

# Equal Opportunity, Non-Discrimination and Harassment Policy

Subject	Students and Personnel
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## 100.00 Scope and Applicability

Montana State University has adopted a policy to address claims of discrimination and harassment based on a protected class, as well as claims of retaliation against individuals due to their participation in a complaint covered by this policy (e.g., as a Complainant, Respondent, witness, or other participant). A complainant is an individual who is alleged to be the subject of prohibited conduct as defined by this Policy. A Respondent is an individual alleged to be the perpetrator of Prohibited Conduct. This policy applies to all Montana State University campuses and programs, including MSU Bozeman (including MSU Extension, Agricultural Experiment Stations, and Gallatin College), MSU Billings (including City College), MSU Northern, and Great Falls College MSU. For purposes of this policy, the term “University” means all campuses listed.

The Policy applies to all faculty, students, employees, and third parties accessing university programs, activities, and facilities.

The procedures that correspond to the University’s Equal Opportunity, Non-Discrimination and Harassment Policy can be found in Appendixes A and B. Appendix A applies to claims of discrimination or harassment based on a protected class other than sex. Appendix B applies to claims of sex-based discrimination and harassment. Appendixes A and B set forth the timelines for the procedures identified therein, including any complaints and appeals. For purposes of this Policy and the accompanying procedures (Appendixes A and B), days means any day the University is open for business, which excludes weekends and University-recognized holidays.

Grievances related to approval of disability accommodations are addressed under the [University Student Accommodations and Appeal Policy](#) or the [Reasonable Accommodations for Employees and Applicants with Disabilities Policy](#).

All complaints that fall within the scope of Appendix A will be adjudicated using the procedures outlined in Appendix A of this policy, regardless of the date of report or alleged conduct. For complaints alleging conduct that falls within the scope of Title IX (Appendix B):

- If the conduct is alleged to have occurred entirely prior to May 7, 2025, the complaint will be adjudicated under the procedures outlined in Appendix B, but utilizing the definitions of Prohibited Conduct in the Discrimination, Harassment and Retaliation Policy;
- If the conduct is alleged to have occurred, at least in part, on or after May 7, 2025, both the definitions and procedures set forth in Appendix B will apply.

## 200.00 Introduction and Purpose

### 200.10 Purpose

The University is committed to providing an educational and employment environment free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to ensure access to University programs and services, the University has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination or harassment and allegations of retaliation.

## 200.20 Policy and Notice of Nondiscrimination

The University seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in public post-secondary education institutions. The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of a protected class, including race, color, ethnicity, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political belief or affiliation, marital or family status, pregnancy or related conditions, physical or mental disability or perceived disability, genetic information (including family medical history), gender identity, gender expression, or sexual orientation. This Policy covers nondiscrimination in both employment and access to educational opportunities.

## 300.00 Nondiscrimination Team Contacts

The University has appointed a Nondiscrimination Team, comprised of individuals and departments across the University, to coordinate the University's compliance with federal, state, and local civil rights laws and ordinances. Collectively, these individuals and their designees are responsible for providing comprehensive nondiscrimination education and training; coordinating the University's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

The procedures identified in this policy, including in Appendixes A and B, are designed to ensure that investigations are conducted in a neutral, independent, and timely manner, that investigators are appropriately trained and have the relevant experience and expertise to conduct investigations, and to ensure the most efficient and appropriate use of University resources. The procedures also allow for greater collaboration across University departments, as appropriate.

The University encourages prompt reporting of conduct that may violate this policy. Reports should be made directly to the appropriate Nondiscrimination Team identified below for each campus. The Nondiscrimination Teams will coordinate to ensure complaints are directed to the appropriate department. The University may collaborate with offices and departments across campus, to the extent allowed by law, to ensure uniform, consistent, efficient and effective implementation of this policy.

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## 300.10 External Contact Information

Concerns about the University's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

### Office for Civil Rights (OCR)

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

### *Local Office - Seattle*

U.S. Department of Education  
915 Second Avenue, Room 3310  
Seattle, WA 98174-1099

Telephone: (206) 607-1600

Facsimile: (206) 607-1601

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

Montana Human Rights Bureau (HRB)

PO Box 1728

Helena MT, 59624-1728

406-444-2884

Web: <https://erd.dli.mt.gov/human-rights/>

For Complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC).

Anonymous complaints may be submitted to the Montana University System Compliance Hotline. The Montana University System Compliance Hotline is available for the following types of issues:

- Accounting and Financial (e.g., fraud, theft, waste, financial misconduct)
- Athletics (e.g., compliance, sports wagering, recruiting misconduct)
- Discrimination or Harassment (e.g., bias incidents, ADA matters)
- Health and Safety (e.g., unsafe working conditions, environmental issues)
- Human Resources (e.g., employee misconduct, inappropriate supervisor directives)
- Information Security and Technology (e.g., data privacy/integrity, malicious use of technology)
- Research (e.g., biological, human or animal research, export control concerns, research misconduct)
- Other (e.g., retaliation for making a report to the compliance hotline, other matters)

More information about the Montana University System Compliance Hotline is available at <https://secure.ethicspoint.com/domain/media/en/gui/74116/index.html>

## 400.00 Accommodations

The University is committed to ensuring an inclusive, accessible, and equitable process for all participants. Employees with a disability who require reasonable accommodations in order to participate in any part of the complaint or investigative process should contact the ADA Coordinator or Human Resources. Students with a disability who require reasonable accommodations to participate in the investigative process should contact the campus student disability services office. Requests for accommodations should be made as soon as

possible to ensure the University has sufficient time to review and process the accommodation request.

## 500.00 Mandated Reporting and Confidential Employees

All University faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions (see section 500.10 below). Supportive and protective measures may be offered as the result of such disclosures without formal University action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Nondiscrimination Team.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations. Mandatory Reporters will, within 24 hours, pass Notice to the Nondiscrimination Team (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

### 500.10 Confidential Resources

The following section describes resources where an individual can confidentially report concerns of discrimination and harassment.

#### A. Confidential Employees

To enable access to support and resources without filing a Complaint, the University has designated specific employees as Confidential Resources. Those designated by the University as Confidential Resources are not required to report actual or suspected discrimination or harassment in a way that identifies the Parties. They will, however, provide the Complainant with the Nondiscrimination Team's contact information and offer options and resources without any obligation to inform an outside agency or University official unless a Complainant has requested the information be shared.

There are two categories of Confidential Employees:

1. Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors when acting in their capacity as such a professional; and
2. Those conducting human subjects research as part of a study approved by the University's Institutional Review Board (IRB).

For those in the first category to respect confidentiality they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

Employees who have confidentiality as described herein, and who receive Notice within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

#### B. Confidential Resources for Students and Employees

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with a confidential resource. The following are confidential resources for employees and students:

#### C. Confidential Resources for Students

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff

#### D. Confidential Resources for Employees

Employees can access additional confidential resources, including counseling and 24-hour crisis help, through the Employee Assistance Program (EAP). The EAP is available to help free of charge and can be accessed by visiting <https://choices.mus.edu/eap-work-life.html>.

#### E. External Confidential Resources

Complainants may speak with individuals unaffiliated with the University without concern that Policy will require them to disclose information to the institution without permission. These confidential external resources are not associated with the University and speaking with an external resource does not constitute a report to the University.

- Licensed professional counselors and other medical providers
- Local rape crisis counselors

- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

## 500.20 Failure to Mandatory Report

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of University Policy and can be subject to disciplinary action up to and including termination for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a violation of this Policy and can result in disciplinary action up to and including termination. Additionally, failure to mandatory report may result in the University being unable to take appropriate action.

A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

## 600.00 Jurisdiction

This Policy applies to the University's education programs and activities (defined as including locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the conduct occurred), University employment, circumstances where the University has disciplinary authority, and to misconduct occurring within any building owned or controlled by a University-recognized student organization. A Complainant does not have to be a member of the University community to file a Complaint, but must be accessing or attempting to access the University's education programs, activities or employment, or filing on behalf of another person who is accessing or attempting to access the University's education programs, activities or employment..

For claims under Appendix A, this Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to University's education program or activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial University interest.

A substantial University interest includes:

1. Any action by an individual otherwise subject to University corrective action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
3. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
4. Any situation that substantially interferes with the University's educational interests or mission.

For corrective action to be issued pursuant to this Policy, the Respondent must be a University faculty member, student, or employee. If the Respondent is unknown or is not a member of the University community, the Nondiscrimination Team Member will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive and protective measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and/or to these Policies and procedures to which their employer has agreed to be bound by their contracts.

In cases involving Title IX complaints, when the Respondent is enrolled in or employed by another institution, the Nondiscrimination Team can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Nondiscrimination Team may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, the Nondiscrimination Team may be able to assist by providing supportive and protective measures or helping to facilitate corrective action.

## 700.00 Supportive and Protective Measures

The University will offer and implement appropriate and reasonable supportive and protective measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation.

Supportive and protective measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the University's employment opportunities, facilities, and education programs and activities, including measures designed to protect the safety of all Parties and/or the University's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Nondiscrimination Team Member shall promptly make supportive and protective measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive and protective measures are offered, if a Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Complaint with the University either at that time or in the future. The Nondiscrimination Team Member will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive and protective measures.

The University will maintain the confidentiality of the supportive and protective measures, provided that confidentiality does not impair the University's ability to provide those measures. The University will act to ensure as minimal an academic/occupational impact on the Parties as possible. The University will attempt to implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Referral to visa or immigration services
- Referral to student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no-contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments

- Trespass orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Nondiscrimination Team Member

Violations of no-contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

## 800.00 Advisors

Students and employees participating in non-Title IX complaints (e.g., under Appendix A) may bring an advisor or support person of their choice with them to any meetings or hearings, provided the advisor is not also a witness or party in the matter and the advisor does not have an actual or apparent conflict of interest. Students and employees participating in non-Title IX complaints will not have an advisor appointed for them. Advisors may offer support but may not speak or act on a party's behalf, nor take any action that impedes or disrupts the University's investigation or any proceeding. Non-participation in an investigation by the advisor will not prevent the investigation from proceeding. For questions about advisors, please contact the Nondiscrimination Team.

For Title IX complaints (under Appendix B), an advisor is a person chosen by a party to be present during an investigation and hearing and/or to conduct cross-examination on behalf of a party during a live hearing conducted under the procedures in Appendix B. Where appropriate, the University may appoint an advisor for participants in Title IX hearings. Additional information on advisors in Title IX matters may be found in Appendix B.

## 900.00 Free Expression and Academic Freedom

The University has a long tradition of, and a deep commitment to, academic freedom. The welfare and strength of the University and of society at large depend upon the ability to engage in free expression in the search for meaning. To this end, the University recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the administration and operation of his/her own institution and the Montana University System.

Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment that should characterize higher education. In the spirit of a true university environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. In addressing all reports under this Policy, the University will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements. While the University will vigilantly protect students' and employees' rights against discrimination, harassment or retaliation based upon a protected class, this Policy is not meant to inhibit or prohibit the use of educational materials, or of content or discussions inside or outside the classroom that include germane but controversial or sensitive subject matters protected by academic freedom. This Policy does not restrict any rights discussed in the University's [Academic Freedom Policy](#).

## 1000.00 Online Harassment and Misconduct

University policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's employment, education programs and activities, or when they involve the use of the University's networks, technology, or equipment.

Although the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it may engage in a variety of means to address and mitigate the effects. These means may include implementation of corrective action, use of a resolution process to address off-campus conduct whose effects contribute to limiting or denying a person access to University employment or education programs or activities, or other options as may be appropriate.

Nothing in this Policy is intended to infringe upon or limit a person's right to free speech. Any online posting or other electronic communication by students or employees, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will be subject to this Policy when such conduct can be shown to cause (or will likely cause) substantial harm or infringement on the rights of individuals protected by this Policy to participate in University employment, programs or activities.. Otherwise, such communications are considered speech protected by the First Amendment. Supportive and protective measures for Complainants will be provided to the extent that appropriate and effective measures are reasonably available to the Nondiscrimination Team.

## 1100.00 Prohibited Conduct

Students and employees are entitled to an employment and educational environment free of discrimination, harassment, and retaliation. All prohibited conduct definitions below encompass actual and/or attempted conduct.

Any prohibited conduct can be charged as an individual violation or combined as pattern of violations at the discretion of the Nondiscrimination Team. Patterns may exist based on target selection, similarity of conduct, or other factors. Where a pattern is found, it can be the basis to enhance sanctions.

### 1100.10 Discrimination

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic, including race, color, ethnicity, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political belief or affiliation, marital or family status, pregnancy or related conditions, physical or mental disability or perceived disability, genetic information (including family medical history), gender identity, gender expression, or sexual orientation. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

#### 1100.11 Disparate Treatment Discrimination:

Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic and that:

- Excludes an individual from participation in;
- Denies the individual benefits of; or
- Otherwise adversely affects a term or condition of an individual's participation in University employment opportunities, programs or activities.

#### 1100.12 Disparate Impact Discrimination:

Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:

- Excludes an individual from participation in;

- Denies the individual benefits of; or
- Otherwise adversely affects a term or condition of an individual's participation in University employment opportunities, programs or activities

## 1100.20 Discriminatory Harassment

Discriminatory Harassment is:

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), as identified in section 1000.10, 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 University employment opportunities, programs or activities

## 1100.30 Title IX Sex-based Harassment

Sex-based Harassment is a form of discrimination on the basis of sex that meets the elements of one or more of the offenses below. Sex-based harassment includes, but is not limited to sexual assault, dating violence, domestic violence, and stalking.

### 1100.31 Quid pro quo

Quid pro quo conduct occurs when:

- an employee, agent, student-employee, or other person authorized by the University,
- to provide an aid, benefit, or service under University employment opportunities, programs or activities,
- explicitly or impliedly conditions the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

### 1100.32 Hostile Environment Sex-Based Harassment

Hostile Environment Sex-Based Harassment is:

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe and pervasive,
- that it limits or denies a person's ability to participate in or benefit from University employment opportunities, programs or activities.

### 1100.33 Sexual Assault

Any sexual act, including Rape, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent (incest and statutory rape); also unlawful sexual intercourse.

Sexual assault under the Policy is defined as one of the six chargeable offenses listed below it.

A. Rape

- Penetration,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental or physical incapacity

B. Sexual Assault with an Object

- Respondent's use of an object or instrument
- to unlawfully penetrate, however slightly, the genital or anal opening
- of the body of the Complainant,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental or physical incapacity

C. Fondling:

- The touching of the private body parts (breasts, buttocks, groin, genitals) of the Complainant by the Respondent
- or causing the Complainant to touch the Respondent's private body parts
- intentionally for a sexual purpose
- without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental incapacity or physical incapacity.

D. Incest:

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

E. Statutory Rape:

- Nonforcible sexual intercourse with a person
- who is under the statutory age of consent in Montana.

### 1100.34 Sex-Based Violence

#### A. Dating Violence:

- Violence committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - length of the relationship
  - type of relationship
  - frequency of the interaction between the Parties involved in the relationship.

For purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

#### B. Domestic Violence

- Felony or misdemeanor crimes committed by a person who:
- is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Montana or a person similarly situated to a spouse of the Complainant;
- is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- shares a child in common with the Complainant; or
- commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Montana.

### 1100.35 Stalking

- engaging in a course of conduct on the basis of sex, that is,
- 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 purposes of this definition:

- A 'course of conduct' requires that there be more than one incident, and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the conduct's duration, frequency, and intensity should be considered. Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. Merely annoying conduct, even if repeated, which is a nuisance, is not typically chargeable as stalking.
- Reasonable person is an objective standard meaning a person in the Complainant's shoes (having similar characteristics/demographics to the Complainant).
- In the context of stalking, a Complainant is not required to obtain medical or other professional treatment, and counseling is not required to show substantial emotional distress.
- Stalking based on a protected class other than sex constitutes Prohibited Conduct under this Policy, but will be adjudicated under the procedures in Appendix A. The definition of stalking above shall apply to such claims, but shall substitute the protected class at issue for "sex" as included in this definition.

## 1100.40 Sexual Misconduct

### 1100.41 Sexual Exploitation

Sexual Exploitation:

- an individual taking non-consensual sexual advantage of another that does not constitute Sex-based Harassment as defined above.
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and

observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography

- Using artificial intelligence (AI), or equivalent, to create the perception of an individual engaging in a sexual act, or otherwise violating the individual's sexual privacy, without the consent of the individual
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Engaging in sex trafficking
- Knowingly engaging in sexual abuse of a child, including soliciting a minor for sexual activity or creating, possessing, or disseminating child sexual abuse images or recordings, and other conduct prohibited by Montana law
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes, use of AI or other means)

## 1100.50 Retaliation

### Retaliation is:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by a student, employee, or a person authorized by the University to provide aid, benefit, or service in a University program, activity, or employment,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Equal Opportunity, Non-Discrimination and Harassment Policy, including an Informal

Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Equal Opportunity, Non-Discrimination and Harassment Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### 1100.60 Unauthorized Disclosure or Recording

Parties may not disclose information or materials received as part of an investigation under this Policy, except as permitted or required by law or as expressly permitted by the University. Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, union representatives, attorneys or Advisors; or otherwise prepare for or participate in a resolution process.

Personal or unauthorized audio or video recording of any meeting, interview, or resolution proceeding contemplated by the Policy or these Procedures is prohibited.

### 1100.70 Failure to Comply/Process Interference

Failure to comply with the procedures accompanying this Policy may constitute a separate and distinct violation of this or other University policies. Examples of failure to comply or process interference include but are not limited to:

- Failure to comply with the reasonable directives of the Nondiscrimination Team or the Nondiscrimination Team in the performance of their official duties, including with the terms of a no-contact order
- Failure to comply with emergency removal or interim suspension terms
- Failure to comply with sanctions
- Failure to adhere to the terms of an agreement achieved through informal resolution
- Failure to comply with mandated reporting duties as defined in this Policy
- Interference with the resolution process, including but not limited to:
  - Destruction of or concealing of evidence

- Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
- Intimidating or bribing a witness or party

## 1100.80 Consent, Force, Coercion, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

### 1100.81 Consent<sup>1</sup>

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

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<sup>1</sup> The Montana definition of consent can be found in the [Montana Code Annotated 45-5-501](#). The state definition is applicable to criminal prosecutions for sex offenses in Montana but may differ from the definition used by the University to address Policy violations.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on the University to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.

Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

#### 1100.82 Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but not all non-consensual sexual activity is forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

#### 1100.83 Coercion

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective because it is not voluntary. Examples of coercive conduct may include, but are not limited to, threats to harm themselves or others if someone refuses to engage in sexual activity or a romantic relationship, threats to disclose photos or personal information of a sexual nature, or other situations where force, threats, or undue pressure is used in an attempt to engage in sexual activity. Generally, repeated or persistent requests for sexual activity, without an accompanying threat or other coercive conduct, does not constitute coercion.

Coercion is evaluated based on the totality of the circumstances, including the frequency, intensity, isolation, and duration of the pressure involved, as well as any impacts from the potentially coercive conduct.

#### 1100.84 Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a disability, temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

#### 1100.90 Relationships Involving a Power Differential

This Policy does not address consensual relationships between parties. For campuses that have adopted policies governing relationships where a power differential may exist, such as between employees or between employees and students, any such relationships are subject to those policies.

## 1200.00 Sanction Ranges

Sanctions for Prohibited Conduct range from warning to expulsion or termination, depending on the specific facts and circumstances. Sanctions outside of this range may be imposed when there are aggravating or mitigating circumstances, or where the cumulative conduct record of the Respondent warrants a greater or lesser sanction, subject to any other university policies or collective bargaining agreements. See Appendix B for additional sanctions in Title IX cases.

## 1300.00 Standard of Review

The University uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not, based upon available information at the time of the decision, that the Respondent engaged in (or is responsible for) the alleged Policy violation(s).

## 1400.00 Reports/Complaints of Discrimination, Harassment, and/or Retaliation

The requirements and processes for reporting a complaint of discrimination or harassment based on a protected class, or retaliation for engaging in rights protected under this Policy, can be found in the procedures in Appendixes A and B.

## 1500.00 Time Limits on Reporting

There is no time limitation on providing Notice to the Nondiscrimination Team. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Nondiscrimination Team's discretion; they may document allegations for future reference, offer supportive and protective measures and/or remedies, and/or engage in informal or formal action, as appropriate.

## 1600.00 False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action up to and including termination or expulsion. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline up to and including termination or expulsion under appropriate University policies.

## 1700.00 Confidentiality and Privacy

The University makes every effort to preserve the Parties' privacy. The ability of the University to maintain the Parties' privacy and confidentiality varies depending on the type of claim involved and the status of the individual (e.g., employee or student). More information on privacy and confidentiality can be found in the procedures for claims under Appendixes A and B.

## 1800.00 Emergency Removal/Interim Actions/Leaves

The University may remove individuals from the workplace and/or its education program or activities, partially or entirely, on an emergency basis when the University determines that removal is necessary for the health or safety of the campus community or University property. The Nondiscrimination Team will consult with appropriate individuals and departments on campus to evaluate any health or safety risks. The decision to remove any individual is subject to other University policies and procedures, and any applicable collective bargaining agreements.

When appropriate, an employee may be placed on administrative leave when necessary to protect the health or safety of the campus community, prevent interference with the investigation, prevent disruption of University business or operations, or when the nature or severity of the allegations warrant leave. Likewise, interim restrictions may be imposed on students where appropriate, pursuant to the Code of Student Conduct.

## 1900.00 Federal Timely Warning Obligations

The University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

More information on Timely Warnings can be found in the Annual Security Report.

## 2000.00 Amnesty

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the University community that Complainants choose to give Notice of misconduct to University officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, the University maintains a Policy of offering Parties and witnesses amnesty from specific policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the University, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

The University maintains a separate Medical Amnesty policy for students who seek assistance for themselves or others in need. More information on the Medical Amnesty Policy is available at [https://www.montana.edu/policy/medical\\_amnesty.html](https://www.montana.edu/policy/medical_amnesty.html).

## 2100.00 Independence and Conflicts of Interest

Any concerns regarding bias or conflict of interest on the part of the Nondiscrimination Team should be directed to the Office of Legal Counsel or the Montana University System Compliance Hotline.

## 2200.00 Timeframes

Consistent with timeframes identified herein and where otherwise unspecified, the University will respond to and seek resolution of all Reports of Prohibited Conduct promptly, as determined by fact and circumstance, and in accordance with federal

regulation. The Nondiscrimination Team will make reasonable efforts to set and provide advanced notice of timelines and deadlines to parties, witnesses, and Advisors.

Except as otherwise specified, the Nondiscrimination Team may extend a deadline or permit delay of any resolution process described herein upon a showing of good cause. Good cause may include considerations such as the unavailability of a party, or witness; concurrent law enforcement activity; to prevent retaliation; or the need for language assistance or accommodation of disability.

## 2200.00 Revision of this Policy

This Policy replaces and supplants the [Discrimination, Harassment and Retaliation Policy](#) and the Discrimination, Harassment and Retaliation Grievance Procedures for any incidents occurring after May 7, 2025.

The University reviews and updates its policies and procedures regularly. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws that frame such policies and codes, generally.

# APPENDIX A: Non-Title IX

## Procedures

### 100.00 Applicability

The procedures set forth herein apply to complaints (other than sex-based harassment) for discrimination or harassment based upon a protected class involving students and/or employees. This includes complaints based on an individual's race, color, ethnicity, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, gender, age, political belief or affiliation, marital or family status, pregnancy or related conditions, physical or mental disability or perceived disability, genetic information (including family medical history), gender, gender identity, gender expression, or sexual orientation. This Policy covers also addresses complaints for sex-based discrimination as well as complaints that an individual was retaliated against for participating in the procedures described in Appendixes A and B (e.g., as a reporter, complainant, respondent, witness, or other participant).

Claims for sex-based harassment that fall under the University's Title IX Procedures (Appendix B) must be addressed and adjudicated pursuant to those procedures.

### 200.00 Procedures

#### **Report of Complaint**

When a Nondiscrimination Team member receives a complaint or other information indicating a possible violation of this policy, a preliminary assessment of the complaint will be conducted to determine whether the University has jurisdiction over the alleged conduct, and whether that conduct, if true, would constitute a violation of this policy. If it is determined that the University has jurisdiction over the alleged conduct and there is a potential violation of this policy, the Nondiscrimination Team member will determine the appropriate steps to address the potential violation.

The University has multiple ways of responding to and addressing reports of harassment, discrimination or retaliation based on a protected class, including conducting an investigation, referring the conduct to another department for review, taking other

remedial actions, informal resolution, or closing the matter due to insufficient details or other appropriate reasons. Not all reports of violations of this policy result in or are addressed through an investigation. The University has the sole discretion to determine when an investigation is necessary or appropriate to address complaints and other concerns related to alleged violations of this policy.

### **Investigation Process**

When it is determined that an investigation is appropriate, the Nondiscrimination Team may conduct the investigation or delegate the investigation to another investigator. In certain circumstances the Nondiscrimination Team may delegate all or a portion of the investigation to another University department or to an outside investigator. The University will attempt to investigate and resolve the alleged violations of this policy as promptly as possible.

The exact steps involved in any given investigation may vary based upon the specific facts and circumstances, including the classification of the individuals involved (e.g., student or employee), whether a collective bargaining agreement applies, and other relevant factors. The following is an overview of the steps taken in a typical investigation.

1. A notice of investigation will be provided to the Respondent when it is determined that notice is appropriate or where required by University policy or an applicable collective bargaining agreement. A notice of investigation may not be issued in every matter. If an investigation is not conducted or no discipline is imposed, the Respondent may not be made aware of the complaint against them.
2. The Nondiscrimination Team (or designee) will conduct interviews and gather any evidence and information relevant to the investigation. Participants are expected to cooperate with investigations by providing truthful accounts and relevant documentation in response to investigator questions and related information requests.

Employees who fail to comply as defined in this policy, fail to cooperate, or otherwise impede an investigation, may be subject to disciplinary action in accordance with University policy and/or any applicable collective bargaining agreement.

Non-participation in an investigation by a Respondent or witness will not prevent the investigation from proceeding.

3. The Nondiscrimination Team (or designee) will inform the parties of the nature of any relevant evidence being considered as part of the investigation, as well as the identities of any witnesses where appropriate, so as to allow the parties to identify

any additional evidence that may be relevant to the proceeding. Parties will not have the right to inspect evidence.

4. The Nondiscrimination Team (or designee) will determine whether the allegations are founded, unfounded, or inconclusive, and whether the alleged conduct violates this policy. This determination should be documented in writing and made a part of the investigative report and retained per the University record retention policy.
5. When it is determined that a violation of this policy occurred, the Nondiscrimination Team shall notify the Respondent in writing of the finding and that the matter is being referred to another University department for further action (e.g., Human Resources, Dean of Students, etc.).

In the case of employees, the Respondent's supervisor or department administrator will also be notified when necessary to implement any remedial or corrective action in compliance with University policy or any applicable collective bargaining agreements.

6. Due to privacy concerns and restrictions, Complainants will be provided with a notice of closure indicating that the investigation has concluded, however, no details about any findings, or the nature or extent of any disciplinary action will be disclosed to the Complainant(s) or witnesses. A notice of closure will not be provided if the Nondiscrimination Team declines to investigate.

## 300.00 Informal Resolution

At the discretion of the Nondiscrimination Team, this process may be available to resolve allegations of Prohibited Conduct under this policy. At any point after receiving a report, the Nondiscrimination Team or designee may reach out to both parties to explore whether they would like to engage in an Informal Resolution. The Nondiscrimination Team or designee are responsible for overseeing the Informal Resolution process. Examples of Informal Resolution include mediation, facilitated conversation, and education. Both parties must provide voluntary written consent to informally resolve a complaint, and the Nondiscrimination Team must determine that an Informal Resolution is appropriate before commencing the Informal Resolution process.

At any time before completing a resolution, any party has the right to withdraw from the Informal Resolution process. The Nondiscrimination Team reserves the right to initiate an

investigation if an informal resolution is unsuccessful. A completed resolution must contain signatures of the parties and the Nondiscrimination Team overseeing the matter. The Nondiscrimination Team retains the authority to determine whether any Informal Resolution is sufficient to resolve the matter. The Nondiscrimination Team may consult with other University officials when determining if a proposed informal resolution is appropriate.

Complaints resolved through informal resolution may be forwarded to other University departments (e.g., Human Resources or the Dean of Students) for further follow up and any additional corrective action.

## 400.00 Burden of Proof and Standard of Review

Neither a Complainant nor a Respondent has the burden to prove or disprove any alleged violations of this policy. The University has the burden to prove, through the procedures described herein, that a Respondent engaged in Prohibited Conduct. The University presumes the Respondent is not responsible for violating this policy based on the conduct alleged until a determination has been made regarding responsibility at the close of the investigation.

The standard of review for determining whether a Respondent violated this policy is the preponderance of the evidence standard. The preponderance of the evidence standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

The University may take remedial measures to address concerns prior to the conclusion of an investigation when the University determines such actions are necessary and appropriate.

## 500.00 Confidentiality

During the investigation process, information regarding what was reported will only be shared on a need-to-know basis. The University shall make reasonable efforts to maintain the confidentiality of the source of any complaint, where appropriate. If a complaint proceeds to investigation, Respondents may be notified of the identity of a Complainant. In addition, the identities of the parties may have to be disclosed when: i) required by law; ii) necessary to implement any remedial measures; iii) required in order to provide due process in connection with any disciplinary action against the Respondent; or iv) the University otherwise determines that disclosure is necessary or appropriate.

## 600.00 Appeals and Grievances

The University has established expectations for the imposition of performance management actions or discipline of employees. Where other policies or agreements are in place that govern employee appeals and grievances, those policies and agreements supersede any appeal procedures contained in this policy. For employees covered by a [collective bargaining agreement](#), the provisions of the applicable agreement must be followed in administering any disciplinary action or for any grievances. For employees not covered by a collective bargaining agreement, any disciplinary action and grievances must comply with any other applicable University policies.

A party found to have violated this policy may appeal as follows (provided other University policies or collective bargaining agreements do not apply):

1. An appeal must be submitted to the Nondiscrimination Team within 10 days of the date the written determination was provided to the Respondent. Appeals shall include the following: a) a statement of the issue on appeal; b) a detailed summary of the pertinent facts demonstrating a qualifying ground for appeal; c) any information supporting the appeal; and d) the desired outcome.

Permissible grounds for appeal are: i) procedural irregularity that affected the outcome of the matter; ii) new evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter; and iii) the Nondiscrimination Team had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

2. Once the Nondiscrimination Team has received the appeal they will provide the appeal, the investigatory decision, and any other relevant documents or information to the designated University Official.

The designated University Official for appeals are as follows:

1. appeals by students shall be determined by the Vice President of Student Success (or designee);
2. appeals by faculty shall be determined by the Provost (or designee);
3. appeals by employees (other than faculty) shall be determined by the Vice President of Administration and Finance (or designee).

The designated University Official will issue a written decision detailing the outcome of the appeal and the rationale for the outcome.

A decision by the designated University Official is the final decision of the University and thus the conclusion of the grievance proceeding. As such, appropriate disciplinary sanctions may be immediately imposed, regardless of whether a party files an appeal under Board of Regents Policy 203.5.2. The University may also determine to impose interim measures/sanctions consistent with the final University determination, pending any appeal under Board of Regents or other University policies.

# Appendix B: Title IX Procedures

## 100.00 Scope and Applicability

The procedures set forth herein provide for the prompt and equitable resolution of claims of sex-based harassment, including sexual assault, quid pro quo, stalking, dating violence, domestic violence, and sexual exploitation.

Claims of discrimination, harassment, or retaliation based on a protected class (other than sex-based harassment) must be addressed under the Non-Title IX Procedures outlined in Appendix A.

The Equal Opportunity, Non-Discrimination and Harassment Policy (Policy) is referenced here and incorporated as if fully set forth herein.

## 200.00 Procedures

### 200.10 Report of Complaint

Following receipt of a report of sex-based harassment and/or a Formal Complaint, the Nondiscrimination Team will:

1. Promptly contact the Complainant to offer Supportive and Protective Measures;
2. Inform the Complainant of the availability of Supportive and Protective Measures with or without the filing of a Formal Complaint; and
3. Invite the Complainant to meet with the Nondiscrimination Team to assess whether the University has jurisdiction over the complaint and discuss potential resolution options, including the process for filing a Formal Complaint.

### 200.20 Formal Complaint

The University will not initiate a Grievance Proceeding or Informal Resolution Process, as defined in Appendix B below, in the absence of a Formal Complaint. A Formal Complaint is a document signed by a Complainant or by the Title IX Coordinator alleging Prohibited Conduct by a named Respondent and requesting that the University investigate and adjudicate the allegation(s) of Prohibited Conduct.

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or at the contact information listed in the Policy. The Formal Complaint

must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint. Complainants wishing to file a Formal Complaint are encouraged to meet with the Nondiscrimination Team to initiate the complaint process.

The Title IX Coordinator will not sign a Formal Complaint without a requesting and participating Complainant unless the Title IX Coordinator deems it necessary to campus safety based on factors such as:

1. Patterned Prohibited Conduct, as evidenced by more than one report of distinct but similar Prohibited Conduct against the same Respondent;
2. Excessive violence, as evidenced by reported Prohibited Conduct involving a weapon, significant bodily injury, or ongoing and continued threats of physical harm; or
3. Harm to minors, as evidenced by any report of Prohibited Conduct against a child.

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sex-based harassment arise out of the same facts or circumstances.

### 200.30 Notice

Following receipt of a Formal Complaint, the Title IX Coordinator or designee will promptly issue a written notice to the Complainant(s) and Respondent(s) who are known. The notice will include:

1. A link to or copy of these procedures;
2. A description of the allegations in the Formal Complaint;
3. Sufficient details about the allegations, including the identity of the parties involved in the incident, if known;
4. The conduct allegedly constituting Prohibited Conduct; and
5. The date(s) and location(s) of the alleged incident(s), if known.

The written notice will include a statement that the Respondent(s) is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of these Grievance Procedures. The notice will inform the parties that they may have an Advisor of their choice, and that the parties may inspect and review evidence as described in these Procedures.

### 200.40 Dismissal of Formal Complaint

The Title IX Coordinator may dismiss a Formal Complaint at any time during the investigation or hearing for the following reasons:

1. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint;
2. The Respondent is no longer enrolled or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon dismissal of the Formal Complaint for any reason, the Title IX Coordinator will promptly send written notice of the dismissal and the reason(s) therefore to the parties.

Either party may appeal the dismissal of a Formal Complaint by following the procedures outlined in Section 300.00.

## 200.50 Resolution Options

The University has two processes to resolve a Formal Complaint: 1) an informal resolution; or 2) a Grievance Proceeding.

## 200.60 Informal Resolution

At the discretion of the Nondiscrimination Team, the informal resolution process may be available to resolve allegations of sex-based harassment.

After a Formal Complaint is filed, the Nondiscrimination Team may reach out to both parties to explore whether they would like to engage in an informal resolution. The parties may also ask the Nondiscrimination Team whether the Formal Complaint is appropriate for informal resolution. Both parties must provide voluntary written consent to informally resolve a Formal Complaint, and the Nondiscrimination Team must determine that an informal resolution is appropriate before commencing the informal resolution process. The informal resolution process may not be used to resolve allegations that an employee Sexually Harassed a student.

The Nondiscrimination Team or designee is responsible for overseeing the informal resolution process. The informal resolution process may include a facilitated conversation with both parties or mediation. At any time before completing a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Proceeding with respect to the Formal Complaint. A completed resolution must contain signatures of the parties and the Nondiscrimination Team. The Nondiscrimination Team retains the authority to determine whether any informal resolution is sufficient.

The only record resulting from the informal resolution process will be a written agreement signed by both parties and the Nondiscrimination Team. Each party will receive a copy of the written agreement, and the Nondiscrimination Team will maintain a copy per the University's records retention policy.

None of the information learned solely as a result of the informal resolution process may be used in the Grievance Proceeding. The fact that the parties participated or that any party declined to participate or withdrew from the informal resolution process may not be considered in a Grievance Proceeding.

### 200.70 Grievance Proceeding

A Grievance Proceeding involves an investigation, a hearing, sanctions, and an appeal if applicable.

### 200.71 Burden of Proof and Standard of Review

Neither a Complainant nor a Respondent has any burden to prove or disprove Prohibited Conduct. The University has the burden to prove through the Grievance Proceeding that a Respondent engaged in Prohibited Conduct. The University presumes that the Respondent has not engaged in Prohibited Conduct until it has made a final determination at the conclusion of the Grievance Proceeding.

The standard of evidence for determining whether a Respondent has engaged in Prohibited Conduct is the preponderance of the evidence standard. The preponderance of the evidence standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it.

### 200.72 Role of the Investigator

Upon receipt of a formal complaint, the Title IX Coordinator will assign a properly trained and impartial Investigator.

The Investigator is responsible for gathering evidence sufficient to reach a determination regarding responsibility or no responsibility based upon the preponderance of the evidence.

The Investigator makes factual findings based on the weight of the evidence but does not determine whether the alleged conduct constitutes a Policy violation.

The Investigator may not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized

professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to a party, unless the University obtains that party's voluntary, written consent to do so for this Grievance Process.

## 200.73 Steps in an Investigation

### Step 1: Notice

An Investigation begins when the parties receive Notice as defined herein.

If, during the investigation, information becomes available that leads to the investigation of additional allegations about the Respondent or Complainant that were not included in the initial written notice, the Investigator will provide written notice of the additional allegations to the parties whose identities are known.

### Step 2: Evidence Collection

The Investigator will provide equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. This is typically done through interviews, records requests, document review, or other means deemed appropriate by the Investigator. The Investigator will provide written notice to interviewees of the date, time, participants, and purpose of any interviews and other meetings to allow reasonably sufficient time for the interviewee to prepare.

### Step 3: Evidence Review

The Investigator will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint. This evidence will be provided to each party and the party's Advisor, if any, in an electronic, read-only format.

The review will include relevant evidence as well as evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, Inculpatory or Exculpatory evidence, and evidence obtained from a party or any other source. Evidence Review takes place so that each party can meaningfully respond to the evidence, such as by identifying additional evidence relevant to the investigation, prior to the conclusion of the investigation.

The parties will have 10 days to review the evidence and submit a written response, which the Investigator will consider.

The party's written response should include:

- Names of additional relevant witnesses including:
  - o Contact information
  - o Specific details outlining how they are related to this investigation
- Names of rebuttal witnesses including:
  - o Contact information
  - o Specific details outlining which materials in this evidence file the new witness is expected to rebut
- Facts relevant to the potential bias of any named witnesses
  - o Specific details on why this bias needs to be considered
- New factual evidence, including but not limited to:
  - o Electronic records
  - o Physical documents, etc.
- Incomplete evidence or documents that would be relevant to a finding
- Items/issues that you feel are not covered by the evidence

Based on the written responses, the Investigator may return to Evidence Collection or proceed to a pre-hearing investigation report.

If the Investigator determines that the material(s) submitted do not constitute substantially new information, the parties will not be given the opportunity to review the documents before the finding is made. If additional evidence is collected, the parties will have equal opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint and will have 10 additional days to submit a written response.

#### Step 4: Pre-Hearing Investigation Report and Review

The Investigator will create a pre-hearing investigative report that fairly summarizes relevant evidence. The pre-hearing investigative report will state factual findings based upon an objective evaluation of all relevant evidence.

The objective evaluation will be based upon the presumption that the Respondent(s) is not responsible for the alleged conduct and the preponderance of the relevant evidence standard.

The Investigator will send to each party and the party's Advisor, if any, the pre-hearing investigative report in an electronic, read-only format.

Upon receipt of the pre-hearing investigative report, each party has 10 days to submit a written response to the Investigator.

#### Step 5: Release of the Pre-Hearing File

After receipt of the parties' responses to the pre-hearing investigative report, or expiration of the time permitted for such responses, the Investigator will provide the Pre-Hearing File to the Title IX Coordinator, Hearing Officer, the parties, and their respective Advisors, if any. The Pre-Hearing File shall include:

1. Written Notices issued during the investigation, including the Notice of Formal Complaint, Notice of Evidence Release, Notice of Pre-Hearing Investigation Report and any additional written notices;
2. The pre-hearing investigation report which, unless otherwise noted, includes a description of the procedural steps taken from the receipt of the Formal Complaint through the final pre-hearing investigative report and receipt of any responses to the final pre-hearing investigative report, including all notifications to the parties, interviews with the parties and witnesses, site visits, and methods used to gather other evidence;
3. All evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint and any additional allegations of which the parties were provided written notice, including evidence upon which the Investigator did not rely in forming an opinion, and any Inculpatory or Exculpatory evidence whether obtained from a party or other source;
4. All written responses and any other submissions provided by the parties and their advisors to the Investigator.

The Pre-Hearing File contains all the evidence to be considered during the Hearing. Assuming the Parties were provided with equal opportunities to present evidence, no new evidence shall be submitted or considered after the release of the Pre-Hearing File. Prior non-participation does not allow parties or witnesses to submit evidence after the release of the Pre-Hearing File.

### 200.74 Role of the Hearing Officer

At the conclusion of the Investigation, the Title IX Coordinator will appoint an unbiased Hearing Officer trained in VAWA and Title IX in accordance with federal guidelines to proceed with the live Hearing.

The Hearing Officer is tasked with overseeing the Hearing in accordance with the Procedures below. At the conclusion of the Hearing, the Hearing Officer will determine whether the Respondent is responsible for the alleged conduct and whether the conduct violates the Policy. If the Hearing Officer determines that Respondent violated the Policy, the Hearing Officer will recommend appropriate sanctions. The Hearing Officer may

consult with other University offices, such as Human Resources or the Dean of Students, before recommending sanctions.

The Title IX Coordinator retains the sole authority to choose a Hearing Officer, but may not choose someone with prior involvement in the case. This includes but is not limited to Investigators, Case Managers, union representatives, or others with a perceived or actual bias.

### 200.75 Role of the Hearing Coordinator

After the release of the Hearing File, the Title IX Coordinator will appoint a Hearing Coordinator to work with the Hearing Officer, Parties, Advisors, and witnesses to schedule a date, time, and location for the Pre-Hearing Conferences and live Hearing.

The Hearing Coordinator will be present during the Hearing to oversee logistics, troubleshoot technology questions, and serve as a liaison between Hearing participants and the Title IX Coordinator.

### 200.76 Hearing Procedures

If a party does not have an Advisor, the University will appoint one prior to the Pre-Hearing Conference.

Either party may request that the Hearing occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witnesses answering questions.

The Title IX Coordinator or designee retains the sole authority to appoint a Hearing Officer, choose the modality of the hearing, and oversee Hearing logistics, including requests for extensions or delays.

#### Step 1: Pre-Hearing Conference

The Hearing Officer may convene a pre-hearing conference with the parties and their Advisors to discuss matters of procedure, including but not limited to:

- Logistics of technologies to be used;
- Any requests for parties to be located in separate rooms;
- Time allocations;
- Identity and logistics of witnesses to be called;
- Sequestration of witnesses;
- Evidence to be presented;

- Recording or transcription of the hearing;
- Identification of support persons to be present;
- Process for questions and cross-examinations;
- Anticipated evidentiary disputes;
- Rules of Decorum; and
- Other matters that will help to enable a fair and impartial hearing.

Prior to the pre-hearing conference, the Hearing Officer will request each party to submit a list of anticipated witnesses and cross-examination questions. The Hearing Officer will discuss the party's submitted questions with the submitting party and their Advisor during the pre-hearing conference.

### Step 2: Live Hearing

The Hearing Officer will conduct all proceedings in accordance with the rules established by the Hearing Officer or during pre-hearing conferences.

#### Opening Statements (Optional)

Each party will be afforded an opportunity to make an opening statement, personally or through their Advisor.

#### Investigator Statement

The Investigator shall provide an overview of the Investigation, including the timeline and procedures followed.

#### Questioning and Cross-Examination

At any point during the hearing, the Hearing Officer may ask questions of parties and witnesses. The Parties, through their Advisors, will also have the opportunity to cross-examine (ask relevant questions) of parties and witnesses. The Hearing Officer has the sole authority to make determinations regarding relevancy and will permit only relevant questions to be asked of parties and witnesses.

Cross-examination will be conducted as follows, in accordance with federal requirements:

1. Each party's Advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination will be conducted directly, orally, and in real-time by the party's Advisor of choice and never by a party personally.

2. Before a Complainant, Respondent, or witness answers a cross-examination question, the Hearing Officer will first determine whether the question is relevant and explain any decision to exclude a question.
3. Parties and witnesses cannot be compelled to answer questions. The Hearing Officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's refusal to answer cross-examination or other questions.

#### Closing Statements (Optional)

Each party will be afforded an opportunity to make an opening and closing statement, personally or through their Advisor.

### 200.77 Impermissible and Not Relevant Questions

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

Asking a question of a particular individual previously asked of and answered by that individual is impermissible and may be prohibited by the Hearing Officer.

### 200.78 Effect of Non-Participation

If a party or witness does not attend the Hearing or refuses to answer a specific question at the Hearing, the Hearing Officer may elect to consider any other evidence made available during the hearing, including testimony offered by parties and witnesses present and any documentation evidence included in the pre-hearing investigation report. The Hearing Officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Hearing Officer may consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility.

## 200.80 Hearing Officer's Written Determination

Following the conclusion of a Grievance Proceeding, the Hearing Officer will promptly issue a written determination regarding responsibility. To reach this determination, the Hearing Officer will begin the analysis with the presumption that the Respondent(s) is not responsible for the alleged conduct and will weigh the evidence to determine whether the preponderance of the relevant evidence weighs in favor of a finding of responsibility or no finding of responsibility for the alleged Prohibited Conduct.

The written determination will be provided to the Complainant and Respondent as simultaneously as possible and will include the following:

1. Identification of the allegations potentially constituting Prohibited Conduct;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the Policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
6. Any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's Program or Activity will be provided by the University to the Complainant; and
7. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Officer will provide to the Title IX Coordinator the final written decision, the recording or transcription of the live hearing, and all evidence directly related to the matter ("Hearing Officer File").

## 300.00 Rules of Decorum

Hearings under these Procedures are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule, "purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner." 85 Fed. Reg. 30026, 30319 (May 19,

2020). The purpose of the Rules of Decorum is to set forth the expectations of the University about the appropriate behavior of the parties and participants during the hearing.

The Hearing Officer has wide discretion to determine the hearing format (location of parties and witnesses, use of technology, order of presentation, etc.) and has broad authority to take steps needed to maintain an orderly, fair, impartial, and respectful hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.

The rules noted below apply equally to Complainants, Respondents, witnesses, and advisors. These Rules of Decorum require that all hearing participants treat others engaged in the process with respect.

By participating in an Informal Resolution or Grievance Proceeding, parties, witnesses, and Advisors are agreeing to the following Rules of Decorum:

1. No party may act abusively or disrespectfully toward any participant, including the other party, witnesses, advisors, investigators, or the Hearing Officer.
2. Questions must be conveyed in a neutral tone and be formed to elicit answers relevant to the material facts of the case.
3. Parties and advisors will refer to other parties, witnesses, advisors, and university employees using the individual's name of choice, which will be clarified at the Pre-Hearing Conference. If a participant is unwilling or unable to abide by this rule, they may also use the term Complainant, Respondent, or Witness followed by a last name.
4. The advisor may not yell, scream, or badger a party or witness.
5. Any person participating in the hearing should refrain from disrupting the hearing by making gestures, facial expressions, audible comments, or other manifestations of approval or disapproval during any testimony.
6. The advisor may not use profanity (except where such language is relevant) or make irrelevant personal attacks upon a party or witness. Questions should test the knowledge of the witness or reveal information that assists in understanding a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the advisor in cross-examination, the party or advisor in direct statements, or by the Hearing Officer. When the Hearing Officer determines a

question has been “asked and answered” or is otherwise not relevant, the advisor must move on.

8. When cross-examining a party or witness, advisors shall not characterize, express an opinion about, editorialize, or otherwise state any response to the answer given by the party or witness except to ask a follow up question to elicit relevant evidence.
9. Parties and advisors may take no action or engage in conduct that is intended to, or does, intimidate any person (whether party, witness, or official) into not participating in the process or modifying their participation in the process.

### 300.10 Warning and Removal Process

The Hearing Officer has sole discretion to determine if the Rules of Decorum have been violated.

Upon a violation of the Rules, the Hearing Officer will alert the participants of the violation and warn the offending party that a further violation could lead to removal. The Hearing Officer shall have the discretion to remove the offending person or take other steps to address the continuing violation of the Rules as deemed appropriate.

If the Hearing Officer removes a party's Advisor, the party may select a different advisor of their choice, or accept an Advisor provided by the university for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be authorized if an Advisor has been removed. A party cannot serve as their own Advisor in this circumstance.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, Advisors may be prohibited from participating in future proceedings at the University in the Advisor role on a temporary or permanent basis.

The University may take action under the Code of Student Conduct or applicable employment policies to address violations of the Rules of Decorum.

### 300.20 Relevant Questions Asked in Violation of the Rules of Decorum

If an advisor asks a relevant question in a manner that violates the Rules of Decorum, the question may not be deemed irrelevant by the Hearing Officer simply because of the manner it was delivered. Under that circumstance, the Hearing Officer will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

## 400.00 Appeals

Either or both parties may appeal a determination regarding responsibility and the University's dismissal of a formal complaint or any allegations therein.

An appeal must be submitted to the Title IX Coordinator within 10 days of the date the written determination was submitted to the parties.

Grounds for appeal are:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or the Hearing Officer had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

Upon receipt of an appeal, the Title IX Coordinator will notify the other party in writing and will issue instructions, including reasonable deadlines for the non-appealing party to submit a written response.

Once the Title IX Coordinator has received the written statements or the deadlines for submission of the written statements has expired, the Title IX Coordinator will provide to the President of the University or their designee the written statements submitted by the parties and the final written decision and will make available the Hearing Officer File.

The President or designee will issue a written decision describing the result of the appeal and the rationale for the result and will provide the written decision simultaneously to both parties.

A decision by the President or designee is the final decision of the University and thus the conclusion of the grievance proceeding. As such, appropriate disciplinary sanctions may be immediately imposed, regardless of whether a party files an appeal under Board of Regents Policy 203.5.2 described below. The University may also determine to impose interim measures/sanctions consistent with the final University determination, pending an appeal under the Board of Regents policy.

[Board of Regents Policy 203.5.2](#) provides that any party may appeal the final decision of a University President within thirty (30) days of the President's decision to the Commissioner of Higher Education.

## 500.00 Sanctions

Sanctions may be imposed 10 days after the receipt of the Hearing Officer's Written Determination or upon receipt of the President or designee's written decision describing the result of the appeal.

### 500.10 Student Respondents

The Hearing Officer is responsible for recommending sanctions against student respondents, but, as appropriate, may consult with other University offices before making a recommendation.

Possible sanctions against students may include one or more of the following:

1. Disciplinary probation: A designated period of time during which the Respondent is not in good standing with the University. The terms of disciplinary probation may involve restrictions of privileges and/or set specific behavioral expectations;
2. Restriction from employment at the University: Prohibition of or limitation on University employment;
3. Class/workshop/training/program attendance: Enrollment in and completion of a class, workshop, training, or program that could help the respondent or the University community;
4. Educational project: Completion of a project specifically designed to help the respondent understand why certain behavior was inappropriate and to prevent its recurrence;
5. University housing transfer or removal: Permanent placement in another room or housing unit or removal from University housing. Housing transfers or removals may be for a specified time (e.g., a year) or permanent depending on the circumstances;
6. Removal from specific courses or activities: Suspension or transfer from courses or activities at the University for a specified period of time or permanently;
7. Banning from all or specific University activities and events: The University may prohibit an individual from attending University sponsored activities either on or off-campus;
8. Permanent No Contact: Restriction from entering specific University areas and/or from all forms of contact with certain persons;
9. Suspension: Separation from the University for a specified period of time or until certain conditions are met;

10. Expulsion or permanent separation: Termination of student status for an indefinite period for students or termination from employment for employees;
11. Transcript hold: The University may prevent a student from receiving a copy of their transcript; or
12. The University may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of prohibited conduct. In extraordinary circumstances, the University may revoke the conferral of a degree.

Student Respondents may submit to the Hearing Officer a mitigation statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions imposed. Complainants may submit to the Hearing Officer an impact statement describing the impact of the Prohibited Conduct on the Complainant and expressing the Complainant's preferences regarding appropriate sanctions.

In determining the appropriate sanctions for students, the Hearing Officer will be guided by a number of considerations, including:

1. The nature of the conduct at issue and the Prohibited Conduct for which Respondent was charged;
2. The impact of the Prohibited Conduct on the Complainant;
3. The impact of the Prohibited Conduct on the community or the University;
4. Whether the Respondent has accepted responsibility for the Prohibited Conduct, which may be considered as a factor that may lessen, not increase, the severity of the sanctions;
5. Maintenance of a safe and respectful environment conducive to learning;
6. Protection of the University community;
7. The necessity of any specific action in order to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant or other University community members; and
8. Any other mitigating, aggravating, or compelling circumstances, including those set forth in the impact or mitigation statements.

## 500.20 Employee Respondents

If the Respondent(s) is an employee, the Hearing Officer will not make a determination regarding sanctions. After any appeal or opportunity for appeal has been exhausted, the Title IX Coordinator will provide the Hearing Officer's written decision and any final decisions on appeal, to the University administrator with the authority to impose sanctions

in accordance with applicable employment policies and procedures and collective bargaining agreements.

Possible sanctions against employees may include one or more of the following:

- Letter of Expectation
- Letter of Warning
- Suspension with or without pay
- Administrative Leave with or without pay
- Educational programming
- Job transfer or reassignment
- Campus trespass
- Progressive discipline
- Cancellation of leave
- Termination

The Title IX Coordinator will inform the Complainant(s) of the status of the employee sanctioning process and outcomes as they directly relate to the Complainant(s)'s participation in University Programs or Activities.

### 500.30 Graduate Student and Student-Employee Sanctions

If the Respondent is a graduate student or student-employee, the Hearing Officer will determine sanctions with respect to the Respondent's status as a student, and the Title IX Coordinator will provide the Hearing Officer's decision to the University administrator with the authority to impose sanctions in accordance with applicable employment policies and procedures and collective bargaining agreements.

### 600.00 Records

The Title IX Coordinator is responsible to maintain for a period of seven years the following records:

1. Records of the Grievance Procedure following the filing of each Formal Complaint including:
  - a. Hearing Officer File;
  - b. Any disciplinary sanctions imposed upon the Respondent(s);
  - c. Any remedies provided to the Complainant(s) designed to restore or preserve equal access to the University's Programs or Activities;

- d. Any documents submitted as part of an appeal and any written decisions as a result of an appeal;
    - e. Any Written Agreement of Informal Resolution.
  2. All materials used to train the Title IX Coordinator and any Deputy Title IX Coordinators, Investigators, the Hearing Officer, the President (or designee), all other decision-makers for appeals, and any person who facilitates an Informal Resolution Process. The Title IX Coordinator must make these training materials available on the Title IX Office website.
  3. Records of all Reports of Prohibited Conduct including:
    - a. A record of the initial report;
    - b. A record of any actions taken in response to a report of Prohibited Conduct;
    - c. A record of Supportive Measures provided to a Complainant, or if Supportive Measures are not provided to a Complainant, documentation of the reasons why such a response was not clearly unreasonable in light of the known circumstances;
    - d. Documentation of measures taken by the University to restore or preserve equal access to the University's Programs or Activities;
    - e. Documentation of the basis for the conclusion that the University's response was not deliberately indifferent to a report of Prohibited Conduct.

## 700.00 Confidentiality

The University will take reasonable efforts to keep confidential the identity of any individual who has made a report or filed a Formal Complaint of Prohibited Conduct, any Complainant, any Respondent, and any witnesses, except as may be permitted by the FERPA statute, 20 U.S.C. § 1232g, or FERPA regulations, 34 CFR part 99, or as required by law or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, appeal, or judicial proceeding arising thereunder.