail or email, using the contact information listed below.

Brittany Brickman

Title IX Coordinator, Clark University

Title-IX@clarku.edu

508-793-7194

950 Main St  
Worcester, MA 01610



**Title IX Hearing Board:** Any person or persons authorized by the University to conduct a live hearing in order to determine whether, by a preponderance of evidence, a Respondent is responsible for prohibited conduct as defined in this Appendix A. When serving as a Title IX Hearing Board member in a particular matter, a person will not also serve as Investigator, Title IX Coordinator, or any person who facilitates an informal resolution process, and will not hear and decide appeals.

**Hearing Advisor:** During a hearing, a Complainant and Respondent shall each have a Hearing Advisor. The role of a Hearing Advisor is limited to asking questions of the other party and witnesses during the course of a hearing. The Hearing Advisor may not otherwise participate directly in, represent a party, impede or interfere with the hearing proceedings. The Hearing Advisor may be the same person who served as the Advisor for a Party throughout the investigation. This person may be of the Complainant's or Respondent's own choosing. However, if a Complainant or Respondent does not have a Hearing Advisor who can be present for the hearing, one will be provided by the University.

### **III. PROCEDURES**

#### **A. FILING A TITLE IX FORMAL COMPLAINT**

In order to proceed to a Resolution Process under Appendix A, a Formal Complaint must be filed and signed by either Complainant or the Title IX Coordinator. A Formal Complaint differs from solely making a report to the Title IX Coordinator. A Formal Complaint results in notification to the Respondent that a report has been made, and is needed to initiate either an investigation and hearing or Agreement-Based Resolution under Appendix A. Anyone who wishes to discuss their options for resolving a report prior to filing a Formal Complaint is encouraged to contact the Title IX Coordinator. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in a University program or activity or be an applicant to, or employee of, the University.

A Formal Complaint may be made to the University Title IX Coordinator by U.S. mail or email, using the contact information listed below.

Brittany Brickman

Email: [titleix@Clarku.edu](mailto:titleix@Clarku.edu)

Phone: 508-793-7194

950 Main Street Worcester, MA 01610

The Title IX Coordinator shall have the discretion to sign a Formal Complaint and initiate an investigation when a Complainant's allegations involve violence, use of weapons, serial predation, or similar factors impacting the safety of the broader University community. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become the "Complainant" for purposes of this Appendix A.

## **B. RESPONDING TO A TITLE IX FORMAL COMPLAINT**

When a Formal Complaint is filed, the Title IX Coordinator will provide written notification to the Respondent that a Formal Complaint has been filed and the Resolution Process has commenced, unless the Title IX Coordinator determines that the Formal Complaint should be dismissed as set forth below. In the event the University dismisses the Formal Complaint, both parties will be notified in writing of the decision and the rationale for the decision, and of the opportunity for both parties to appeal the decision as set forth in Section III of this Appendix A.

### Mandatory Dismissal

At any time following the submission of a Formal Complaint and prior to the commencement of a hearing, any case proceeding under this Appendix A will be dismissed if it is determined by the Title IX Coordinator that the conduct at issue does not meet the definitional or jurisdictional requirements of this Appendix A. This includes the obligation to dismiss a Formal Complaint at any time in the process if it is determined that the conduct as alleged, even if true, would not constitute a violation of this Appendix A.

### Discretionary Dismissal

The University may, at its discretion and at any time following the submission of a Formal Complaint and prior to the commencement of a hearing: (a) Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint; (b) the Respondent is no longer enrolled or employed at the University; or (c) circumstances prevent the University from gathering evidence sufficient to reach a determination.

Upon dismissal, the University may refer a case dismissed under this Appendix A for further handling under Section VI of this Policy or other appropriate University policy or code. If the investigation has already commenced at the time of dismissal, the University may use evidence already gathered during the Title IX process for the further handling of the complaint.

The emergency removal of an employee or student shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

**Emergency Removal of a Student**

If at any time the University determines that the conduct, as alleged, poses a risk of imminent, physical harm to one or more members of the University community, the University may instruct that a student Respondent be suspended or reassigned, on an interim basis, from specific University programs or activities, or placed on leave, pending the outcome of the process under Appendix A. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an interim suspension, reassignment, removal or leave will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

**Emergency Removal of an Employee**

If at any time the University determines that the conduct, as alleged, poses a risk of imminent physical harm to one or more members of the University community or to the University's educational, research, scholarly, or work environment, the University may instruct that the employee be placed on administrative leave or reassigned, pending the outcome of the process under Appendix A. Any such assessment will be made on a case-by-case basis, and based on an individualized safety and risk analysis. The decision to enact an administrative leave or reassignment will be provided to Respondent in writing with a rationale for the decision, and an explanation of the process for challenging the emergency removal decision.

The decision to place any Respondent on an interim suspension, reassignment, removal or leave shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Appendix A.

The emergency removal of an employee or student shall not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

**Opportunity to Challenge Emergency Removal**

A Respondent shall have an opportunity to challenge the decision of suspension or removal by

filling out the appeal form within five (5) business days of the emergency removal. The Title IX Coordinator will designate a trained staff member who will schedule a meeting with the Respondent during which the Respondent may present their challenge to the emergency removal decision.

## **C. RESOLUTION METHODS**

There are two resolution methods available under this Appendix A: (1) Agreement-Based Resolution or (2) Investigation and Hearing.

### **1. Agreement-Based Resolution**

At any time prior to a hearing, one or both parties may request an Agreement-Based Resolution to resolve the Formal Complaint.

An Agreement-Based Resolution is a process where the Complainant and Respondent each voluntarily agree to resolve the Formal Complaint of alleged prohibited conduct by mutually agreeable terms, approved by the Title IX Coordinator or designee. An Agreement-Based Resolution does not involve any determination as to whether the Respondent violated this Policy, and therefore the University does not impose any discipline or sanction. An Agreement-Based Resolution will not be used if the Complainant is a student and the Respondent is an employee, or if significant power differentials exist between employee parties.

When appropriate, the Title IX Coordinator will take the Complainant's suggestions for resolution into consideration. If both the Complainant and the Title IX Coordinator agree to using an Agreement-Based Resolution, the Title IX Coordinator will inform the Respondent of the alleged prohibited conduct, that the Complainant wishes to resolve the report of alleged prohibited conduct via an Agreement-Based Resolution, and the process for arriving at a resolution. Both parties must agree, in writing, to an Agreement-Based Resolution.

When the Complainant and Respondent agree to the use of an Agreement-Based Resolution, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation(s) of prohibited conduct;
- The requirements of the Agreement-Based Resolution process, including the circumstances under which a successful Agreement-Based Resolution process precludes the parties from an Investigation arising from the same allegations;
- Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to engage in the Agreement-Based Resolution process does not presume that the alleged prohibited conduct has occurred, and that the Respondent is presumed not responsible for the alleged prohibited conduct;
- An explanation that each party may be accompanied by an Advisor and/or Support Person of their choice, who may be a parent, legal guardian, friend, or attorney;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

Both the Complainant and Respondent may propose steps or actions throughout the

Agreement-Based Resolution process until a final agreement is arrived at and agreed to by all parties and approved by the Title IX Coordinator. Both the Complainant and Respondent may be accompanied by an advisor and/or support person during the course of the Agreement-Based Resolution process. If either party does not voluntarily agree in writing to pursue an Agreement-Based Resolution, or if the Complainant, Respondent, or Title IX Coordinator, at any time, determines that Agreement-Based Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the Title IX Formal Complaint will proceed through the Investigation and Hearing Process.

Agreement-Based Resolutions may include but are not limited to:

- work, academic, or program reassignment
- an agreement that the Complainant and Respondent will engage with one another only in limited and specific circumstances
- an agreement that the Complainant and Respondent will not contact one another
- completion of an educational project by the Respondent
- completion of a community service project by the Respondent
- targeted prevention education and training
- a written apology by the Respondent
- any other method agreed upon by the Complainant, Respondent and the Title IX Coordinator that is designed to address the reported prohibited conduct. If at any time either party does not wish to continue with the Agreement-Based Resolution process, or if the Title IX Coordinator determines that the Agreement-Based Resolution process is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the report of prohibited conduct will proceed through the Investigation process.

Once a final agreement is arrived at and agreed to by all parties and approved by the Title IX Coordinator, in writing, the matter shall be considered closed, and no investigation or further action will be taken under Appendix A. Violations of the terms of an Agreement-Based Resolution may lead to an Investigation and, if substantiated, to discipline or sanction.

The Agreement-Based Resolution process is generally expected to be completed within thirty (30) business days from the date the process is initiated and it may be extended for good cause by the Title IX Coordinator. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of any Agreement-Based Resolution will be maintained by the Title IX Coordinator and can be shared by the Title IX Coordinator with other offices as appropriate.

## **2. Investigation & Hearing Process**

An Investigation is the method the University uses to establish whether the allegations of prohibited conduct contained in a report can be substantiated, and, if so, to help determine the appropriate discipline for the Respondent. The Title IX Coordinator is responsible for overseeing the Investigation process and ensuring that a trained investigator is assigned to conduct a fair, neutral investigation. Throughout the Investigation process, both the Complainant and Respondent will be treated with respect and without prejudgment regarding

the allegations and their involvement in the investigation process.

All individuals are expected to participate truthfully in any Investigation process, whether as a Complainant, Respondent, or a witness. All employees who are Respondents or witnesses in an investigation are required to participate. A determination that there is not enough evidence to support a finding shall not be sufficient to conclude that a party or witness made a knowingly false material statement.

The Title IX Coordinator and the investigator shall endeavor to complete the Investigation process within 60 business days from the date of the initiation of the investigation (this timeframe excludes the time the Parties take to review and comment on the Investigative Report). Should the Investigation timeline need to be extended, the Title IX Coordinator will notify the Complainant and Respondent in writing of the extension including the reason for the extension and the new timeline for completion of the investigation.

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from Parties, Advisors, Support Persons and any other individual whose actions disrupt or interfere with the University's Investigation process.

### **Sharing information with Law Enforcement**

There may be times when the University investigates alleged prohibited conduct under this Policy at the same time that a law enforcement agency is investigating the same allegations or conduct. The University will comply with reasonable law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding investigation as soon as it is notified that doing so would not impede any law enforcement activities.

### **Sexual History**

In cases involving sex-based or sexual conduct: evidence that relates to the Complainant's sexual predisposition or prior sexual behavior will not be disclosed, even if otherwise relevant, unless evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged conduct or evidence about specific incidents of the Complainant's prior sexual behavior with the Respondent is offered to prove consent to the alleged sex-based or sexual conduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged sex-based or sexual conduct or preclude determination that sex-based or sexual conduct occurred.

### **Privileged/Confidential Records**

Medical and counseling records are confidential documents that if disclosed, will be considered impermissible evidence without appropriate voluntary written consent of the individual. Prior to producing medical records, parties and witnesses are encouraged to ask the investigator, the Title IX Coordinator, or their advisor about the possible consequences of releasing this information. Evidence that is protected under a privilege recognized by federal or state law, or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is

owed has voluntarily waived the privilege or confidentiality.

### **Ensuring the Integrity of the Investigation Process**

The Title IX Coordinator may exercise appropriate action to ensure the integrity of the investigation and the opportunity for the Complainant, Respondent and witnesses to participate in the investigation in a manner free of harassment, intimidation, bullying, and retaliation from parties, advisors, support persons and any other individual whose actions disrupt or interfere with the University's investigation process.

### **Non-University Investigations**

In the event a party, a participant in the Investigation process, or a third-party to the investigation conducts a separate inquiry into the allegations or conduct under investigation by the University, the party, the participant in the Investigation process, or the third-party will make such inquiry known to the Title IX Coordinator so that the Title IX Coordinator may notify participants in the university investigation of the additional inquiry, and so that steps can be taken to prevent disruption to the university investigation process, and ensure that participation in the University investigation is free of harassment, intimidation, bullying, retaliation or interference. Any party, participant in the Investigation, or third-party conducting such an investigation is required to inform anyone interviewed that their inquiry is not an official university inquiry, and must identify the individual for whom the investigation is being conducted.

### **Communicating the Initiation of the Investigation**

Prior to the start of any investigation, the Complainant and the Respondent will both be provided with written notification of the decision to initiate an investigation. Such Notice of Investigation will include:

- The name of the Complainant(s)
- The name of the Respondent(s)
- The allegations under investigation including, if known, the date and location of the alleged conduct
- The applicable Policy including sections of this Appendix A
- A description of the investigation process including the identity of the investigator
- The rights of Complainant and Respondent to meet with the investigator with a minimum of five (5) business days' notice; have an advisor/ support person of their choice present throughout the investigation process including all meetings with the investigator; provide information and evidence pertaining to the allegations; suggest witnesses to be included in the investigation; suggest questions to be posed of witnesses and the other Party; review and respond to all of the evidence gathered that is directly related to the allegations and not otherwise impermissible, prior to the drafting of the investigation report; receive a right to a copy of the investigation report
- A statement indicating that the University's decision proceed to an investigation and hearing does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the resolution process, there is a determination of responsibility
- Information regarding the prohibition against retaliation

Should additional allegations be brought forward, a revised Notice of Investigation shall be provided to both parties, in writing.

### **Conflict of Interest or Bias**

After a Notice of Investigation is issued to Complainant and Respondent, each party may object to the participation of the designated investigator on the grounds of a demonstrated bias or actual conflict of interest. Both parties will have three (3) business days from the date of the Notice of Investigation to submit a written objection to the selection of the investigator. If the objection is substantiated, that individual shall be replaced.

### **Evidentiary Standard**

The standard used in Investigation process under Appendix A is preponderance of evidence, meaning, when the evidence shows that it is “more likely than not” that the alleged conduct occurred. A Respondent is presumed not to have violated this Policy until and unless the Investigation process has concluded and a preponderance of the evidence establishes it is more likely than not that the Respondent is responsible for a policy violation.

### **Gathering Information**

The Title IX Coordinator will assign a trained investigator (who may be an external investigator), who will gather information, including interviews of the Complainant, Respondent and any witnesses, and any documents, materials or information considered to be directly-related to the allegations. It may be necessary to interview the Complainant, Respondent or witnesses more than once during the course of the investigation as new information is learned and gathered. Interviews may be conducted in person, or via video conference. The investigator shall make the interview notes available to the person interviewed for review. The interviewee will have three (3) business days to correct or comment on any statements in the interview notes. The deadline may be extended for good cause, upon request to the investigator. If the interviewee has corrections or comments to the notes, the interviewee may submit a written response within the three (3) business day review period reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee’s statement. If no response is received by the deadline, their interview notes will be presumed to be accurate.

Once all of the evidence has been gathered and the interviews have been conducted, the investigator will share all directly-related (and not otherwise impermissible) inculpatory and exculpatory evidence with the Complainant and Respondent. At the direction of the Complainant and Respondent, directly- related evidence may also be shared with their respective Advisor. The Complainant and Respondent will be provided ten (10) business days to respond to the evidence if they choose to do so by providing written comments or additional evidence, names of witnesses, or requests that additional questions be posed to the other party or witnesses to the investigator. Neither the Complainant nor the Respondent (nor their Advisors) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided or forward, post or otherwise make available the information to any individual, group, organization or agency. Any student or employee who fails to abide by this Appendix A may be subject to discipline. Any Advisor who fails to abide by this Appendix A may be subject to discipline and/or may be excluded from further participation in the process.



After receiving any responses from the Complainant or Respondent, the investigator may gather additional relevant information or ask additional relevant questions of the Complainant, Respondent and witnesses as needed.

If new relevant evidence is provided by either party, or gathered by the investigator, the newly-gathered evidence (including answers to clarifying questions) will be made available for review by each party. Each party shall have ten (10) business days to respond to the new evidence if they choose to do so by providing written comments or additional evidence, names of witnesses, or requests that additional questions be posed to the other party or witnesses to the investigator.

### **Investigation Report**

Once the information gathered has been shared with the Complainant and Respondent, the investigator will write a report summarizing all of the relevant (and not otherwise impermissible) evidence gathered and all steps taken during the investigation process including the allegations under investigation, a list of individuals interviewed, a the relevant and not otherwise impermissible) information gathered, and a summary of the relevant information from each interview. Following the conclusion of the investigation, the investigator shall provide the investigation report to the Title IX Coordinator.

### **Outcome of Investigation and Notice of Hearing**

Following conclusion of the investigation, the Title IX Coordinator will send written notification to the Complainant and Respondent, and if requested to their respective Advisor, of the conclusion of the investigation process, access to all of the relevant evidence, and a notice of hearing along with a copy of the investigation report.

The Notice of Hearing will include:

- The date of the hearing (scheduled no less than 10 business days from the date of the Notice of Hearing)
- Identity of the Hearing Board members
- Opportunity to provide to the Title IX Coordinator written object to the Hearing Board members on the basis of a demonstrated bias or actual conflict of interest within three (3) business days of receipt of the Notice of hearing
- Notice that each party has five (5) business days in advance of the hearing to submit to the Title IX Coordinator or designee the names of witnesses they would like to have present at the hearing
- Notice that each party has three (3) business days prior to the hearing to submit to the Title IX Coordinator or designee a preliminary list of questions they wish to pose to the other party or a witness
- Names of witnesses, if identified
- Notice of opportunity to resolve the Formal Complaint via Agreement-Based Resolution prior to the commencement of the Hearing

Should the Title IX Coordinator determine that there is an actual bias or conflict of interest with a Hearing Board member, the Title IX Coordinator shall remove the Hearing Board member and appoint a replacement.

## **Hearing Procedures**

The purpose of the hearing is to determine whether there is sufficient evidence to determine, by a preponderance of the evidence, that the alleged conduct alleged occurred, and, if so, whether such conduct violates this Appendix A. The University expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearing Board members must immediately inform the Title IX Coordinator if they have a bias or conflict of interest.

The hearing will be conducted by a neutral, trained, three-member Hearing Board chosen by the Title IX Coordinator. One member of the Hearing Board must be from an area of the University most closely aligned with the status of the Respondent. One member of the Hearing Board may be an external individual.

The Hearing Board will be presided over by a trained Board Chair who will make evidentiary rulings and enforce the rules of decorum. The Board Chair shall have the authority to limit the time allotted to any phase of the hearing and/or to limit the time allotted to the full hearing. Any such limitation shall be communicated to the parties no later than three (3) business days before the hearing. Note, however, that it is expected that hearings will not exceed one (1) business day in length. The Board Chair, in consultation with the Hearing Board and Title IX Coordinator, has the discretion to determine whether to allow a hearing to exceed this length.

The University does not compel any individual to participate in a hearing. However, the Board Chair shall have the discretion whether or not to take into consideration the statements made during the investigation by any individual who does not participate in the hearing and submit to questioning and, should the Board Chair consider such statements, the Board Chair shall further have the discretion to determine the reliability of such statements, as well as what weight, if any, to give them. If the Respondent does not attend the hearing, that is not be taken into account against the Respondent. Additionally, the Title IX Coordinator may choose to continue with the hearing in the absence of the Complainant, Respondent or any witness.

Hearings may be conducted in person or via videoconferencing. If the Title IX Coordinator determines that a hearing by videoconference is appropriate then, prior to the hearing, the Board Chair shall have received instruction regarding the operation of any audio-visual equipment that will be used for the hearing. The Board Chair shall also provide the participants instructions regarding how to participate in the hearing and any rules or guidelines for hearing participation.

Each hearing shall be recorded by the Board Chair and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for listening until the conclusion of the appeals process to Complainant, Respondent, their respective Advisors, Board Chair and Appeal Officer by contacting the Title IX Coordinator.

The Complainant, Respondent, and the Board Chair all have the right to call witnesses. Witnesses must have information relevant to the allegations. No party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the University's investigation. Each party shall submit to the Board Chair the names of witnesses they would

like to call no less than five (5) business days in advance of the hearing. The Board Chair has final discretion of who to call as a witness.

Three (3) business days prior to the hearing, each party shall submit to the Board Chair a preliminary list of questions they wish to pose to the other party, or to a witness. If the Board Chair determines that any questions are not relevant to the allegations, the Board Chair shall explain the reason for the exclusion of the question at the hearing.

#### New Information at the Hearing

Information not provided to the investigator during the investigation and evidence review process will not be allowed during the hearing itself, nor considered in determining whether this Appendix A was violated, unless it can be clearly demonstrated that such information was not reasonably known to, nor available to, the parties at the time of the investigation. Should new evidence be presented at the hearing that was not otherwise available the hearing shall be recessed and the matter be sent back to the investigator for further, limited investigation.

#### **Hearing Advisor**

Each party is entitled to one Advisor at the hearing which shall be referred to as the Hearing Advisor. The role of the Hearing Advisor is to ask questions of the other party and of witnesses, but not to advocate for, or respond for or otherwise speak on behalf of, the Complainant or Respondent during the hearing. No party shall be permitted to ask questions of the other party, or of a witness. In the event that a party does not appear for the Hearing, the Advisor for that party shall appear and may question the other party, and witnesses.

A Hearing Advisor of the University's choosing shall be provided for any party who does not have a Hearing Advisor. If both parties do not have a Hearing Advisor the University may provide one Hearing Advisor to serve as the Hearing Advisor for both parties.

#### **Hearing Participation Guidelines**

The Board Chair shall have the authority to maintain order and decorum at the hearing. The Board Chair also has the authority to determine whether any questions are relevant, impermissible, abusive, intimidating, or disrespectful, and will not permit such questions. Any party or witness who is disruptive may, at the discretion of the Board Chair be removed from the Hearing. Any Hearing Advisor who is disruptive may, at the discretion of the Board Chair, be removed from the hearing entirely. In the event the Board Chair removes a Hearing Advisor, the Board Chair will appoint another Hearing Advisor for the remainder of the hearing.

The following will apply during a hearing (note that modifications to accommodate videoconference hearings may be necessary):

- Hearings will be convened in a private room and will not be open to the public. A record of the hearing (digital audio and/or written) will be maintained by the University. No other recordings shall be made at the hearing.
- At the request of either Party, the Hearing will proceed with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.
- All Parties have a right to a fair and impartial hearing. However, a Party's failure to attend a scheduled hearing after receiving appropriate, timely notice, or a Party's failure

to participate appropriately in the proceeding, are not sufficient reasons to halt the Hearing Board from rendering a decision.

- The Hearing Board will determine the order of proceedings, noting that all Parties will be provided an opportunity to ask questions (through their respective Hearing Advisors) and respond to questions. The Hearing Board may, at its discretion, allow for opening and/or closing statements by the Hearing Advisors.
- The Respondent is presumed not responsible for the alleged policy violation(s) of this Appendix A unless and until the Hearing Board determines after the hearing that Respondent is responsible by a preponderance of the evidence.
- In a Hearing involving more than one Respondent or more than one Complainant, the Title IX Coordinator, or designee, in their discretion, may permit the hearings concerning each Respondent or Complainant to be conducted either separately or jointly.
- Neither the Respondent nor Complainant may question one another directly. Each Party's Advisor may ask the other Party and any witnesses all relevant questions and follow-up questions, including that challenging credibility. Such questioning at the Hearing must be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally. Before a Complainant or Respondent answers a question, they should pause long enough to allow the Board Chair to first determine whether the question is relevant or and not otherwise impermissible, and to explain any decision to exclude a question as not relevant or otherwise impermissible.

At the conclusion of the hearing, the Board will adjourn the hearing. The Board will discuss privately and will decide by majority vote if the Respondent is responsible for one or more policy violations. Decisions are made based on a "preponderance of evidence," meaning the incident was more likely than not to have happened. Only if the Respondent is in violation of the policy would the process include sanctioning.

Following the hearing, the Board Chair will then prepare a written report. To the extent credibility determinations need to be made, such determinations shall not be based on a person's status as Complainant, Respondent, or witness.

The Board Chair's report will include:

- The allegations;
- Description of all procedural steps taken to date;
- Findings of fact;
- Conclusion of application of facts to the Policy; and
- Rationale for each determination.

If the Board Chair determines that there is no finding of responsibility, the Board Chair's report shall be provided to the Title IX Coordinator, who shall communicate the findings, along with a copy of the Board Chair's report, to the parties, together with procedures for appeal.

If the Respondent is found responsible for violating University policy, the Hearing Board will deliberate and decide upon which sanction(s) shall be applied. The Title IX Coordinator shall be notified of the determination of sanction.

The Board Chair's report, together with the determination of the appropriate sanction(s), shall be provided to the Title IX Coordinator, who shall communicate the findings and the

sanction(s), along with a copy of the Board Chair's report, to the parties within seven (7) business days, together with procedures for appeal. The Complainant shall also be provided with information on remedies, as determined by the Title IX Coordinator.

### **Determining Sanctions**

The Hearing Board will consider the following as non-exhaustive list of aggravating factors in determining sanction(s):

A range of sanctions, from written warning, disciplinary warning, disciplinary probation, loss of privileges, revocation of admission and/or degree, withholding of degree, changes to work assignments, class schedules or room assignments, educational sanctions, banned from campus, suspension, dismissal from the university, expulsion, or termination may be imposed upon any student or employee found responsible under Appendix A.

The following will be considered as aggravating factors when determining appropriate sanctions (this is a non-exhaustive list):

- Frequency of the violation
- Severity of the violation
- Previous conduct history of the Respondent
- Non-adherence to supportive measures (e.g., no contact directives)
- Use of drugs or alcohol to facilitate the violation
- Use of force or a weapon in committing the violation
- Multiple actors committing the violation
- Ongoing threat to the Complainant or University community

When determining an appropriate sanction, consideration will be given to the Complainant's ability to freely access the benefits of their education or employment and participate in the University community.

## **III. APPEALS**

A Party may appeal a dismissal of a Formal Complaint, or the final determination and sanction in the Board Chair's Report, on the following grounds:

- A procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Appeals must be filed in writing with the Title IX Coordinator within seven (7) business days of the dismissal of a Formal Complaint or the date of the Board Chair's Report.

**Notification of Receipt of Appeal**

The Appeal Officer will be the Provost. If there is a conflict of interest or apparent bias, the Executive Vice President will assume the position of Appeal Officer. The Appeal Officer will acknowledge receipt of the appeal and make the non-appealing party aware an appeal has been filed, and shall provide the non-appealing party seven (7) business days to provide a written response to the appeal to the Appeal Officer. A response to the appeal is not required and a lack of response to the appeal does not indicate agreement with the appeal.

**Review and Determination of the Appeal**

The Appeal Officer will review the written appeal and any response to the appeal, along with any documents pertaining to the investigation and any additional supporting documents pertaining to the appeal.

The Appeal Officer will issue a written determination regarding the appeal to Complainant, Respondent and the Title IX Coordinator generally within seven (7) business days following the deadline to submit appeal materials. The determination of the Appeal Officer may:

- Affirm the dismissal or determination and sanction in the Board Chair's Report
- Return the matter to the Title IX Coordinator to determine next steps to review and consider any new evidence not previously available or to correct any procedural error that may have materially affected the outcome. The Title IX Coordinator may then refer the matter back to an investigation and/or hearing as appropriate.

The determination of the Appeal Officer is final.

**IV. RECORD RETENTION**

All records relating to complaints and resolutions under Appendix A will be maintained for a period of seven (7) years. All other records will be maintained in accordance with the University records retention guidelines.