

LOYOLA UNIVERSITY NEW ORLEANS
STUDENT CODE OF CONDUCT
2017-2018

V. TITLE IX POLICY

Loyola University of New Orleans complies with Title IX of the Education Amendments of 1972, which prohibits discrimination (including sexual and gender based harassment, assault and sexual violence) based on gender in the University's educational programs and activities. Title IX also prohibits retaliation for asserting or otherwise participating in claims of gender discrimination. As outlined below, Loyola University of New Orleans has designated Title IX Coordinators to coordinate compliance with and respond to inquiries concerning Title IX.

The University will take prompt and effective steps to end any sexual or gender-based harassment and discrimination, assault and/or sexual violence as well as to eliminate any hostile environment. It will take prompt and effective steps to prevent the recurrence of the prohibited conduct, and remedy any effects on the victim or others as appropriate.

The purpose of the policy is to define the conduct prohibited, describe the process for reporting violations of the policy, outline the process used to investigate and adjudicate alleged violations of policy, and identify some of the resources available to University students who are involved in an incident that may violate this policy.

1. Applicability and prohibition

This policy applies to all University students—regardless of gender, sexual orientation, or gender identity. Members of the University community shall not engage in sexual discrimination, including dating and domestic violence, stalking, or sexual misconduct (all of which are discussed in more detail below) against employees, students, or third parties.¹ Persons who do so are subject to disciplinary action, up to and including dismissal for students. The University also prohibits sexual discrimination, including dating and domestic violence, stalking, and sexual misconduct by third parties towards members of the University community. The University prohibits retaliation, including retaliatory harassment, against individuals who report discrimination, dating and domestic violence, stalking, or sexual misconduct or who participate in the University's investigation and handling of such reports.

This policy and the procedures for addressing complaints apply to all forms of sex discrimination, including sexual and gender based harassment, assault, and violence, against students occurring in and all of the University's programs and activities, including when:

- a. The conduct occurs on campus;
- b. The conduct occurs off-campus in the context of University employment, education, or research programs or activities, including but not limited to University-sponsored study abroad, internships, graduate/professional programs, intercollegiate athletics, or other affiliated programs.
- c. If the conduct occurs off-campus outside the context of a University program or activity, the University will consider the effects of the off campus conduct in order to evaluate whether it has continuing adverse effects on campus or in any University program or activity, including the creation of a hostile environment on campus or in an off-campus education program or activity.

2. Gender Discrimination

Title IX of the Educational Amendments of 1972 prohibits gender discrimination at institutions of higher education. The University prohibits gender discrimination in any of its programs or activities. Sexual

¹ A third party is an individual who is not a member of the University community (faculty, staff, or student) such as a visitor or guest, contractor, alum, or student from another institution.

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discrimination, including sexual assault, stalking, and other kinds of sexual violence, is a form of gender discrimination. This policy and its related procedures apply to complaints alleging all forms of gender discrimination (including sexual harassment, stalking, sexual assault, and sexual violence). For the purposes of this policy, references to sexual misconduct include all forms of sex discrimination, including sexual and gender-based harassment, assault, and violence.

3. Retaliation

Title IX and the University prohibit retaliation (including retaliatory harassment) against anyone for inquiring about suspected breaches of University policy, registering a complaint pursuant to its policies, assisting another in making a complaint, or participating in an investigation under its policies. Retaliation is a serious violation that can subject the parties to strong responsive action, including sanctions, independent of the merits of the policy violation allegation. Retaliation is prohibited even if the University finds that no violation of the policy occurred.

Retaliation is defined as an adverse action or adverse treatment against an individual involved in an investigation by an individual who knew of the individual's participation in the investigation.

Anyone experiencing any conduct that he or she believes to be retaliatory (or retaliatory harassment) should immediately report it to one of the Title IX Coordinators using the contact information below.

4. Title IX Coordinators

Loyola University of New Orleans has designated Title IX Coordinators to coordinate compliance with and response to inquiries concerning Title IX. A report of a violation of this policy should be made to one of the following:

Tommy Screen University Title IX Coordinator 240 Marquette Hall 504-864-7082 tscreen@loyno.edu	Diana M. Ward, Ph.D Deputy Title IX Coordinator for Students 222 Danna Student Center 504-864-7151 dmward@loyno.edu
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Any person may also file a complaint with the Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting: the U.S. Department of Education's website or calling 1-800-421-3481.

To the extent a violation of this policy may also violate a criminal law, impacted individuals are encouraged to report their complaint to local law enforcement. Any person making a complaint under this policy may pursue a complaint with the University and police simultaneously. The police and the University independently investigate complaints of relationship violence and sexual misconduct. The police investigate to determine whether there has been a violation of criminal laws. The University investigates to determine whether there has been a violation of University policy. The investigations proceed concurrently, and the outcome of one investigation does not determine the outcome of the other investigation.

Occasionally, the University may need to briefly suspend the fact-finding aspect of its investigation at the request of law enforcement while the police are in the process of gathering evidence. The University will maintain regular contact with law enforcement to determine when it may begin its investigation. The University will promptly resume its investigation as soon as notified by the police department that it has completed its evidence gathering process, or sooner if the University determines that the evidence gathering process will be lengthy or delayed. The University will not delay its investigation until the ultimate outcome of the criminal investigation. Even if the University investigation is briefly suspended, the University will nevertheless

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communicate with the complainant (the person filing the complaint or who was allegedly the victim of discrimination) regarding their rights, procedural options, and the implementation of appropriate interim measures to assist and protect the safety of the complainant and the campus community and to prevent retaliation. Even if the investigation is suspended temporarily, the University will implement appropriate interim measures to assist and protect the safety of the complainant and the campus community and to prevent retaliation.

5. Prohibited Conduct-Domestic and Dating Violence (Intimate Partner Violence)

“Domestic and Dating Violence” is defined as abusive behavior, including threats, verbal and/or emotional abuse, and physical assault, between persons in an intimate and/or dating relationship. Examples of domestic violence include, but are not limited to, intimidation, threats, and physical harm. Preventing a partner from making contact with others among the partner’s family, friends, or peer group also falls within this definition. This includes behavior toward another person when the intimate and/or sexual relationship has ended.

6. Prohibited Conduct-Stalking

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for their own safety or the safety of others or suffer substantial emotional distress. A course of conduct means two or more acts in which a person 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. Stalking includes, but is not limited to, the intentional and repeated uninvited presence of the alleged perpetrator at another’s home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, or sexual assault.

7. Prohibited Conduct-Sexual Misconduct

a. Nonconsensual Sexual Intercourse and Sexual Conduct

Any sexual behavior including sexual intercourse or attempted intercourse without consent, including rape, attempted rape, molestation, and other cases where the victim is unable to refuse or effectively consent to sexual advances. The definition applies regardless of whether the alleged assailant is a stranger or an acquaintance. Examples include, but are not limited to, forced insertion, oral copulation, rape by foreign object, sodomy and unwanted touching of an intimate part of another person for the purpose of sexual gratification. Sexual intercourse is defined as anal or vaginal penetration by a penis, tongue, finger or inanimate object.

For purposes of this policy, consent to engage in sexual activity must exist from beginning to end of each instance of sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage in a specific sexual activity. Silence alone, without actions evidencing permission, does not demonstrate consent. While consent may be expressed by words or by actions, it is highly recommended that consent be expressed and obtained verbally. Non-verbal consent expressed through actions may lead to confusion and potential for misunderstandings, which may lead to a violation of this policy.

It is the responsibility of the initiator of any sexual activity to obtain their partner’s consent. Consent must be knowing and voluntary. To give consent, a person must be at least 17 years old. Assent does not constitute consent if obtained through “coercion” or from an individual whom the respondent knows or reasonably should know is “incapacitated”.

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Coercion for purposes of this policy is the use of express or implied threats, intimidation, or physical force which places an individual in reasonable fear of immediate harm or physical injury.

An individual is considered to be incapacitated for purposes of this policy if, by reason of mental or physical condition, the individual is manifestly unable to make a knowing and deliberate choice to engage in sexual activity. Someone who is drunk or intoxicated is not necessarily incapacitated. Individuals who are asleep, unresponsive or unconscious are incapacitated. Among the factors the University will use to assess whether someone is incapacitated for purposes of this policy are: inability to communicate coherently, inability to dress/undress without assistance, inability to walk without assistance, slurred speech, loss of coordination, vomiting, or inability to perform other physical or cognitive tasks without assistance. The existence of any one of these factors will support a finding of incapacitation for purposes of this policy.

An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain consent if that individual is the one who initiates sexual activity.

Consent to engage in sexual activity may be withdrawn by any person at any time. Once withdrawal of consent has been expressed, the sexual activity must cease immediately. Consent is automatically withdrawn by a person who is no longer capable of giving consent.

A current or previous consensual dating or sexual relationship between the Parties does not itself imply Consent or preclude a finding of responsibility for misconduct.

b. Sexual Exploitation

Taking nonconsensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Intentionally exposing a private or intimate part of one's body in a lewd manner;
- Committing any other lewd act in a public place;
- Prostituting another student;
- Non-consensual video or audio recording of sexual activity;
- Exceeding the boundaries of explicit consent, such as allowing friends to hide in a closet to witness one's consensual sexual activity;
- Engaging in non-consensual voyeurism; and/or
- Knowingly transmitting a sexually transmitted disease/infection or HIV to another student.

c. Sexual Harassment

Unwelcome sexual advances or requests for sexual favors and/or other verbal or physical conduct or communication of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment, or services, or academic status; or
- Submission to, or rejection of, such conduct by an individual used as a basis for employment, or services, or academic decisions affecting him or her; or
- Such conduct, whether verbal or physical, has the purpose or effect of interfering with the individual's work or academic performance or of creating an intimidating, hostile or offensive employment, service or educational environment.

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d. Sexual Verbal Abuse

Language that is sexual in nature and unwanted on the part of another person. Examples include, but are not limited to, obscene telephone calls and use of written and/or oral communication that would be considered obscene.

8. Confidentiality

The goal of this policy is to provide members of the community with a positive working and learning environment that is free from sexual misconduct. Complaints of sexual misconduct will be investigated in a manner that is consistent with this goal. All participants in the investigation will be advised that they should keep the complaint and the investigation confidential.

The University cannot promise complete confidentiality in its handling of sexual misconduct complaints. To the extent possible, the University will keep the complaint and investigation confidential and will make every reasonable effort to handle inquiries, complaints, and related proceedings in a manner that protects the privacy of all parties. Each situation is resolved as discreetly as possible, with information shared only with those who need to know. Because Title IX and the University prohibit retaliation, the University will take proper steps to prevent such retaliation and will take strong responsive action if such retaliation occurs.

If a complainant requests anonymity or that an investigation not be pursued, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as honoring the request does not prevent the University from responding effectively to the harassment and preventing harassment of others. If a complainant requests anonymity, the scope of University's ability to respond to the alleged misconduct may be limited. In certain circumstances, the University may be able to address concerns and stop problematic behavior without revealing to the alleged harasser the identity of the person who complained and/or the individuals involved in the investigation. However, this is not possible in every matter, as some situations require the disclosure of the complainant's identity in order to fully investigate the matter and/or to enable the respondent to fully respond to the allegations against him or her. In cases when a complainant requests anonymity or does not wish to proceed with an investigation, the Title IX Coordinator and/or appropriate Deputy Title IX Coordinator will determine whether the University has an obligation to proceed with the investigation notwithstanding this request based on concern for the safety or well-being of the broader University community. The University reserves the right to take appropriate action in such circumstances, even in cases when the complainant is reluctant to proceed. In making this evaluation, the University may consider the following:

- a. The seriousness of the alleged incident;
- b. The age of the alleged victim;
- c. Whether there have been other complaints or reports of policy violations against the accused individual;
- d. The rights of the accused individual to receive information about the accuser and the allegations if a proceeding with sanctions may result;
- e. The increased risk that the accused individual will commit additional acts of relationship violence or sexual misconduct, such as: (a) Whether there have been other relationship violence or sexual misconduct complaints about the same alleged perpetrator; (b) Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence; (c) Whether the alleged perpetrator threatened further relationship violence or sexual misconduct against the alleged victim or others; (d) Whether the relationship violence or sexual misconduct was committed by multiple perpetrators; and/or (e) Whether there have been threats to kill or harm the alleged victim;
- f. Whether the alleged policy violation was perpetrated with a weapon; and/or
- g. Whether the University possesses other means to obtain relevant evidence of the policy violation (e.g., security cameras or personnel, physical evidence)

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9. Violations: Complaint Procedures

All reports describing conduct that is inconsistent with the policy will be promptly and equitably resolved in accordance with Title IX and other relevant laws and regulations.

All individuals are encouraged to promptly report conduct that may violate this policy to the University through its Title IX Coordinator or appropriate Deputy Title IX Coordinator. As discussed above, notice may be given at:

Tommy Screen University Title IX Coordinator 240 Marquette Hall 504-864-7082 tscreen@loyno.edu	Diana M. Ward, Ph.D Deputy Title IX Coordinator for Students 222 Danna Student Center 504-864-7151 dmward@loyno.edu
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For the sake of clarity, the Title IX Coordinators above are the only people at the University with the authority to institute corrective measures on the University's behalf pursuant to this policy. In addition, all individuals are encouraged to report conduct that may also violate criminal law to both the University and to local law enforcement. These processes are not mutually exclusive.

The University strongly encourages individuals affected by sex or gender discrimination, sexual harassment, relationship violence, stalking, and sexual misconduct to talk to someone about what happened and obtain support services. The University also needs to respond appropriately to reports of violations of this policy in order to provide a safe and effective learning environment.

The University can most effectively investigate and respond to alleged violations of this policy if the complaint is made as promptly as possible after the alleged violence or misconduct occurs. The University does not, however, limit the time frame for reporting. If the respondent is not a member of the University community at the time of the report, the University will still seek to meet its legal obligations by providing reasonably available support for a complainant, but its ability to investigate and/or take action may be limited. The University will, however, assist a complainant in identifying external reporting options.

The University encourages students to report all incidents of relationship violence or sexual misconduct. Therefore, students who in good faith report violations of this policy will not be disciplined by the University for a violation of the University's drug and alcohol possession or consumption policies that may have occurred in connection with the reported incident.

10. Mandatory Reporters-University Employees.

All University employees, other than counselors, pastors, or advocates and those employees legally regarded as confidential sources must bring reports of violations of this policy, including sexual and gender-based harassment, assault and violence that they observe or learn about, immediately to the attention of the Title IX Coordinator or appropriate Deputy Title IX Coordinator.² Failure to do so can result in discipline, up to immediate discharge.

The employee must report all relevant details about the alleged policy violation, including the name of the alleged victim, the accused, any witnesses, and any other relevant facts, including the date, time, and specific

² Students who are not also employees do not have reporting obligations under this Policy. Nevertheless, students who have witnessed relationship violence or sexual misconduct are strongly encouraged to promptly report such information to the University.

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location of the incident. Complainants may request confidentiality or anonymity, including that their name not be shared with the respondent, that the respondent not be notified of the report, or that no investigation occur. If the alleged victim wants to tell the mandatory reporter what happened, but also wants to maintain confidentiality or anonymity, the employee should tell the alleged victim that the University will consider the request but cannot guarantee confidentiality or anonymity. The employee should advise the alleged victim that the details of the incident will be disclosed only to those officials with a legitimate institutional interest in knowing the information. In reporting the details of the incident to the Title IX Coordinator or appropriate Deputy Title IX Coordinator, the employee will inform the Coordinator of the alleged victim's request for confidentiality or anonymity.

The Title IX Coordinator or appropriate Deputy Title IX Coordinator will weigh the alleged victim's request for confidentiality or anonymity against the University's obligation to provide a safe, nondiscriminatory environment for all students, including the alleged victim.

If the University honors the request for confidentiality, the Title IX Coordinator or appropriate Deputy Title IX Coordinator will explain to the complainant that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator may be limited. The Title IX Coordinator or appropriate Deputy Title IX Coordinator will also explain that the University prohibits retaliation for filing a complaint and will take steps to prevent retaliation and take strong responsive action if any retaliation occurs. If the complainant continues to ask that his or her name not be revealed, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request as long as doing so does not prevent the University from responding effectively to harassment and preventing harassment of others.

Regardless of whether the request for confidentiality is honored, the University will take steps to limit the effects of the alleged relationship violence or sexual misconduct and prevent its recurrence when possible. Such steps might include providing increased security or supervision at locations or activities where a pattern of relationship violence or sexual misconduct exists; providing education and training materials for students, student groups, or employees; reviewing applicable relationship violence and sexual misconduct or disciplinary policies; and conducting climate surveys regarding relationship violence and sexual misconduct.

At times, in order to provide a safe, non-discriminatory environment for members of the campus community, the University may not be able to honor an alleged victim's request for confidentiality. In such circumstances, the Title IX Coordinator or appropriate Deputy Title IX Coordinator will inform the alleged victim prior to starting an investigation and will share information only with people involved in the University's investigation. Individuals who choose to discuss an incident of relationship violence or sexual misconduct only in a privileged/confidential or private setting should understand that the University will not be able to conduct an investigation into the particular incident, or pursue disciplinary action against the alleged perpetrator, unless the incident is reported to the University directly by the alleged victim, law enforcement, someone who is obligated to make a report, or by a confidential party who has been given written permission by the alleged victim to make a report. Counselors and advocates who are able to maintain confidentiality of reports will still assist their clients in receiving support services, regardless of whether a report is made. At the individual's option, this will include coordinating with the University to provide any necessary interim measures.

A complainant who requests confidentiality may later decide to file a complaint to the University or law enforcement and have the incident fully investigated. Safety risks associated with the University contacting or interviewing the accused will be taken into consideration before that occurs, especially in cases where the alleged victim is fearful and does not want the perpetrator contacted, or when the threats and abuse may escalate and put the alleged victim in increased danger due to the investigation process.

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As discussed above, the University will attempt to balance a complainant's request for anonymity or not to participate in an investigation with the University's broader obligation to campus safety.

11. Processing Complaints and Reports

All reports of alleged violations of this policy are reviewed by the Title IX Coordinator and/or Deputy Title IX Coordinator. The University will process all complaints and reports of policy violations it receives, regardless of where the conduct which is the basis for the complaint allegedly occurred. The Title IX Coordinator and/or Deputy Title IX Coordinator may also determine that an investigation is warranted without a complaint if the University has sufficient notice that violations of this policy may have occurred. The University is not precluded from investigating an alleged violation of this policy simply because the alleged victim either did not directly bring the complaint or does not want to participate in an investigation of a possible policy violation.

To the extent applicable, upon receipt of a report of a violation of this policy, the University will provide a written explanation to the complainant and respondent summarizing their respective rights and options. This written explanation will include information about reporting.

Even if it is determined by the Title IX Coordinator and/or Deputy Title IX Coordinator that a formal investigation is not warranted, the University will take prompt, responsive action to support a complainant and will take steps to eliminate, prevent, or address a hostile environment if it determines that one exists.

12. Investigation

The investigatory and appeal processes pursuant to this policy apply when the respondent is a Loyola student. Allegations of sex or gender discrimination against faculty and staff are handled in a manner consistent with the Faculty Handbook and Human Resources Policies and Procedures Manual.

An investigation pursuant to this policy will commence as soon as practical following receipt of the complaint by the Title IX Coordinator or Deputy Title IX Coordinator, generally within two weeks. An investigator with appropriate training will be appointed by the Title IX Coordinator and/or appropriate Deputy Title IX Coordinator. In some cases the Title IX Coordinator may retain an outside investigator. Mediation will not be used to resolve complaints involving some charges of sexual misconduct, including sexual violence.

The complainant (or alleged victim if differing) is not required to participate in the investigation. The complainant (or alleged victim) may decline to participate in the investigation, appear in a proceeding with the respondent present, or otherwise confront the respondent during the grievance process, including any meetings or appeals. Should the complainant (or alleged victim) choose not to participate in an investigation, the Title IX Coordinator or appropriate Deputy Title IX Coordinator will explain that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent may be limited.

The investigation of alleged policy violations will be conducted in a private manner, except insofar as information needs to be disclosed so that the University may effectively investigate the matter or take corrective action.

The University does not allow conflicts of interest, real or reasonably perceived, by those investigating or adjudicating allegations under this policy. A conflict of interest exists when an individual's knowledge of the matter or personal or professional relationships with the complainant, respondent, or witnesses would preclude the individual from being able to investigate or adjudicate the case fairly and impartially. Individuals who wish to challenge an investigator because of a conflict of interest may do so by filing a challenge with the Title IX Coordinator within five business days of an investigator being appointed. The Title IX Coordinator retains sole

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discretion to determine whether a conflict exists and to otherwise take appropriate actions to address the issue in a prompt and equitable manner.

a. Notice

Both the complainant and the respondent will be promptly notified of the initiation of an investigation. The notice will be in writing and shall be given by the Title IX Coordinator or appropriate Deputy Title IX Coordinator. All notices provided to students under this Policy will be sent to the individual's official University email account and students are presumed to regularly check their email accounts.

Unless reasonable extensions of time are needed, both the complainant and respondent will be notified of the initiation of an investigation within ten business days of receipt of the complaint or the time upon which the University otherwise becomes aware of conduct necessitating investigation.

The notice to both the complainant and the respondent shall include the potential policy violation(s) at issue. Each shall be notified of their right to participate in an investigation and timelines for responding. Each shall be notified of the identity of the investigator and their ability to challenge the assignment of the investigator. Each shall be further advised that the investigation may proceed without the participation of either party.

b. Investigatory Process

During an investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. The investigator will review evidence presented and will meet with additional witnesses identified by the complainant, the respondent, or third parties, as determined appropriate in the sole discretion of the investigator.

The complainant or respondent's character or reputation with respect to other sexual activity is never relevant and will not be considered as evidence. However, prior sexual history may be considered under the following limited circumstances:

- Where there was a prior or ongoing relationship between the complainant and respondent, and the respondent asserts that consent was sought and given, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of the policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct.
- To establish a pattern or practice of conduct similar in nature by the respondent.

In addition, other conduct by either party may, under limited circumstances, be relevant to establish intent, motive, absence of mistake, to explain an injury or physical finding, or another ground deemed probative by the investigator.

All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information throughout the investigation process. In some cases, the investigator may interview the parties on more than one occasion.

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c. Investigation Meetings

During the investigation process, both parties will be provided timely notice of any meeting at which their presence is requested or required. Such meetings can provide both parties with an opportunity to be heard and present their account of the events in-person. The complainant has the right not to appear in the same room or otherwise confront the respondent during the investigation process, including appeals. The parties are not permitted to personally cross-examine each other during the investigation process, including any hearings or appeals. However, either party may submit questions in writing to the investigator to be asked of the other party. The investigator has the sole discretion to determine whether the questions are relevant to the investigation and whether to direct the question to the other party. Either party may submit questions at any time during the investigation process up to the deadline for the review of the preliminary investigation report. The opportunity to ask questions may not be used to harass or intimidate the other party.

Throughout the investigation and any subsequent appeals, both the complainant and the respondent shall have the right to have an advisor of choice present at any meeting. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process. Limits on the role of an advisor shall be applied equally to both the complainant and respondent.

The advisor is a silent and non-participating presence who is there solely to observe and provide support during the process. The University has the right at all times to determine what constitutes appropriate behavior on the part of an advisor as well as the right to request that an advisor leave a meeting in the event the investigator determines that the advisor is not acting appropriately. The advisor is encouraged to join the complainant or respondent's initial meeting with the Title IX Coordinator or appropriate Deputy Title IX Coordinator for an orientation to the University's policies and procedures, privacy protections and expected participation/decorum. The advisor may not be a fact witness or otherwise have any conflicting role in the process.

d. Interim Measures

The University may provide reasonable interim accommodations or remedies to support a complainant and to ensure a safe and nondiscriminatory environment pending investigation through final resolution of a complaint, including appeals. The issuance of interim measures is not disciplinary in nature and should not be construed as a determination by the University that the respondent violated this policy. The University will notify complainants, in writing, that interim measures are available during the University's investigation through final resolution of a complaint, including appeals. Such written notice to the complainants shall further state that such measures may be requested at any time during the process by contacting the Title IX Coordinator or appropriate Deputy Title IX Coordinator to make such a request and shall include the means for contacting the Title IX Coordinator or appropriate Deputy Title IX Coordinator.

The Title IX Coordinator or appropriate Deputy Title IX Coordinator has the discretion to ensure the appropriateness of any interim measure based on all available information, and is available to meet with a complainant or respondent to address any concerns about the provision of interim measures. Examples of interim protective measures include, but are not limited to: access to counselling or mental health services, an order of no contact, residence hall relocation, adjustment of course schedules or work-study employment, a leave of absence, transportation arrangements, or reassignment to a different supervisor or position.

The University will take steps to ensure that appropriate interim measures are provided. The University will attempt to ensure, where possible and as supported by available information, that such interim measures minimize the burden and adverse effects on the complainant and the respondent.

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The University will maintain the privacy of any interim measures provided under this policy to the extent practicable and will promptly address any violation of the interim measures. These interim measures may be kept in place until the end of any review or appeal process or may be extended permanently as appropriate.

Violations of interim measures, such as university no-contact orders and access restrictions, should be reported to the Title IX Coordinator or appropriate Deputy Title IX Coordinator. Students may face disciplinary action up to and including expulsion for such violations.

e. Preponderance of Evidence

At all stages in the process, the investigator and/or persons hearing any appeal will investigate and make findings on the merits of an alleged violation using a preponderance of the evidence standard.

Preponderance of the evidence means that the greater weight of the evidence favors either the finding of a violation or the finding of a non-violation. This standard is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence presented.

f. Investigation Outcomes

At the conclusion of the investigation, the investigator will determine whether the preponderance of the evidence indicates that the respondent has violated this policy. The investigator will then provide her or his analysis and conclusions and any recommended actions to the appropriate Deputy Title IX Coordinator. The appropriate Deputy Title IX Coordinator and/or designee will review the analysis and conclusions to ensure that a thorough and equitable investigation was conducted. If the Deputy Title IX Coordinator and/or designee concludes that additional witnesses should be interviewed, additional evidence should be considered, or has questions regarding the investigative report, he or she can request the investigator address any and all deficiencies or questions identified. Assuming there are no questions or additional investigating to be conducted, the Deputy Title IX Coordinator, in consultation with the Title IX Coordinator, will make a decision concerning any corrective or remedial actions that will be imposed.

g. Potential Remedial Actions and Disciplinary Sanctions

In cases where a violation of this policy is found to have occurred, the University will determine the appropriate, enforceable sanction. The sanction will be reasonably calculated to stop the violation and prevent its recurrence.

When a violation of this policy is found, possible disciplinary actions may include, but are not limited to written warnings, loss of privileges, mandatory training or counseling, probation, suspension, demotion, exclusion, expulsion, and termination of employment. The University's response is based on several factors, including the severity of the conduct and any prior policy violations, and aims to prevent problems from recurring and remedy any discriminatory effects on a complainant or others.

In addition, the University may take steps to address the effects of the conduct on victims and others, including, but not limited to, counseling and support resources, academic and housing assistance, change in work situations, leaves of absence, and training or other preventative measures.

h. Notice of Outcomes

The complainant and the respondent will be notified in writing, at the same time, of the outcome of the investigation, including whether the policy was determined to be violated, any sanctions imposed on the respondent that directly relate to the complainant, and other steps that have been taken to eliminate a hostile environment and prevent recurrence. When required by law, the University will also provide the complainant with notification of all disciplinary sanctions assessed on respondent. Notification of findings

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and sanctions may be provided to the complainant and the respondent in separate correspondence from the Title IX Coordinator or appropriate Deputy Title IX Coordinator and the appropriate office imposing corrective action.

i. Investigation Timelines

The University will use its best efforts to complete its investigations within 60 calendar days, although this timeframe may be extended for good cause. Good cause may exist for a variety of factors, including the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by law enforcement, to accommodate the availability of witnesses, to account for University breaks or vacations, or to address other legitimate reasons. In the event a time frame is extended, both the complainant and the respondent will be notified of any delay and the anticipated length of the delay.

13. Appeals

The complainant or respondent may appeal a decision. Both parties may participate equally in the appeal process even if the party did not file the appeal himself or herself. The appeal must be made within five business days of the date of the written notification of the conclusion of the investigation, or if a sanction is being appealed, within five business days of the date of the written notification of the sanction imposed. An appeal must be in writing, submitted to the Title IX Coordinator, and specify the substantive and/or procedural basis for the appeal.

The original finding is presumed to have been decided reasonably and appropriately by a preponderance of the evidence, and the only grounds for appeal are as follows:

- a. Partiality.** The inability of the investigator to refrain from acting upon predisposed or developed bias during the investigation or the determination of its outcome.
- b. New Evidence.** Information or material which was unable to be known at the time of the investigation. The student is expected to demonstrate that such evidence was unable to be known. Evidence that was known or was accessible during the investigation, but which the student chose not to or neglected to present does not constitute a sound basis of appeal. In those cases where new evidence becomes known after the period of filing for an appeal has expired, and reasonable grounds for an appeal seem substantial, access to the appellate process may be granted by the VPSA/AP.
- c. Disregard for Rights.** That a student was not afforded a right provided by this policy.
- d. Arbitrary and Capricious Decision.** The decision is arbitrary and capricious in that it was not made on reasonable grounds. For the sake of clarity, it is not an appropriate basis of appeal to suggest that the appellate body should submit its judgment for the judgment of the investigator. Rather, an appeal on the basis of arbitrary and capricious decision-making will only be granted if there is NO reasonable basis for the original decision.
- e. Inappropriateness of the Sanction.** A sanction is inappropriate if it does not reflect a proper alignment between the nature of the offense, the student's previous disciplinary record, other factors which should be considered, and the sanction administered. Because these multiple factors are incorporated in each individual disciplinary decision, previous decisions do not establish precedent in University disciplinary hearings.

The Deputy Title IX Coordinator will share the appeal with the other party or parties (e.g. if the responding student appeals, the appeal is shared with the complainant, who may wish to file a response, request an appeal on the same grounds or different grounds). The Deputy Title IX Coordinator will refer the request(s) to an appropriately trained appellate body appointed by the Deputy Title IX Coordinator.

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The appellate officer or board chair will conduct an initial review to determine if the appeal request meets the limited grounds and is timely. The appellate officer or board chair must consult the Deputy Title IX Coordinator on any procedural or substantive questions on relevant cases.

If the appeal is not timely or substantively eligible, the original finding and sanction will stand and the decision is final. If the appeal has standing, the designated appellate body will review the appeal. In conducting the review, the original finding and sanction are presumed to have been reasonably and appropriately decided, thus the burden is on the appealing party (parties) to show clear error. The appellate body must limit their review to the challenges presented.

The appellate body may affirm or change the findings and/or sanctions of the original investigation but only according to the permissible grounds. Procedural or substantive errors should be corrected, new evidence should be considered, and sanctions should be proportionate to the severity of the violation and the student's cumulative conduct record.

All decisions of the appellate body are to be made within fifteen business days of submission (though this may vary based on the scope of the investigation or unforeseen circumstances) and are final. A written decision will be provided to both parties, which shall be final and not subject to further appeal.

The presumptive stance of the University is that all decisions made and sanctions imposed by the original decision-maker are to be implemented during the appellate process. At the sole discretion of the Title IX Coordinator when necessary, implementation of sanctions may be stayed pending review only in extremely exigent circumstances. This does not include proximity to graduation, end of term, or exams.

The University does not allow conflicts of interest, real or reasonably perceived, by those investigating or adjudicating allegations under this policy or its related procedures. Individuals who wish to challenge an appellate officer or board member because of a conflict of interest may do so by filing a written challenge to the Title IX Coordinator. This challenge must be filed within three business days of the individual being notified of the identity of the appellate officer or board member.