



FERRIS STATE
UNIVERSITY

ACADEMIC CALENDAR

CODE OF STUDENT COMMUNITY STANDARDS

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Section 3: Sexual Misconduct Resolution Process



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This Sexual Misconduct Resolution Process applies to the resolution of all Formal Complaints of Sexual Harassment and related sexual misconduct allegations, including sexual exploitation, that do not apply within the scope of the Ferris State University Sexual Harassment and Related Title IX Policy and when the respondent is a student. The Sexual Misconduct Resolution Process was adapted from the University's Title IX Policy to address sexual harassment and sexual misconduct allegations that are outside of the Title IX Policy, usually when the behavior occurs off campus, in a private setting, and outside the scope of the University's Education Programs and Activities or

that occurs outside the geographic boundaries of the United States even if it occurs in the University's Education Programs and Activities.

Administration

The Director of Student Community Standards or their designee shall have responsibility to oversee and administer the Sexual Misconduct Resolution Process. The Director of Student Community Standards may consult with other University administrators and counsel as needed.

Fairness and Impartiality

The Director of Student Community Standards, Investigating Officer, Conduct Case Manager, appeals officer, and alternative resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern to the Dean of Student Life promptly so that the University may evaluate the concern and find a substitute, if appropriate. The standard to be used in determining whether recusal is warranted is whether the individual would be able to evaluate the case fairly and impartially given the individual's knowledge of the matter or personal or professional relationship with any party. In cases involving allegations of Sexual Harassment, the University prohibits the use of medical experts that have an actual or apparent conflict of interest.

The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

Presumption of Non-Responsibility

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

Participation in Investigations and Adjudications

Participation in Investigations and Adjudications

All members of the University Community are encouraged to fully cooperate with any investigation and adjudication under this Student Respondent Sexual Misconduct Resolution Process. In the event an alleged complainant refuses to participate, the Title IX Coordinator may file a Formal Complaint. In the event a Respondent refuses to participate, the Sexual Misconduct Resolution Process will be completed despite the Respondent's lack of participation and may result in a finding of misconduct *in absentia*.

Relationship with Criminal Process

Some instances of Sexual Harassment may also constitute criminal conduct. In such instances, the Complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the Complainant in doing so. The pendency of a criminal investigation, however, does not prohibit the University from having a fair and reasonable disciplinary process to maintain the orderly function of the University. Therefore, while the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

Definitions

- a. **“Coercion”** includes intimidation, deception, and/or express or implied threats of physical, reputational, academic, financial, or emotional harm or restraint, that would reasonably place an individual in fear of immediate or future harm and that is used to persuade or compel someone to engage in sexual contact. This includes threatening to “out” someone based on sexual orientation, gender identity, and/or gender expression.
- b. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- c. **“Consent”** is the voluntary agreement to engage in sexual contact. Additional information about how the University evaluates consent is available under Understanding Consent and Incapacitation listed below.

- d. **“Conduct Case Manager”** is defined as any individual University official who is authorized by the Director of Student Community Standards to meet with students regarding alleged violations of the Code of Student Community Standards and Student Respondent Sexual Misconduct Procedures, to recommend appropriate charges and outcomes, and to monitor the completion of assigned educational and/or administrative outcomes.
- e. **“Dating Violence”** is violence committed by a person –
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship; and
 - iii. The frequency of interaction between the persons involved in the relationship.
- f. **“Director of Student Community Standards”** means the Director and all designees as assigned, including the Conduct Case Manager. The Director of Student Community Standards has experience and extensive training on issues related to dating violence, domestic violence, sexual assault, and stalking as well as the procedures for conducting investigation and conduct conference processes that protect the safety of the complainants and promote accountability.
- g. **“Domestic Violence”** is an act of violence¹ committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Michigan.
- h. **“Force”** is the use or threat of physical violence and/or strength or intimidation to overcome an individual’s freedom of will to choose whether to participate in sexual contact. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, duress, or any combination of these behaviors. When determining whether or not force was involved, there is no requirement that a Complainant resist the sexual advance or request. However, resistance by the Complainant will be viewed as a

... requirement that a Complainant report the sexual harassment or request remedial assistance by the Complainant may be viewed as a clear demonstration of non-consent.

- i. **“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 of Sexual Harassment in accordance with this policy.
- j. **“Hostile Environment Sexual Harassment”** is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s education programs and activities.
- k. **“Incapacitation”** is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why, or how” of the sexual interaction) and/or is physically or mentally helpless.
- l. **“Investigating Officer”** means the Title IX Coordinator or their designee. The Investigating Officer may be a third-party Investigating Officer or attorney retained for that purpose by the University.
- m. **“Quid Pro Quo Sexual Harassment”** is an individual conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual contact.
- n. **“Retaliation”** is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or conduct conference under this policy.
- o. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- p. **“Sexual Assault”** includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.
 - 1. **“Rape”** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or anus by the sex organ of the other person.

Attempted Rape is included.

2. **“Sodomy”** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 3. **“Sexual Assault with an Object”** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
 4. **“Fondling”** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
 5. **“Incest”** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.
 6. **“Statutory Rape”** is sexual intercourse with a person who is under the statutory age of consent as defined by Michigan law.
- q. **“Sexual Harassment”** is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking. Sexual Harassment does not depend on the gender, gender identity, or sexual orientation of the Complainant and Respondent. Thus, Sexual Harassment can occur between persons who consider themselves to be of the same gender, the opposite gender, or to otherwise have differing gender identities. This term is used throughout this process and the Title IX Grievance Process when collectively referring to these types of conduct.
- r. **“Sexual Exploitation”** is taking non-consensual, sexual advantage of another person for the purpose of sexual gratification, financial gain, personal benefit or advantage, benefit or advantage of a third party, or any other non-legitimate purpose. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods, or devices):
1. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person’s consent

2. Indecent or lewd exposure or inducing others to expose themselves when consent is not present
 3. Recording any person engaged in sexual or intimate activity in a private space without that person's consent
 4. Distributing personal sexual information, images, or recordings about another person without that person's consent (applies even if the videos were obtained with consent)
 5. Recruiting, harboring, transporting, providing, or obtaining another person for the purpose of sexual exploitation
 6. Inducing incapacitation in another person with the intent to engaging sexual conduct, regardless of whether prohibited sexual conduct actually occurs
 7. Prostituting another person
 8. Knowingly transmitting a sexually transmitted disease to another person through sexual activity when that person has not consented to engaging in such sexual activity despite being expressly, verbally, and understandably informed of the sexually transmitted disease
- s. **"Stalking"** is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
1. Fear for their safety or the safety of others; or
 2. Suffer substantial emotional distress.
- t. **"Student"** includes the following:
1. A person who has been notified of their acceptance for admission to Ferris State University, who is admitted and enrolled in any credit-bearing course or program in any school or division of Ferris State University, or who is a continuing student between academic periods.
 2. A person who resides in Ferris State University housing, whether or not that person is enrolled in any school or division of Ferris State University.

3. A person was enrolled at the University at the time of the incident but has since withdrawn while disciplinary matters are pending.
- u. **“Title IX Coordinator”** means the University’s Title IX Coordinator and all designees as assigned, including Deputy Title IX Coordinators. The Title IX Coordinator is generally made aware of all reports of sexual harassment on and off campus, and ensures the University response to complaints of sexual harassment adhere to all state and federal requirements.

Understanding Hostile Environment Sexual Harassment

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant’s position. A person’s adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities

- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Disseminating sexual pictures or videos of another person without consent regardless of whether the pictures or videos were obtained with consent
- Insulting, demeaning, or degrading another person on the basis of gender or gender stereotypes
- Understanding Consent and Incapacitation

Understanding Consent and Incapacitation

CONSENT

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is the voluntary agreement to engage in sexual contact. Consent to engage in sexual contact must demonstrate that it meets the following four components: (1) informed, (2) freely and actively given, (3) mutually understandable words or actions, (4) indicating a clear agreement to engage in sexual contact of any kind.

It is the responsibility of the person who wants to engage in sexual contact to make sure that they have received consent from any person(s) involved. If an individual initiating sexual contact is not sure if they have received consent, they have an obligation to seek additional clarification.

Informed:

1. Consent includes each person(s) having a clear and mutually understanding of the nature and scope of the sexual contact;
2. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact;

3. Informed consent cannot be given by anyone under the legal age of consent (anyone under age 16).

Freely and Actively Given:

1. Consent cannot be given by an incapacitated person(s) (see definition of incapacitation above).
2. Consent cannot be achieved through force (see definition of force above), threat, deception, intimidation, or coercion (see definition of coercion above).
3. Consent cannot be assumed or implied by a current or previous dating or sexual relationship.

Mutually Understandable Words or Actions:

1. Consent consists of clear communication (words or actions) that indicates each person(s) unambiguous willingness to engage in sexual contact from the beginning to end of each instance of sexual contact and for each form of sexual contact;
2. Consent cannot be assumed or implied by silence, passivity, or the lack of an objection. A person who does not physically resist or verbally refuse sexual contact is not necessarily giving consent.

Indicating a Clear Agreement to Engage in Sexual Contact:

1. Consent can be withdrawn at any time through clear communication (words or actions) that indicates each person(s) is no longer willing to engage in sexual contact.
2. In the absence of a clear agreement to engage in sexual contact, consent does not exist.

INCAPACITATION

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why, or how” of the

sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

1. Decision-making ability
2. Awareness of consequences
3. Ability to make informed judgments
4. Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

Analyzing Domestic Violence, Dating Violence, and Stalking

Domestic Violence, Dating Violence, and Stalking (often called "intimate partner violence") are considered to be a violation of this Policy, no matter the motivation behind them. Domestic and Dating Violence occur on a continuum and can vary in frequency and severity. Domestic and Dating Violence often take the forms of threats, assaults, or property damage.

Stalking includes cyberstalking, which is a form of stalking occurring in electronic media such as the Internet, social networks, blogs, cell phones, texts, or emails that are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion. Examples of stalking include: unwelcome and repeated visual or physical proximity to a person; repeated oral or written threats; and unwelcomed/unsolicited written communications, including letters, cards, texts, emails, instant messages, or messages on social media or message bulletin boards.

Investigation

COMMENCEMENT AND TIMING

Upon receiving a Formal Complaint, the Investigating Officer will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written investigation report, that will be submitted to the Office of Student Community Standards. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within ninety (90) business days.

During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other individuals as needed.

DOCUMENTATION OF INVESTIGATION

The Investigating Officer will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the Investigating Officer's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the Investigating Officer in the Investigating Officer's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

CONTENT OF THE SEXUAL MISCONDUCT INVESTIGATION

During the investigation, the Investigating Officer will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence, and to describe the effect of the alleged incident on their opportunity to benefit from the University's programs or activities. Except for circumstances where the University has determined that alternative resolution may be appropriate and the parties have agreed to participate in such a process, the Investigating Officer will not concurrently interview the Complainant and Respondent and/or require the parties to discuss, mediate, or otherwise resolve the complaint.

Notwithstanding the foregoing, the Investigating Officer retains discretion to limit the number of witness interviews the Investigating Officer conducts if the Investigating Officer finds that testimony would be unreasonably duplicative, irrelevant to the allegations under investigation, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The Investigating Officer will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the conduct conference absent a showing of mistake, inadvertence, surprise, or excusable neglect.

Formal rules of evidence do not apply to the conduct conference or any alternative resolution processes. Nonetheless, evidence that is irrelevant or whose prejudicial effect substantially outweighs its probative value may be excluded from consideration.

The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review physical evidence and/or materials, review electronic transmissions, review records and other documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. Information relevant to the investigation may include the severity, pervasiveness, and chronology of alleged conduct; the relationship, if any, existing between the parties prior to and after the alleged conduct; patterns of conduct; consent and co-involvement of the parties; effects of drug or

alcohol use; and the effect of intervening measures taken by the University.

Throughout the investigation, parties will be granted an opportunity to review and comment, in writing, any statements or evidence provided by the other party, or any information independently developed by the Investigating Officer. The University will respect determinations made by the Complainant and Respondent regarding their level of participation in the investigation. However, parties shall be advised that non-participation in the process shall not preclude the University from appropriate remediation of complaints, including completing of its fact finding and imposition of corrective or disciplinary action if determined appropriate.

All parties and witnesses involved in the investigation are expected to provide complete and truthful information. University Community members are expected to comply with reasonable requests from the Investigating Officer for records, documentation, and/or other materials and to cooperate in the investigatory process, including the timely arrangement of meetings, evidence production, and following Investigating Officer directives. Students who disrupt or obstruct the investigation may be subject to corrective and/or disciplinary action.

ACCESS TO THE EVIDENCE

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the Investigating Officer will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any conduct conference and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) business days in which to submit to the Investigating Officer a written response, which the Investigating Officer will consider prior to completing the investigation report.

INVESTIGATION REPORT

After the period for the parties to provide any written response to the evidence has expired, the Investigating Officer will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the Investigating Officer will transmit a copy to the Title IX Coordinator. The investigation report will be transmitted to each party

and their advisor, in either electronic or hard copy form at least ten (10) business days prior to a conduct conference if a conduct conference is required.

Emergency Removal

At any time after receiving a report of Sexual Harassment, the Dean of Student Life may remove a student Respondent from the University's Education Programs and Activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the University imposes an emergency removal, the University must offer to meet with the Respondent within the next business day and provide the Respondent an opportunity to challenge the emergency removal.

Student Respondent Adjudication Conduct Conference Process

CONDUCT CASE MANAGER

Upon receipt of the final investigation report, the Title IX Coordinator or designee will promptly refer the matter to the Office of Student Community Standards who will oversee the conduct conference process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the conduct conference process. The Title IX Coordinator will see that the Office of Student Community Standards is provided a copy of the investigation report and a copy of all evidence, and the evidence is transmitted to the parties by the Investigating Officer.

CONDUCT CONFERENCE AND RESPONSE TO THE INVESTIGATION REPORT

After the conduct case manager is designated by the Director of Student Community Standards, the parties will receive written notice of the conduct case manager's appointment; the deadline for the parties to submit any written response to the investigation report; a date for the

pre-conference meeting; the date and time for the conduct conference; and a copy of the applicable conduct conference procedures. Neither the pre-conference meeting, nor the conduct conference itself, may be held any earlier than ten (10) business days from the date of transmittal of the written notice specified in this section.

A party's written response to the investigation report must include:

1. To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
2. Any argument that evidence should be categorically excluded from consideration at the conduct conference based on privilege, relevancy, undue prejudice, the prohibition on the use of sexual history, or for any other reason;
3. A list of any witnesses that the party contends should be requested to attend the conduct conference pursuant to an attendance notice issued by the conduct case manager;
4. A list of any witnesses that the party intends to bring to the conduct conference without an attendance notice issued by the conduct case manager;
5. Any objection that the party has to the conduct conference procedures;
6. Any request that the parties be separated physically during the pre-conference meeting and/or conduct conference;
7. Any other accommodations that the party seeks with respect to the pre-conference meeting and/or conduct conference;
8. The name and contact information of the advisor who will accompany the party at the pre-conference meeting and/or conduct conference;
9. If the party does not have an advisor who will accompany the party at the conduct conference, a request that the University provide an advisor for purposes of conducting questioning.

A party's written response to the investigation report may also include:

1. An argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
and
2. An argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

PRE-CONFERENCE MEETING

Prior to the conduct conference, the conduct case manager will conduct a pre-conference meeting with the parties and their advisors. The pre-conference meeting will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-conference meeting will be conducted with the conduct case manager, the parties, the advisors, and other necessary University personnel, including the Title IX Coordinator or their designee, together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the conduct case manager's discretion, the pre-conference meeting may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-conference meeting, the conduct case manager will discuss the conduct conference procedures with the parties; address matters raised in the parties' written responses to the investigation report as the conduct case manager deems appropriate; discuss whether any stipulations may be made to expedite the conduct conference; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the conduct conference without a notice of attendance; and resolve any other matters that the conduct case manager determines, in the conduct case manager discretion, should be resolved before the conduct conference.

ISSUANCE OF NOTICES OF ATTENDANCE

After the pre-conference meeting, the conduct case manager, or a University Official acting on their behalf, will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the conduct

conference as a witness. The notice will advise the subject to appear for the conduct conference at the specified date and time and advise the subject to contact the conduct case manager immediately if there is a material and unavoidable conflict.

CONDUCT CONFERENCE

After the pre-conference meeting, the conduct case manager will convene and manage a conduct conference pursuant to the applicable conduct conference procedures. The conduct conference will be audio recorded or transcribed. The audio recording or transcription will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The conduct conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. The conduct case manager shall maintain necessary order and shall make all rulings necessary for a fair, orderly, and expeditious conduct conference. By default, the conduct conference will be conducted with the conduct case manager, the parties, the advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the conduct case manager's discretion, the conduct conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the conduct conference procedures and rulings from the conduct case manager will govern the particulars of the conduct conference, each conduct conference will include, at a minimum:

1. Opportunity for each party to address the conduct case manager directly and to respond to questions posed by the conduct case manager;
2. Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions of the other party and any witnesses, including questions that support or challenge credibility;
3. Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such

objections ruled on by the conduct case manager and a reason for the ruling provided;

4. Opportunity for each party to submit evidence that the party did not present during the investigation due to a mistake, an inadvertence, a surprise, or an excusable neglect;
5. Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the conduct case manager, the conduct conference will be closed to all persons except the parties, their advisors, the Investigating Officer, the conduct case manager, the Title IX Coordinator or designee, and other necessary University personnel. With the exception of the Investigating Officer and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the conduct conference, the parties and their advisors will have access to the investigation report and evidence that was transmitted.

While a party has the right to attend and participate in the conduct conference with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the conduct conference and/or engages in other behavior that is materially disruptive, may be barred from further participation and/or have their participation limited by the discretion of the conduct case manager.

Subject to the minimum requirements specified in this section, the conduct case manager will have sole discretion to determine the manner and particulars of any given conduct conference, including with respect to the length of the conduct conference, the order of the conduct conference, and questions of admissibility. The conduct case manager will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The conduct conference is not a formal judicial proceeding and strict rules of evidence do not apply. The conduct case manager will have discretion to modify the conduct conference procedures, when good cause exists to do so, and provided the minimal requirements specified in this section are met. When it appears necessary, the Conduct Case Manager may, at their discretion, grant a reasonable postponement and/or recess of the conduct conference.

SUBJECTION TO QUESTIONING

In the event that any party or witness refuses to attend the conduct conference or attends but refuses to submit to questioning by the parties' advisors, the testimony of that party or witnesses, as the case may be, whether given during the investigation or during the conduct conference, will be given appropriate evidentiary weight by the conduct case manager in reaching a determination of responsibility.

In applying this section, the conduct case manager will not draw an inference about the determination regarding responsibility based solely on a party or a witness absence from the conduct conference and/or refusal to submit to questioning by the parties' advisors.

DELIBERATION AND REMEDIES

After the conduct conference is concluded, the conduct case manager will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the conduct conference, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The conduct case manager will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-conference meeting or during the conduct conference. The conduct case manager will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

DISCIPLINE AND REMEDIES

In the event the conduct case manager determines that the Respondent is responsible for violating this policy, the conduct case manager will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. In cases where the conduct case manager does not work within the Office of Student Community Standards, they will consult with the Office of Student Community Standards. The conduct case manager will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether, and to what extent, ongoing support

measures or other remedies will be provided to the Complainant.

The University will impose discipline commensurate with the severity or pervasiveness of the offense and the threat it poses to the community. The conduct case manager is authorized to impose any one or a combination of administrative and educational outcomes for behavior found to be in violation of the Code of Student Community Standards ranging from an administrative warning to permanent dismissal from the institution.

WRITTEN DECISION

After reaching a determination, the conduct case manager will prepare a written decision that will include:

1. Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
2. A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the conduct conference;
3. Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
4. A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
5. The discipline determined by the appropriate University official and any ongoing support measures or other remedies as determined by the Title IX Coordinator;
6. A description of the University's process and grounds for appeal.

The conduct case manager's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the conduct conference process, subject to any right of appeal as listed below.

Although the length of each adjudication by conduct conference will vary depending on the totality of the circumstances, the University strives to issue the conduct case manager's written determination within fifteen (15) business days of the conclusion of the conduct conference.

DISMISSAL AFTER REFERRAL OR DURING ADJUDICATION

The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

1. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined by this section;
2. The Complainant provides the Office of Student Community Standards written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case, those discrete allegations may be dismissed);
3. The Respondent is no longer enrolled at the University, as the case may be; or
4. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case, those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in this section. A dismissal pursuant to this section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

APPEAL

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

1. A procedural irregularity affected the outcome;
2. There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
3. The Title IX Coordinator, Investigating Officer, or conduct case manager had a conflict of interest or bias for or against Complainants or Respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

The appeal must be submitted in writing, within ten (10) business days of the notice of determination or dismissal being sent by the University and must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer, or a University Official acting on their behalf, will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within ten (10) business days. The appeal officer shall also promptly obtain from the Office of Student Community Standards any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing

an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within fifteen (15) business days of an appeal being filed or the opposition statement being received, whichever is later.

ADVISOR OF CHOICE

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and the conduct conference that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

The advisor may provide support and private counsel to the party. However, except for the questioning of witnesses during the conduct conference, the advisor may not advocate on behalf of a party, be actively involved in any proceedings, or directly address the Investigating Officer, conduct case manager, or appeal officer. The support person/advisor must agree to maintain the confidentiality of the process.

The University reserves the right to remove or dismiss an advisor who fails to follow this process and applicable provisions of the Sexual Misconduct Resolution Process, in which case the party will be allowed to select a different advisor.

In the event a party is not able to secure an advisor to attend the conduct conference, and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the conduct conference. The University will have sole discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the conduct conference specified and requests that the University provide an advisor.

TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION

During the investigation and adjudication process, the Investigating Officer and/or adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use the following records or information unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process:

1. A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional 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; or
2. Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;

Notwithstanding the foregoing, the Investigating Officer and/or adjudicator may consider any such records or information otherwise covered by this section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

SEXUAL HISTORY

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this section.

ALTERNATIVE RESOLUTION [1]

At any time after the parties are provided written notice of the Formal Complaint as specified in this process, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or another form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any alternative resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the alternative resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

1. Describes the parameters and requirements of the alternative resolution process to be utilized;
2. Identifies the individual responsible for facilitating the alternative resolution (who may be the Title IX Coordinator, another University official, or a suitable third-party);
3. Explains the effect that participating in alternative resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
4. Explains any other consequence resulting from participation in the alternative resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the alternative resolution may commence.

During the pendency of the alternative resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach an agreed resolution through the alternative resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation

allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct, or where required to avoid a manifest injustice to either party or to the University. A resolution reached pursuant to this section is not subject to appeal.

A party may withdraw their consent to participate in alternative resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator any alternative resolution process must be completed within twenty (20) business days. If an alternative resolution process does not result in a resolution within twenty-one (21) business days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the alternative resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the alternative resolution.

Other language in this section notwithstanding, alternative resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

OBJECTIONS GENERALLY

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate, consider and address it, if appropriate.

OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University, including, but not limited to, conduct case manager, alternative resolution officer, and appeals officer.

The University retains discretion to appoint two or more persons to jointly fulfill the role of conduct case manager, alternative resolution officer, and/or appeals officer.

DISCIPLINARY RECORDS

All conduct records are maintained by the University for at least seven (7) years from the time of their creation except those that result in suspension or dismissal, which are maintained indefinitely.

[1] Full Alternative Resolution Process.

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