



OTTERBEIN
UNIVERSITY



SEXUAL MISCONDUCT POLICY | 2022-23

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Title IX Grievance Policy

The purpose of the Title IX Grievance Policy Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

Only incidents falling within the definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

The University remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the University retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Sexual Misconduct Policy through a separate grievance proceeding. [117.0 Sexual Misconduct Policy](#) and/or Student Handbook.

Covered Sexual Harassment

Sexual harassment includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively

offensive that it effectively denies a person equal access to the educational University's education program or activity;

3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Ohio domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Ohio.
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code of Conduct or University policies.

Consent

Consent means informed, freely and actively given, mutually understandable words or action, which indicate a willingness to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.
- Silence or lack of resistance, in and of itself, cannot be interpreted as consent.
- Consent can be given by words, actions, or behaviors as long as those words, actions or behaviors create mutually understandable clear permission regarding willingness to engage in the conditions of sexual activity: who, what, when, where, why, and how sexual activity will take place.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time by word or action.
- Previous relationships or prior consent cannot imply consent to current or future sexual acts.

To be effective, consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion.

- Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion.
- Coercion is unreasonable pressure for sexual activity. When a person indicates by words or actions that they do not want to engage in sexual activity, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

- Intimidation is implied threats, including the exertion of perceived or actual power resulting from position or stature.
- A person must be of legal age (16) to give consent.

An incapacitated person cannot give consent. Sexual activity with someone who one should know to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) is not consented sexual activity and therefore is a violation of this policy.

- Incapacitation is a state where someone cannot make rational, reasonable decisions
- Incapacitation may result from mental disability, sleep, involuntary physical restraint, and alcohol or drug impairment, including taking “rape drugs.” A rape drug is any drug intentionally used to incapacitate another victim to assist in the execution of [drug facilitated sexual assault](#).
- Possession, use and/or distribution of any so-called “rape drug” is prohibited and administering these drugs to another person is a violation of this policy.
- Being under the influence of alcohol or other drugs will not excuse behavior that violates this policy.

Education Program or Activity

Education program or activity includes:

- Any on-campus premises.
- Any off-campus premises that the University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University’s programs and activities over which the University has substantial control.

Formal Complaint

Formal complaint means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
- They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

Respondent

Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Privacy vs. Confidentiality

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean the University offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. The University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Making a Report Regarding Covered Sexual Harassment to the University

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator

Name: Julie Saker

Title: Title IX Coordinator

Office Address: 65 W. Home Street on Cochran Alley

Email Address: jsaker@otterbein.edu

Telephone Number: 614.823.1554

Name: Molly Miller

Title: Director of Human Resources

Office Address: 25 W Home St - Bus Affairs/HR, Suite B

Email Address: miller95@otterbein.edu

Telephone Number: 614.823.1130

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Confidential Reporting

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Julie Saker, Director, Title IX

Officials of Authority

President

Provost

Vice President of Business Affairs

Vice President of Institutional Advancement

Vice President of Enrollment Management

Vice President of Student Affairs

Chief Diversity Officer

Executive Director of the Point

Director of Residence Life

The following Officials may provide confidentiality:

Employee Confidential Resources

Employee Assistance Program 800.865.1044

Student On-Campus Confidential Resources

Mental Health Counselor 614.823.1333

University Chaplain 614.823.1409

Off-Campus Confidential Resources for Employees and Students

SARNCO (Sexual Assault Response Network of Central Ohio)
614.267.7020

CHOICES 24 Hour Domestic Violence Hotline
614.224.4663

Mt. Carmel Crime & Trauma Assistance Program
614.234.5900

Buckeye Region Anti-Violence Organization (BRAVO)
614.294-7867

Rape, Abuse, & Incest National Network (RAINN)
800.656.4673

Anonymous Reporting

The following resources provide anonymous reporting options. Anonymous reporting may limit the University's ability to fully investigate and resolve the complaint.

Campus Conduct Hotline

866.943.5787

Otterbein Police Silent Witness online form at

<https://www.otterbein.edu/police/silent-witness-form/>

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from the University regardless of whether they desire to file a complaint, which may include supportive measures offered as appropriate. Supportive measures are non-disciplinary and non-punitive.

Supportive Measures suggested by the Preamble: As appropriate, supportive measures may include, but not be limited to:

- Counseling
- extensions of deadlines or other course-related adjustments
- modifications of work or class schedules
- campus escort services
- restrictions on contact between the parties (no contact orders)
- changes in work or housing locations
- leaves of absence
- increased security and monitoring of certain areas of the campus

The Women's Gender and Sexuality Resource Center (WGSRC) provides on campus peer advocate training and resources. The WGSRC offers knowledgeable support to survivors of sexual violence; to students questioning their gender, sexuality, sex, or relationships; or students experiencing depression, anxiety, or psychological/emotional distress.

Emergency Removal

The University retains the authority to remove a respondent from the University's program or activity on an emergency basis, where the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If the University determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. The student may immediately submit a written appeal of the removal decision to the Vice President of Student Affairs. The Vice President of Student Affairs or designee must issue a written decision within five (5) calendar days of receiving the student's written appeal.

Administrative Leave

The University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process.

The Title IX Grievance Process

Filing a Formal Complaint

The time frame for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than one hundred twenty days (120) calendar days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee. For complainants who do not meet these criteria, the University will utilize existing policy in the Student Code of Conduct and/or Sexual Misconduct Policy.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The University will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or the Student Code of Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Informal Resolution

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the University's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Information about this Process is available here: [Informal Resolution Policy](#).

Multi-Party Situations

The University may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the

allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator or another appropriate official without a conflict of interest or bias will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the University's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, the University will investigate the allegations according to the Grievance Process. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Sexual Misconduct Policy 117.0 if a case is not complete by that date.

Allegations Potentially Falling Under Two Policies:

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator or another appropriate official without a conflict of interest or bias will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in

“Appeals,” below.

Discretionary Dismissal

The Title IX Coordinator or another appropriate official without a conflict of interest or bias may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by the University; or,
- If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their University email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

Notice of Removal

Upon dismissal for the purposes of Title IX, the University retains discretion to utilize the Student Code of Conduct and/or Sexual Misconduct Policy to determine if a violation of the Student Code of Conduct and/or Sexual Misconduct Policy has occurred. If so, the University will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and

removal of the allegations to the other conduct process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances. The parties will be notified by their University email accounts if they are a student or employee, and by other reasonable means if they are neither. The University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

Contents of Notice

The Notice of Allegations will include the following:

Notice of the University's Title IX Grievance Process including any informal resolution process and a hyperlink to a copy of the process.

- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the
- Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is

directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

- A statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Ongoing Notice

If, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the University will notify the parties whose identities are known of the additional allegations by their University email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Participation of Advisor of Choice

The University will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The University has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the University.

Notice of Meetings and Interviews

The University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

The Title IX Coordinator shall have sole judgment to grant further pauses in the Process.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

The University and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

The University cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility.
2. inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The University will send the evidence made available for each party and each party's advisor, if any, to inspect and review. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole

discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension as their designated extension request.

The University will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties and their advisors agree not to photograph or otherwise copy the evidence.

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

Investigative Report

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, will and provide that Report to the parties at least ten (10) calendar days prior the hearing for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Hearing

General Rules of Hearings

The live hearing may be conducted with all parties physically present in the same geographic location, or, at University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through remote video conferencing. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audiovisual recording. That recording or transcript will be made available to the parties for inspection and review.

Continuances or Granting Extensions

The University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Newly-Discovered Evidence

As a general rule, no new evidence or witnesses may be submitted during the live hearing.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-maker answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party.

- A statement is an individual's account written to convey information about the allegation.
- A statement would not include a document, audio recording, audiovisual reading, and digital media, that is part of the conduct alleged to be sexual harassment. (Digital media includes, but is not limited to, text messages, emails and social media postings.)
 - See OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any statements made by that party in reaching a determination. The decision-maker may reach a determination based on evidence that does not constitute a "statement" by that party.
- The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions in the case, nor may the Decision-Maker hear the appeal if filed.
- The Decision-maker will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case, gathered that does not constitute a "statement" by that party.
- A statement is an individual's account written to convey information about the allegation.
- A statement would not include a document, audio recording, audiovisual reading, and digital media, that is part of the conduct alleged to be sexual harassment.
- Digital media includes, but is not limited to, text messages, emails and social media postings.

- See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any statements made by that party in reaching a determination. The decision-maker may reach a determination based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

The Decision-maker

- The hearing body will consist of a single decision-maker.
- The Decision-maker will not have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may the Decision-Maker hear the appeal if filed.
- The Decision-maker will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of choice

- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing party.

Witnesses

Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after Decision-maker conducts its initial

round of questioning; during the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.

- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.
- The Parties will each be given the opportunity to provide closing statements.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including that challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the decision-maker may be deemed irrelevant if they have been asked and answered.

Review of Recording

The recording of the hearing will be available for review by the parties within 5 (five) calendar days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

Determination Regarding Responsibility Standard of Proof

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion. Except where specifically barred by the Title IX Final Rule, a

witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

While the expert witness will be allowed to testify and be crossed, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that the University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness' credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their University email account, or other reasonable means as necessary.

The Determination will include:

- Identification of the allegations potentially constituting covered sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Policy, if any, the respondent has or has not violated.

For each allegation:

- A statement of, and rationale for, a determination regarding responsibility;
- A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
- A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- The recipient's procedures and the permitted reasons for the complainant and respondent to appeal are described below in Appeals.

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within ten (10) calendar of the completion of the hearing.

Remedies and Sanctions

Sanctions must be designed to restore or preserve equal access to the University's education program or activity.

When the Respondent is an employee, examples are:

- Letter of Reprimand
- Mandatory Training
- Suspension (paid or unpaid)
- Termination

When the Respondent is a student, examples are:

- Restitution
- Restricted Access
- Living Unit Probation
- Living Unit Dismissal
- Disciplinary Probation
- Disciplinary Probation with Restrictions
- Alcohol/Drug/Anger Assessment
- Suspension
- Dismissal

Finality

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) calendar of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the

matter (i.e. a failure to follow the University's own procedures);

- 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;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than ten (10) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards. The appeal will be submitted to the Title IX Coordinator.

Appeals will be decided by the President's Designee who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

The University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a

report or Formal Complaint of sexual harassment.

Complaints alleging retaliation may be filed with the Title IX Coordinator.

Recordkeeping:

The University shall maintain for a period of seven (7) years records of (A) Each sexual harassment investigation including any determination regarding responsibility and any audiovisual recording required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education programs or activities; (B) Any appeal and the result therefrom; (C) Any informal resolution and the result therefrom; and (D) All material used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

XXX.0-A None

117 Sexual Misconduct

Student Code of Conduct

Student Rights

Complainant

- To have all allegations of sexual misconduct taken seriously and to be given a timely and respectful response.
- To be given amnesty (Complainant and witness) for minor student misconduct violations (such as alcohol or drug use) that is secondary to the sexual misconduct incident.
- To be informed of immediate measures for medical care and preservation of evidence if applicable.
- To be informed about University and community support services and resources.
- To be told about criminal and student conduct reporting options and the right to be assisted by campus

authorities.

- To learn about possible protective measures, including but not limited to, change in class schedules, alternative housing assignments, campus employment, and restricted contact.
- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.
- To suggest names of witness to be interviewed during the investigation process and provide the investigator with questions that they would like asked of the complainant or witnesses.
- To review, consistent with FERPA, any evidence gathered.
- To be informed in writing of the outcome of the student conduct proceeding and appeal procedure at the same time the Respondent is informed.
- To be notified of any change in the investigation results prior to when they become final.
- To be notified when the results become final.

Respondent

- To be informed of all allegations of sexual misconduct in a timely and respectful manner.
- To be given amnesty (Respondent and witness) for minor student misconduct violations (such as alcohol or drug use) that is secondary to the sexual misconduct incident.
- To be informed about University and community support services and resources.
- To learn about possible measures, including but not

limited to, change in class schedules, alternative housing assignments, campus employment and restricted contact.

- To be offered a trained University faculty/staff member to serve as a support person and resource.
- To have an advisor other than the University provided support person to assist during the investigation and resolution process.
- To be have related policy, process and support information explained clearly and fully at every stage of the conduct process.
- To suggest names of witness to be interviewed during the investigation process and provide the investigator with questions that they would like asked of the complainant or witnesses.
- To review, consistent with FERPA, any evidence gathered.
- To be informed in writing of the outcome of the student conduct proceeding and appeal procedure at the same time the Complainant is informed.
- To be notified of any change in the investigation results prior to when they become final.
- To be notified when the results become final.

Enacted: August 14, 2020

Revised: November 2022

The *Campus Life Handbook* is updated by the Student Affairs Office. If you have any questions, please call 614.823.1250 and we will be glad to help you.

Office of Student Affairs
614-823-1250

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