

Policy on Harassment and Non-Discrimination

Adopted by the Board of Trustees on June 5, 2015;
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I. LEHIGH UNIVERSITY POLICY ON HARASSMENT AND NON-DISCRIMINATION FOR ALL STUDENTS, EMPLOYEES, AND THIRD PARTIES (hereinafter, the “Policy”)

1. Purpose

Lehigh University (hereinafter, the “University”) upholds *The Principles of Our Equitable Community* (see Appendix A) and is committed to providing an educational and employment environment that is free from discrimination and harassment based on protected characteristics and retaliation for engaging in protected activity.

The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of employment and of the education program or activity, the University has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination or harassment or allegations of retaliation.¹

2. Applicability

This Policy applies to all students, faculty, staff, applicants for admission, applicants for employment, and third parties.

3. Notice of Non-Discrimination²

The University seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private post-secondary education institutions. The University is committed to providing an educational and work environment that is free from harassment and discrimination based on protected characteristics. Such harassment or discrimination is unacceptable behavior and will not be tolerated.

The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived:

- Age
- Color
- Disability
- Ethnicity
- Familial status

¹ All conduct prohibited by this Policy is deemed perceived or alleged until such time as an investigation is complete and a determination has been made that such conduct has occurred.

² Section 3 of this Policy shall be distributed in languages other than English, as necessary.

- Gender expression
- Gender identity
- Genetic information
- Marital status
- National origin (including shared ancestry and ethnic characteristics)³
- Pregnancy or related conditions
- Race
- Religion
- Sex
- Sexual orientation
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.⁴

This Policy covers non-discrimination in both employment and access to educational opportunities.⁵ Therefore, any member of the University community whose acts deny, deprive, unreasonably interfere with or limit the education, employment, residential, and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s) is in violation of this Policy.

The University will promptly take steps to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence. The University will promptly and effectively address any such discrimination of which it has Knowledge/Notice⁶ using the Resolution Processes contained in this Policy.

³ Discrimination based on shared ancestry and/or ethnic characteristics can include anti-Semitic discrimination, anti-Arab discrimination, anti-Asian discrimination, or similar forms of discriminatory behavior.

⁴ Although the scope of this Policy does not include social class or socioeconomic status as protected characteristics, using social class or socioeconomic status as a pretext (i.e., a reason to justify a course of action that is not the real reason) for harassment or discrimination based upon a protected characteristic is prohibited.

⁵ Educational opportunities include all academic, extra-curricular, and University-sponsored programs and activities.

⁶ Capitalized terms that are not defined in the Policy are defined in Appendix B. The definitions as stated in this Policy and appendices are applicable to these terms as they are used throughout the entirety of this Policy, regardless of capitalization.

4. Non-Discrimination Oversight

The Equal Opportunity Compliance Coordinator serves as the Title IX Coordinator, ADA/Section 504 Coordinator, and Age Act Coordinator, and is responsible for coordinating the University's compliance with federal, state, and local civil rights laws, regulations, and ordinances:

Equal Opportunity Compliance Coordinator & Title IX Coordinator
Office of Equal Opportunity & Title IX Compliance
Alumni Memorial Building
27 Memorial Drive W
Bethlehem, PA 18015
610-758-3535
eocc@lehigh.edu
eocc.lehigh.edu

In the event that the conduct involves the Equal Opportunity Compliance Coordinator/Title IX Coordinator⁷ or there is a reasonable concern about a potential conflict of interest or bias, Reports should be made to:

Associate Vice President, Human Resources⁸
306 S. New Street, Suite 437
Bethlehem, PA 18015
610-758-3900
inhro@lehigh.edu

The Equal Opportunity Compliance Coordinator/Title IX Coordinator is responsible for providing comprehensive non-discrimination education and training; coordinating the University's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

The University recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the University community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

⁷ The Equal Opportunity Compliance Coordinator is referred to as the Equal Opportunity Compliance Coordinator and Title IX Coordinator interchangeably throughout this Policy.

⁸ All references herein to a University official also include a University official's designee.

5. External Contact Information

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

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

Office for Civil Rights (OCR)
Philadelphia Office
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: (215) 656-8541
Facsimile: (215) 656-8605
Email: OCR.Philadelphia@ed.gov

For Complaints involving employee-on-employee conduct:

Equal Employment Opportunity Commission (EEOC)
Philadelphia District Office
801 Market Street, Suite 1000
Philadelphia, PA 19107-3126
Telephone: (800) 669-4000
(267) 589-9700
Facsimile: (215) 440-2606
Web: [Contact EEOC | U.S. Equal Employment Opportunity Commission](#)

Pennsylvania Human Relations Commission
Harrisburg Regional Office
333 Market Street, 8th Floor
Harrisburg, PA 17101-2210
Telephone: (717) 787-9780
Web: <https://www.pa.gov/en/agencies/phrc.html>

6. Education and Prevention

The University provides education about discrimination, harassment, and other conduct prohibited by this Policy through various means, including orientation programs for new students and employees, online training, and follow-up programs for students, staff, faculty, and administrators. Individuals in a supervisory capacity may participate in additional training opportunities to assist with implementing this Policy and related procedures. They will inform people under their direction of this Policy and assume leadership in implementing the procedures.

7. Academic Freedom

Lehigh University upholds the principles of academic freedom as stated in Rule 2.1.1. of the [Rules and Procedures of the Faculty of Lehigh University](#).

8. Scope

This Policy applies to all employees, students, and other individuals participating in or attempting to participate in the University's programs or activities, including education and employment. When the Respondent is a member of the University community, a grievance/resolution process may be available regardless of the status of the Complainant, who may or may not be a member of the University community.

This Policy prohibits all forms of discrimination on the basis of a protected characteristic(s), and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

Each reported incident is reviewed to determine whether the University has jurisdiction over the individuals involved (*see* Section I.9 below); whether this Policy is applicable to the parties and the conduct involved; and actions within the University's control to eliminate, prevent, and address the conduct.

9. Jurisdiction

This Policy applies to the University's education programs or activities (defined as including locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where the University has disciplinary authority, and to misconduct that takes place on property owned or controlled by the University, at University-sponsored events, or occurring within any building owned or controlled by a University-recognized student organization. At the discretion of the Equal Opportunity Compliance Coordinator/Title IX Coordinator, a Complainant who is not a member of the University community may file a Complaint/Formal Complaint.

This Policy may also apply to the effects of off-campus misconduct that effectively deprives a person of access to the University's education programs or activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial University interest as determined by the Equal Opportunity Compliance Coordinator/Title IX Coordinator.

A substantial University interest includes:

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

Conduct prohibited by this Policy may be committed by, or against, an individual, or as a result of the collective actions of an organization or group (including but not limited to recognized student organizations).

For disciplinary action to be issued under this Policy, the Respondent must be a University student or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the University community, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting local or University law enforcement if the individual would like to file a police report about criminal conduct.

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

When the Respondent is enrolled in or employed by another institution, the Equal Opportunity Compliance Coordinator/Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or non-discrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct

that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Equal Opportunity Compliance Coordinator/Title IX Coordinator if brought to their attention.

10. Online Harassment and Misconduct

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

Although the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in efforts to address and mitigate the effects.

11. Inclusion Related to Gender Identity/Expression

The University strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by the University. If a member of the University community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described in this Policy.

In upholding the principles of equity and inclusion, the University supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

The University is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. The University will continue to administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, two-spirit, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary and fixed at birth. As our society's understanding of gender evolves, so do the University's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the University's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is

usually resolved with a simple apology if someone clarifies their pronouns. Intentional misgendering is inconsistent with the type of community the University holds itself out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm.

Deadnaming, along with misgendering, can be traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned name, rather than the name they have chosen and presently go by.

Again, unintentional deadnaming can often be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided. Unintentional deadnaming may constitute a Policy violation if the effect is greater than *de minimis* harm.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with applicable law
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms, consistent with applicable law
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the University community

The University uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, the University will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, the University will offer remedial solutions or enforce its policies while also respecting the rights of all members of its community.

12. Prohibited Conduct

Students and employees are entitled to an educational and employment environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are prohibited under this Policy. When speech or conduct is protected by academic freedom and/or University policies, it will not be considered a violation of this Policy, though supportive measures will be offered to those impacted.

All definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other University policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

The University reserves the right to address offensive conduct based on a protected characteristic that does not meet the definitions of prohibited conduct contained below, including conduct that does not rise to the level of creating a hostile environment or that is generic in nature and does not implicate a protected characteristic. Conduct that implicates a protected characteristic but does not rise to the level of discrimination or discriminatory harassment as those terms are defined in this Policy is referred to as bias-related conduct. Addressing such conduct will not result in the imposition of discipline under this Policy, but may be addressed through respectful conversation, remedial actions, education, effective Hearing Resolution or Administrative Resolution, and/or other Informal Resolution mechanisms. Depending on the nature of the offensive conduct, the matter may be referred to other appropriate University offices for review and appropriate action under other University policies.

The University assesses each reported incident to determine if the behavior constitutes prohibited conduct or biased-related conduct, and if so, the appropriate response pursuant to this Policy or other pertinent University policies.

The University is committed to complying with all applicable non-discrimination laws, including Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 and promoting a campus free from harassment, discrimination, and bias-related conduct.

A. Discrimination

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes

allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability or religion.

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.
- Depending on the facts and circumstances of a particular incident, the following conduct may violate this Policy:
 - A faculty member giving a student a lower grade because of the student's race, national origin, or other protected characteristic.
 - A staff member receiving a negative performance review based on their gender identity or gender expression.
 - A student with a disability not receiving approved academic accommodations.
 - A student barring another student from joining a student organization due to the individual's religious beliefs or because they wear symbols or styles of dress associated with their beliefs (e.g., wearing a hijab, crucifix, or Star of David).
 - Vandalizing or stealing religious or cultural symbols.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

B. Discriminatory Harassment (Hostile Environment)

- Unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

C. Sexual Harassment

Relevant federal and state agencies regard sexual harassment, a specific form of harassment, as an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity or expression of those involved.

The University has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community and to comply with applicable federal and state laws. Two definitions are required by federal law. While these definitions overlap, they are not identical, and they each apply as noted.

- **Title VII/Fair Housing Act (FHA) Sexual Harassment** applies to situations where an employee is subjected to workplace sexual harassment or where a situation involves a residential Complainant in University-provided housing.
 - Unwelcome verbal, written, graphic, and/or physical conduct,
 - that is severe or pervasive and objectively offensive,
 - on the basis of sex/gender, that
 - unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

- **Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual harassment is defined as conduct on the basis of sex,⁹ or that is sexual in nature, that satisfies one or more of the following:
 - Quid Pro Quo:
 - An employee of the University,
 - conditions¹⁰ the provision of an aid, benefit, or service of the University,
 - on an individual's participation in unwelcome sexual conduct.

 - Sexual Harassment (Hostile Environment):
 - Unwelcome conduct,
 - determined by a reasonable person,
 - to be so severe, and
 - pervasive, and
 - objectively offensive,

⁹ Including gender identity or expression, sexual orientation, sex characteristics, and sex stereotypes.

¹⁰ Implicitly or explicitly.

- that it effectively denies a Complainant equal access to the University’s education program or activity.¹¹
- Sexual Assault, defined as:
 - Any sexual act¹²
 - directed against a Complainant,¹³
 - without their consent, or
 - instances in which the Complainant is incapable of giving consent.
 - Incest:
 - Non-forcible sexual intercourse,
 - between two persons who are related to each other,
 - within the degrees wherein marriage is prohibited by Pennsylvania law.
 - Statutory Rape:
 - Non-forcible sexual intercourse,
 - with a person who is under the age of the statutory age of consent of 16.

¹¹ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

¹² A “sexual act” is specifically defined by federal regulations to include one or more of the following:

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 their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their 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.

¹³ This would include being touched by an individual sexually, forcibly, and/or without their consent.

- Dating Violence,¹⁴ defined as:
 - Violence,
 - on the basis of sex,
 - committed by a person,
 - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

- Domestic Violence,¹⁵ defined as:
 - Felony or misdemeanor crimes of 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 Pennsylvania, 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 Pennsylvania.

- Stalking, defined as:
 - engaging in a course of conduct,
 - on the basis of sex,
 - directed at the Complainant, that
 - would cause a reasonable person to fear for their safety,
 - or

¹⁴ Collectively, dating violence and domestic violence are referred to as “intimate partner abuse.”

¹⁵ To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- the safety of others; or
- suffer substantial emotional distress.

For the purposes of this definition—

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

D. Other Prohibited Sex-Based Misconduct

- **Sexual Exploitation:**¹⁶
 - a person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above,
 - for their own benefit or for the benefit of anyone other than the person being exploited.

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

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

¹⁶ This offense is not classified under Title IX as “Sexual Harassment,” but it is included here in this Policy as a tool to address a wider range of behaviors.

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

E. Other Prohibited Conduct

1) Retaliation:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the University, a student, employee, or a person authorized by the University to provide aid, benefit, or service under the University's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or

- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Processes under this Policy, including an Informal Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

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

2) Unauthorized Disclosure:¹⁷

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the University; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

3) Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of the Equal Opportunity Compliance Coordinator/Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Resolution Processes, including, but not limited to:
 - Destruction of or concealing of evidence
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - Intimidating or bribing a witness or party

¹⁷ Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, Support Advisors; or otherwise prepare for or participate in the Resolution Processes.

F. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Discrimination:** warning through expulsion or termination.
- **Discriminatory Harassment:** warning through expulsion or termination.
- **Quid Pro Quo Harassment:** warning through expulsion or termination.
- **Hostile Environment Harassment:** warning through expulsion or termination.
- **Rape:** suspension through expulsion or termination.
- **Fondling:** warning through suspension (termination for employees).
- **Incest:** warning through probation.
- **Statutory Rape:** warning through suspension (termination for employees).
- **Stalking:** probation through expulsion or termination.
- **Dating/Domestic Violence:** probation through expulsion or termination.
- **Sexual Exploitation:** warning through expulsion or termination.
- **Retaliation:** warning through expulsion or termination.
- **Unauthorized Disclosure:** warning through expulsion or termination.
- **Failure to Comply/Process Interference:** warning through expulsion or termination.

G. Consent, Force & Coercion, and Incapacitation

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

1) Consent

Consent is defined as:

- a mutual agreement that is
- knowing, and
- voluntary, and
- clearly communicated permission
- by word or action
- to engage in sexual activity.¹⁸

¹⁸ The state definition of consent, which is applicable to criminal prosecution for sex offenses in Pennsylvania (but differs from the definition used to address alleged violations of this Policy) is,

(a) General rule. The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense if such consent negates an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

(b) Consent to bodily injury. When conduct is charged to constitute an offense because it causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if: (1) the conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport; or

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

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

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

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

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

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

(2) the consent establishes a justification for the conduct under Chapter 5 of this title (relating to general principles of justification).

(c) Ineffective consent. Unless otherwise provided by this title or by the law defining the offense, assent does not constitute consent if: (1) it is given by a person who is legally incapacitated to authorize the conduct charged to constitute the offense; (2) it is given by a person who by reason of youth, mental disease or defect or intoxication is manifestly unable or known by the actor to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) it is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or (4) it is induced by force, duress or deception of a kind sought to be prevented by the law defining the offense.

18 Pa.C.S. § 311.

not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

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

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.¹⁹

2) **Force and Coercion**

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

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

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) **Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they

¹⁹ Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual. Kink refers to sexual behavior where the use of force or violence is consensual, and includes such behaviors as dominant/submissive behaviors, safe words, and BDSM.

lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

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

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

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

H. Unethical Relationships

The University does not have a policy prohibiting romantic or sexual relationships between members of the University community. However, the University does not permit an individual in a position of direct or indirect power or influence over another individual (for example, faculty over students or staff; supervisor over supervisee, graduate teaching assistant over undergraduate class participant, etc.) to engage in a romantic or sexual relationship with that individual without resolving the conflict of interest (that is, the position of power or influence). To engage in this kind of relationship puts the individual in the position of power or influence at risk for charges of sexual harassment and creates a situation that may result in discriminatory treatment of others. Accordingly, a supervisor should avoid developing a romantic or sexual relationship with an employee. Similarly, an instructor (e.g., advisor, course instructor, teaching assistant) should avoid developing a romantic or sexual relationship with a student taught, advised, or supervised by that instructor. If such a relationship does develop, it is a conflict of interest for the supervisor or instructor to continue in any type of supervisory role. In such a situation, the supervisor or instructor must arrange for alternative supervision of the employee or student. For example, a doctoral advisor should confer with the student and the faculty of their department to identify and recruit an alternate doctoral advisor. A supervisor and employee should work with their department and Human Resources for reassignment of the employee or supervisor to another department or to institute a change in the supervisory relationship.

It is the responsibility of the person in the supervisory role to report the conflict of interest directly to their supervisor and to resolve it in a manner satisfactory to the supervisor.

13. Supportive Measures

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

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

The Equal Opportunity Compliance Coordinator/Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge, a Report, or Formal Complaint/Complaint. At the time that supportive measures are offered, if a Complaint/Formal Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Complaint/Formal Complaint with the University either at that time or in the future. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

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

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact restrictions (no-contact orders) between the Parties

- Academic support, extensions of deadlines, or other course/program-related adjustments
- No Trespass or Persona Non Grata (PNG) orders
- Timely warnings issued by the Lehigh University Police Department in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Equal Opportunity Compliance Coordinator/Title IX Coordinator

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

14. Mandated Reporting and Confidential Employees

A. Mandated Reporters

All non-confidential staff, faculty, administrators, teaching assistants, graduate assistants, research assistants,²⁰ gryphons, and other designated University representatives are required to promptly report all known details of actual or suspected incidents of harassment (including sexual harassment), discrimination, retaliation, and other conduct prohibited by this Policy, that are brought to their attention by student(s) or that are reported to them or witnessed by them involving student(s). Such reports must be made to the Equal Opportunity Compliance Coordinator/Title IX Coordinator, who will address the report consistent with the procedures set forth below. Descriptions of the conduct prohibited by this Policy, including the definitions of harassment, sexual harassment, and discrimination, are contained in Section I.12 of this Policy.

Non-confidential staff, faculty, and administrators who serve in a supervisory role at the University are **required to promptly report** all known details of actual or suspected incidents of harassment (including sexual harassment), discrimination, retaliation, and other conduct prohibited by this Policy, that are brought to their attention by any member of the University community, including visitors. Such reports must be made to the Equal Opportunity Compliance Coordinator/Title IX Coordinator, who will address the report consistent with the procedures set forth below. Descriptions of the conduct prohibited by this Policy, including the definitions of harassment, sexual harassment, and discrimination, are contained in Section I.12 of this Policy.

²⁰ For this specific reporting requirement, undergraduate and graduate students are mandatory reporters only while they are actively serving in their role and fulfilling their responsibilities as a paid teaching assistant, graduate assistant, or research assistant. As such, when they are not serving in their paid role or acting in an official University capacity, they are not considered mandatory reporters at those times.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Equal Opportunity Compliance Coordinator/Title IX Coordinator.

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

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of this Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these employees will immediately pass Notice to the Equal Opportunity Compliance Coordinator/Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following reporting options are available for actual or suspected incidents of harassment, discrimination, retaliation, or other conduct prohibited by this Policy:

Equal Opportunity Compliance Coordinator/Title IX Coordinator
Office of Equal Opportunity & Title IX Compliance
Alumni Memorial Building
27 Memorial Drive W
Bethlehem, PA 18015
610-758-3535
eocc@lehigh.edu

[Discrimination, Harassment, Retaliation, or Bias Online Incident Reporting Form](#)

[Sexual Misconduct/Title IX Online Incident Reporting Form](#)

B. Confidential Employees/Resources

To enable Complainants to access support and resources without filing a Complaint/Formal Complaint, the University has designated specific employees as Confidential Resources. Those designated by the University as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with

the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or University official unless a Complainant has requested the information be shared.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Resources:

Confidential Campus Resources for Students

- University Counseling & Psychological Services
Johnson Hall, 4th Floor
610-758-3880
incso@lehigh.edu
- Chaplain's Office
The Dialogue Center
661 Taylor Street
610-758-3877
incha@lehigh.edu
- Health & Wellness Center
Johnson Hall, 3rd Floor
610-758-3870
inluhc@lehigh.edu

Confidential Campus Resources for Employees

- Employee Assistance Program
Health Advocate
866-799-2728
answers@HealthAdvocate.com

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

In addition, Complainants may speak with community partners and other individuals unaffiliated with the University without concern that this Policy will require those resources to disclose information to the University without the Complainant's permission.

- Crime Victims Council of the Lehigh Valley
801 Hamilton Street, Suite 300

Allentown, PA 18101
610-437-6610
610-437-6611 (24 hour hotline)
65 E. Elizabeth Avenue
Bethlehem, PA 18015
610-849-2446

- Turning Point of the Lehigh Valley
444 E. Susquehanna Street
Allentown, PA 18103
877-438-4957
TTY: 610-882-2465
610-437-3369 (24 hour hotline)
- Licensed professional counselors and other medical providers
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

Finally, those conducting human subjects research as part of a study approved by the University's Institutional Review Board ("IRB") are confidential in that information gathered as part of the study is not required to be reported.

C. Other Individuals

All members of the University community who are not in a situation where they are required to report are still strongly encouraged, although not required, to promptly report incidents of harassment (including sexual harassment), discrimination, retaliation, and other conduct prohibited by this Policy to the Equal Opportunity Compliance Coordinator/Title IX Coordinator. If a Report is not made in accordance with this Section, the University may be unaware of the incident and therefore unable to respond. If an individual does not want to report for fear of potential retaliation, please refer to Section I.12 above. When individuals are in doubt about their obligation to report an incident, they should consult with the Equal Opportunity Compliance Coordinator/Title IX Coordinator for guidance.

15. Standard of Proof

The University uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s). This standard means that there is a greater than 50 percent chance that a Policy violation has occurred. This standard requires a much lower level of proof than the beyond a reasonable doubt standard used for criminal matters.

16. Reports/Complaints of Discrimination, Harassment, and/or Retaliation

A Report provides Notice to the University of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Equal Opportunity Compliance Coordinator/Title IX Coordinator to provide information, resources, and supportive measures. A Complaint/Formal Complaint provides Notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a Report and may decide at a later time to make a Complaint/Formal Complaint. Reports or Complaints/Formal Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1) File a Report with, or give verbal Notice directly to, the Equal Opportunity Compliance Coordinator/Title IX Coordinator. Such a Report may be made by using the following methods:

- [Discrimination, Harassment, Retaliation, or Bias Online Incident Reporting Form](#)
- [Sexual Misconduct/Title IX Online Incident Reporting Form](#)
- Email – ineocc@lehigh.edu
- Telephone – 610-758-3535
- Mail – Office of Equal Opportunity & Title IX Compliance
Alumni Memorial Building
27 Memorial Drive W
Bethlehem, PA 18015

Anonymous Reports/Notice are accepted, but the Report/Notice may give rise to a need to try to determine the Parties' identities. Anonymous Report/Notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Reports/Notice.

2) File a Complaint/Formal Complaint with the Equal Opportunity Compliance Coordinator/Title IX Coordinator to move forward with a University process outlined in this Policy. Such a Complaint/Formal Complaint may be made by contacting the Equal Opportunity Compliance Coordinator/Title IX Coordinator, who will provide an online Complaint/Formal Complaint form to be completed.

Reporting carries no obligation to initiate a Complaint/Formal Complaint, and in most situations, the University is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint/Formal Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the University to discuss and/or provide supportive measures, in most circumstances.

3) Reports may also be made to the following University resources:

Lehigh University Police Department
321 E. Packer Avenue
Bethlehem, PA 18015
610-758-4200

University Gender Violence Support Advocates²¹
610-758-4763 (24 hour hotline)

17. Time Limits on Reporting

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

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

18. False Allegations and Evidence

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

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

19. Confidentiality/Privacy

The University makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint/Formal Complaint of discrimination, harassment, or retaliation; any Complainant; any individual who has been reported to be the

²¹ University Gender Violence Support Advocates (Advocates) work specifically with students experiencing any sex-based discrimination or sexual harassment; therefore, reports involving students and specifically sex-based discrimination or sexual harassment may be reported to the Advocates by Mandated Reporters.

perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX and the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations), or as required by law; including any investigation or resolution proceeding arising under these policies and procedures.^{22,23} Additional information regarding confidentiality and privacy can be found in Appendix C.

20. Unauthorized Disclosure of Information

Parties and Advisors (and Support Advisors) are prohibited from disclosing information obtained by the University through the Resolution Processes, to the extent that information is the work product of the University (meaning it has been produced, compiled, or written by the University for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of this Policy to publicly disclose institutional work product that contains a Party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions/disciplinary action.

21. Emergency Removal/Interim Actions/Leaves

A. Students

The University can act to remove a student Respondent accused of Sexual Harassment from its education programs or activities, partially or entirely, 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 University's Community Assessment Response & Evaluation Team (CARE Team) using its standard objective violence risk assessment procedures, in consultation with the Equal Opportunity Compliance Coordinator/Title IX Coordinator.

Students accused of other forms of discrimination and harassment (not Sexual Harassment) are subject to interim action, which can be imposed for safety reasons.

The Dean of Students or their designee will have authority under this Section and Article IV of the [Student Code of Conduct](#) to take emergency/interim action and will follow the process established under Article IV of the [Student Code of Conduct](#) to notify the Respondent and allow a challenge to the decision following the removal.

²² 20 U.S.C. 1232g.

²³ 34 C.F.R. § 99.

B. Employees

Employees are subject to existing procedures for interim actions and leaves.

22. Federal Timely Warning Obligations

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

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

23. Amnesty

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

It is in the best interests of the University community that Complainants choose to give Notice of misconduct to University officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

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

A. Students

The University also maintains an amnesty policy for students in addition to witnesses who offer help to others in need. The Medical Amnesty Policy can be found in Article III of the [Student Code of Conduct](#).

B. Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The University may, at its discretion, offer employee Complainants amnesty from such policy violations

(typically ,more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

24. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. Evidence can be preserved by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 96 hours of the incident (sooner is better).²⁴
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement).

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take time-stamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Equal Opportunity Compliance Coordinator/Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

²⁴ Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

25. Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking²⁵
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Lehigh University Police Department for publication in the Annual Security Report and daily campus crime log.

26. Independence and Conflicts of Interest

The Equal Opportunity Compliance Coordinator/Title IX Coordinator acts with independence and authority, free from bias and conflicts of interest. The Equal Opportunity Compliance Coordinator/Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Resolution Pool are vetted and trained to ensure they are not biased for or against any party in a specific Complaint/Formal Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Equal Opportunity Compliance Coordinator/Title IX Coordinator, contact the Associate Vice President, Human Resources, at 610-758-3900 or at inhro@lehigh.edu. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Equal Opportunity Compliance Coordinator/Title IX Coordinator.

27. Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual harassment/misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Equal Opportunity Compliance Coordinator/Title IX Coordinator reviews and updates these policies and procedures regularly.

²⁵ 42 U.S.C. Sections 13701 through 14040.

The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

28. Support Resources

Individuals impacted by discrimination, harassment, retaliation, or other prohibited conduct or by the procedures utilized to resolve allegations of these behaviors may find detailed information regarding University and community support resources at eocc.lehigh.edu/resources.

II. RESOLUTION PROCESSES FOR ALLEGED VIOLATIONS OF LEHIGH UNIVERSITY’S POLICY ON HARASSMENT AND NON-DISCRIMINATION (hereinafter the “Resolution Processes” or “Procedures”)

1. Overview

The procedures below apply to all allegations of discrimination on the basis of an actual or perceived protected characteristic, harassment, retaliation, or other Prohibited Conduct involving students, employees, or third parties.

2. Notice/Complaint

Upon receipt of a Report or Notice, a Complaint or Formal Complaint, or Knowledge of an alleged Policy violation, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will initiate a prompt initial evaluation to determine the University’s next steps. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed. The source of the Report/Notice, if not the Complainant, will be contacted to acknowledge receipt of the Report/Notice.

3. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other University policies not incorporated into this Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may consult with University officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of the Equal Opportunity Compliance Coordinator/Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in applicable University handbooks and policies.

4. Initial Evaluation

The Equal Opportunity Compliance Coordinator/Title IX Coordinator conducts an initial evaluation, typically within seven (7) business days of receiving Notice/Report/Complaint/Formal Complaint/Knowledge of alleged misconduct.²⁶ The initial evaluation typically includes:

²⁶ If circumstances require, the President or Associate Vice President of Human Resources will designate another person to oversee the applicable Resolution Process should an allegation be made about the Equal Opportunity

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
 - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether the University has jurisdiction over the reported conduct, as defined in the Policy.
 - If the conduct is not within University jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate University office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the applicable Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint/Formal Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the applicable Resolution Process described below, if a Complaint/Formal Complaint is made.

A. Helping a Complainant to Understand Resolution Options

If the Complainant indicates they wish to initiate a Complaint/Formal Complaint, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will help to facilitate the Complaint/Formal Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- a supportive and remedial response, and/or
- Informal Resolution,²⁷ or
- the applicable Resolution Process described below.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the applicable Resolution Process below, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator has determined the Policy applies

Compliance Coordinator/Title IX Coordinator or if the Equal Opportunity Compliance Coordinator/Title IX Coordinator is otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

²⁷ Per the 2020 Title IX regulations, the University is prohibited from Informal Resolution of a Formal Complaint by a student against an employee. In a case involving Sexual Harassment, a Formal Complaint must first be filed with the Title IX Coordinator before Informal Resolution may be pursued.

and that the University has jurisdiction, they will provide the Parties with a Notice of Investigation and Allegation(s) (NOIA) and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly (as appropriate).

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Equal Opportunity Compliance Coordinator/Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

B. Equal Opportunity Compliance Coordinator/Title IX Coordinator's Authority to Initiate a Complaint/Formal Complaint

If the Complainant does not wish to file a Complaint/Formal Complaint, the Equal Opportunity Compliance Coordinator/Title IX Coordinator, who has ultimate discretion as to whether a Complaint/Formal Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint/Formal Complaint themselves. To make this determination, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will evaluate the request to determine if there is a serious and imminent threat to someone's safety or if the University cannot ensure equal access without initiating a Complaint/Formal Complaint. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint/Formal Complaint:

- The Complainant's request not to initiate a Complaint/Formal Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint/Formal Complaint.
- The risk that additional acts of discrimination would occur if a Complaint/Formal Complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a University employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether the University could end the alleged discrimination and prevent its recurrence without initiating a resolution process.

If deemed necessary, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may consult with appropriate University employees, and/or conduct a violence risk assessment²⁸ to aid their determination whether to initiate a Complaint/Formal Complaint.

When the Equal Opportunity Compliance Coordinator/Title IX Coordinator initiates a Complaint/Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

5. **Dismissal**

A. Formal Complaint (Sexual Harassment)

Per the 2020 Title IX regulations,²⁹ the University **must** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy, even if proved; and/or
- 2) 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
- 3) The University does not have control of the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the University's education program or activity, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the University.³⁰

The University **may** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

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

²⁸ See detailed information regarding Violence Risk Assessment in [Appendix D](#).

²⁹ 34 C.F.R. Part 106.45.

³⁰ Such a Complainant is still entitled to supportive measures, but the Formal Grievance Process/Hearing Resolution is not available unless the Title IX Coordinator signs the Formal Complaint in the event the Complainant cannot/will not do so.

B. Complaint (All Other Prohibited Conduct)

The University **may** dismiss a Complaint if, at any time during the investigation or applicable Resolution Process, one or more of the following grounds are met:

- 1) The University is unable to identify the Respondent after taking reasonable steps to do so.
- 2) The University no longer enrolls or employs the Respondent.
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator declines to initiate a Complaint.
- 4) The University determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven.

An Investigator and/or a Decision-maker can recommend dismissal to the Equal Opportunity Compliance Coordinator/Title IX Coordinator if they believe the grounds are met. A Complainant who decides to withdraw a Complaint/Formal Complaint may later request to reinstate or refile it.

Upon any dismissal, the University will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the University will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

6. Appeal of Dismissal

The Complainant may appeal a dismissal of their Complaint/Formal Complaint. The Respondent may also appeal the dismissal of the Complaint/Formal Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint/Formal Complaint, the Equal Opportunity Compliance Coordinator/Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the University will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.

- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that affected the outcome of the matter.
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- 3) The Equal Opportunity Compliance Coordinator/Title IX Coordinator, Investigator(s), or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will share the petition with all other Parties and provide three (3) business days for other Parties and the Equal Opportunity Compliance Coordinator/Title IX Coordinator to respond to the request. At the conclusion of the response period, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties and/or the Equal Opportunity Compliance Coordinator/Title IX Coordinator, to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, if applicable, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, if applicable, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint/Formal Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Equal Opportunity Compliance Coordinator/Title IX Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Equal Opportunity Compliance Coordinator/Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will maintain documentation of all such consultation.

7. Emergency Removal/Interim Suspension of a Student

The University may emergency remove a student accused of Sexual Harassment upon receipt of Notice/Knowledge, a Report or Complaint/Formal Complaint, or at any time during the applicable Resolution Process. Prior to an emergency removal, the University will conduct an individualized risk assessment and may remove the student if that assessment determines that an immediate threat to the physical health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action. Students accused of other forms of discrimination and harassment (not Sexual Harassment) are subject to interim action, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within three (3) business days of the notification. The challenge must be submitted in writing to the Dean of Students, showing cause as to why the removal/action should not be implemented or should be modified. The Dean of Students or their designee will provide their decision in writing to the affected student as soon as reasonably possible after receiving the challenge.

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 or interim suspension is appropriate, should be modified, or lifted. When this meeting is not requested within three (3) business days, objections to the emergency removal or interim suspension will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Dean of Students, in consultation with the Equal Opportunity Compliance Coordinator/Title IX Coordinator, determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Dean of Students for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Dean of Students will communicate the final decision in writing, typically within three (3) business days of the review meeting.

8. Placing an Employee on Leave

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

9. Counter-Complaints

The University is obligated to ensure that the applicable Resolution Process is not abused for retaliatory purposes. Although the University permits the filing of counter-complaints, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the applicable Resolution Process below. At the Equal Opportunity Compliance Coordinator/Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint/Formal Complaint.

10. Advisors in the Resolution Process

A. Who Can Serve as an Advisor?

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the applicable Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.³¹

Parties must have Advisors for all pre-hearing meetings and the live hearing in the Hearing Resolution Process. If a party does not select their own Advisor, the University will assign a trained Advisor to them. An assigned Advisor will be familiar with the University's resolution processes. The Equal Opportunity Compliance Coordinator/Title

³¹ "Available" means the party cannot insist on an Advisor who simply does not have inclination, time, or availability to engage in the role or the applicable Resolution Process. The Advisor cannot have institutionally conflicting roles, such as being member of the Board of Trustees of the University, an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts 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 Decision-maker(s).

IX Coordinator may elect to utilize qualified external organizations and/or individuals to serve as Advisors.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator may decide to maintain a list of trained Advisors that can be provided to the Parties if the Parties would like to choose someone from that list. If the Parties choose an Advisor from a pool available from the University, the University will have trained the Advisor and familiarized them with the University's Resolution Processes.

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 to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Equal Opportunity Compliance Coordinator/Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The University permits Parties to have an Advisor and a Support Advisor. More information about Support Advisor is contained below. If a party decides to engage an Advisor and a Support Advisor, the party must notify the Equal Opportunity Compliance Coordinator/Title IX Coordinator which Advisor will serve as the primary Advisor, meaning that Advisor is responsible for cross-examination at a live hearing and will be the main point of contact copied on any relevant correspondence during the Hearing Resolution Process.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the University will copy both the party and their Advisor on all communications.

Advisors appointed by the University cannot be Confidential Employees. Although Advisors will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

B. Advisor's Role in the Resolution Processes

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Processes. 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.

Under the 2020 Title IX regulations, a form of indirect questioning is required during the live hearing in the Formal Grievance/Hearing Resolution Process, but must be conducted by the Parties' Advisors. The Parties are not permitted to directly question 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 questioning of the Parties and witnesses.

C. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the University shares with them, per [Section I.19](#) of the Policy addressing Confidentiality. Advisors may not disclose any University work product or evidence the University obtained solely through the Resolution Process for any purpose not explicitly authorized by the University.

The University may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

D. Advisor Expectations

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings/interviews when planned, but the University may change scheduled meetings/interviews to accommodate an Advisor's inability to attend, if the Advisor's inability to attend is not habitual and does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party. Advisors are expected to advise without disrupting proceedings.

E. Advisor Policy Violations

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the University's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including the University requiring the party to use a different Advisor or providing a different University-appointed Advisor. Subsequently, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

11. Support Advisor in the Resolution Process

A. Who Can Serve as a Support Advisor?

The Parties may each have a Support Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) in addition to an Advisor present with them for all meetings and interviews within the Resolution Processes, including intake. The Support Advisor may not be a witness or Advisor in the same Resolution Process. Otherwise, the Parties may select whomever they wish to serve as their Support Advisor as long as the Support Advisor is eligible and available.³²

A party may elect to change Support Advisors during the process and is not obligated to use the same Support Advisor throughout. Parties are expected to provide the Equal Opportunity Compliance Coordinator/Title IX Coordinator with timely notification if they change Support Advisors. If a party changes their Support Advisor, consent to share information with the previous Support Advisor is assumed to be terminated, and a Family Educational Rights & Privacy Act (FERPA) release for the new Support Advisor must be submitted.

The University permits Parties to have an Advisor and a Support Advisor. The Support Advisor may not act as both Advisor and Support Advisor in any capacity during the same Resolution Process. If a party decides to engage an Advisor and a Support Advisor, the party must notify the Equal Opportunity Compliance Coordinator/Title IX Coordinator which Advisor will serve as the primary Advisor, meaning that Advisor is responsible for cross-examination at a live hearing and will be the main point of contact

³² "Available" means the party cannot insist on a Support Advisor who simply does not have inclination, time, or availability to engage in the role or the applicable Resolution Process. The Support Advisor cannot have institutionally conflicting roles, such as being a member of the Board of Trustees of the University, an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing a Support Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses a Support Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

copied on any relevant correspondence during the Hearing Resolution Process. More information about Advisors is contained above.

The University, as a practice, will not include the Support Advisor on any communication sent to the Complainant or Respondent. A Complainant or Respondent may share information with the Support Advisor if they choose to do so.

B. Support Advisor's Role in the Resolution Processes

A Support Advisor may accompany a Complainant or Respondent to any meeting or interview related to an investigation. The Support Advisor provides support (such as emotional support) during the process, and may alert the Equal Opportunity Compliance Coordinator/Title IX Coordinator, Investigator, Decision-maker, and/or Advisor of any physical or emotional needs of the Respondent or Complainant during a meeting or interview or alert them to acts of retaliation.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. The Support Advisor generally may not speak on behalf of their Complainant or Respondent, but may check-in on the emotional needs of their Complainant or Respondent, 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 Support Advisors should ask for breaks to allow for private consultation.

The Support Advisor may not stand in for or otherwise represent the Complainant or Respondent at any meeting or interview. The Support Advisor may not contact a witness or other party participating in the applicable Resolution Process or otherwise impede the investigation process.

C. Information Shared With Support Advisors

Support Advisors are not entitled to the same opportunity as the Complainant or Respondent and their Advisors to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Support Advisors are expected to maintain the confidentiality of all information they learn from the University during the applicable Resolution Process, per [Section I.19](#) of the Policy addressing Confidentiality. Support Advisors may not disclose any University work product or evidence the University obtained solely through the applicable Resolution Process for any purpose not explicitly authorized by the University.

The University may restrict the role of any Support Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

D. Support Advisor Expectations

The University generally expects a Support Advisor to adjust their schedule to allow them to attend University meetings/interviews when planned, but the University may change scheduled meetings/interviews to accommodate a Support Advisor's inability to attend, if the Support Advisor's inability to attend is not habitual and does not cause an unreasonable delay.

The University may also make reasonable provisions to allow a Support Advisor who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies.

All Support Advisors are subject to the same University policies and procedures. Support Advisors are expected to provide emotional support and assistance without disrupting proceedings.

E. Support Advisor Policy Violations

Any Support Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the University's established rules of decorum will be warned. If the Support Advisor continues to disrupt or otherwise fails to respect the limits of the Support Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including the University requiring the party to use a different Support Advisor. Subsequently, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine how to address the Support Advisor's non-compliance and future role.

12. Resolution Options Overview

Resolution processes consist of Informal Resolution or the Administrative Resolution or Hearing Resolution/Formal Grievance Process. The Hearing Resolution/Formal Grievance Process contained in this Policy is the University's primary resolution approach in cases involving Sexual Harassment unless Informal Resolution is elected by all Parties and the University.

Informal Resolution and/or the Administrative Resolution are the University's chosen approach for addressing all other forms of discrimination on the basis of protected characteristics, harassment, retaliation, and other Prohibited Conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the Equal Opportunity Compliance Coordinator/Title IX Coordinator's discretion. The determination concerning the application of the Administrative Resolution or Hearing Resolution is based on the protected characteristic(s) implicated and applicable laws and regulations.

Resolution proceedings are private. All individuals present at any time during the applicable Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with this Policy. While the University expects Parties to maintain the privacy of information that the Investigator(s) shares with Parties during interviews, the Parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the Parties agree not to disclose as part of an Informal Resolution. The University encourages Parties to discuss this with their Advisors before doing so.

A. Informal Resolution

In cases involving Sexual Harassment, a Complainant must first submit a Formal Complaint before Informal Resolution can be initiated. In all other cases under this Policy, it is not required that a Complainant file a Complaint prior to the initiation of Informal Resolution. To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Equal Opportunity Compliance Coordinator/Title IX Coordinator at any time prior to a final determination, or the Equal Opportunity Compliance Coordinator/Title IX Coordinator may offer the option to the Parties, in writing.

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.

Before initiation of an Informal Resolution process, the University will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the University's applicable Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the applicable Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.
- What information the University will maintain, and whether and how it could disclose such information for use in its applicable Resolution Process.

The University offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Equal Opportunity Compliance Coordinator/Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.

- 2) **Educational Conversation.** When the Equal Opportunity Compliance Coordinator/Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and University are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative or Hearing Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative or Hearing Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative or Hearing Resolution Process, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Equal Opportunity Compliance Coordinator/Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Categories of Informal Resolution

1) Supportive Resolution

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the University's education program or activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may also provide

reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator does not initiate a Complaint.

2) Educational Conversation

The Complainant(s) may request that the Equal Opportunity Compliance Coordinator/Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

3) Accepted Responsibility³³

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the applicable Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine whether all Parties and the University are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Equal Opportunity Compliance Coordinator/Title IX Coordinator implements the accepted finding that the Respondent is in violation of University Policy, implements agreed-upon restrictions

³³In [Section II.21](#) below, there is a description of a process to waive the decision-making step of the applicable Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section II.21, in contrast, is unilateral. Neither the Complainant nor the Equal Opportunity Compliance Coordinator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. Under Section II.21, the outcome involves sanctioning imposed by the University, rather than an agreement to self-sanction, as outlined in this section.

and remedies, and determines the appropriate responses in coordination with other appropriate University officials, as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the applicable Resolution Process will either continue or resume.³⁴

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

4) Alternative Resolution

The University offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Equal Opportunity Compliance Coordinator/Title IX Coordinator or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint

³⁴ The Parties may not want discussions that take place within Informal Resolution to be admissible in a later Resolution Process, but essential facts must and do transfer from the informal process to subsequent resolution proceedings.

- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Equal Opportunity Compliance Coordinator/Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator maintains records of any resolution that is reached. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the applicable Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the University will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

B. Hearing Resolution Process (see Section II.23 below)

C. Administrative Resolution Process (see Section II.24 below)

13. Resolution Process Pool

The Resolution Process relies primarily on a pool of University officials ("the Pool") to carry out the process.³⁵

³⁵ External, trained third-party neutral professionals may also be used to serve in Pool roles. If external, trained third-party neutral professionals are designated to serve in any of these roles, the number of individuals needed to fill the particular role(s) may be altered to require less individuals due to the expertise and experience of the external professionals.

A. Pool Member Roles

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Equal Opportunity Compliance Coordinator/Title IX Coordinator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

B. Pool Member Appointment

The Equal Opportunity Compliance Coordinator/Title IX Coordinator appoints the Pool, which acts with independence and impartiality. The appointment process may involve the submission of an application and/or an interview/selection process. Although members of the Pool are typically trained³⁶ in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, the University can also designate permanent roles for individuals in the Pool.

C. Impartiality

Any individual materially involved in the administration of a resolution process including the Equal Opportunity Compliance Coordinator/Title IX Coordinator, facilitator for Informal Resolution options, Investigator(s), Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will vet the assigned Investigator(s), facilitator for Informal Resolution options, and Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the resolution process, the Parties may raise a concern regarding bias or conflict of interest, and the Equal Opportunity Compliance Coordinator/Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another qualified individual will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Equal Opportunity Compliance Coordinator/Title IX Coordinator, concerns should be raised with the Associate Vice President of Human Resources.

³⁶ Information about annual training for Pool members is available in Appendix E.

14. Notice of Investigation and Allegations (NOIA)

Prior to an investigation, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will provide the Parties with a detailed written NOIA. The Complainant will be provided with advance notice regarding when the NOIA will be delivered to the Respondent. The Complainant will be copied on the notice sent to the Respondent. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- If already identified, the name(s) of the Investigator(s), along with a process to notify the Equal Opportunity Compliance Coordinator/Title IX Coordinator of any conflict of interest that the Investigator(s) may have in advance of the interview process,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all relevant and directly related evidence obtained during the review and comment period
- A statement of the potential sanctions/responsive actions that could result
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share University work product obtained through the applicable Resolution Process
- A statement that the Parties may each have an Advisor of their choice and/or Support Advisor of their choice who may accompany them through all steps of the applicable Resolution Process
- A statement informing the Parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the applicable Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the applicable Resolution Process
- A link to the University's VAWA Brochure

- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) 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, the notification will be presumptively delivered.

15. Resolution Timeline

The University will make a good faith effort to complete the applicable Resolution Process within ninety (90) business days, including any appeals, which the Equal Opportunity Compliance Coordinator/Title IX Coordinator can extend as necessary for appropriate cause. Some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors. The Parties will receive regular updates on the progress of the applicable Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

If a party or witness chooses not to participate in the applicable Resolution Process or becomes unresponsive, the University reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the applicable Resolution Process.

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 health conditions. The University will promptly resume its applicable Resolution Process as soon as feasible. During such a delay, the University will implement and maintain supportive measures for the Parties as deemed appropriate.

University action(s) or processes 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.

The University will make a good faith effort to complete the applicable Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

16. Ensuring Impartiality

The Resolution Processes involve an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that 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. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

17. Investigator Appointment

Once an investigation is initiated, the Equal Opportunity Compliance Coordinator/Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the University's community. Typically, a team of two Investigators will be assigned to conduct the investigation.

18. Witness Role and Participation in the Investigation

Employee and student witnesses and witnesses from outside the University community cannot be required to participate but are encouraged to cooperate with University investigations and to share what they know about a Complaint/Formal Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The University will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

19. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Resolution Process. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

20. Evidentiary Considerations

Neither the investigation nor the determination/hearing will consider:

- 1) Incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or
- 2) Questions and evidence about the Complainant's sexual predisposition; or
- 3) Questions and evidence about the Complainant's 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 not be used as evidence unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

As discussed below, a Sanction Statement may also be submitted prior to the determination/hearing for the consideration of the Decision-maker at the sanctioning stage of the process when a determination of responsibility has been reached.

Within the limitations stated above, the investigation and determination/hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

21. Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the applicable Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

22. Investigation

All investigations are adequate, thorough, reliable, impartial, prompt, and fundamentally fair. They involve interviewing all relevant Parties and witnesses, obtaining available relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification,

objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

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 University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

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

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Equal Opportunity Compliance Coordinator/Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential Policy violation.
- Work with the Equal Opportunity Compliance Coordinator/Title IX Coordinator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues, preparing witness and evidence lists, and determining the order of interviews for the Parties and witnesses and the timeframe of the investigation.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.

- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if applicable) with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors (if applicable) an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Equal Opportunity Compliance Coordinator/Title IX Coordinator and/or legal counsel for their review and feedback.

23. Hearing Resolution Process

The Hearing Resolution Process is used for all Formal Complaints of Sexual Harassment or when Informal Resolution is either not elected or is unsuccessful in such matters.

The Hearing Resolution Process consists of a hand-off of the investigation report and all relevant evidence to a Decision-maker who makes a finding and determines sanctions (if applicable) after a live hearing.

At the discretion of the Title IX Coordinator, the assigned Decision-maker will be an individual or a three-member panel drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution.³⁷ If a panel is used, a voting chair will be designated by the Title IX Coordinator. The Decision-maker will have had no previous involvement with the investigation. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met.

The Hearing Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

³⁷ The choice of a single Decision-maker or panel should generally be consistent for the same types of Formal Complaints, and not vary Formal Complaint-by-Formal Complaint.

A. Live Hearing Requirements

- **Hearing Venue Options and Recordings.** The live hearing may occur in person or via video technology (such as Zoom, Skype, Microsoft Teams, etc.). The Decision-maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator's discretion. The default hearing venue is video technology.
 - The Parties may make a request to the Title IX Coordinator that the hearing be held in person or via video technology, but they must do so at least five (5) business days prior to the hearing with an explanation of the rationale for the request. The Title IX Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
 - All hearings (but not deliberations) will be recorded by the University. The Parties, their Advisors, the Decision-maker, and appropriate University administrators will be permitted to review the recording or review a transcript of the recording from the Title IX Coordinator following the live hearing.
 - The Parties may not record the proceedings and no unauthorized recordings are permitted.
- **Scheduling.** 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, including during the summer, as needed, to meet the University's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month positions are still expected to participate in Resolution Processes that occur during this time period.
- **Hearing Participants.** Persons who may be present for a hearing include the Decision-maker(s), hearing facilitator, Investigator(s), the Parties and their Advisors, Support Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-maker and/or Title IX Coordinator. 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. Witnesses are present only during their portion of the testimony.
- **Advisors.** The Parties may have the assistance of an Advisor of their choosing at the hearing or can request that the University appoint a trained Advisor for them. Appointed Advisors may or may not be attorneys. If a party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves. A party must be accompanied by an Advisor at all pre-hearing meetings and at the hearing itself.
 - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor and one Support Advisor. No other persons (e.g.,

additional Advisors, Support Advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.

- Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a manner consistent with this Policy.
- All questions during the hearing will be asked by the Decision-maker. Parties and Advisors may suggest questions to be posed by the Decision-maker during the pre-hearing meetings or by submission of written questions during the hearing. The method of submitting questions to the Decision-maker will be specified by the Decision-maker during the pre-hearing meetings.
- **Sanction Statements.** Each party may submit a sanction statement to the Title IX Coordinator that the Decision-maker will review during any sanction determination.
 - Upon receipt of a sanction statement, the Title IX Coordinator will review the sanction statement to determine whether any immediate needs exist.
 - The Title IX Coordinator will only provide the sanction statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Title IX Coordinator shares the sanction statements with the Decision-maker, they will also be shared with the Parties.
- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- **Conflicts of Interest or Bias.** The Decision-maker must not have a bias for or against complainants or respondents generally or the individual Complainant or Respondent in particular.
 - The Decision-maker must recuse themselves if such bias or conflict of interest exists.
 - If the Decision-maker believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
 - The Parties may raise challenges that the Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator no later than two (2) business days prior to the hearing.
 - The Title IX Coordinator will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
 - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker and Parties.**
 - The Decision-maker will be provided electronic copies of the Final Investigation Report and all directly related evidence, including the names of all Parties, witnesses, and Advisors, at least ten (10) business days in advance of the hearing.

- The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.

B. Hearing Notice

The Title IX Coordinator will send the Parties a Notice of Hearing with sufficient time for the Parties to prepare for the hearing after the final investigation report has been transmitted to the Parties and the Decision-maker, typically at least ten (10) business days prior to the hearing unless the Parties and the Decision-maker agree to an expedited timeline. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The hearing notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- A description of any technology that will be used to facilitate the hearing and how the hearing will be recorded and the recording made available to the Parties after the hearing.
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report and any other materials provided to the Decision-maker about the Formal Complaint unless previously provided to the Parties, the Parties and witnesses participating in the hearing, notification that if any party or witness does not appear at the scheduled hearing that the hearing may be held in their absence, the identity of the Decision-maker, how to raise objections to the identified Decision-maker, details related to questioning, the role of Advisors, sanction statements, and how to request disability accommodations or other assistance.

C. Witness Participation

Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. Witnesses are not permitted to be accompanied by an Advisor or a Support Advisor without express permission of the Title IX Coordinator. At the discretion of the Decision-maker, a witness may join by phone or other comparable method if no other reasonable alternative is available.

The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule 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 Decision-maker assent to the new witness's participation in the hearing without remanding the Formal Complaint back to the Investigator(s). The same holds true for any Relevant Evidence that is first offered at the hearing.

If the above criteria are not met, but the witness's evidence is deemed relevant, not impermissible, and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing; and/or
- Instruct that the investigation needs to be reopened to consider that evidence.³⁸

D. Pre-Hearing Meetings

The Decision-maker (the Chair, if a panel serves as the Decision-maker) will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and Support Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Parties from submitting a question at the hearing for the first time or asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-maker/Chair will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Decision-maker/Chair, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor/Support Advisor, and can be done remotely, or as a written communication exchange. The Decision-maker/Chair will work with the Parties to establish the format and timing of the meetings and will

³⁸ 34 C.F.R. 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

circulate a summary of any rulings made to ensure all Parties and Advisors/Support Advisors are aware.

E. Hearing Procedures

1. Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completing the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker/Chair for relevance. If deemed relevant and not impermissible, the Parties and Decision-maker/Chair must agree to admit it into the record. If the evidence is deemed not relevant or impermissible, the Decision-maker/Chair may proceed with the hearing absent the new evidence.

If the above criteria are not met, but the evidence is deemed relevant, not impermissible, and not duplicative, the Decision-maker/Chair may, at their discretion, engage in any of the following actions:

- Delay the hearing; and/or
- Instruct that the investigation needs to be reopened to consider that evidence.³⁹

2. Collateral Misconduct

The Decision-maker has the authority to hear and make determinations on all allegations of Sexual Harassment under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with Sexual Harassment, even though those collateral allegations may not specifically fall within the Policy.

3. Joint Hearings

In Formal Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person 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 or Complainant 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 and/or for each Complainant with respect to each alleged Policy violation.

³⁹ 34 C.F.R. 668.46(k)(3)(B)(3) requires “timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.”

4. Introductions and Hearing Procedure Explanation

The Decision-maker/Chair will explain the hearing procedures and introduce the participants. Participants at the hearing will include the Decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the Parties (or one (1) organizational representative when an organization is the Respondent), Advisors to the Parties, Support Advisors to the Parties, any called witnesses, and anyone providing authorized accommodations, interpretation, and/or assistive services. The Title IX Coordinator may attend the hearing.

The Decision-maker/Chair will answer any procedural questions prior to and as they arise throughout the hearing. The non-voting hearing facilitator will oversee the administrative elements of the hearing and may be the Title IX Coordinator or be appointed by the Title IX Coordinator.

5. Investigator Presentation of Final Investigation Report

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties through their Advisors. If more than one Investigator conducted the investigation, only one Investigator needs to attend to present the Final Investigation Report and to be available for questions. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker/Chair's discretion.

Neither the Parties nor the Decision-maker should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and Parties will refrain from discussion or questions for Investigator(s) about these assessments. If such information is introduced, the Decision-maker/Chair will direct that it be disregarded.

6. Testimony and Questioning

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-maker/Chair. The Decision-maker/Chair will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through their Advisors.

All questions are subject to a relevance determination by the Decision-maker/Chair before they are asked. The Decision-maker/Chair will determine the method by which the Parties will submit their questions to the Decision-maker/Chair for their review and, if approved, to be posed. Questions that the Parties wish to have posed can be questions for that party themselves, another party, or witnesses.

The Decision-maker/Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker/Chair will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive. The Decision-maker/Chair has final say on all questions and determinations of relevance and appropriateness. The Decision-maker/Chair may consult with legal counsel on any questions of admissibility.

The Decision-maker then allows the relevant Advisor to pose the questions deemed relevant, not impermissible, and appropriate to the party and/or witness.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Decision-maker/Chair will allow witnesses who have relevant information to appear at the portion of the hearing appropriate for the witness to respond to specific questions from the Decision-maker and the Parties, and the witnesses will then be excused.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker/Chair may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for Investigator bias.

The Decision-maker will allow witnesses who have relevant and not impermissible information to appear at a portion of the hearing to respond to specific questions from the Decision-maker and the Parties, and the witnesses will then be excused.

7. Refusal to Submit to Questioning and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on the available relevant evidence and not impermissible evidence in making the ultimate determination of responsibility. The Decision-maker may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions.

An Advisor or Support Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor/Support Advisor unless the party being advised consents to that information being shared.

8. Hearing Recordings

The University records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate University officials will be permitted to review the recording or review a transcript of the recording upon request to the Equal Opportunity Compliance Coordinator/Title IX Coordinator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

9. Deliberation and Determination

After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the preponderance of the evidence standard of proof. If a panel is used, a simple majority vote is required to determine the finding. Deliberations are not recorded. The hearing facilitator may be invited to attend the deliberation by the Decision-maker/Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility for one or more of the allegations, the Decision-maker may then consider any previously submitted sanction statement(s) provided by the Parties in determining appropriate sanction(s). The Title IX Coordinator will ensure that any submitted statements are exchanged between the Parties if they are viewed by the Decision-maker. Sanction statements do not influence the finding, they only potentially influence the sanctions.

The Decision-maker will also review any pertinent conduct history provided by the appropriate administrator and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-maker will then prepare and provide the Title IX Coordinator with a written outcome letter detailing all findings and final determinations, the rationale(s) explaining the decision(s), the relevant and not impermissible evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s).

This statement is usually five to fifteen (5-15) pages in length and is typically submitted to the Equal Opportunity Compliance Coordinator/Title IX Coordinator within ten (10) business days from the conclusion of the hearing, unless the Title IX Coordinator grants an extension. The Title IX Coordinator will notify the Parties of any extension.

24. Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and other Prohibited Conduct (as defined in Policy) that do not involve Sexual Harassment, or when Informal Resolution is either not elected or is unsuccessful in such matters.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Equal Opportunity Compliance Coordinator/Title IX Coordinator, the assigned Decision-maker will be an individual or a panel drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution.⁴⁰ If a panel is used, a voting chair will be designated by the Equal Opportunity Compliance Coordinator/Title IX Coordinator. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Equal Opportunity Compliance Coordinator/Title IX Coordinator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

A. Investigator-led Questioning Meetings

- The Equal Opportunity Compliance Coordinator/Title IX Coordinator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.
- The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
 - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.
 - The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.

⁴⁰ The choice of a single Decision-maker or panel should generally be consistent for the same types of Complaints, and not vary Complaint-by-Complaint.

- The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.
 - For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).
- Typically, within three (3) business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties and the Decision-maker for their review. The Parties will then have five (5) business days to review these recordings or transcripts and propose any follow-up questions for the Investigator to ask. The Decision-maker may also propose additional follow-up questions for the Investigator to ask.
- The Investigator will review the proposed questions with the Decision-maker to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker.
- The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
- The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator will then share the Final Investigation Report with the Equal Opportunity Compliance Coordinator/Title IX Coordinator and/or legal counsel for their review and feedback.
- The Investigator will then provide the Equal Opportunity Compliance Coordinator/Title IX Coordinator with the Final Investigation Report and investigation file.

B. The Decision-maker's Determination

- The Equal Opportunity Compliance Coordinator/Title IX Coordinator will provide the Decision-maker, the Parties, and their Advisors (if applicable) with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.
- The Decision-maker will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:

- To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
- At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
- The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions.
- **Timeline.** The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.
- **Sanction Statements.** Prior to a determination, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will also provide the Parties with an opportunity to submit a written sanction statement. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Sanction Statements from the Equal Opportunity Compliance Coordinator/Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

25. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

The Decision-maker may consult with other appropriate administrators regarding sanctions as appropriate.

The sanctions will be implemented as soon as it is feasible once a determination is final, 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.

A. Student Sanctions

Responsive actions for a student who is found to have violated this Policy are set forth in Article VII of the [Student Code of Conduct](#).

B. Student Group and Organization Sanctions

Responsive actions for a student group or organization that is found to have violated this Policy are set forth in Article VII of the [Student Code of Conduct](#).

C. Employee Sanctions/Responsive/Corrective Actions

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

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination⁴¹
- Other Actions: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

⁴¹ A move for dismissal of a tenured member of the faculty requires a special procedure involving the Board of Trustees, as per the Rules and Procedures of the Faculty.

26. Notice of Outcome

Within ten (10) business days of the conclusion of the applicable Resolution Process and associated deliberations by the Decision-maker, the Equal Opportunity Compliance Coordinator/Title IX Coordinator provides the Parties with a written outcome notification (Notice of Outcome). The Notice of Outcome will specify the finding for each alleged Policy violation, all applicable sanctions that the University is permitted to share pursuant to state or federal law, a detailed rationale, written by the Decision-maker, supporting the findings to the extent the University is permitted to share under federal or state law, and a description of the procedural steps taken by the University from the receipt of the Notice/Knowledge/Report/Complaint/Formal Complaint to the determination.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official University records, or emailed to the Parties' University-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

27. Withdrawal or Resignation While Charges are Pending

A. Students

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from the University, the applicable Resolution Process may continue, or the Equal Opportunity Compliance Coordinator/Title IX Coordinator may exercise their discretion to dismiss the Complaint/Formal Complaint. If the Complaint/Formal Complaint is dismissed, the University will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Complaint/Formal Complaint is dismissed or pursued to completion of the applicable Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to the University in any capacity until the Complaint/Formal Complaint is

resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Equal Opportunity Compliance Coordinator/Title IX Coordinator has discretion to dismiss the Complaint/Formal Complaint. The appropriate University offices may be notified accordingly.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the applicable Resolution Process may continue remotely. If found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with the University with unresolved allegations pending, the applicable Resolution Process may continue, or the Equal Opportunity Compliance Coordinator/Title IX Coordinator may exercise their discretion to dismiss the Complaint/Formal Complaint. If the Complaint/Formal Complaint is dismissed, the University may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Complaint/Formal Complaint is dismissed, the employee may not return to the University in any capacity. The appropriate University offices will be notified accordingly. A note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the University. The records retained by the Equal Opportunity Compliance Coordinator/Title IX Coordinator will reflect that status.

28. Appeal of the Determination

The Equal Opportunity Compliance Coordinator/Title IX Coordinator will designate an Appeal Decision-maker – either a three-member panel or an individual chosen from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker(s) will have been previously involved in the applicable Resolution Process for the Complaint/Formal Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process. If a panel is used, a voting chair will be designated by the Equal Opportunity Compliance Coordinator/Title IX Coordinator.

A. Appeal Grounds

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter.

- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- 3) The Equal Opportunity Compliance Coordinator/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.
- 4) The sanction(s) is inappropriate (i.e., unduly harsh or unduly lenient).

B. Request for Appeal

Any party may submit a written request for appeal (“Request for Appeal”) to the Equal Opportunity Compliance Coordinator/Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker (or the Appeal Decision-maker Chair, if a panel is utilized) for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed. The Appeal Decision-maker/Chair may consult with appropriate individuals to assist with the Review for Standing of the Request for Appeal.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker/Chair, and the Parties and their Advisors (if applicable) will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker/Chair will notify all Parties and their Advisors (if applicable), the Equal Opportunity Compliance Coordinator/Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors (if applicable), the Equal Opportunity Compliance Coordinator/Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker/Chair will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker/Chair to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Equal Opportunity

Compliance Coordinator/Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors (if applicable) will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker/Chair will collect any additional information needed and all documentation regarding the approved appeal grounds and the subsequent responses and will promptly render a decision. If the Appeal Decision-maker is a panel, the Chair will share all information and documentation with the panel.

C. Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, 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. All decisions are made by majority vote and apply the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Equal Opportunity Compliance Coordinator/Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Equal Opportunity Compliance Coordinator/Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and/or Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the University is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the University is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent addresses indicated in official institutional records, or emailed to the Parties’ University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the four (4) available appeal grounds.

E. Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within three (3) business days of implementation.

If the original sanction(s) includes separation in any form, the University may place a hold on official transcripts, diplomas, graduations, course registrations, etc., pending the outcome of the appeal. The Respondent may request a stay of these holds from the Equal Opportunity Compliance Coordinator/Title IX Coordinator within three (3) business days of the notice of sanctions. The request will be evaluated by the Equal Opportunity Compliance Coordinator/Title IX Coordinator or their designee, whose determination is final.

29. Long-Term Remedies/Other Actions

Following the conclusion of the applicable Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the University community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Equal Opportunity Compliance Coordinator/Title IX Coordinator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will address any remedies the University owes the Respondent to ensure no effective denial of educational access.

The University will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the University's ability to provide these services.

30. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Equal Opportunity Compliance Coordinator/Title IX Coordinator's satisfaction.

31. Recordkeeping

For a period of at least seven (7) years⁴² following the conclusion of the applicable Resolution Process, the University will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- 2) Any disciplinary sanctions imposed on the Respondent.
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's education program or activity.
- 4) Any appeal and the result therefrom.
- 5) Any Informal Resolution and the result therefrom.
- 6) All materials used to provide training to the Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the University's Resolution Processes, or who has the authority to modify or terminate supportive measures. The University will make these training materials available for review upon request.
- 7) All materials used to train all employees consistent with the requirements in the Title IX Regulations.

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

32. Accommodations and Support During the Resolution Process

Disability Accommodations

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.

⁴² In certain instances, the University may retain records longer than seven (7) years, pursuant to its record retention policies and procedures. For example, pursuant to the Office of Student Conduct & Community Expectation's [Records Retention and Release Policy](#), disciplinary records are maintained indefinitely.

Anyone needing such accommodations or support should contact the Equal Opportunity Compliance Coordinator/Title IX Coordinator, who will work with Disability Support Services (students) or the Accommodations Specialist (employees) as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Other Support

The University will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Processes
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Processes

33. Revision of these Procedures

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Equal Opportunity Compliance Coordinator/Title IX Coordinator will regularly review and update these procedures. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing 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 governing laws, regulations, or court holdings.

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

These procedures are effective as of August 1, 2024.

BASED ON THE ATIXA 2024 ONE POLICY, ONE PROCEDURE (1P1P) MODEL.

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APPENDIX A: [THE PRINCIPLES OF OUR EQUITABLE COMMUNITY](#)

THE PRINCIPLES OF OUR EQUITABLE COMMUNITY

Lehigh University is first and foremost an educational institution, committed to **developing the future leaders of our changing global society**. Every member of our community has a personal responsibility to acknowledge and practice the following basic principles:

We **affirm the inherent dignity** in all of us, and we maintain an inclusive and equitable community.

We **recognize and celebrate** the richness contributed to our lives by our diverse community.

We **promote mutual understanding** among the members of our community.

We **confront and reject discrimination in all its forms**, including that based on age, color, disability, gender identity, genetic information, marital status, national or ethnic origin, political beliefs, race, religion, sex, sexual orientation, socio-economics, veteran status, or any differences that have been excuses for misunderstanding, dissension, or hatred.

We **affirm academic freedom** within our community and uphold our commitment to the highest standards of **respect, civility, courtesy, and sensitivity** toward every individual.

We **recognize each person's right to think and speak** as dictated by personal belief and to **respectfully** disagree with or counter another's point of view.

We **promote open expression of our individuality and our differences** within the bounds of **University policies**.

We **acknowledge each person's obligation to the community** of which we have chosen to be a part.

We take **pride** in building and maintaining a culture that is founded on these **principles of unity and respect**.



LEHIGH UNIVERSITY

APPENDIX B: DEFINITIONS⁴³

The following definitions apply to the Policy on Harassment and Non-Discrimination and the associated Procedures:

- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Processes and advise the party on those processes.
- **Equal Opportunity Compliance Coordinator.** The person with primary responsibility for overseeing and enforcing the Policy on Harassment and Non-Discrimination and its Procedures. As used in these policies and procedures, the “Equal Opportunity Compliance Coordinator” also includes their designee(s).
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, or Other Prohibited Conduct under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or Other Prohibited Conduct under the Policy and who was participating or attempting to participate in the University’s education program or activity at the time of the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct.
- **Complaint.** An oral or written request to the University that can objectively be understood as a request for the University to investigate and make a determination about the alleged Policy violation(s).
- **Confidential Employee.**
 - An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, retaliation, or Other Prohibited Conduct. If the employee also has a duty not associated with providing those services, the employee’s confidential status only applies with respect to information received about discrimination,

⁴³ The definitions as stated in this Appendix are applicable to these terms as they are used throughout this Policy and related Procedures, regardless of capitalization.

harassment, retaliation, or Other Prohibited Conduct in connection with providing those services.

- **Day.** A business day when the University is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Education Program(s) or Activity(ies).** Locations, events, or circumstances where the University exercises substantial control over the context in which the discrimination, harassment, retaliation, and/or Other Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that the University officially recognizes.
- **Employee.** A person employed by the University either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Finding.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Complaint.** A document filed/signed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment and requesting that the University investigate the allegations pursuant to the Hearing Resolution Process in this Policy.
- **Formal Grievance Process.** A method of formal resolution designated by the University to address all sex-based conduct that falls within this Policy, and which complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304. Also referred to as the Hearing Resolution Process.
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Equal Opportunity Compliance Coordinator/Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.

- **Knowledge.** When the University receives Notice of conduct that reasonably may constitute harassment, discrimination, retaliation, or Other Prohibited Conduct in its Education Program or Activity.
- **Mandated Reporter.** A University employee who is obligated by this Policy to share Knowledge, Notice, and/or reports of discrimination, harassment, retaliation, and/or Other Prohibited Conduct with the Equal Opportunity Compliance Coordinator/Title IX Coordinator.⁴⁴
- **Notice.** When an employee, student, or third party informs the Equal Opportunity Compliance Coordinator/Title IX Coordinator of the alleged occurrence of discriminatory, harassing, retaliatory, and/or Other Prohibited Conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristic.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or this Policy.
- **Relevant Evidence.** Evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in a complaint.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University's Education Program or Activity.
- **Report.** An oral or written account of discrimination based on a protected characteristic, harassment, or other retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct provided to the Equal Opportunity Compliance Coordinator/Title IX Coordinator by an employee, student, or third party that does not indicate a desire for an investigation or resolution of allegations.
- **Resolution Process(es).** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution or Hearing Resolution or Administrative Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.

⁴⁴ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** A person taking or scheduled to take courses at Lehigh University, either full-time and part-time, pursuing undergraduate, graduate, post graduate, or professional studies. A person who is not enrolled at Lehigh University for a particular term but has a continuing relationship with the University is considered a student.
- **Support Advisor.** A person providing emotional support and assistance to a Complainant or Respondent but does not assist with details or information related to the applicable Resolution Process. A Support Advisor may not otherwise be a witness or an Advisor in the same investigation.
- **Title IX Coordinator.** At least one official designated by the University to ensure ultimate oversight of compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout the Policy may also encompass a designee of the Title IX Coordinator for specific tasks.

APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms *privacy*, *confidentiality*, and *privilege* have distinct meanings.

- **Privacy.** Means that information related to a Complaint will be shared with a limited number of University employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint/Formal Complaint.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by the University as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Equal Opportunity Compliance Coordinator/Title IX Coordinator can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court order release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. The University treats employees who have the ability to have privileged communications as Confidential Employees.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about a Complaint/Formal Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The

circle of people with this knowledge will be kept as small as possible to preserve the Parties' rights and privacy.

The University may contact students' parents/guardians 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 prior to doing so.

APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to describe assessment of any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other Behavioral Intervention Team (BIT) (otherwise known as the CARE team at the University) members.

A VRA occurs in collaboration with the Community Assessment Response & Evaluation Team (CARE Team) and must be understood as an ongoing process, rather than as a single evaluation or meeting.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

- 1) An appraisal of **risk factors** that escalate the potential for violence.
- 2) A determination of stabilizing influences, or **protective factors**, that reduce the risk of violence.
- 3) A contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on target; grievance collection; and action and time imperative for violence.
- 4) The application of **intervention and management** approaches to reduce the risk of violence.

To assess a person's level of violence risk, the Equal Opportunity Compliance Coordinator/Title IX Coordinator will initiate the VRA process through the CARE Team. The CARE Team will assign a trained person(s) to perform the assessment, according to the specific nature of the complaint.

The assessor(s) will follow their process for conducting a VRA and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure.

The CARE Team member(s) conducts a VRA process and makes a recommendation to the Equal Opportunity Compliance Coordinator/Title IX Coordinator and/or to the Dean of Students as to whether the VRA indicates there is a substantial, compelling, and/or imminent and serious threat to the health and/or safety of a person or the community.

In some circumstances, the Equal Opportunity Compliance Coordinator/Title IX Coordinator may determine that a VRA should be conducted by the CARE Team as part of the initial evaluation of a Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

- 1) Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)
- 2) Whether the Equal Opportunity Compliance Coordinator/Title IX Coordinator should pursue/initiate a Complaint/Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a Complaint/Formal Complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to impose transcript notation or communicate with a transfer institution about a Respondent
- 8) Assessment of appropriate sanctions/remedies (to be applied post-determination)
- 9) Whether a Clery Act Timely Warning/Trespass Order is needed

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Institutions may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

APPENDIX E: RESOLUTION POOL TRAINING

Pool members receive annual training, including a review of University policies and procedures, as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability. The training generally includes, but is not limited to:

- The scope of the University's Policy on Harassment and Non-Discrimination and related procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- 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
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- ANY technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes Relevant Evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

All training materials are posted at eocc.lehigh.edu.

APPENDIX F: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and Procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Conduct, when reported in good faith to University officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be treated with respect by University officials.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without University pressure, if Informal Resolution is approved by the Equal Opportunity Compliance Coordinator/Title IX Coordinator.
- Not be discouraged by University officials from reporting discrimination, harassment, retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the University in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement, security, and/or other University officials.
- Be informed of available supportive measures, such as:
 - Counseling
 - Health care
 - Relocating a residential student's housing to a different on-campus location
 - Assistance from University staff in completing the relocation
 - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - Transportation assistance
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and provide a pro-rated refund
 - Rescheduling or adjusting an exam, paper, and/or assignment
 - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts

- Alternative course completion options
- Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law, and be given ten (10) business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed.
- Regular status updates on the investigation and/or applicable Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings and interviews that are closed to the public.
- Petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the applicable Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Have a Sanction Statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the University's grounds for appeal.
- A fundamentally fair resolution as defined in these Procedures.