



## **Sexual Misconduct Policy**

**Issuing Authority:** Paul J. LeBlanc, President

**Responsible Officer(s):** Title IX Coordinator

**Effective Date:** August 14, 2020

**Review Period:** Annually or as deemed necessary

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## 1. Introduction

- 1.1 Southern New Hampshire University (“the University”) is committed to providing a workplace and educational environment that are free from Sexual Misconduct, including unlawful Sexual Harassment, or associated Retaliation, on the basis of sex. Accordingly, the University adopts this policy and the associated procedures for a prompt and equitable grievance process for claims of Sexual Misconduct and Sexual Harassment, including sexual assault, stalking, Sexual Exploitation, dating violence, or domestic violence, all as further defined in this Policy. The University encourages prompt reporting of these matters to allow the University to quickly respond, address allegations, and offer immediate support to the affected community members, as set forth in this Policy.
- 1.2 Reports of Sexual Harassment and any inquiries concerning this Policy should be directed to the University’s Title IX Coordinator, whose contact information is as follows:
  - Kristin Scaduto
  - Title IX Coordinator/Equity Officer
  - 2500 North River Road
  - Manchester, NH 03106
  - 603.644.3188
  - [k.scaduto@snhu.edu](mailto:k.scaduto@snhu.edu)
  - [titleix@snhu.edu](mailto:titleix@snhu.edu)

Further information regarding reporting is found in Section 6 of this Policy.

## 2. Definitions

For purposes of this Policy, these words have the following definitions:

- 2.1 **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.
- 2.2 **Complainant** means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct, Sexual Harassment, or Retaliation for engaging in a protected activity.
- 2.3 **Confidential Professional** means an employee who has a legally recognized professional duty of confidentiality and is not a Required Reporter of Notice of Sexual Misconduct, Sexual Harassment, or Retaliation on the basis of sex (irrespective of Clery Act Campus Security Authority status).
- 2.4 **Consent:** See Section 3.5 of this Policy.
- 2.5 **Day** means a business Day when Southern New Hampshire University is in normal operation. It does not include weekends or holidays.
- 2.6. **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 Southern New Hampshire University.

- 2.7 Final Determination** means a binding conclusion by a Decision-Maker by a preponderance of the evidence whether the alleged conduct did or did not violate policy.
- 2.8 Finding** means a conclusion by a preponderance of the evidence that conduct alleged did or did not occur.
- 2.9 Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation.
- 2.10 Formal Grievance Process** means the method of formal resolution designated by this Policy by which the University addresses conduct prohibited by this Policy in compliance with the legal requirements of 34 CFR Part 106.45.
- 2.11 Grievance Process Pool** includes any Investigators, Decision-Makers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case). At the discretion of the Title IX Coordinator, certain members of the Pool may be restricted to certain roles based on availability and individual training levels.
- 2.12 Decision-Maker or Panel** refers to those who have decision-making and Sanctioning authority within the University's Formal Grievance processes.
- 2.13 Investigator** means the person or persons tasked by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- 2.14 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, or of violations of this Policy. When used in lower-case format in this Policy, notice has its normal dictionary meaning.
- 2.15 Official with Authority** means an employee of the University explicitly vested with the responsibility to implement corrective measures for harassment or other conduct prohibited by this Policy, on behalf of the University.
- 2.16 Party/Parties** include the Complainant(s) and Respondent(s), collectively. Neither the Title IX Coordinator nor the University are Parties.
- 2.17 Required Reporter** means a University employee who is obligated by policy to share knowledge, Notice, and/or reports of Sexual Harassment, Sexual Misconduct, or Retaliation with the Title IX Coordinator. This reporting obligation is separate and independent from any reporting obligation under other University policies or from applicable state law reporting obligations with respect to child abuse, elder/incapacitated adult abuse, hazing/bullying, etc., though these responsibilities may overlap with reporting obligations set forth in this Policy.
- 2.18 Remedies** are actions taken by University after a Final Determination, which are directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and ensure equitable access to the University's educational programs or activities.
- 2.19 Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct, Sexual Harassment, Retaliation for engaging in a protected activity, or otherwise violating this Policy.
- 2.20 Resolution** means the result of an informal or Formal Grievance Process.
- 2.21 Retaliation** means words or actions that intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured

by Title IX or this 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 or Title IX.

**2.22 Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.

**2.23 Sexual Exploitation** occurs when an individual takes sexual advantage of another person for the benefit of anyone other than that person without that person's Consent, or in a circumstance where that person cannot legally Consent. Examples of behavior that could rise to the level of Sexual Exploitation include:

- I. Prostituting another person;
- II. Recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's Consent;
- III. Distributing, or threatening to distribute, images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not Consent to such disclosure and/or objects to such disclosure; and,
- IV. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's Consent, and for the purpose of arousing or gratifying sexual desire.
- V. Coercing a person into engaging in unwanted sexual activity by exploiting that person's substance or drug dependence.

**2.24 Sexual Harassment** means harassment on the basis of sex, sexual assault, stalking, dating violence, or domestic violence, each as further defined in Section 3.4 of this Policy.

**2.25 Sexual Misconduct** includes a range of unwelcome conduct of a sexual nature occurring without Consent, including, Sexual Exploitation, Sexual Harassment, sexual assault, relationship violence (including domestic violence and dating violence), or stalking.

**2.26 Student** means, for the purpose of this Policy, any individual who has accepted an offer of admission, or who is registered or enrolled for coursework, and who maintains an ongoing relationship with the University.

**2.27 Title IX Coordinator** is the official (or officials) designated by the University to ensure compliance with Title IX, this Policy, and the University's Title IX program. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks, where appropriate.

**2.28 Title IX Team** refers to the Title IX Coordinator, any Deputy Title IX Coordinators who may be designated from time to time, and any member of the Grievance Process Pool.

## 3. Policy

### 3.1. Scope

The University strictly prohibits all forms of Sexual Misconduct by any member of its community, whether occurring in University programming or off-campus but having an effect on the University's educational environment or a Complainant's educational experience. This Policy applies to Parties regardless of sexual orientation, gender identity, or expression.

The Sexual Harassment Grievance Procedure set forth in Section 9 of this Policy applies to Sexual Harassment occurring in all Programs and Activities of Southern New Hampshire University, and is available to Complainants in the United States. All Sexual Misconduct which does not fall within the jurisdiction of the Sexual Harassment Grievance Procedure, but which are otherwise actionable under this Policy, may be addressed under the Institutional Sexual Misconduct Grievance Procedures set forth in Section 10 of this Policy.

Conduct or grievances that fall outside the scope of this Policy may be addressed under other Southern New Hampshire University policies and procedures, as applicable. Nothing in this Policy shall be used to deny any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder.

### **3.2 Purpose**

The purpose of this Policy is to define, prevent, and respond to Sexual Misconduct, and Sexual Harassment as defined in 34 C.F.R. Part 106, and achieve compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681–1688) and associated regulations, as well as applicable New Hampshire state law.

### **3.3 Policy Statement**

It is the policy of Southern New Hampshire University to prohibit all forms of Sexual Misconduct and Sexual Harassment or Retaliation within the Scope of this Policy. The University will respond to Notice of allegations of Sexual Misconduct and Sexual Harassment or Retaliation in accordance with the appropriate procedures set forth below.

The University does not discriminate on the basis of sex in any education program or activity, and is prohibited from doing so by Title IX. This requirement not to discriminate extends to both admission and employment at the University.

### **3.4 Prohibited Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New Hampshire regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. As stated above, Sexual Harassment is prohibited by this Policy.

The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well. Acts of Sexual Harassment can be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of Sexual Harassment, sexual assault, domestic violence, dating violence, and stalking\*, and is defined as:

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\* The New Hampshire state law definitions of "Consent," "Domestic Violence," "Dating Violence," "Sexual Assault," and "Stalking" differ in some ways from the federal definitions listed here. SNHU will provide the state law definitions as part of its education programs for students (as required by the Clery Act) but

conduct on the basis of sex that satisfies one or more of the following:

- I. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (often referred to as "quid pro quo");
- II. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- III. Sexual assault, defined as:
  - A. **Sex Offenses, Forcible:** Any sexual act directed against another person, without the Consent of the victim, including instances in which the victim is incapable of giving Consent.
  - B. **Rape:** 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 victim. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded (each defined separately below).
  - C. **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.
  - D. **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - E. **Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - F. **Sex Offenses, Non-forcible:**
    - i. **Incest:** Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by law.
    - ii. **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of Consent.
  - G. **Dating Violence**, defined as: violence committed by a person—
    - i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
      1. The length of the relationship;

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definitions applied for purposes of this Policy will be the federal definitions provided here, as required by Title IX.

2. The type of relationship;
3. The frequency of interaction between the persons involved in the relationship.

**H. Domestic Violence**, defined as: violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Hampshire, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Hampshire.

- I. Stalking**, defined as: engaging in a course of conduct, on the basis of sex, directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

The University reserves the right to impose any level of Sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

### **3.5 Force, Coercion, Consent, and Incapacitation**

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

#### **I. 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 is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not Consent. Consent is not defined by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-Consent.

#### **II. 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. Consent is the equal approval, given freely, willingly, and knowingly of each participant to desired sexual involvement. Consent is an affirmative, conscious decision –indicated clearly by words or actions-to engage in mutually accepted sexual contact. A person forced to engage in sexual contact by force, threat of force, or coercion has not Consented to contact. Coercion includes unreasonably pressuring another to engage in sexual activity. Lack of mutual Consent is the crucial factor in any Sexual Misconduct. Consent to some form of sexual activity does not necessarily constitute Consent to another form of sexual activity. Silence without demonstrating permission does not constitute Consent.

Consent is not valid when a person is incapacitated, or when an intellectual or other disability prevents a person from having the capacity to give Consent. A person is

incapacitated if they lack the capacity to Consent to sexual activity because the person is asleep, unconscious, mentally and/or physically helpless, or otherwise unaware that sexual activity is occurring. Incapacitation is not necessarily the same as legal intoxication. Where alcohol or other drugs are involved, evaluating Incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's: decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

Under New Hampshire state Law, a person under thirteen years of age cannot Consent to any form of sexual contact. Individuals between the age of thirteen and sixteen cannot Consent to penetrative sexual activity. Individuals between the age of thirteen and sixteen cannot Consent to non-penetrative sexual activity with individuals who are more than five years older than they are. Individuals older than sixteen years of age can legally Consent to sexual activity.

### **3.6 Retaliation Prohibited**

Retaliation in response to a protected activity is strictly prohibited by this Policy. 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.

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.

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.

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.

### **3.7 Right to Report**

Any person may report sex discrimination, Sexual Misconduct, including Sexual Harassment or related Retaliation (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sexual Misconduct or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or to an Official with Authority, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator herein.

### **3.8 False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy, as opposed to allegations which, even if erroneous, are made in good faith, are a violation of this Policy, and a serious offense that will be subject to appropriate disciplinary action. Additionally, 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.

## **4. Role of the Title IX Coordinator**

### **4.1 Role Overview**

The University's designated Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of measures to stop, remediate, and prevent Sexual Misconduct, Sexual Harassment and Retaliation prohibited under this Policy. The University's Title IX Coordinator is also responsible to provide or facilitate ongoing training, consultation, and technical assistance on Title IX for all students, faculty and staff, and other community members including:

- I. regular training for faculty and staff outlining their rights and obligations under Title IX and this Policy, including the appropriate response to reports of Sexual Misconduct, the obligation to report Sexual Misconduct (as applicable), and the scope and availability of confidentiality;
- II. annual training for other Title IX staff, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution process, on the definition of Sexual Misconduct and Sexual Harassment, the scope of the University's education program or activities, how to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- III. annual training for Investigators on issues of relevance to create an investigative report that fairly summarizes relevant evidence;
- IV. regular training for Decision-Makers on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant;
- V. regular training for students outlining their rights under Title IX; including with respect to Sexual Harassment, the reporting process (including reports to local law enforcement and confidential reporting to counselors or advocates), the procedures used to process complaints, applicable student conduct code provisions relating to Sexual Misconduct and the consequences of violating those provisions, the role of alcohol and drugs in Sexual Misconduct, the effects of trauma, strategies and skills for bystander intervention, the offices or individuals with whom students can speak confidentially, the offices or individuals who can provide support services, the Required Reporter employees who must report incidents to the Title IX Coordinator, and Title IX's protections against Retaliation.

### **4.2 Website and Training Materials**

The Title IX Coordinator is responsible to ensure that all training materials used to train the Title IX Team are made publicly available on the University's designated Title IX webpage, for a period of seven years from issuance.

### **4.3 Requests for Confidentiality**

The Title IX Coordinator also evaluates requests for confidentiality, as outlined below, by those who report or complain about Sexual Misconduct or Sexual Harassment in the context of the University's responsibility to provide a safe and non-discriminatory environment for all member of its community.

### **4.4 Bystander Policy**

The University encourages all community members to take reasonable and prudent actions to prevent or stop an act of Sexual Harassment. Taking action may include direct intervention where it is safe to do so, creating a distraction, calling law enforcement, or seeking assistance from a person in authority.

### **4.5 Amnesty Policy**

#### **I. Students:**

Student Complainants, bystanders, or witnesses may have concerns about reporting Sexual Misconduct because of the University's drug or alcohol policy, or other policy violations. The University's primary concern is community safety. A Complainant shall not be subject to a disciplinary proceeding or Sanction for a violation of the University's code of conduct related to the incident unless a University official determines that the report was not made in good faith or that the violation was egregious.

#### **II. Employees:**

The University may, at its discretion, offer employee Parties and witnesses amnesty from policy violations (typically more minor policy violations) related to the facts and circumstances surrounding the incident.

## **5. Healthcare and Support Resources**

### **5.1 Resources Available**

Complainant has the option to seek treatment for injuries sustained during an incident of Sexual Misconduct, preventative treatment for sexually transmitted diseases, and other health services. A medical exam is also an important way for a health provider to properly collect and preserve evidence, which could later be used in a civil or criminal case. In cases where necessary, rape kits are also available at local emergency rooms.

### **5.2 Medical Treatment**

Medical Treatment in the area of the Manchester/Hooksett campus include the following:

**Elliot Hospital**  
**4 Elliot Way, Manchester, NH 03013**  
**(603) 669-5300**

**Catholic Medical Center (CMC)**  
**100 McGregor St, Manchester, NH 03102**  
**(603) 668-3545**

Sexual Assault and Domestic Violence resources in New Hampshire and the Manchester area include:

**New Hampshire Sexual Assault Hotline  
1-800-277-5570**

**New Hampshire Domestic Violence Hotline  
1-866-644-3574**

### **5.3 Community Services**

Services for survivors of sexual assault, domestic violence, stalking and Sexual Harassment are available through the NH Coalition Against Domestic and Sexual Violence, which is comprised of thirteen member programs throughout the state. A community member does not need to be in crisis to call. According to the Coalition's website, services are free, confidential, and available to everyone regardless of gender, age, health status (including HIV-positive), physical, mental or emotional ability, sexual orientation, gender identity/expression, socio-economic status, race, national origin, immigration status or religious or political affiliation.

Coalition member agencies serving the Manchester and Hooksett campus areas include:

**Crisis Center of Central New Hampshire (CCCNH)**  
**PO Box 1344, Concord, NH 03302-1344**  
**Crisis Line: 1-866-841-6229**  
**Office: 603-225-7376**

**YWCA Crisis Service**  
**72 Concord Street, Manchester, NH 03101**  
**Crisis Line: 603-668-2299**  
**Manchester Office: 603-625-5785**  
[www.ywcanh.org](http://www.ywcanh.org)

Coalition agencies provide the following services:

- Support and information, available in person and through a 24-hour hotline
- Accompaniment, support, and advocacy at local hospitals, courts, and police departments
- Access to emergency shelter
- Peer Support Groups
- Assistance with protective/restraining orders and referrals to legal services
- Information and referrals to community programs
- Community and professional outreach and education.

### **5.4 Financial Assistance Resources**

Community members who require medical assistance but have financial hardship or limited financial resources may qualify for financial assistance through the NH Health Access Network. The New Hampshire Health Access Network helps low-income residents of New Hampshire who have health insurance but need financial assistance to help cover out of pocket medical expenses such as deductibles, co-pays, and co-insurance.

The NH Health Access Network NH Health Access Network, 125 Airport Road, Concord, NH 03301 (603) 225-0900 <a href="http://www.healthynh.com">www.healthynh.com</a>
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## 5.5 On-Campus Resources

Basic non-emergency medical treatment, and counseling for on-campus students, are also available at the Campus Wellness Center, located in the Robert A. Freese Student Center. Students can access health services during normal business hours by walk-in and may reach the Wellness Center Counselors at 603-645-9679. Emergency counseling services are also available twenty-four hours a Day. During regular business hours, a student can speak with a counselor by contacting the Wellness Center staff. During nights, weekends and holidays, a student seeking emergency counseling can access services by calling the Wellness Center and selecting the appropriate option to speak with an after-hours counselor.

## 5.6 Resources for Online Students and Remote Employees

In addition, a list of counseling, health, mental health, victim advocacy, legal assistance, and other services available including crisis help lines can also be found on the COCE Wellness Center's webpage at <https://my.snhu.edu/Offices/COCE/Wellness>. Students and remote employees located outside of New Hampshire can click the "Locate Resources in Your Area" link to be directed to crisis resources based on their location.

## 5.7 Resources for Employees

Full and half-time University employees have access to the Employee Assistance Program (EAP) offered through Anthem, which provides assessment and referral for a wide range of concerns facing employees.

To speak with a consultant please call 1-800-647-9151.

# 6. Reporting Sexual Misconduct, Sexual Harassment, and Retaliation

## 6.1 Reporting Policy

The University encourages community members to promptly report incidents of Sexual Harassment, Sexual Misconduct, or Retaliation immediately to the University using the process described below. Required Reporters must inform the Title IX Coordinator or any Official with Authority of incidents of Sexual Misconduct of which they are aware, as further detailed below. Any person may inform the Title IX Coordinator or other Official with Authority of an alleged violation of this policy, however only a Complainant or the Title IX Coordinator can sign a Formal Complaint.

## 6.2 Reporting Process

Concerns of a violation of this Policy or seeking supportive measures may be made using the intake forms designated here:

- **University College** – Campus Students may file a report in one of two ways. First by filing a report in person at the Office of Public Safety or by filing an online [Incident Form](#).
- **College of Online and Continuing Education** – Online Students may file an online [Student Dispute Form](#) through the Office of Dispute Resolution and Student Conduct.
- **University Employees** may contact their Human Resources Business Partner or submit a [Complaint Notification Form](#).

Those wishing to engage the Formal Grievance Process for Sexual Harassment and/or Retaliation may file a Formal Complaint with the Title IX Coordinator or any Official with Authority. Such a report may be made at any time (including during non-business hours) by using the email or postal office address(es) listed for the Title IX Coordinator and/or any other official listed/designated below.

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 set forth below, 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.

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.

### **6.3 Anonymous Reports:**

Reports that are submitted anonymously limit the ability of the University to respond in a formal manner. The privacy of those submitting bias reports will be maintained to the extent possible. Therefore, persons are strongly encouraged to identify themselves when submitting reports and participate in the investigation and response process.

### **6.4 Contact Information for Reporting:**

Complaints or Notice of alleged Sexual Misconduct, including Sexual Harassment, Retaliation, other policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to the University's Title IX Coordinator:

- Kristin Scaduto, Title IX Coordinator, can be reached on the University's main campus at 2500 North River Road, Manchester NH, by telephone at 603-644-3188, or by email at [K.Scaduto@snhu.edu](mailto:K.Scaduto@snhu.edu) .

The following Deputy Title IX Coordinator(s) have also been designated as Officials with Authority and may also accept Notice or complaints on behalf of the University:

- Kelly Lockwood is the Director Dispute Resolution and Community Standards and is also the Deputy Title IX Coordinator for SNHU Online. She can be reached at 603-314-1419, or at [K.lockwood@snhu.edu](mailto:K.lockwood@snhu.edu) .

The following additional personnel are also identified as Officials with Authority by the University:

- All athletics coaches and athletic directors, including assistant directors.
- Residence life personnel (not including student employees)
- Dean of Students, Academic Deans & Office of Vice President of Academic Affairs
- President and CEO
- Chief Operating Officer

- Executive Vice President, Human Resources

## **6.5 Reporting to the Police**

Complainants are also encouraged to consider reporting Sexual Misconduct that constitutes a crime, or any other related crime, to law enforcement authorities. Complainants may also wish to pursue a criminal or civil restraining order from a local court. However, Complainants have a right to choose not to file a report with law enforcement or seek a restraining order. The decision to file a criminal complaint or seek a court order is a deeply personal choice. Complainants often make this decision based on the circumstances surrounding the incident and the circumstances in their life at the time of the incident. Complainants must also understand that SNHU Public Safety is not a police force, and a report to Public Safety is not equivalent to filing a police report.

Upon reporting an incident to the Title IX Coordinator (or other Official with Authority), Complainants will have the opportunity, if they choose, to speak with appropriate local law enforcement personnel to make the report. Confidential Resource Advisors can also assist with this process. Complainants do not need to file a criminal complaint with law enforcement in order to initiate a grievance with the University, and the University may find a Respondent responsible for violating this Policy regardless of the status or outcome of any criminal proceedings. Absent extenuating circumstances, the University will not unduly delay its grievance process to await the completion of any criminal proceeding or investigation, unless required to do so by valid court order.

In the case of an ongoing emergency, dial 911. Non-emergency contact information for local police in the Manchester area for non-emergency reporting is as follows:

**Hooksett Police Department**

15 Legends Dr.  
Hooksett, NH 03106  
(603) 624-1560

**Manchester Police Department**

405 Valley Street  
Manchester, NH 03106  
(603) 668-8711

## **6.6 Employee Reporting Obligation**

The University takes the position that all employees except those with a legal duty of confidentiality (e.g. a licensed counselor, doctor, or nurse) or Confidential Resource Advisors, are Required Reporters. With respect to students who are also employed by the University, only those working in the office of Residence Life (RDs, CAs, RAs), Graduate Teaching Assistants or Instructors, and those student employees with similar significant responsibility for student welfare are Required Reporters under this Policy.

A Required Reporter who witnesses or has Notice of Sexual Misconduct, Sexual Harassment, or Retaliation against a student must immediately contact the Title IX Coordinator to make a report to allow the University to respond appropriately. A failure by a Required Reporter to report a violation of this Policy may warrant disciplinary action up to and including termination.

This reporting obligation does not apply for any employee who has themselves been an alleged victim of Sexual Misconduct, Sexual Harassment, or Retaliation, with respect to the specific conduct or incident(s) affecting them.

## **6.7 Additional Reporting Resources**

A student or applicant who believes that he or she has been discriminated against can also file a Charge of Discrimination with the U.S. Department of Education Office for Civil Rights.

U.S. Department of Education  
8<sup>th</sup> Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
[Email: OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

The Regional Office serving New Hampshire can be contacted at:

U.S. Department of Education  
8th Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
[Email: OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

## **6.8 Timing of Complaints**

There is no time limit for filing a complaint or providing Notice under this Policy. However, if the Respondent is no longer subject to University's jurisdiction and/or significant time has passed, the University's ability to investigate, respond, and provide Remedies may be limited or impossible. Complainants are therefore strongly encouraged to file complaints in a timely manner to maximize the University's ability to promptly gather evidence, and conduct a thorough, impartial, and reliable investigation. If the Respondent is expected to graduate or complete a program during the pendency of the process, the University may temporarily withhold that student's Southern New Hampshire University degree, certificate, or other terminal credential, pending conclusion of the complaint Resolution procedures.

## **6.9 Independence and Conflict of Interest**

- I. The Title IX Coordinator is responsible for oversight of the Title IX Team, and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator ultimately oversees all outcomes and 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, generally. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.
- II. To raise any concern involving bias or conflict of interest, or misconduct or discrimination committed by the Title IX Coordinator, contact the University's Chief of Staff, Donald Brezinski, by phone at (603) 644-3109, or email at [d.brezinski@snhu.edu](mailto:d.brezinski@snhu.edu). The Chief of Staff may also coordinate with the Human

Resources department regarding review and resolution of such concerns. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

## 7 Privacy and Confidentiality

### 7.1 Disambiguation

Cases involving alleged Sexual Harassment demand special attention to issues of privacy and confidentiality. For the purpose of this Policy, privacy and confidentiality have distinct meanings.

#### I. Privacy:

Privacy means that information related to a Formal Complaint will be shared with a limited number of University employees who “need to know” in order to assist in the assessment, investigation, and Resolution of the report, as well as the Parties and their Advisors. All employees who are involved in the University’s response to Notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the University’s FERPA policy, except where limited or superseded by the applicable Title IX regulations (found at 34 C.F.R. Part 106). The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that are subject to this Policy, consistent with FERPA. The privacy of employee records will be protected in accordance with Human Resources policies, except where limited by applicable law.

However, privacy in this context has limits: all Complainants must understand that the following receipt of a Formal Complaint of Sexual Harassment, the University is legally required to provide prompt written notice to all known Parties to the complaint of the following information:

- identities of Parties involved, if known
- conduct alleged to constitute Sexual Harassment
- date and location of incident(s)
- Notice of any additional allegations added after the initial notice to the known Parties

As further detailed below, known Parties are also entitled to receive certain evidence gathered during the investigation process that is directly related to the Formal Complaint.

The University will keep any supportive measures provided to any Complainant or Respondent private, to the extent that maintaining such privacy would not impair the ability to provide such measures.

The University may also by necessity contact parents/guardians or third-parties to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

### 7.2 Confidentiality:

For purposes of this Policy, Confidentiality should be understood in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, ordained clergy, and some sexual assault or domestic violence counselors. The law (which varies by state) creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who are able to have legally privileged communications as Confidential Professionals who are exempt from Required Reporter responsibilities. All other employees of the University are Required Reporters who must inform the Title IX Coordinator or other Official with Authority of any incidents subject to this policy.

When information is shared by a Complainant with a Confidential Professional, that person cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information.

All Confidential Professionals may be required or permitted to break confidentiality by law in certain circumstances, as more fully described in "Exceptions to Confidentiality," below.

Confidential Professionals will not inform the University's Title IX Coordinator of an incident, unless a Complainant directs them to do so, but can still assist the Complainant in receiving other necessary protection and support, such as academic support or accommodations, disability, health or mental health services. As a practical matter, the full availability of some of these services may be limited in certain circumstances by a victim's desire for confidentiality and level of cooperation.

A Complainant who at first requests confidentiality from a Confidential Professional may later decide to file a Formal Complaint with the University.

### **7.3 Confidential Professionals**

#### **I. Professional and Pastoral Counselors**

SNHU can provide campus-based students with professional, licensed counselors who provide mental-health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor). SNHU Wellness counselors can be reached at 603-645-9679. Pastoral counselors may also be available to speak to campus-based students through Campus Ministry, which can be reached at 603-645-9608 or by referral at the Wellness Center.

These counselors are not required to report any identifying information about an incident to the Title IX Coordinator without a Complainant's permission. A counselor may collect and eventually report some general, non-identifying data that will not lead to an investigation, such as the date of the report, date of the crime, and general location as part of the University's crime data reporting responsibility. A member of the community wishing to speak with a professional, licensed counselor can request to do so through the on-campus Wellness Center.

Emergency services are available 24 hours a Day. Students can access services during normal business hours by calling 603-645-9679. During nights, weekends and holidays, a student can access services by contacting Public Safety at 603-645-9700 who will notify a counselor on call.

Employees and students in the College of Online and Continuing Education (COCE), and other non-campus based students can also log on to <https://my.snhu.edu/Offices/COCE/Wellness> and find a list of available professional counseling resources in their state.

Employees also have access to the Employee Assistance Program (EAP) offered through Anthem, which can be reached at 1-800-647-9151.

## **II. Registered Nurses**

In addition to counseling services, the campus Wellness Center is staffed by Advanced Practice Registered Nurse(s) (APRN) and licensed registered nurse(s). New Hampshire law (RSA 326-B) provides that confidential communications made to a nurse by a patient are entitled to the same privilege as those between a physician and a patient. As a result, a nurse in the Wellness Center is not required to reveal any details of an incident to the Title IX Coordinator. As with a professional counselor, a nurse may collect and eventually report some general, non-identifying data that will not lead to an investigation, such as the date of the report, date of the crime, and general location as part of the University's crime data reporting responsibility.

## **III. Confidential Resource Advisors**

As required by New Hampshire state law, the University has also designated Confidential Resource Advisors, who shall not be Required Reporters, and who shall be permitted to assist students in a confidential manner and provide appropriate resources and information, and assist any student with the reporting process, if desired.

For purposes of this Policy, all University-appointed and trained Advisors within the Grievance Process Pool are designated as Confidential Resource Advisors. Advisors selected by parties from outside the Grievance Process Pool may not be designated as Confidential Resource Advisors as they may not have been trained or vetted by the University.

While communications between Advisors and their advisees are considered private as to the University and its personnel, Parties should be aware that legal privilege for communications made to Confidential Resource Advisors under New Hampshire law applies only to communications between victims of alleged sexual assault, alleged domestic abuse, alleged sexual harassment, or alleged stalking, and a Confidential Resource Advisor in the course of that relationship and in confidence. Therefore, communications made between a Respondent and their Advisor would typically be private as to the University, but may not be legally privileged communications under New Hampshire state law.

The University may from time to time designate other employees or categories of employees as Confidential Resource Advisors, and may also from time to time enter into Memoranda of Understanding with outside local, state, or national agencies to provide third-party Confidential Resource Advisors to Parties.

### **7.4 Exceptions to Confidentiality:**

While these professional counselors and nurses may maintain a victim's confidentiality vis-à-vis the University, they (and other University personnel) may have mandatory reporting or other obligations under state or federal law. For example, New Hampshire has a mandated reporter law for when a person "has reasons to suspect that a child

has been abused or neglected” (R.S.A. §169-C:29), which requires timely disclosure to the N.H. Department of Health and Human Services if the victim is under eighteen years of age. A similar reporting law applies to incapacitated and elderly adults. (RSA 161-F:46). New Hampshire also has an anti-hazing statute that requires that any person who is present or otherwise has direct knowledge of any student hazing must report the hazing to law enforcement or educational institution authorities. (RSA 631:7).

Likewise, behavior that poses a serious threat of harm to self or others, or receipt of a court order or a subpoena under certain circumstances can trigger a duty to timely disclose confidential information, irrespective of the categories above.

Also, if the University determines that the alleged perpetrator(s) poses a serious and immediate threat to the University community, Campus Safety may be called upon to issue a timely warning to the community as required by federal law. Any such warning should not include any information that identifies the Complainant.

## **8. Supportive Measures and Emergency Removal**

### **8.1 Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged Sexual Misconduct, including Sexual Harassment, and/or Retaliation.

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 further harassment, discrimination, and/or Retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice or a complaint. At the time that 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 that their wishes are reasonably considered with respect to the supportive measures that are planned and implemented, including with respect to privacy.

The University will maintain the privacy of the supportive measures, solely to the extent that privacy does not impair the University’s ability to provide the supportive measures. The University will seek to ensure as minimal an academic impact on the Parties as reasonably possible. The University will implement measures in a way that does not unreasonably burden the other Party.

Supportive measures may include, but are not limited to:

- A.** Referral to counseling, medical, and/or other healthcare services
- B.** Referral to the Employee Assistance Program
- C.** Referral to community-based service providers
- D.** Student financial aid counseling
- E.** Education to the community or community subgroup(s)
- F.** Altering campus housing assignment(s)
- G.** Altering work arrangements for employees or student-employees

- H. Safety planning
- I. Implementing contact limitations (restricted contact orders) between the Parties
- J. Academic support, extensions of deadlines, or other course/program-related adjustments
- K. Timely warnings
- L. Class schedule modifications, withdrawals,
- M. Leaves of absence
- N. Increased security and monitoring of certain areas of the campus
- O. Any other actions deemed appropriate by the Title IX Coordinator

Violations of restricted contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **8.2 Emergency Removals and Administrative Leaves**

### **I. Emergency Removals**

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 has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Public Safety Team, using objective violence risk assessment procedures.

In all cases in which 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 prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting will be conducted remotely using electronic video conferencing technology whenever possible.

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. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. 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.

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.

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.

The University will implement the least restrictive emergency actions reasonably 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 re-assigning an employee (in consultation with Human Resources), 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.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.

## **II. Administrative Leaves**

The University reserves its right to place an employee on administrative leave during the pendency of a grievance related to alleged Sexual Misconduct, Sexual Harassment, or Retaliation, in accordance with existing HR policy and procedures. No Appeal of an administrative leave is provided pursuant to this Policy.

### **8.3 Grievance Procedures:**

The University will apply one of two grievance procedures based on the specific conduct alleged. As further described in Sections 9 and 10 of this Policy, these procedures largely mirror one-another, with important exceptions. For purposes of both Grievance Procedures, the Respondent is presumed not responsible for the reported misconduct unless and until a Final Determination is made at the conclusion of the applicable grievance process that the Respondent is responsible. The burden of proof is on the University, and not on either Party.

- I. The Title IX Sexual Harassment Grievance Procedures set forth in Section 9 apply only to qualifying allegations of Sexual Harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) as defined in this Policy.

The Sexual Harassment Grievance Procedures may be used to address collateral misconduct only if it is determined to be arising from the investigation of or occurring in conjunction with reported Sexual Harassment (e.g., Retaliation, vandalism, physical abuse of another).

- II. The Institutional Sexual Misconduct Grievance Procedures set forth in Section 10 to apply to Sexual Misconduct that does not constitute Sexual Harassment within the definitions and/or jurisdiction of the Title IX regulations. Complaints that are dismissed from the Sexual Harassment Grievance Procedures may (and often are) referred to be processed under the Institutional Sexual Misconduct Grievance Procedures, including for Sexual Harassment that does not meet the jurisdictional requirements of Title IX.

### **8.4 Other Policies and Procedures:**

All other allegations of discrimination on the basis of a protected class (excluding Sexual Misconduct) will be referred to the [University's Discrimination Complaint Protocol](#), except that complaints of disability discrimination will be addressed under the [University's ADA/504 Grievance Procedure](#). Other incidents may be addressed through procedures elaborated in the student, faculty, and staff handbooks, or other applicable policies or procedures.

### **8.5 Timeframe for Response & Grievance Process**

The University will conduct a timely review of complaints processed under either grievance process. Absent extenuating circumstances, review and Resolution is expected to take place within sixty (60) to ninety (90) days from Notice or receipt of the Formal Complaint. Absent extenuating circumstances, decisions on appeals are typically issued within thirty (30) days of the date of receipt of the appeal.

## **8.6 Extensions**

For purposes of complaints processed under either grievance process, all deadlines and time requirements in the grievance process may be extended for good cause as determined by the Title IX Coordinator or their designee. Both the Respondent and the Complainant will be notified in writing of the delay, the reason for delay, and provided the date of the new deadline or event. Extensions requested by one Party will ordinarily not be longer than 5 business/school days.

# **9. Title IX Sexual Harassment Grievance Process**

## **9.1 Initial Assessment**

Following receipt of Notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>†</sup> engages in an initial assessment, which is typically one to five days in duration. The steps in an initial assessment can include:

- I. If Notice is given, the Title IX Coordinator seeks to determine if the Complainant wishes to make a Formal Complaint, explains the process to do so, and provides assistance with filing, if desired.
- II. 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.
- III. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in<sup>‡</sup> the education program or activity of the University.
- IV. The Title IX Coordinator reaches out to the Complainant to assess and offer supportive measures, (which may also have already been offered or provided prior to the filing of a Formal Complaint).
- V. The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- VI. The Title IX Coordinator works with the Complainant to determine whether the Complainant seeks supportive measures only, an Informal Resolution option (only after filing a Formal Complaint), or a formal investigation and grievance process.
  - A. If a Formal Complaint has not been filed, and the Complainant wishes only to pursue supportive measures, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation of appropriate supportive measures.

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<sup>†</sup> If circumstances require, the Vice President of Student Affairs or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>‡</sup> A Complainant who has graduated may still be “attempting to participate” in the University’s education program or activity; for example, where the Complainant has graduated from one program but intends to apply to a different program, or where the graduated Complainant intends to remain involved with a recipient’s alumni programs and activities. Similarly, a Complainant who is on a leave of absence may be “participating or attempting to participate” in the recipient’s education program or activity; such a Complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still “attempting to participate”.

- B.** If the Complainant does not wish to file a Formal Complaint after the Title IX Coordinator describes the process, discusses availability of supportive measures, and considers the Complainant's wishes, the Title IX Coordinator may in their discretion still initiate a Formal Complaint by signing it in lieu of the Complainant. The Title IX Coordinator may consider a variety of factors in making this assessment, including a pattern of alleged misconduct by the Respondent.
- C.** If the Title IX Coordinator does not sign a Formal Complaint, and an Informal Resolution option is preferred by Complainant, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available, and seek to determine if the Respondent is also willing to engage in Informal Resolution. If so, each Party's voluntary written Consent is required to proceed with Informal Resolution.
- D.** If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX Sexual Harassment and this procedure,
  - 1.** If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
  - 2.** If it does not, the Title IX Coordinator issues a determination that this procedure does not apply (and will "dismiss" that aspect of the complaint, if any), assesses which other University policies may apply, which resolution process is applicable, and will refer the matter accordingly. Dismissing a complaint under these Sexual Harassment Grievance Procedures is procedural, and does not limit the University's authority to address a complaint with other appropriate processes and Remedies. Complaints dismissed from the Sexual Harassment Grievance Procedures will often be referred to the Institutional Sexual Misconduct Grievance Procedures (Section 10) or other applicable University process for Resolution.

## **9.2 Dismissal (Mandatory and Discretionary)**

- I.** 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.
- II.** 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.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

This dismissal decision is appealable by any Party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### **9.3 Counterclaims**

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 made with retaliatory intent will not be permitted.

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.

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.

### **9.4 Right to an Advisor**

The Parties may each have one Advisor of their choice present with them for all meetings and interviews within the Resolution process, if they so choose. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. §

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).

#### **I. Who Can Serve as an Advisor**

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.

The Title IX Coordinator will also offer to assign a trained Advisor for any Party if the Party so chooses. 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, and will have been designated as a Confidential Resource Advisor under New Hampshire law.

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§ "Available" means the Party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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 the University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution process, prior to a hearing.

## **II. Advisors in Hearings/The University-Appointed Advisor**

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the Parties' Advisors. The Parties are not permitted to directly cross-examine each other or any witnesses. 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.

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 thoroughly, regardless of the participation or non-participation of the advised Party in the hearing itself. Questioning of the Parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

## **III. Advisor's Role**

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. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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.

## **IV. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or directly 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, or as otherwise specifically permitted by this Policy.

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.

Any Advisor who oversteps their role as defined by this policy will be warned only once. 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. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **V. Sharing Information with the Advisor**

The University expects that the Parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor if they wish. Doing so may help the Parties participate more meaningfully in the Resolution process.

The University also provides a Consent form that authorizes the University to share such information directly with their Advisor. The Parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating Consent to a release of information to the Advisor before the University is able to share records with an Advisor.

#### **VI. Privacy of Records Shared with Advisor.**

Advisors are expected to maintain the privacy of the records shared with them, except where their advisees provide express permission to share private information.

#### **VII. Expectations of an Advisor**

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.

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.

#### **VIII. Expectations of the Parties with Respect to Advisors**

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).

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.

#### **9.5 Resolution Processes**

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 this Policy. 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.

## **I. Informal Resolution Options**

Informal Resolution can include three different approaches:

- A.** When the Parties agree to resolve the matter through an offered alternate resolution mechanism including mediation, restorative practices, etc.;
- 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.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

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.

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.

The University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. Informal resolution is never appropriate or available for allegations that an employee sexually harassed a student.

## **II. Alternate Resolution**

Alternate Resolution is an informal process, including mediation or restorative practices, etc. by which a mutually agreed upon Resolution of an allegation is reached. All Parties must Consent in writing to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the Parties:

- A.** The Parties' amenability to Alternate Resolution;
- B.** Likelihood of potential Resolution, taking into account any power dynamics between the Parties;
- C.** The Parties' motivation to participate;
- D.** Civility of the Parties;
- E.** Whether an emergency removal is needed;
- F.** Skill of the Alternate Resolution facilitator with this type of complaint;
- G.** Complaint complexity;
- H.** Emotional investment of the Parties;
- I.** Rationality of the Parties;
- J.** Goals of the Parties;

**K. Adequate resources to invest in Alternate Resolution (time, staff, etc.)**

The ultimate determination of whether Alternate Resolution is available (with Consent of the parties) or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any Resolution that is reached, and failure to abide by the Resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable after a Resolution agreement has been signed.

**III. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution process. 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.

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. If so, the Title IX Coordinator implements the accepted Finding that the Respondent is in violation of The University policy and implements agreed-upon Sanctions and/or Remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of Resolution. When the Parties cannot agree on all terms of Resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a Resolution is accomplished, the appropriate Sanction or responsive actions are promptly implemented under the direction of the Title IX Coordinator.

**IV. Negotiated Resolution**

The Title IX Coordinator, with the written Consent of the Parties, may negotiate and implement an agreement to resolve the allegations that satisfies all Parties and the University. Negotiated Resolutions are not appealable after agreement is reached. Failure by a Party to honor and portion of an agreement may be punishable under the Student Code of Conduct, or Employee Handbook, as applicable.

**9.6 Grievance Process Pool**

The Formal Grievance Process relies on the Grievance Process Pool ("the Pool") to carry out the process.

**I. Pool Member Roles**

**A. Roles**

Members of the Pool are trained, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- 1) To act as an Advisor to the Parties (note that Party-selected Advisors from outside the Pool are not considered part of the Pool and do not receive training from the University)

- 2) To serve in a facilitation role in Informal Resolution under the direction of the Title IX Coordinator
- 3) To investigate complaints
- 4) To serve as a hearing facilitator (process administrator, no decision-making role)
- 5) To serve as a Decision-Maker, either individually or as part of a panel, regarding the complaint
- 6) To serve as an Appeal Decision-maker

## **II. Pool Member Appointment**

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. 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 also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This 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.

The University reserves the right to supplement the pool on an as-needed basis with individuals from external service providers, consultants, or other firms.

## **III. Pool Member Training**

The Pool members who will serve in an Investigator, Decision-Maker role, or who facilitate Informal Resolution processes, receive annual training related to their respective roles. This training includes, but is not limited to:

- A. The scope of this Policy and associated procedures
- B. The scope of the University's programs and activities
- C. The definition of Sexual Harassment
- D. How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes, as applicable
- E. How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, and how to avoid reliance on sex stereotypes
- F. Any technology to be used at a live hearing
- G. Issues of relevance of questions and evidence
- H. For those filling the Investigator role, Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- I. Reporting, confidentiality, and privacy requirements
- J. 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
- K. For Decision-Makers, how to determine appropriate Sanctions in reference Sexual Harassment findings.

All Pool members are required to attend these trainings. The materials used to train all members of the Pool are publicly posted here: <https://www.snhu.edu/consumer-information/title-ix-sexual-misconduct>

## **9.7 Formal Grievance Process: Notice of Investigation and Allegations**

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.

The NOIA will include:

- I. A meaningful summary of all of allegations,
- II. The identity of the involved Parties (if known),
- III. The specific conduct alleged to constitute Sexual Harassment,
- IV. The date and location of the alleged incident(s) (if known),
- V. A copy of the specific policies implicated (including this Policy),
- VI. The URL of the University's public webpage with Title IX materials
- VII. A description of the applicable procedures,
- VIII. A statement of the potential Sanctions/responsive actions that could result,
- IX. A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- X. A statement that Final 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,
- XI. A statement about the University's policy on Retaliation,
- XII. Information about the privacy of the process,
- XIII. Information on the right of Parties to have an Advisor of their choice, who may be, but is not required to be, an attorney,
- XIV. A statement informing the Parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution process,
- XV. Detail on how the Party may request disability accommodations during the interview process,
- XVI. 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 bias or conflict of interest that the Investigator(s) may have, and
- XVII. An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9.8 Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

## **9.9 Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution process may neither have a conflict of interest or bias for a Party generally, or for a specific Complainant or Respondent specifically.

The Title IX Coordinator will vet the assigned Investigator(s) 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 Pool member 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 the University's Chief of Staff.

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.

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 a preponderance of the evidence.

## **9.10 Investigation Timeline**

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.

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.

## **9.11 Delays in the Investigation Process and Interactions with Law Enforcement**

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.

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, The University will implement supportive measures as deemed appropriate.

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.

### **9.12 Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

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.

The Title IX Coordinator or assigned deputy coordinator may be present to observe any of the steps in the investigation process, including party or witness interviews, as part of their oversight responsibilities.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- I. Determine the identity and contact information of the Complainant
- II. In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- III. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- IV. Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- V. 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
- VI. Meet with the Complainant to finalize their interview/statement, if necessary
- VII. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- VIII. Notice should inform the Parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the Party
- IX. 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
- X. Make good faith efforts to notify the Parties of any meeting or interview involving the other Party, in advance when possible
- XI. 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
- XII. Interview all available, relevant witnesses and conduct follow-up interviews as necessary

- XIII.** 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.
- XIV.** Complete the investigation promptly and without unreasonable deviation from the intended timeline
- XV.** Provide regular status updates to the Parties throughout the investigation.
- XVI.** 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
- XVII.** Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- XVIII.** Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of 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 Final 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).
- XIX.** The Investigator(s) 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
- XX.** The Investigator(s) 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
- XXI.** The Investigator shall have an opportunity to receive confidential legal advice regarding any aspect of the investigation or the report from the University's legal counsel
- XXII.** The Investigator will incorporate any relevant feedback, and the final report is then shared with all Parties and their Advisors through secure electronic transmission or hard copy 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

### **9.13 Role and Participation of Witnesses in the Investigation**

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.

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. Remote conference technologies may be used for interviews in

the Investigator's discretion. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

#### **9.14 Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved Parties must be made aware of audio and/or video recording.

#### **9.15 Evidentiary Considerations in the Investigation**

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.

#### **9.16 Referral for Hearing**

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.

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–unless all Parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or panel of Decision-makers from the Pool.

#### **9.17 Hearing Decision-maker Composition**

The University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

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.

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.

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.

Legal counsel for the University may be present in the hearing to observe and provide legal counsel to the Chair or panel during recesses which may be called by the Chair as reasonably necessary.

### **9.18 Evidentiary Considerations in the Hearing**

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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate Sanction upon a determination of responsibility, in accordance with the University's progressive discipline system. This information is only considered at the Sanction stage of the process.

University personnel may not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written Consent to do so for a grievance process under this section.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

### **9.19 Notice of Hearing**

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.

The notice will contain:

- I. 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.
- II. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- III. Any technology that will be used to facilitate the hearing.
- IV. 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.

- V. 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.
- VI. Information on how the hearing will be recorded or transcribed and on access to the recording for the Parties after the hearing.
- VII. 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.
- VIII. 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.
- IX. A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.\*\*
- X. 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.

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.

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.

### **9.20 Alternative Hearing Participation Options**

The Title IX Coordinator or the Chair can arrange to use web or video conferencing technology to allow remote testimony and otherwise conduct a live hearing by video conference without compromising the fairness of the hearing. Remote options may also be needed during in-person hearings for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **9.21 Pre-Hearing Preparation**

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.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) 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

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\*\* The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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.

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 48 hours prior to the hearing. Decision-makers will only be substituted if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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.

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.

## **9.22 Pre-Hearing Meetings**

The Chair in their discretion may convene a pre-hearing meeting(s) with the Parties and their Advisors to invite them to submit the questions or topics they (the Parties and 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.

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 during a recess consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

## **9.23 Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of Sexual Harassment and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the Sexual Harassment, including related Retaliation.

Participants at the hearing may include the Chair, any additional panelists, a hearing facilitator (if deemed necessary) the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called witnesses, the Title IX Coordinator, observing legal counsel for the University, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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.

#### **9.24 Joint Hearings**

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.

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.

#### **9.25 The Order of the Hearing – Introductions and Explanation of Procedure**

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.

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.

#### **9.26 Investigator Presents the Final Investigation Report**

The Investigator(s) will then 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.

Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) 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.

#### **9.27 Testimony and Questioning**

Once the Investigator(s) 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”).

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.

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.

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.

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.

#### **9.28 Refusal to Submit to Cross-Examination and Inferences**

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.

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.

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.

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.

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 the University-provided Advisor 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.

### **9.29 Recording Hearings**

Hearings (but not deliberations) are recorded or transcribed 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.

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.

### **9.30 Deliberation, Decision-making, and Standard of Proof**

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 make a Finding or Final Determination. The preponderance of the evidence 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.

The Decision-maker(s) will review the statements from the hearing and any pertinent conduct history and determine the appropriate Sanction(s).

The Chair will then prepare a written determination regarding responsibility and deliver it to the Title IX Coordinator, detailing the elements listed below:

- I. Identification of the allegations potentially constituting Sexual Harassment as defined in this Policy
- II. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- III. Findings of fact supporting the Final Determination;
- IV. Conclusions regarding the application of the University's Policy to the facts;
- V. A statement of, and rationale for, the result as to each allegation, including a Final Determination regarding responsibility, any disciplinary Sanctions the University will impose on the Respondent, and whether Remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the University to the Complainant; and
- VI. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

This report typically should not exceed 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.

### **9.31 Resolution Letter**

Within 7 days of receiving the deliberation statement, the Title IX Coordinator will assist the Decision Maker to convey the deliberation statement to all Parties, including any Sanctions and findings of fact, in the form of a Resolution Letter, signed by the Decision Maker.

The Resolution Letter will be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official University records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Remedies (other than Sanctions) provided to the Complainant designed to ensure access to the University's educational or employment program or activity are not typically shared with the Respondent unless the Remedy directly relates to the Respondent.

The Resolution Letter 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.

### **9.32 Sanctions**

#### **I. Factors:**

Factors that may be 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 the Sexual Misconduct, Sexual Harassment, and/or Retaliation
- E.** The need for Sanctions/responsive actions to prevent the future recurrence of
- F.** discrimination, harassment, and/or Retaliation
- G.** The need to remedy the effects of the discrimination, harassment, and/or
- H.** Retaliation on the Complainant and the community
- I.** The impact on the Parties
- J.** Any other information deemed relevant by the Decision-maker(s)

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.

The Sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or Sanctions imposed by external authorities.

## **II. Student Sanctions**

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

- A.** Warning A warning consists of formal notification that the student has violated the university's community standards and advises that repetition will result in a more severe Sanction.
- B.** Reprimand At this increased standing, students understand a formal reprimand is in place.
- C.** Residence Probation Students are placed on residence probation for a minimum of one semester. The Decision-Maker reserves the right to determine the length of probation based on the incident and the student's past history. Any violation of university policy during the probationary period may result in the student's referral for residence suspension.
- D.** Residence Suspension automatically carries with it the status of persona non grata in the residential areas. If the student has lost the privilege to live on campus, he/she/they is barred from the residence areas and will only be allowed in non-residential spaces, administrative and academic buildings, and the Dining Center between 7:30 am and 12:00 am. The student's vehicle may only be on campus during that time, and parking is restricted to Lots 1 or 12.
- E.** University Probation This Sanction is the most serious warning for violation of university regulations prior to university suspension, and it places limits on the student's good standing with the university. Students on university probation may be limited in their ability to attend university programs and if a student is currently in residence, this status automatically carries residence probation. If the student is found responsible for violating any university policy during the period of probation, both residence suspension and/or university suspension may become effective and the student may be subject to additional Sanctions.
- F.** University Suspension means that the student is dismissed from the university for a given period of time, with an opportunity for re-admission. If suspended from the university, the student will be persona non grata in all university facilities and online environments and from all university functions for the period of his/her/their suspension.
- G.** University Dismissal If a student is dismissed from the university, he/she/they is permanently dismissed from the university without opportunity for readmission. If dismissed from the university, the student will be persona non grata in all university facilities and online environments and from all university functions.

As this model is presented in increasing severity, it should be noted that violations may be cumulative. A student's prior conduct history and length of time between violations are factors considered when selecting a conduct Sanction.

In some cases, a Sanction may be held in abeyance. This means that the suspension will not be enforced immediately, but is "in place." This conduct status requires that specific conditions be fulfilled. Any violation of those conditions will result, at a minimum, in immediate enforcement of the suspension without a hearing. It may also result in further conduct action.

### **III. Employee Sanctions**

Responsive actions available for an employee who has engaged in Sexual Harassment, Sexual Misconduct, and/or Retaliation include:

- A.** Warning – Verbal or Written
- B.** Performance Improvement/Management Process
- C.** Required Training or Education
- D.** Probation
- E.** Loss of Annual Pay Increase
- F.** Loss of Oversight or Supervisory Responsibility
- G.** Demotion
- H.** Suspension with pay
- I.** Suspension without pay
- J.** Termination
- K.** Other Actions: In addition to or in place of the above Sanctions, the University may assign any other Sanctions as deemed appropriate.

#### **9.33 Withdrawal or Resignation While Charges Pending**

##### **I. Students:**

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.

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 with respect to Sexual Harassment.

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 Sexual Harassment, 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 and modalities of the University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

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.

##### **II. Employees:**

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.

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 Sexual Harassment.

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.

### **9.34 Appeals**

Any Party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 7 days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No Appeal Decision maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal.

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.

#### **I. Grounds for Appeal**

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 Final 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 of the matter.

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 Chair and the Parties and their Advisors will be notified in writing of the denial and the rationale.

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).

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 7 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.

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 7 business days, barring exigent circumstances.

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.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' the University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **II. Sanctions Status During the Appeal**

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.

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. 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.

## **III. Appeal Considerations**

- A.** 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.
- B.** 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.
- C.** An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the Finding and/or Sanction(s).
- D.** The Appeal Chair/Panel 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.
- E.** 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.
- F.** 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).

- G. In rare cases where a procedural 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).
- H. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- I. 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.

### **9.35 Failure to Comply with Sanctions**

All Respondents are expected to comply with the assigned Sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

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)/action(s) pursuant to the University's standard conduct process, including suspension, expulsion, and/or termination from the University.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **9.36 Recordkeeping**

The University will maintain for a period of at least seven years records of:

- I. Each Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- II. Any disciplinary Sanctions imposed on the Respondent;
- III. Any Remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- IV. Any appeal and the result therefrom;
- V. Any Informal Resolution and the result therefrom;
- VI. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
- VII. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sexual Harassment, including:
  - A. The basis for all conclusions that the response was not deliberately indifferent;
  - B. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - C. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

### **9.37 Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution process.

Students needing such accommodations or support should contact the Campus or Online Accessibility Centers. Employees should notify their HR business partner. The request will be reviewed, 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.

## **10. Southern New Hampshire University Institutional Sexual Misconduct Grievance Procedures**

### **10.1 Scope:**

The University adopts these Institutional Sexual Misconduct Grievance Procedures for purposes of all Sexual Misconduct this is not otherwise subject to the Sexual Harassment Grievance Procedures (hereafter referred to as "other Sexual Misconduct").

These procedures do not apply for cases where both the Complainant and Respondent are employees, and not students. Instead, procedures and policies of the Employee Handbook and SNHUPEA Master Agreement (as applicable) apply to such matters between employees falling outside the scope of the definition/jurisdiction of Sexual Harassment under this Policy.

### **10.2 Procedure:**

The University adopts and will employ the same procedures as are set forth in Section 9, above, including designated appeal procedures, for purposes of addressing all other Sexual Misconduct, with the following important exceptions.

For purposes of these Institutional Sexual Misconduct Grievance Procedures:

#### **I. Advisors:**

Advisors may attend Investigatory meetings and hearings, but may only provide input and advice to the student for whom they are appointed directly. They may not advocate directly or represent the student in any proceedings, nor question witnesses. Reasonable breaks or recesses can be provided to permit private consultation with Advisors.

#### **II. Cross Examination:**

Neither a student nor his or her Advisor is permitted to directly cross examine another Party. Questions for the witness may be submitted by the questioning student, and, after assessment by the Chair, may be asked, or modified, to the witness by the Chair directly.

#### **III. Admissibility of Statements:**

Statements made but which are not the subject of cross-examination may still be considered and weighed by the Decision-Maker(s). This may occur, for example, if a Respondent or Complainant does not attend a hearing, but made statements to the Investigator in the course of an Investigation. Section 9.28, therefore, does not apply.

#### **IV. Dismissal Requirements:**

The mandatory dismissal requirements set forth in Section 9.2, Subsection I. do not apply. The discretionary dismissal standards articulated in Subsection II do apply. In addition, the Title IX Coordinator may dismiss any complain that would not constitute Sexual Misconduct or a violation of this Policy, even if proved, or if the Respondent is not subject to the University's jurisdiction or control.

## **11 Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing Sexual Misconduct, including Sexual Harassment, and related Retaliation and will be reviewed and updated 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.

During the Resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any Party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional 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 procedures.

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

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.

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