

**3.06 / Sexual Harassment, Discrimination and Retaliation for Employees, Students and Visitors**

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## 3.06 / Sexual Harassment, Discrimination and Retaliation for Employees, Students and Visitors<sup>1</sup>

### I. PURPOSE

- A. Wichita State University (“the University”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex. The University upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

### II. SCOPE

- A. This policy prohibits all forms of discrimination on the basis of sex. Sometimes, discrimination involves the exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using the Formal Grievance Process as determined by the Title IX Coordinator, and as detailed below.
- B. When the Respondent is a member of the University community, the grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

### III. DEFINITIONS

- A. *Advisor* means a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

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- B. ***Attempted Offense(s)***: means attempts to complete any of the acts defined by this Policy as sexual harassment or other sex-based offenses as completed acts.
- C. ***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- D. ***Confidential Resource*** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- E. ***University Business Day*** means any weekday (Monday-Friday) that the University is open.
- F. ***Education program or activity*** means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- G. ***Final Determination*** means a conclusion by the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.
- H. ***Finding*** means a conclusion by the standard of proof that the conduct did or did not occur as alleged.
- I. ***Formal Complaint*** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- J. ***Formal Grievance Process*** means a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- K. ***Grievance Process Pool*** means any individuals who may perform the role of hearing officers, and advisors (though not at the same time or with respect to the same case).
- L. ***Hearing Decision-maker*** means those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- M. ***Investigator*** means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling information into an investigation report and file of directly related evidence.
- N. ***Mandated Reporter*** (also referred to as a Responsible Employee) means an employee of the University who is obligated by policy to share knowledge,

notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.

- O. **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- P. **Official with Authority (“OWA”)** means an employee of the University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.
- Q. **Parties** means the Complainant(s) and Respondent(s), collectively.
- R. **University** means Wichita State University, a postsecondary education program that is a recipient of federal funding.
- S. **Remedies** mean post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.
- T. **Respondent** means an individual who has been reported to have engaged conduct that could constitute harassment or discrimination as defined within this policy; or retaliation for engaging in a protected activity.
- U. **Resolution** means the result of an Informal Resolution Process, or Formal Grievance Process.
- V. **Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- W. **Sexual Harassment** means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section IX.A, for greater detail.
- X. **Title IX Coordinator** means at least one official designated by the University to ensure compliance with Title IX and the University’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- Y. **Title IX Team** refers to the Title IX Coordinator, any Deputy Title IX Coordinator, any Office of Institutional Equity and Compliance (“OIEC”) staff member and any member of the Grievance Process Pool.

## **IV. TITLE IX COORDINATOR**

### **A. Role and Responsibility of the Title IX Coordinator**

1. Sara Zafar serves as the Title IX Coordinator<sup>2</sup>. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

### **B. Independence and Conflict-of-Interest**

1. The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents.
2. Concerns involving bias or conflict of interest by the Title IX Coordinator contact the Executive Director of Institutional Equity and Compliance, Christine Taylor at [Christine.taylor@wichita.edu](mailto:Christine.taylor@wichita.edu), or 316-978-3205. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.
3. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Executive Director of Institutional Equity and Compliance. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

### **C. Administrative Contact Information**

1. Complaints, reports, or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:
  - a. Sara Zafar, J.D.  
Title IX Coordinator  
Office of Institutional Equity and Compliance  
116 Human Resources Center  
1845 N. Fairmount Street  
Wichita, KS 67260  
(316) 978-5177  
Email: [sara.zafar@wichita.edu](mailto:sara.zafar@wichita.edu)

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<sup>2</sup> Throughout this Policy, Title IX Coordinator also means Title IX Coordinator or designee.



Web: <https://wichita.edu/oiec>  
[https://cm.maxient.com/reportingform.php?WichitaStateUniv&layout\\_id=8](https://cm.maxient.com/reportingform.php?WichitaStateUniv&layout_id=8)

- b. Christine Taylor, J.D., LL.M.  
Executive Director  
Office of Institutional Equity and Compliance  
(316) 978-3205  
[christine.taylor@wichita.edu](mailto:christine.taylor@wichita.edu)
- c. Michael Irvin, J.D., MPA  
Equal Opportunity Coordinator  
Office of Institutional Equity and Compliance  
(316) 978-3186  
[OIEC@wichita.edu](mailto:OIEC@wichita.edu) or [michael.irvin@wichita.edu](mailto:michael.irvin@wichita.edu)
- d. Becky Endicott  
Senior Associate Athletic Director, Senior Women's Administrator  
Intercollegiate Athletics  
Title IX Deputy Coordinator for Athletics  
Charles Koch Arena, Room 201  
(316) 978-3540
- e. Judy Espinoza  
Executive Director Human Resources  
Title IX Deputy Coordinator for Employees and Visitors  
Human Resources Center, Room 117  
(316) 978-3540  
[Judy.espinsoza@wichita.edu](mailto:Judy.espinsoza@wichita.edu)
- f. Linnea Glenmaye  
Associate Vice President for Academic Affairs  
Title IX Deputy Coordinator for Faculty  
Morrison Hall, Room 109  
(316) 978-5054  
[Linnea.glenmaye@wichita.edu](mailto:Linnea.glenmaye@wichita.edu)
- g. Alicia Newell  
Assistant Vice President for Student Affairs  
Title IX Deputy Coordinator for Students  
Rhatigan Student Center, Room 231  
(316) 978-6105  
[Alicia.newell@wichita.edu](mailto:Alicia.newell@wichita.edu)

- 2. The University has determined that the following administrators are Officials with Authority (OWAs), whose knowledge of alleged sexual

harassment, discrimination and retaliation set forth in this Policy, triggers the University's duty to respond in accordance with this Policy.

- a. Executive Director of Institutional Equity and Compliance  
Office: HR 110A  
Telephone: 978-3205
  - b. Title IX Coordinator  
Office: HR 116  
Telephone: 978-5177
  - c. Equal Opportunity Coordinator  
Office: HR 110  
Telephone: 978-3186
3. This list may be updated from time to time at the discretion of WSU. The titles, office locations and telephone numbers are current as of August 14, 2020. Please refer to the Wichita State University Directory at <https://www.wichita.edu/directories/index.php> to search faculty and staff.
  4. University has classified employees as Mandated Reporters (Responsible Employees) of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporters details which employees have this responsibility and their duties, accordingly.
  5. Inquiries may be made externally to:
    - a. 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>
    - b. Kansas City Office  
Office for Civil Rights  
U.S. Department of Education  
One Pettycoat Lane  
1010 Walnut Street, 3<sup>rd</sup> Floor, Suite 320  
Kansas City, MO 64016  
TDD #:
  6. Employees may also file complaints of discrimination with:

- a. EEOC Field Office Gateway Tower  
400 State Avenue, Suite 905  
Kansas City, Kansas 66101  
Phone: 1-800-669-4000 TTY: 1-800-669-6820  
Fax: 913-551-6957
- b. Kansas Human Rights Commission (KHRC)  
900 SW Jackson Street  
Suite 568-S  
Topeka, KS 66612-1258  
Phone: 785-296-3206  
Fax: 785-296-0589

**V. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION**

- A. Notice or complaints of discrimination, harassment, and or retaliation may be made using any of the following options:
  - 1. File a complaint with, or give verbal notice to the Title IX Coordinator, Deputy Title IX Coordinator, Title IX Team Member, or any OWA (see contact information above). Reports may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
  - 2. Any person may report incidents of harassment, discrimination or retaliation, regardless of whether the person reporting is the Complainant.
  - 3. Report online, using the report form posted at:  
[https://cm.maxient.com/reportingform.php?WichitaStateUniv&layout\\_id=8](https://cm.maxient.com/reportingform.php?WichitaStateUniv&layout_id=8) Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.
  - 4. WSU Police Department at [police@wichita.edu](mailto:police@wichita.edu), or 911 Emergency TDD, Non-emergency, 316-978-3450.
- B. A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as

described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

- C. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **VI. UNIVERSITY RESPONSE**

### **A. Supportive Measures**

1. The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.
2. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University’s education program or activity, including measures designed to protect the safety of all parties or the University’s educational environment, and/or deter harassment, discrimination, and/or retaliation.
3. The Title IX Coordinator shall make every effort to promptly make supportive measures available to the parties upon receiving notice, report or a complaint. At the time supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure their wishes are considered with respect to the planned and implemented supportive measures.
4. The University will maintain the privacy of supportive measures, provided that privacy does not impair the University’s ability to provide supportive measures. The University will act to ensure the parties experience as minimal an academic impact as possible. The University will implement measures in a way that does not unreasonably burden the other party.
5. These actions may include, but are not limited to:
  - a. Referring to counseling, medical, and/or other healthcare services
  - b. Referring to the Employee Assistance Program
  - c. Assisting with visa and immigration
  - d. Counseling for student financial aid
  - e. Referring to community-based service providers
  - f. Altering campus housing assignment(s)
  - g. Altering work arrangements for employees or student-employees

- h. Preparing a safety plan
  - i. Providing campus safety escorts
  - j. Supporting no contact orders between the parties
  - k. Providing academic support, extensions of deadlines, or other course/program-related adjustments
  - l. Issuing a University No Trespass Notice
  - m. Issuing timely warnings
  - n. Modification of class schedule, withdrawals, or leaves of absence
  - o. Increasing security and monitoring of certain areas of the campus
  - p. Any other actions deemed appropriate by the Title IX Coordinator
6. Violations of no contact orders will be referred to the appropriate student or employee conduct processes for enforcement.

**B. University's Response to Respondent**

- 1. The Title IX Coordinator will notify a Respondent when it takes action that impacts the Respondent directly, such as instituting Supportive Measures to the Complainant that restrict the Respondent's privileges or access to campus or upon the filing of a Formal Complaint.
- 2. However, depending on the circumstances and the Complainant's wishes, the Respondent may not be notified of a report of conduct addressed under this Policy or the outcome of the Title IX Coordinator's initial assessment of the allegations.
- 3. Once a Respondent is notified by the Title IX Coordinator about the allegations raised against the Respondent under this Policy, the Title IX Coordinator will offer to meet with the Respondent to review available Supportive Measures. The Title IX Coordinator will discuss the Grievance Process and answer any questions.

**C. Emergency Removal**

- 1. The University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the CARE Team using its objective violence risk assessment and behavior intervention procedures.
- 2. When an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator before such action/removal is imposed, or as soon thereafter as reasonably

possible, to show cause why the action/removal should not be implemented or should be modified.

3. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. If this meeting is not requested in a timely manner, objections to the emergency removal are waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.
4. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
5. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.
6. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily reassigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.
7. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic disruption as possible on the parties.

**D. Promptness**

1. All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Typically, complaints can take 60-90 days to resolve. However, exceptions and extenuating circumstances

may cause a resolution to take longer. The University will avoid all undue delays within its control.

2. If the general timeframes for resolution outlined in University procedures will be delayed, the University will provide written notice to the parties. This notice will include the cause of the delay, and an estimate of the anticipated additional time needed.

#### **E. Privacy**

1. Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
2. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
3. Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Institutional Equity and Compliance, Division of Student Affairs, Student Conduct and Community Standards, University Police, Care Team and the Threat Assessment Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.
4. Confidentiality and mandated reporting are addressed more specifically below.

### **VII. UNIVERSITY JURISDICTION**

#### **A. Application of Policy**

1. This policy applies to the University's education programs and activities, and to conduct that takes place on campus, on property owned or controlled by the University, at University sponsored events, or in buildings owned or controlled by University recognized student organizations. The Respondent must be a member of the University's community for its policies to apply.

2. This Policy can apply to the effects of off-campus misconduct that effectively deprives someone of access to the University's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.
3. Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:
  - a. Any 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;
  - b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
  - c. Any situation or conduct that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
  - d. Any situation detrimental to the educational interests or mission of the University.
4. If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and supportive options and/or, when criminal conduct is alleged, to contact local or campus law enforcement if the individual would like to file a police report.
5. The University may take actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.
6. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, because it may be possible to allege violations through that institution's policies.
7. The University may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or another environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.



## **B. Time Limits on Reporting**

1. There is no time limitation on providing notice/complaints to the Title IX Coordinator. 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 provide remedies may be more limited or impossible.
2. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.
3. When notice/complaint is affected by a significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

## **C. Online Harassment and Misconduct**

1. University policies are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment.
2. The University may not control websites, social media, and/or other venues in which harassing communications are made. When such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.
3. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.
4. Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## VIII. RELATED POLICIES

### A. Consensual Relationship Policy

1. In the event employees are married, in an intimate partnership, have a domestic relationship, or have sexual contact with another employee or student with whom they have direct professional power differential or supervisory responsibilities, they are required to disclose the relationship to the appropriate supervisor. Supervisors should contact their Human Resource Business Partner for guidance as necessary if this applies to their employee(s). *See:* [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_16.php](https://www.wichita.edu/about/policy/ch_03/ch3_16.php)

### B. Policy on Nondiscrimination

1. The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education. WSU Policies and Procedures 3.02 Notice of Non-Discrimination. *See:* [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_02.php](https://www.wichita.edu/about/policy/ch_03/ch3_02.php)

### C. Policy on Protected Characteristic Discrimination

1. The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of protected characteristics. Grievances related to disability status and/or accommodations for employees and students is set forth in WSU Policies and Procedures 3.47/ Discrimination Review Process for Students, Employees and Visitors. *See:* [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_47.php](https://www.wichita.edu/about/policy/ch_03/ch3_47.php)
2. Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Wichita State University's Policies and Procedures 3.47/Discrimination Review Process for Students, Employees and Visitors is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.
3. WSU Policies and Procedures 3.47/ Discrimination Review Process for Students, Employees and Visitors, *see* [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_47.php](https://www.wichita.edu/about/policy/ch_03/ch3_47.php) sets forth the specific forms of legally prohibited harassment that are also prohibited under University policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted.

**D. Policy on Disability Discrimination and Accommodation**

1. The University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.
2. *See:* WSU Policies and Procedures 8.10/Students with Disabilities, [https://www.wichita.edu/about/policy/ch\\_08/ch8\\_10.php](https://www.wichita.edu/about/policy/ch_08/ch8_10.php); *See:* WSU Workplace Accommodations Procedures [https://www.wichita.edu/services/humanresources/Total\\_Rewards/Leave/ADAAA/](https://www.wichita.edu/services/humanresources/Total_Rewards/Leave/ADAAA/); and *See:* WSU Policies and Procedures 3.47/Discrimination Review Procedures for Students, Employees, and visitors, [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_47.php](https://www.wichita.edu/about/policy/ch_03/ch3_47.php)

**IX. REVIEW PROCEDURES FOR DISCRIMINATORY HARASSMENT ON THE BASIS OF SEX**

**A. Sexual Harassment**

1. The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the state of Kansas regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.
2. The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists of employer and employees, and students.
3. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
4. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:
5. Conduct on the basis of sex that satisfies one or more of the following:
  - a. Quid Pro Quo:
    - i. an employee of the University,
    - ii. conditions either implicitly or explicitly the provision of an aid, benefit, or service of the University,
    - iii. on an individual’s participation in unwelcome sexual conduct.

- b. Sexual Harassment:
  - i. unwelcome conduct,
  - ii. determined by a reasonable person,
  - iii. to be so severe, and
  - iv. pervasive, and,
  - v. objectively offensive,
  - vi. that it effectively denies a person equal access to the University's education program or activity.

**B. Sexual Assault<sup>3</sup>**

- 1. Sexual Assault means one of the following sexual offenses, whether forcible or nonforcible, when directed at another person without that person's Consent, including instances where the person is incapacitated:
  - a. Rape – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the Complainant.<sup>4</sup>
  - b. Fondling – The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - c. Incest – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Kansas law.
  - d. Statutory Rape – Nonforcible sexual intercourse with a person who is under the statutory age of consent (16 years of age in Kansas).

**C. Dating Violence<sup>5</sup>**

- 1. Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined

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<sup>3</sup> 20 U.S.C. § 1092(f)(6)(A)(v).

<sup>4</sup> "The Clery Act defines sexual assault as an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation. The FBI UCR consists of two crime reporting systems: The Summary Reporting System (SRS) and the National Incident-Based Reporting System (NIBRS). The definitions for sexual assault defined in this Policy (including rape, fondling, incest, and statutory rape) align with and encompass all behaviors that may constitute sexual assault under either the SRS or NIBRS."

<sup>5</sup> Violence Against Women Act, 34 U.S.C. 12291(a)(10) (2013).

based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

2. For the purposes of this definition:
  - a. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - b. Dating violence does not include acts covered under the definition of domestic violence.

**D. Domestic Violence<sup>6</sup>**

1. Domestic Violence is defined as a felony or misdemeanor crime of violence committed:
  - a. By a current or former spouse or intimate partner of the Complainant;
  - b. By a person with whom the Complainant shares a child in common;
  - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - d. By a person similarly situated to a spouse of the Complainant under the Kansas domestic or family violence laws; or
  - e. By any other person against an adult or youth Complainant who is protected from that person's acts under the Kansas domestic or family violence laws.
2. To categorize an incident as Domestic Violence under this policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**E. Stalking<sup>7</sup>**

1. Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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<sup>6</sup> *Id.* at 12291(a)(8).

<sup>7</sup> *Id.* at 12291 (a)(30).

- a. Fear for the person’s safety or the safety of others; or
  - b. Suffer substantial emotional distress.
2. For the purposes of this definition:
- a. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
  - b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - c. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

**F. Other Sex-based Offenses**

- 1. Sex Discrimination (also referred to as Non-Sexual Harassment Sex Discrimination). Providing differential treatment on the basis of sex such as in athletics, or with respect to employment, admissions or enrollment or participation in an academic course.
- 2. Sexual exploitation. Occurs when a person engages in non-consensual or abusive conduct that takes sexual advantage of another individual for the person’s own advantage or benefit, or to benefit or advantage anyone other than the individual being exploited and does not constitute any other offense addressed in this Policy.
- 3. Discrimination on the basis of sexual orientation, gender identity or gender expression. Providing differential treatment on the basis of sexual orientation, gender identity or gender expression, or harassment on the basis of sexual orientation, gender identity or gender expression.
- 4. Discrimination against pregnant and parenting students. Providing differential treatment on the basis of a Student’s status as a pregnant or parenting Student or harassment on the basis of a Student’s status as being a pregnant or parenting Student. *See:* WSU Policies and Procedures: 8.21/Accommodations for Pregnant and Parenting Students [https://www.wichita.edu/about/policy/ch\\_08/ch8\\_21.php](https://www.wichita.edu/about/policy/ch_08/ch8_21.php)

**G. Force, Coercion, Consent, and Incapacitation**

- 1. As used in the offenses above, the following definitions apply:

- a. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that occurs by is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of force or resistance alone is not consent. Consent is not demonstrated by the absence of force or resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

- b. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- c. **Consent:**

- i. Is:

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

- ii. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

- iii. 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.

- iv. Consent can also be withdrawn once given, if the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

- v. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not enough to constitute consent.

- vi. Proof of consent or non- consent and the burden of collecting evidence sufficient to reach a determination regarding responsibility, rests on the University, not the parties.
  - vii. 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 incident occurred and any similar, previous patterns that may be evidenced.
  - viii. Consent in relationships must be considered in context. When parties consent to BDSM (Bondage, discipline/dominance, submission/sadism, and 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, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.
2. **Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. It is a violation of this Policy if a Respondent engages in sexual activity with someone who is incapable of giving consent.
- a. It is a defense to a sexual assault policy violation if the Respondent neither knew nor should have known the Complainant was physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. The use of alcohol or other drugs will never function as a defense for any behavior that violates this Policy.
  - b. Incapacitation occurs when someone 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, or how” of their sexual interaction).
  - c. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.



- d. This Policy includes incapacity resulting from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

## **H. Sexual Exploitation**

1. In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University prohibits Sexual Exploitation as a form of discrimination.
2. Sexual Exploitation means: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - a. 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)
  - b. Invasion of sexual privacy
  - c. 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 revenge pornography
  - d. Prostituting another person
  - e. 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 infection
  - f. 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
  - g. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections

- h. 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
- i. Knowingly soliciting a minor for sexual activity
- j. Engaging in sex trafficking
- k. Creation, possession, or dissemination of child pornography
- l. Stealthing (The practice of a man covertly removing or damaging a condom during sexual intercourse, when his partner has only consented to condom-protected sex)

**I. Other Civil Rights Offenses**

- 1. Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities. *See: WSU Policy 3.47* [https://www.wichita.edu/about/policy/ch\\_03/ch3\\_47.php](https://www.wichita.edu/about/policy/ch_03/ch3_47.php)

**J. Retaliation**

- 1. Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.
- 2. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.
- 3. It is prohibited for the University or any member of the University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
- 4. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

5. The exercise of rights protected under the First Amendment does not constitute retaliation.
6. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**K. Notice to Mandated Reporters (Responsible Employees)**

1. All University employees (including student employees), with the exception of those who are specifically designated as Confidential Resources, are Mandated Reporters (“Responsible Employees”) and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. A “Responsible Employee” includes any employee who:
  - a. Has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees; or
  - b. A student, employee or visitor could reasonably believe has the authority or responsibility to take action.
2. Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.
3. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.
4. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates they desire to report or a seek a specific response from the University.
5. Supportive measures may be offered as the result of such disclosures without formal University action.
6. Failure of a Mandated Reporter to report all information they are aware of regarding an incident of harassment on the basis of sex or discrimination addressed by this Policy, to the Title IX Coordinator is a violation of University Policy and can be subject to disciplinary action for failure to comply.

7. When a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the University is not on notice when the harasser is also a Mandated Reporter unless the harasser does in fact report themselves.
8. A Mandated Reporter who is a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are encouraged to do so.

**L. When a Complainant Does Not Wish to Proceed**

1. If a Complainant does not wish their name to be shared with the Respondent, does not wish an investigation, or does not wish to pursue a Formal Complaint, they may make a request to the Title IX Coordinator, who will evaluate the request in light of the duty to ensure the safety of the campus and compliance with state or federal law.
2. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint initiating the grievance process after completion of an appropriate violence risk assessment.
3. The Title IX Coordinator's decision should be based on the results of the violence risk assessment that show a compelling risk to health and/or safety requiring the University to pursue formal action to protect the community.
4. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.
5. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.
6. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.
7. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Complainant may request that their Advisor serve as proxy for the Complainant throughout the process,

acting to ensure and protect the rights of the Complainant, not in the Complainant's place as a party.

8. The University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.
9. If the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.
10. If the Complainant elects to take no action, they can change that decision and pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

**M. Federal Timely Warning Obligations**

1. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.
2. 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.

**N. False Allegations and Evidence**

1. Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.
2. Witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

**O. Amnesty for Complainants and Witnesses**

1. The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or

witnesses are hesitant to report to University officials or participate in grievance 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.

2. It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.
3. To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.
4. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**P. Federal Statistical Reporting Obligations**

1. Campus officials – those deemed as Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):
  - a. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - b. Hate crimes, which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
  - c. VAWA<sup>8</sup> – based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
  - d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

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<sup>8</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

- Q.** All personally identifiable information is kept private, but statistical information must be passed along to university law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Fire and Safety Report and daily campus crime log.
- R.** Campus Security Authorities include: student affairs/student conduct staff, university law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

**X. INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF SEXUAL HARASSMENT, DISCRIMINATION AND RETALIATION POLICY**

**A. Overview**

1. The University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.
2. The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) and other sex-based offenses listed in section IX F of this Policy, involving students, staff, administrators or faculty members.
3. If other policies are invoked such as policies on protected class harassment, discrimination, and retaliation, *see*: WSU Policy 3.47 for a description of the procedures applicable to the resolution of such offenses.
4. All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures set forth in University policies.

**B. Notice / Complaint**

1. Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the University initiates a prompt initial assessment to determine the next steps the University needs to take.
2. The University will initiate at least one of three responses:
  - a. Offering supportive measures because the Complainant does not want to proceed formally;
  - b. An informal resolution;

- c. A Formal Grievance Process including an investigation and a hearing.
3. The investigation and grievance process will determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

**C. Initial Assessment**

1. Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>9</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:
  - a. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
    - i. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
  - b. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
  - c. The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
  - d. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
  - e. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - f. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

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<sup>9</sup> For purposes of this policy, “Title IX Coordinator” always means “Title IX Coordinator or designee.”



- g. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, whether an informal process may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- h. If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
  - i. If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue, based on the nature of the complaint.
  - ii. If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable and will refer the matter accordingly. Or refers the matter for resolution under other university policy(s). Please note that dismissing a complaint under Title IX is procedural and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

**D. Violence Risk Assessment**

- 1. In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by member of the CARE team if the Respondent is a student or student employee as part of the initial assessment. A VRA aids in ten critical and/or required determinations, including:
  - a. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
  - b. Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
  - c. Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - d. To help identify potential predatory conduct;
  - e. To help assess/identify grooming behaviors;

- f. Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
  - g. Whether to permit a voluntary withdrawal by the Respondent;
  - h. Whether to impose transcript notation or communicate with a transfer University about a Respondent;
  - i. Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
  - j. Whether a Clery Act Timely Warning and/or Trespass order is needed.
2. Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.
  3. VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE team members. A VRA requested by the Title IX Coordinator should occur in collaboration with the CARE team or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.
  4. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology. A VRA is not an evaluation for an involuntary behavioral health, nor is it a psychological or mental health assessment.
  5. More about the University's process for VRA can be found below/in Appendix B.

**E. Dismissal (Mandatory and Discretionary)**

1. The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
  - a. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
  - b. The conduct did not occur in an educational program or activity controlled by the University (including buildings or property

controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or

- c. The conduct did not occur against a person in the United States; and/or
  - d. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.
2. The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:
    - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
    - b. The Respondent is no longer enrolled in or employed by the University; or
    - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
  3. Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
  4. This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate and refile it.

#### **F. Counterclaims**

1. The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.
2. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

3. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

**G. Right to an Advisor**

1. The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor. This could include an attorney, advocate or support person.
2. The law permits one Advisor for each party.
3. Witnesses are not entitled to Advisors within this grievance process however they may be advised externally.
4. The chosen Advisor should be eligible and available. A party cannot insist on an Advisor who doesn't have the inclination, time or availability.
5. The Advisor cannot have institutionally conflicting roles, for example, the Title IX Coordinator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.
6. Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).
7. The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX coordinator and will be granted equitably to all parties.
8. Who Can Serve as an Advisor
  - a. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.
  - b. The Title IX Coordinator will offer to assign a trained Advisor for any party if the party does not have an advisor at the time of hearing. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

- c. If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.
  - d. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.
9. Advisors in Hearings/University-Appointed Advisor
- a. Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, and must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses.
  - b. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.
  - c. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, the University will appoint an Advisor who will do so regardless of the participation or non-participation of the advised party in the hearing itself.
  - d. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.
10. Advisor's Role
- a. Advisors support the parties and assist them through the Grievance Process. The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews.
  - b. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.
  - c. Advisors should help the parties prepare for each meeting and the hearing and are expected to advise ethically, with integrity, and in good faith.

- d. The Advisor's role in the hearing is limited to cross examination of the other party and of any witnesses. An Advisor may not make a presentation on behalf of or represent the party during any meeting or proceeding in the grievance process and may not speak on behalf of the party to the Investigator(s) or Decision-makers, except during cross-examination. Advisors may ask process-related questions to the Investigator(s), Hearing Chair, Decision-Maker(s), or the Title IX Coordinator.
- e. The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

11. Pre-Interview Meetings

- a. Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

12. Advisor Violations of University Policy

- a. All Advisors are subject to the same University policies and procedures, whether they are attorneys or not.
- b. Advisors are expected to advise their advisees without disrupting proceedings.
- c. Advisors should not address University officials in a meeting or interview unless invited to (asking procedural questions).
- d. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross examination.
- e. Any Advisor who oversteps their role as defined by this policy will be warned only once.
  - i. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented.
  - ii. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

13. Sharing Information with the Advisor

- a. The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors, including attorney Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.
- b. If a party chooses an attorney advisor, the OIEC team and Decision-makers within this grievance process are not bound to attorney-attorney communications. All communications and documentation from the OIEC team or Decision-makers will be sent to the parties via their University assigned email.
- c. Privacy of Records Shared with Advisor
  - i. Advisors are expected to maintain the privacy of the records shared with them by the party they are advising.
  - ii. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University.
  - iii. The University may require Advisors to sign a non-disclosure agreement to ensure the confidentiality of the information shared with them by the University.
  - iv. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

14. Expectations of an Advisor

- a. The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.
- b. The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

15. Expectations of the Parties with Respect to Advisors

- a. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their

Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

- b. The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.
- c. As a public entity, the University fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

16. Assistance in Securing an Advisor

- a. For representation, Respondents may wish to contact organizations such as:
  - i. FACE (<http://www.facecampusequality.org>)
  - ii. SAVE (<http://www.saveservices.org>)
- b. Complainants may wish to contact organizations such as:
  - i. The Victim Rights Law Center (<http://www.victimrights.org>)
  - ii. The National Center for Victims of Crime (<http://www.victimsofcrime.org>)
  - iii. The Time's Up Legal Defense Fund (<http://nwic.org/times-up-legal-defense-fund/>)

## **XI. RESOLUTION PROCESSES**

### **A. Privacy of Resolutions Proceedings**

- 1. Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy.



2. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. The University encourages parties to discuss this with their Advisors before doing so.

## **B. Informal Resolution**

1. Informal Resolution can include three different approaches:
  - a. When the parties agree to resolve the matter using an informal/alternate resolution process.
  - b. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
  - c. When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
2. To initiate Informal Resolution, a Complainant must file a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they must contact the Title IX Coordinator in writing to so indicate.
3. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.
4. Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.
5. The University shall obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution process before proceeding and will not pressure the parties to participate in the Informal Resolution process.
6. The Informal Resolution option is an informal process, including facilitation, mediation or restorative practices, etc. by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of the Informal Resolution process.
7. The Title IX Coordinator may consider the following factors to assess whether Informal/Alternate Resolution is appropriate, or which type of Informal Resolution processes may be most successful for the parties:

- a. The parties' amenability to Informal Resolution process;
  - b. Likelihood of potential resolution, considering the allegations set forth in the Formal Complaint;
  - c. The parties' motivation to participate;
  - d. Cleared violence risk assessment/ongoing risk analysis;
  - e. Disciplinary history;
  - f. Whether an emergency removal is needed;
  - g. Complaint complexity;
  - h. Goals of the parties.
8. The Title IX Coordinator shall determine whether the Informal Resolution process is appropriate, and the Title IX Coordinator must approve any resolution agreement reached as a result of the Informal Resolution process.
  9. The Title IX Coordinator maintains records of any resolution agreement reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.
  10. Results of complaints resolved by Informal Resolution are not appealable.
  11. The Informal Resolution agreement is not final until it is signed by all parties and the Title IX Coordinator.

**C. Respondent's Acceptance of Responsibility**

1. The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process.
2. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.
3. If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies.
  - a. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

4. This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution.
5. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.
6. When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

**D. Negotiated Resolution**

1. The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University.
2. Negotiated Resolutions are not appealable.

**E. Grievance Process Pool**

1. The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office. The Title IX Coordinator, in consultation with the OIEC team, appoints the Pool.<sup>10</sup>
  - a. **Pool Member Appointment:** While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can designate permanent roles for individuals in the Pool, using as substitutes or to provide greater depth of experience when necessary. The process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.
  - b. **Pool Membership:** Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

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<sup>10</sup> This does not preclude the University from having all members of the Pool submit an application and/or interview/selection process.

- c. **Pool Member Training:** Pool members receive annual training. This training includes, but is not limited to:
- i. The scope of the University's Discrimination and Harassment Policy and Procedures
  - ii. Implicit bias
  - iii. Disparate treatment and impact
  - iv. Reporting, confidentiality, and privacy requirements
  - v. Applicable laws, regulations, and federal regulatory guidance
  - vi. How to implement appropriate and situation-specific remedies
  - vii. How to investigate in a thorough, reliable, and impartial manner
  - viii. How to uphold fairness, equity, and due process
  - ix. How to weigh evidence
  - x. How to conduct questioning
  - xi. How to assess credibility
  - xii. Impartiality and objectivity
  - xiii. How to render findings and generate clear, concise, evidence-based rationales
  - xiv. The definitions of all offenses
  - xv. How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
  - xvi. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
  - xvii. Any technology to be used at a live hearing
  - xviii. Issues of relevance of questions and evidence
  - xix. How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
2. Specific training is also provided for Appeal Officers, intake personnel, Advisors (who are University employees). All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are available on the OIEC website.

## **XII. FORMAL GRIEVANCE PROCESS**

### **A. Notice of Investigation and Allegations**

1. The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.
2. The NOIA will include:
  - a. A meaningful summary of all of allegations,
  - b. The identity of the involved parties (if known),
  - c. The precise misconduct being alleged,
  - d. The date and location of the alleged incident(s) (if known),
  - e. The specific policies implicated,
  - f. A description of the applicable procedures,
  - g. A statement of the potential sanctions/responsive actions that could result,
  - h. A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
  - i. A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
  - j. A statement about the University’s policy on retaliation,
  - k. Information about the privacy of the process,
  - l. Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
  - m. A statement informing the parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,

- n. Detail on how the party may request disability accommodations during the interview process,
  - o. A link to the University's VAWA Brochure,
  - p. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
  - q. An instruction to preserve any evidence that is directly related to the allegations.
- 3. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.
  - 4. Notice will be made in writing and may be delivered by email to the parties' University - issued email or designated accounts. Once emailed notice will be presumptively delivered.

**B. Resolution Timeline**

- 1. The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

**C. Appointment of Investigators**

- 1. Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one investigator usually within two (2) business days of determining that an investigation should proceed.

**D. Ensuring Impartiality**

- 1. Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, OIEC Team and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.
- 2. The Title IX Coordinator will vet the assigned Investigator to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another individual will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of

interest or bias is the Title IX Coordinator, concerns should be raised with Executive Director of OIEC.

3. The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.
4. The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

**E. Investigation Timeline**

1. Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.
2. The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

**F. Delays in the Investigation Process and Interactions with Law Enforcement**

1. The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.
2. The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, University will implement supportive measures as deemed appropriate.
3. The University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

**G. Steps in the Investigation Process**

1. All investigations are conducted in a thorough, reliable, impartial, prompt, and fair manner. Investigations involve interviews with all relevant parties

and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

2. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.
3. The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):
  - a. Determine the identity and contact information of the Complainant
  - b. In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
  - c. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
  - d. Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
  - e. Prepare the Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - f. Notice should inform the parties of their right to an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
  - g. Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
  - h. When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
  - i. Interview all available, relevant witnesses and conduct follow-up interviews as necessary
  - j. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and



witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.

- k. Complete the investigation promptly and without unreasonable deviation from the intended timeline
- l. Provide regular status updates to the parties throughout the investigation.
- m. Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- n. Prepare a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Including relevant physical or documentary evidence.
- o. The Investigator gathers, assesses, and synthesizes evidence, but does not make conclusions, engage in policy analysis, or make recommendations as part of their investigative report.
- p. Prior to the conclusion of the investigation, provide the parties a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- q. The Investigator may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.
- r. The Investigator will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- s. The investigator shares the report with the Title IX Coordinator for their review and feedback.

- t. The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

#### **H. Role and Participation of Witnesses in the Investigation**

1. Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.
2. While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.
3. Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

#### **I. Recording of Interviews**

1. All interviews are audio and/or video recorded. All involved parties will be made aware of the audio and/or video recording. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

#### **J. Evidentiary Considerations in the Investigation**

1. The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

**K. Referral for Hearing**

1. Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.
2. The hearing cannot be less than ten (10) business days from the conclusion of the Investigation –when the final investigation report is transmitted to the parties and the Decision-maker(s)–unless all parties and the Decision-maker(s) agree to an expedited timeline.
3. The Title IX Coordinator will select an appropriate Decision-makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-makers depending on the context of the alleged misconduct.

**L. Hearing Decision-maker Composition**

1. The University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.
2. The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.
3. Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.
4. The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

**M. Evidentiary Considerations in the Hearing**

1. Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, 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.

2. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process.
3. The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.
4. After post-hearing deliberation, the Decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

#### **N. Notice of Hearing**

1. No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
2. The notice will contain:
  - a. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
  - b. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
  - c. Any technology that will be used to facilitate the hearing.
  - d. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
  - e. A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

- f. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
  - g. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
  - h. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
  - i. A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>11</sup>
  - j. An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
  - k. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
  - l. Whether parties may bring mobile phones/devices into the hearing.
3. Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.
  4. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

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<sup>11</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

**O. Alternative Hearing Preparation Options**

1. If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.
2. The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person must inform the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing so appropriate arrangements can be made.

**P. Pre-Hearing Preparation**

1. The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.
2. Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.
3. The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).
4. The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

5. During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

**Q. Pre-Hearing Meetings**

1. The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.
2. The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.
3. At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.
4. The pre-hearing meeting(s) will be recorded.

**R. Hearing Procedures**

1. At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Sexual Harassment, Discrimination and Retaliation.
2. Participants at the hearing will include the Chair, any additional panelists, hearing facilitator, the Investigator(s) who conducted the investigation, the

parties (In incidents involving student groups or organizations, the president, director, team captain or other member of student leadership will participate in the student conduct process on behalf of the group or organization), Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

3. The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.
4. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

**S. Joint Hearings**

1. In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.
2. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

**T. The Order of the Hearing-Introductions and Explanation of Procedure**

1. The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.
2. The Chair AND/OR hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.



**U. Investigator Presents the Final Investigation Report**

1. The Investigator will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.
2. Neither the parties nor the Decision-maker(s) should ask the Investigator their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**V. Testimony and Questioning**

1. Once the Investigator present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).
2. All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.
3. The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
4. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.
5. If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the

hearing, the Chair should not permit irrelevant questions that probe for bias.

#### **W. Refusal to Submit to Cross Examination and Inferences**

1. If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.
2. If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.
3. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
4. If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.
5. If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided A refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

#### **X. Recording Hearings**

1. Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

2. The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

**Y. Deliberation, Decision-making, and Standard of Proof**

1. The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.
2. If there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).
3. The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.
4. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate administrator and will determine the appropriate sanction(s).
5. The Chair will prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.
6. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

**Z. Notice of Outcome**

1. Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-maker(s)' deliberation statement.

2. The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: emailed to the parties' University -issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
3. The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.
4. The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).
5. The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **XIII. STATEMENT OF THE RIGHTS OF THE PARTIES (SEE APPENDIX A)**

### **XIV. SANCTIONS**

#### **A. Factors In Determining Appropriate Sanction / Responsive Action**

1. Factors considered when determining a sanction/responsive action may include, but are not limited to:
  - a. The nature, severity of, and circumstances surrounding the violation(s);
  - b. The Respondent's disciplinary history;
  - c. Previous allegations or allegations involving similar conduct;

- d. The need for sanctions/responsive actions to bring an end to, prevent future recurrence of, and/or remedy the effects of the discrimination, harassment, and/or retaliation;
  - e. The impact on the parties;
  - f. Any other information deemed relevant by the Decision-maker(s).
2. The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.
  3. The sanctions described in this policy may be in addition to, other actions or sanctions imposed by external authorities.

## **B. Student Sanctions.**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination.

1. ***Disciplinary Warning*** – This written warning is provided to acknowledge that the Respondent's behavior violated University policy and does not align with Wichita State University's expectations for community members. Another breach of University policy and/or if the Respondent is found responsible for any future violations of University and/or HRL policy, offenses, it may result in severe disciplinary action.
2. ***Disciplinary Probation*** – The student is deemed not in good conduct standing with the University. The duration of any probationary period will be determined by the resolution body on a case-by-case basis. Any further violations of University policy while on probation may result in more serious sanctions being imposed, which may include suspension or expulsion from the University. Restrictions that may be placed on the student during the probationary period include, but are not limited to: participation in student activities, representation of the University on athletic teams or in other leadership positions, eligibility to receive any University award or honorary recognition, entrance into University residence halls or other areas of campus, participation in a study abroad program, or University computer and network usage.
3. ***Suspension*** – The student is required to leave the University for a designated time. During the suspension period, a student may not attend classes (either in person or online) nor participate in a student group or student organization activities, whether they occur on or off-campus. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A registration and records hold will be placed on the student's account until the conclusion of the suspension period. If the student is an on-campus resident, the student's contract with Housing &

Residence Life will also be terminated and the student will be responsible for paying any remaining fees for the duration of the original contract period. The student must complete all assigned educational sanctions before the conclusion of the suspension period. The suspension will remain in effect until they are completed. Any further violations of University policy while on suspension could result in more serious sanctions being imposed.

4. ***Expulsion*** – The student is separated from the University without the possibility of graduation or future enrollment. The student is not allowed on University premises unless authorized in writing in advance under conditions approved by the Vice President for Student Affairs or their designee. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A permanent registration hold is placed on the student’s account. If the student is an on-campus resident, the student’s contract with Housing & Residence Life is terminated and the student is responsible for paying any remaining fees for the duration of the original contract period.
  
5. ***Dismissal*** — Dismissal removes a student from their academic program and separates the student from the University for a period of two to seven years. During the dismissal, the student is not allowed on University premises unless authorized in writing in advance under conditions approved by the Vice President for Student Affairs or their designee. A currently enrolled student is withdrawn from their classes and is not eligible for a refund. A permanent registration hold is placed on the student’s account. If the student is an on-campus resident, the student’s contract with Housing & Residence Life is terminated and the student is responsible for paying any remaining fees for the duration of the original contract period.
  - a. Following the Dismissal, the individual must apply for readmission to the University. Readmission is not guaranteed. Readmission will only be considered when the provisions of subsections i-iii (below) are met.
    - i. Duration of Dismissal is complete
    - ii. All educational sanctions are completed
    - iii. Petition for readmission is submitted to the review committee (see below)
  - b. The review committee includes the Dean of Students and the Associate Dean of Students, or their designee(s). Other individuals may include but are not limited to representatives from Housing and Residence Life, the Office of Institutional Equity and

Compliance, Athletics, or Student Involvement. There must be a minimum of 3 individuals who serve on the review committee. Readmission will be granted upon a majority vote.

- c. If readmission is approved, the committee may apply additional restrictions. These may include, and are not limited to, restricted access to campus and/or other specified activities for the duration of the student's enrollment at the university.
  - d. If readmission is denied, the individual may reapply for readmission one (1) year after the initial application for readmission was received by the university.
6. ***Withholding of Transcripts or Degree*** – The University may withhold copies of student transcripts or awarding a degree otherwise earned until the completion of the process outlined in the Handbook, including the completion of all assigned sanctions.
  7. ***Revocation of Admission and/or Degree*** – Admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University policy in obtaining the degree from or gaining admission to the University or for other serious violations committed by a student before graduation.
  8. ***Loss of University Privileges*** – The student is restricted from accessing specific University privileges including, but not limited to: parking on campus, participation in student activities, holding a student leadership position, participation in a study abroad program, and University computer and network access.
  9. ***Residence Hall Transfer or Removal*** – The student will be placed in another room or residence hall or restricted from living on campus for a specified or indefinite period. If a student is restricted from living on campus, the student's Housing and Residence Life contract will be terminated and the student will be responsible for paying any remaining fees for the duration of the original contract period.
  10. ***No Contact Order*** – The student is prohibited from intentional direct or indirect contact with another person or group or their property via any means, including, but not limited to: personal contact, electronic communication (e.g. text messages, social media, etc.), telephone, or through third parties.
  11. ***Campus and/or Building Ban*** – The student is prohibited from being on any campus property and/or entering specific University facilities. Any student alleged to have violated a campus and/or building ban may be subject to additional disciplinary action.

12. ***No Trespass Order*** – The student is prohibited from being on any campus property and/or entering specific University facilities. Any student alleged to have violated a campus and/or building ban may be subject to arrest.

**C. Employee Sanctions.**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

1. ***Corrective Action*** - Official written notification of unacceptable behavior and violation(s) of University policy. The written documentation becomes part of the employee's personnel file.
2. ***Suspension*** - An employee may be suspended without pay. The length of suspension will be dependent upon the severity of the violation and will range in length from three (3) to thirty (30) University business days.
3. ***Separation*** - An action ending the employment relationship.
4. ***Job Reassignment*** - An employee may be moved temporarily or permanently to a different position or to a different work location. This position may or may not be an equivalent level to their current position.
5. ***Loss of University Privileges*** - An employee may be restricted from accessing specific University privileges including, but not limited to: University computer and network access, sabbatical or eligibility for awards, participation in groups or associations, and utilization of recreation or fitness facilities.
6. ***No Contact Order*** - The employee is prohibited from intentional direct or indirect contact with another person or group or their property via any means, including, but not limited to: personal contact, electronic communication (e.g. text messages, social media, etc.), telephone, or through third parties.
7. ***No Trespass Order*** - The employee is prohibited from being on any campus property and/or entering specific University facilities.
8. ***Other Actions*** - In addition to or in place of the above sanctions, the University may assign any other sanctions deemed appropriate.

**D. Withdrawal or Resignation while Charges Pending**

1. **Students**
  - a. If a student has an allegation pending for violation of this Policy the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.



- b. Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.
- c. However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of University. A hold will be placed on their ability to be readmitted. They may also be barred from University employment, property and/or events.
- d. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.
- e. During the resolution process, the University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

## 2. **Employees**

- a. Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.
- b. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.
- c. The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

## **XV. APPEALS**

### **A. Submitting a Request for Appeal**

1. Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.
2. A single Appeal Chair will be designated by the Title IX Coordinator to review the appeal. No Appeal Chair will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.
3. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).
4. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **B. Grounds for Appeal**

1. Appeals are limited to the following grounds:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. 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
  - c. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome.
2. If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.
3. If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).
4. The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with

the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

5. The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.
6. Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision in no more than 5 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.
7. A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.
8. Notification will be made in writing and may be delivered by email to the parties' University-issued email or otherwise approved account. Once emailed notice will be presumptively delivered.

**C. Sanctions Status During the Appeal**

1. Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.
2. If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.
3. The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

#### **D. Appeal Considerations**

1. Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
2. Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
3. An appeal is not an opportunity for Appeal Chair to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
4. The Appeal Chair may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
5. Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
6. Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
7. In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
8. The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
9. In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **XVI. LONG-TERM REMEDIES AND ACTIONS**

- A. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term

remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

- B.** These remedies/actions may include, but are not limited to:
  - 1. Referral to counseling and health services
  - 2. Referral to the Employee Assistance Program (EAP)
  - 3. Education to the community
  - 4. Permanent alteration of housing assignments
  - 5. Permanent alteration of work arrangements for employees
  - 6. Provision of campus safety escorts
  - 7. Climate surveys
  - 8. Policy modification
  - 9. Provision of transportation accommodations
  - 10. Implementation of long-term contact limitations between the parties
  - 11. Implementation of adjustments to academic deadlines, course schedules, etc.
- C.** At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.
- D.** When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the University to the Respondent.

#### **XVII. FAILURE TO COMPLETE SANCTIONS / COMPLY WITH INTERIM AND LONG-TERM REMEDIES/RESPONSIVE ACTIONS**

- A.** All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.
- B.** Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.
- C.** A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator

## **XVIII. RECORDKEEPING**

- A.** All records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

## **XIX. DISABILITIES ACCOMMODATION IN THE RESOLUTION PROCESS**

- A.** The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at the University. Anyone needing such accommodations or support should contact the Director of Disability Services, who will review the request and, in consultation with the person requesting the accommodation, and the, Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## **XX. POLICY REVISIONS**

- A.** These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.
- B.** The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.
- C.** The Title IX Coordinator may also vary procedures materially with notice (on the University website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.
- D.** Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.
- E.** Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.
- F.** If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.
- G.** This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.
- H.** This policy and procedure is effective as of August 14, 2020.

## **APPENDIX A: STATEMENT OF RIGHTS OF THE PARTIES**

1. The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
5. The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
6. The right to be treated with respect by University officials.
7. The right to have University policies and procedures followed without material deviation.
8. The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
9. The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
10. The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
11. The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
12. The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
13. The right to a University implemented no- contact order, or no trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.

14. The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - a. Relocating an on-campus student's housing to a different on-campus location
  - b. Assistance from University staff in completing the relocation
  - c. Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - d. Transportation accommodations
  - e. Visa/immigration assistance
  - f. Arranging to dissolve a housing contract and a pro-rated refund
  - g. Exam, paper, and/or assignment rescheduling or adjustment
  - h. Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - i. Transferring class sections
  - j. Temporary withdrawal/leave of absence (may be retroactive)
  - k. Campus safety escorts
  - l. Alternative course completion options.
15. The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
16. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
17. The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
18. The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
19. The right not to have irrelevant prior sexual history or character admitted as evidence.
20. The right to know the relevant and directly related evidence obtained and to respond to that evidence.
21. The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
22. The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.



23. The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
24. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
25. The right to regular updates on the status of the investigation and/or resolution.
26. The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least 8 hours of relevant annual training.
27. The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
28. The right to preservation of privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
31. The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
32. The right to the use of the appropriate standard of evidence, preponderance of the evidence to make a finding after an objective evaluation of all relevant evidence.
33. The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
34. The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
35. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
36. The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
37. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
38. The right to a fundamentally fair resolution as defined in these procedures.

## APPENDIX B: VIOLENCE RISK ASSESSMENT (VRA)

1. Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.
2. The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.
3. A VRA occurs in collaboration with the BIT, CARE, and or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.
4. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.
5. When conducting a VRA, the assessor(s) use an evidence-based process consisting of:
  - a. an appraisal of ***risk factors*** that escalate the potential for violence;
  - b. a determination of ***stabilizing influences*** that reduce the risk of violence;
  - c. a contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
  - d. the application of ***intervention and management*** approaches to reduce the risk of violence.
6. To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE team. The CARE team leader will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.
7. The assessor will follow the process for conducting a violence risk assessment routinely used by the university Care Team, and will rely on a consistent, research-based, reliable system that allows the for the operationalization of the risk levels.

8. Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>12</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>13</sup> The Extremist Risk Intervention Scale (ERIS),<sup>14</sup> Looking Glass,<sup>15</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>16</sup> Historical Clinical Risk Management (HCR-20),<sup>17</sup> and MOSAIC.<sup>18</sup>
9. The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.
10. The Care Team conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

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<sup>12</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>13</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

<sup>14</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>15</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>16</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>17</sup> [hcr-20.com](http://hcr-20.com)

<sup>18</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)