

Section: Human Resources Policies
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Responsible University Office: Office of Equity and Inclusion
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I. SCOPE OF THE POLICY AND POLICY STATEMENT

The purpose of this policy (the “Policy”) is to create and maintain a safe and non-discriminatory environment that protects the constitutional and civil rights of students, faculty and staff, as well as vendors, guests, visitors and volunteers, regardless of their race, color, national origin, sex, disability, religion, age, marital status, veteran status, gender identity or expression, or sexual orientation, or any other characteristic protected by applicable law. The Policy expresses the University’s opposition to discrimination, harassment, sexual misconduct and sexual violence and assists the University in complying with federal, state, and local legal mandates in relation to such misconduct. Acts of discrimination and harassment undermine the University's mission by threatening the careers, educational experiences, and well-being of the University community and are strictly prohibited.

The University of Delaware does not discriminate on the basis of race, color, national origin, sex, disability, religion, age, marital status, veteran status, gender identity or expression, or sexual orientation, or any other characteristic protected by applicable law in its employment, educational

programs and activities, admissions policies, and scholarship and loan programs as required by Title IX of the Educational Amendments of 1972, the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, and other applicable statutes and University policies. The University of Delaware further prohibits sex discrimination, sexual assault, sexual harassment, dating violence, domestic violence, stalking and discrimination and harassment on the basis of the protected classes above by anyone on property owned, leased or controlled by the University. The University also prohibits such conduct committed by students, faculty, staff, volunteers, or vendors off University property, if:

- A. The conduct was in connection with a University or University-recognized program or activity;
- B. The conduct is alleged to have created a hostile environment for a member of the University community on property owned, leased or controlled by the University or in connection with a University or University-recognized program or activity;
- C. The Respondent's conduct disrupts the normal functions and processes of the University or a University-recognized program or activity and is egregiously offensive to the University's mission; or
- D. The Respondent's continued presence on campus or involvement in a University or University-recognized program or activity poses a serious threat to persons or property, regardless of where the conduct occurred.

Inquiries and complaints about discrimination and/or harassment may be brought to the Title IX Coordinator of the University's Office of Equity and Inclusion ("OEI"). OEI ensures compliance, with respect to the implementation of the procedures in this Policy, in response to complaints of discrimination and/or harassment. Any question of interpretation regarding this Policy shall be referred to the Title IX Coordinator.

The University will respond to complaints or reports about conduct prohibited by this Policy with measures designed to stop or eliminate the behavior, prevent the recurrence of the prohibited conduct and remediate any adverse effects of such conduct on campus or in University or University-recognized programs or activities.

This Policy applies to all persons who are employed by, attending, or affiliated with the University; participating in, or attempting to participate in any University program or activity, including but not limited to administrators, faculty, staff, students, trustees, vendors, volunteers, and guests; and/or visiting the University campus or any property owned, leased or controlled by the University. Nothing in this Policy is intended to curtail the rights provided to employees under applicable collective bargaining agreements. To the extent there is a conflict, the terms of the applicable collective bargaining agreement control.

II. DEFINITIONS

- A. "Advisor" means an individual who has agreed to provide support or advice to a Complainant or a Respondent. Complainants and Respondents are permitted to bring

an Advisor of their own choosing, including a family member or an attorney, to any meeting or proceeding that is held in connection with the Investigation and resolution of a Complaint brought under this Policy. The Advisor may not speak aloud during any meeting or investigation interview, including by addressing anyone other than the party whom the Advisor is advising. The only exception to this applies to hearings held under Appendix C; at such hearings, the Advisor is permitted to ask relevant questions of the other party and witnesses, but may not otherwise address the Hearing Officer, other party, or witnesses. Any Advisor who disrupts or interferes with any meeting, interview, or hearing, may be asked to leave.

- B. “Appeal” means a process for a party to request a review of the procedures or determinations made by the Investigator, Hearing Officer and/ or Sanctions Officer based on specific criteria set forth in this Policy. The appeal process is documentary under this Policy and does not involve a hearing.
- C. “Appellate Board” means the group of people available to hear appeals of decisions and sanctions in cases involving alleged violations of this Policy by students, staff, or administrators.
 - 1. In a case involving a student Respondent, the Appellate Board in each case is made up of a faculty member, a staff member, a student and a non-voting chairperson, who may be either a faculty or staff member. The student member is an undergraduate student if the Respondent is an undergraduate student, a continuing education student or an English Language Institute student. The student member is a graduate student if the Respondent is a graduate student.
 - 2. In a case involving a staff or administrator Respondent, the Appellate Board in each case is made up of three staff members or administrators and a non-voting chairperson, who will also be a staff member or administrator.
 - 3. In cases in which a faculty member is appealing a decision or sanction, the Appellate Board will be the Faculty Senate Committee on Welfare and Privileges, which will make a recommendation to the Provost.
 - 4. The members of the Appellate Board will be impartial and free from demonstrated bias, including bias for or against complainants or respondents generally, and free from any actual conflict of interest, and will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the member of the Appellate Board.
 - 5. All members of the Appellate Board serving in any cases under this Policy will be trained in adjudicating and reviewing cases involving alleged sexual misconduct and other violations of this Policy.

- D. “Appellate Officer” means the Provost or designee available to hear appeals of decisions and sanctions filed by a non-faculty member in cases in which the other party is a faculty member. The Appellate Officer will be impartial and free from demonstrated bias, including bias for or against complainants or respondents generally, and free from any actual conflict of interest, and will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the Appellate Officer. The Appellate Officer will have training in reviewing appeals under this Policy.
- E. “Complainant” means the person who is alleged to have experienced the prohibited conduct, regardless of whether that individual makes a complaint or desires disciplinary action. A Complainant may be a student, employee, faculty member, volunteer, vendor, visitor or guest.
- F. “Confidential resources” mean University employees or offices designated by this Policy who are not obligated to report disclosures of prohibited conduct under this Policy to the Title IX Coordinator. Information about Confidential Resources, include the confidential offices on campus, can be found at <https://sites.udel.edu/sexualmisconduct/how-to-report/confidentially-disclosing-sexual-misconduct/>.
- G. “Consent” is an affirmative decision to engage willingly in mutually acceptable sexual activity given by clear words or actions. It is an informed decision made freely and actively by all involved parties. In order for a sexual encounter to be consensual, each participant must agree to engage in each act of the encounter. All participants should make clear their willingness or lack of willingness to continue at each progression of the sexual interaction and should not make assumptions about consent during the sexual activity, as confusion or ambiguity may arise.

Consent may not be inferred from silence, passivity, lack of resistance or lack of active response alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Nor does a current or previous dating or sexual relationship constitute consent to sexual activity in every instance.

Either party may withdraw consent at any time during the sexual encounter. Once withdrawal of consent has been expressed by words or actions that indicate a clear desire to end sexual activity, all sexual activity must cease immediately.

Sexual conduct will be considered “without consent” if no clear consent, verbal or non-verbal, is given. This includes situations in which an individual’s ability to consent freely is taken away by another person or circumstance. Examples may include, but are not limited to, when an individual is incapacitated due to alcohol or drugs, passed out, fearful for the individual’s safety or the safety of others, physically forced, intimidated, coerced, mentally or physically impaired, threatened, or confined.

The use of alcohol or drugs can limit a person’s ability to give consent freely and clearly. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether or not consent has been freely and clearly given. The perspective of a reasonable person evaluating another person’s physical or verbal functions will be the basis for determining whether one should have known that the use of alcohol or drugs impaired that person’s ability to give consent. Being intoxicated or impaired by alcohol or drugs does not diminish one’s responsibility to obtain consent and is never an excuse for sexual misconduct.

- H. “Days” means business days when all University offices are open. This does not include weekends, holidays or inclement weather days when University offices are closed.

- I. “Deputy Title IX Coordinators” means University employees designated to assist the University Title IX Coordinator in responding to reports of sexual misconduct, providing training to employees and students and creating an environment free from sexual misconduct. The following individuals have been designated as Deputy Title IX Coordinators:
 - 1. For Undergraduate Students: Adam Cantley, Dean of Students, 132 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-8939, adamcan@udel.edu.
 - 2. For Faculty: Matthew Kinservik, Ph.D., Vice Provost for Faculty Affairs, 116 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-2101, matthewk@udel.edu.
 - 3. For Graduate Students: Mary Martin, Ph.D., Associate Vice Provost for Graduate and Professional Education, 234 Hullihen Hall, University of Delaware, Newark, DE 19716, 302-831-8916, marym@udel.edu.
 - 4. For Athletics: James Coleman. Senior Associate Athletic Director, Diversity 134 Whitney Athletic Center, University of Delaware, Newark, DE 19716, 302-831-0757, jcoleman@udel.edu.

- J. “Emergency Removal Provisions”

If the University determines that the conduct, as alleged, poses an immediate threat of physical harm to one or more members of the University community, or to the University’s educational environment, the University may instruct that the Respondent be removed, on an interim basis, from the University, from residence halls, or from specific programs or activities. Any such assessment will be made on a case-by-case basis, based on an individualized safety and risk analysis. The decision to remove the Respondent will be provided to Respondent in writing.

For cases proceeding under Appendix C, Emergency Removal shall be limited to instances in which there is an immediate threat to the physical health or safety of any student or other individual, arising from the allegations of prohibited conduct as defined in Appendix C.

Respondent shall have an opportunity to challenge the decision immediately following the removal. To challenge the removal, the Respondent should contact the appropriate administrator as listed below, who will explain the process for challenging an emergency removal.

1. For students (Undergraduate and Graduate), the Emergency Removal decision will be made and communicated by the Office of Student Conduct (OSC) and the Dean of Students will review any challenges raised by the Respondent. A Respondent who wishes to challenge an Emergency Removal should email their request to deanofstudents@udel.edu.
2. For faculty, the Emergency Removal decision will be made and communicated by the Vice Provost for Faculty Affairs, vpfaculty@udel.edu, and the provisions set forth in the Faculty Handbook for Emergency Involuntary Leave with Pay will be utilized if the Respondent wishes to challenge the Emergency Removal.
3. For staff and administrators, the Emergency Removal decision will be made and communicated by the Director of Employee Labor and Relations and the Vice President for Human Resources will review any challenges raised by the Respondent. A Respondent who wishes to challenge an Emergency Removal should email their request to jaup@udel.edu.

The decision to use an Emergency Removal shall not be considered as evidence that any determination has been made regarding potential responsibility, as a Respondent is presumed to be not responsible until the conclusion of the process as set forth below in Appendix B, C or D, as may be appropriate.

- K. “Employee” means anyone employed by the University, including but not limited to, faculty and staff, part-time and full-time employees and student workers in their capacity as an employee.
- L. “Faculty Member or Faculty” means any full- or part-time professor, associate professor, assistant professor or instructor, excluding faculty members who also hold administrative appointments.
- M. “Formal Complaint” means the document that meets the requirements below and initiates an investigation pursuant to Appendix C. It has a very specific definition within this Policy, and whether one is filed does not depend on the label applied to the document, but instead on whether certain specific elements are met. A Formal Complaint must be filed and signed by a Complainant or signed by the Title IX

Coordinator, alleging conduct which would constitute a violation of Appendix C and requesting that the University investigate the allegations(s). At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, an education program or activity of the University. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email), by using the contact information listed on the OEI homepage, or as described in this Policy. Individuals who would like more information about filing a Formal Complaint are invited to contact the Title IX Coordinator for additional information.

In the event that the Title IX Coordinator signs the Formal Complaint, this act does not make the Title IX Coordinator the “Complainant” for purposes of this Policy.

- N. “Hearing Officer” means an appropriately trained professional, who may or may not be a University employee, who facilitates a hearing, including maintaining decorum, making determinations regarding evidence and relevancy of questions, and resolving procedural questions that may arise during the hearing. The Title IX Coordinator will assign a Hearing Officer on a case-by-case basis and communicate the identity of the Hearing Officer to the parties in the Notice of Hearing. The Hearing Officer(s) will be impartial and free from demonstrated bias, including bias for or against complainants or respondents generally, and free from any actual conflict of interest, and will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the Hearing Officer. The Hearing Officer will have training in conducting hearings under this Policy, including Appendices B and C.
- O. “Investigator” means an appropriately trained professional, who may or may not be a University employee, who reviews and investigates reports made under this Policy. The Title IX Coordinator will assign an Investigator on a case-by-case basis and communicate the identity of the Investigator to the parties in the Notice of Investigation. The Investigator(s) will be impartial and free from demonstrated bias, including bias for or against complainants or respondents generally, and free from any actual conflict of interest, and will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the Investigator and will have training in investigating and evaluating conduct under this Policy.
- P. “Prohibited Conduct” means the conduct that is prohibited by this Policy which includes discrimination, harassment and retaliation on the basis of a protected status. *See Appendices B, C and D for specific offenses.*
- Q. “Remedial measures or Remedies” are measures that may be implemented as part of the sanctioning to ensure the hostile environment experienced by the Complainant has been addressed, and to restore or preserve equal access to the University’s educational programs or activities. Such measures may include providing an escort to ensure safe movement around campus; ensuring the Complainant and Respondent do not share classes, work spaces or extracurricular activities; reassignment of residence halls;

tutoring or other academic support; arranging for extra time to complete or re-take a class or withdraw from a class without academic or financial penalty; job reassignment; targeted training for a group of students, faculty or staff; and other remedies that can be tailored to the needs of the parties and the University.

- R. “Respondent” means the person who allegedly committed a violation of this Policy. A Respondent may be a student, employee, faculty member, volunteer, vendor or other individual on campus.
- S. “Sanctioning Officer” means an appropriately trained administrator who determines the appropriate sanction following a determination that this Policy has been violated. The Sanctioning Office will be impartial and free from demonstrated bias, including bias for or against complainants or respondents generally, and free from any actual conflict of interest, and will disclose any real or reasonably perceived conflicts of interest to the Title IX Coordinator as soon as such conflicts are discovered by the Sanctioning Officer to the Title IX Coordinator as soon as such conflicts are discovered by the sanctioning officer, and will have training in imposing sanctions under this Policy.
1. In a case involving a student Respondent, the Director of the Office of Student Conduct (OSC) or designee shall determine the appropriate sanctions or corrective actions.
 2. In a case involving a staff or administrator Respondent, the appropriate Vice President or highest-level supervisor shall determine the appropriate sanctions or corrective actions.
 3. In a case involving a faculty member, the Dean of the College in which the Respondent is primarily employed shall determine the appropriate sanction or corrective actions.
- T. “Sanctions” means disciplinary and/or educational measures imposed following a determination of responsibility. Please see specific sanctions listed in the appendices.
- U. “Staff or administrator” means any non-faculty University employee, whether part-time or full-time, temporary or permanent, exempt or non-exempt. Administrator includes faculty members who hold administrative appointments.
- V. “Student” is any individual who is currently enrolled, was enrolled within the previous two terms or is eligible to enroll for the next term. The word “student” as used throughout this Policy includes Student Organizations. [“Term” is defined as an academic session in which classes are offered. This includes traditional semesters (Fall and Spring) as well as special sessions (Winter and Summer).]
- W. “Supervisor” means the Complainant’s or the Respondent’s immediate manager, if the Complainant or Respondent is a University employee.

- X. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge, to either party whether or not a Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment. Supportive measures may include, but are not limited to:
1. offering support services to both parties;
 2. separating the Complainant’s and Respondent’s academic, living or work situations;
 3. issuing a mutual ban from contact for both parties to refrain from communication;
 4. providing increased security at the locations or activities where the misconduct occurred;
 5. offering escort services;
 6. placing restrictions on Respondent (not available through resolution process outlined in appendix C); and
 7. other measures as determined on a case-by-case basis.
- Y. “Support person” means a person providing support to the Complainant or Respondent throughout the processing of any complaint under this Policy. A support person may be anyone who is not a party to or witness in the case. The role of the support person will be limited. The Complainant and Respondent each have the opportunity to be accompanied by one Advisor and one support person. The Complainant and Respondent may also choose to proceed without a support person or with only a support person and not an Advisor. Support persons may be a friend, family member, attorney, or union representative, but support persons may not stand in place of either the Complainant or Respondent, act as legal counsel for a party, or otherwise actively participate in any of the proceedings. If a support person fails to comply with this Policy or is otherwise disruptive to the process, the Title IX Coordinator, Investigator or Hearing Officer may ask the support person to leave the room and continue with the meeting, interview or hearing without the support person present.
- Z. “University Title IX Coordinator or Title IX Coordinator” means that official or designee. The Title IX Coordinator oversees the University’s response to complaints or reports to ensure compliance with Title IX and other applicable laws addressed through this Policy. The Title IX Coordinator will also identify and address any

patterns or systemic problems revealed by complaints or reports made under this Policy.

The University Title IX Coordinator is Dawn Barker Floyd, J.D. 305 Hullahen Hall, Newark, DE 19716, (302) 831-8063, titleixcoordinator@udel.edu.

- AA. “Vendor” means a company or individual providing goods or services on the University campus or to the University community through a contractual relationship with the University.
- BB. “Visitor or Guest” means an individual who is not officially affiliated with the University but is present on campus either independently or as the guest of a University employee or student.
- CC. “Volunteer” means an individual who is not employed by the University but is providing goods or services on the University campus or to the University community, at the request of or with the authorization of the University, without receiving compensation from the University.

III. POLICY STANDARDS AND PROCEDURES

A. Standard of Evidence

The standard of proof in all cases will be the preponderance of the evidence. This means that a finding of responsibility requires that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the Respondent violated this Policy. Individuals are presumed not responsible for violating this Policy unless and until a finding has been made, at the conclusion of the process, that the Respondent has violated this Policy.

This standard of proof differs from the higher standard used in criminal cases, beyond a reasonable doubt. Therefore, there could be instances when the criminal justice system declines to prosecute a case criminally but a finding of responsible is reached under this Policy.

B. Burden of Proof and Burden of Gathering Evidence

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility in each complaint rests on the University and not the parties.

C. Policy Interpretation and Revisions

Any questions regarding the policy should be addressed to the University Title IX Coordinator, who is responsible for updating and interpreting this Policy. The University conducts regular reviews and updates to this Policy. The University may, due to legal or institutional need, make changes to this Policy at any time as deemed appropriate by

University officials. The Policy posted at <https://sites.udel.edu/sexualmisconduct/policies/> is the current and active version.

D. First Amendment and Academic Freedom Protections

The University is committed to free expression and academic freedom. We are equally committed to creating and maintaining an environment free from discrimination and harassment for all members of the University community. Members of the University community are free to examine and discuss all questions of interest to them and to express their opinions. Academic freedom is the freedom to teach, to conduct research and other scholarly or creative activities, and to publish or otherwise disseminate the results, even if the conclusions are unpopular or contrary to public opinion. Nothing in this Policy is meant to infringe upon the First Amendment rights of University employees and students. Nor is this Policy meant to infringe upon academic freedom protections set forth in the Faculty Handbook and in the Collective Bargaining Agreement between the University and the American Association of University Professors (AAUP). The University will consider First Amendment rights and academic freedom protections in the consideration and investigation of reports under this Policy.

E. Amnesty

The University grants amnesty to students who may have violated the Code of Conduct's alcohol and drug Policy, <http://www1.udel.edu/amnesty/>, when they allegedly experienced Prohibited Conduct under this Policy. Therefore, no alcohol or drug charges are applied to students who report that they were under the influence of alcohol or drugs when the reported misconduct took place.

F. Supportive Measures

Any Supportive Measures put in place will be kept confidential, except to the extent that doing so impairs the ability of the institution to provide the supportive measures. For example, in order to effectuate a housing change, staff at Residential Life shall be informed of the need to assist with a housing change as directed by the Title IX Coordinator, but will not be provided with any of the details of any complaint.

Supportive Measures remain in place until the case has been investigated and resolved or until lifted by the appropriate University official or designee. The decision about whether particular Supportive Measures are appropriate and when they should be lifted will be made by:

1. the Dean of Students or designee when the Respondent is an undergraduate student;
2. the Associate Vice Provost for Graduate and Professional Education or designee if the Respondent is a graduate student;

3. the Vice Provost for Faculty Affairs or designee if the Respondent is a faculty member;
4. the Director, Employee Relations or designee if the Respondent is a staff member; and
5. the Title IX Coordinator or designee if the Respondent is a volunteer, visitor or vendor.

G. Disability Accommodations

OEI partners with the Office of Disability Support Services (“DSS”) with respect to the provision of reasonable accommodations for disabilities. If you require an accommodation to participate fully in any part of the OEI process set forth in the Policy, contact the Title IX Coordinator at your earliest convenience. If you have the requested accommodation on file with DSS, OEI will implement the accommodation. If you do not have the requested accommodation on file, OEI will connect you with DSS to initiate the accommodation request process.

H. Consolidation of Cases

In the event that the allegations under this Policy involve allegations of a violation of a separate policy, whether Student Code of Conduct, Faculty Handbook, or Staff Handbook, the University shall have the right, within its sole discretion, to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Policy.

I. Transfer of Cases, Sharing of Information

For any case brought under this Policy, should the case be dismissed and then transferred to another office for handling, the University shall have the right to transfer all communications and information gathered to any other University administrator who will be reviewing and/or handling the case.

J. No Conflict of Interest or Bias

Any individual carrying out this Policy shall be free from any actual conflict of interest or bias that would impact the handling of their obligations to carry out this Policy. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator is to immediately notify the Vice President of Human Resources, who will determine whether any actual conflict of interest or demonstrated bias exists, in which case the Vice President of Human Resources shall designate an Acting Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue. Should any Investigator, Hearing Officer, Sanctioning Officer, or Appellate Officer have a conflict of interest, they are to notify the Title IX Coordinator upon discovery of the conflict.

Each party may also object to the Title IX Coordinator or designated Investigator, Hearing Officer, Sanctioning Officer, or appeals board member or officer, on the grounds of an actual bias or conflict of interest. If any of the parties object, they must notify the Title IX Coordinator in writing within three days of learning of the conflict of interest or demonstrated bias, in which case the Title IX Coordinator will evaluate whether the objection is substantiated. The party raising the objection will be notified in writing of the findings within two (2) days. If it is determined that an actual bias or conflict of interest exists, the person who was the subject of the objection will be removed and replaced.

K. Presumption of non-responsibility

The decision to proceed with an investigation is not a determination that the Respondent has engaged in the conduct as alleged. Any Respondent is presumed not responsible for the conduct that is the subject of the investigation, unless and until a decision of responsibility has been made upon the completion of the adjudication process.

L. Prohibition on Retaliation

The University will not intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX and its regulations or any other state or federal anti-discrimination law or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. Any reports of retaliation should be made to the Title IX Coordinator.

The exercise of rights protected under the First Amendment does not constitute retaliation.

M. Requests for Delays and Extensions of Time

The Title IX Coordinator may extend any deadlines within this Policy, for good cause shown and documented. The Complainant and Respondent will be notified in writing of any extension, the reasons for it, and projected new timelines.

N. Prohibition on False Evidence Provided During Title IX Process

The parties and witnesses are expected to provide truthful information to the Investigator, Hearing Officer, and appeals officer. In the event false evidence is knowingly provided during the Title IX Process, the individual providing the false information will be referred to the appropriate office for review and next steps.

O. Reporting Prohibited Conduct

1. To OEI or Title IX Coordinator

Reports of potential violations of this Policy may be made to the Title IX Coordinator. Reports may be filed at any time by using the online reporting

forms available on the [OEI Homepage](#). The forms/report may also be dropped off at OEI, 305 Hullihen Hall, sent by email to titleixcoordinator@udel.edu, or mailed to OEI, 305 Hullihen Hall, Newark, DE 19716. Upon receipt of a report, the Title IX Coordinator will reach out to the Complainant to conduct an intake interview (*see below*). Reports may be made by an individual who experienced, witnessed or otherwise learned about the alleged misconduct.

2. Formal Complaints under Appendix C

Formal Complaints under Appendix C may be submitted to the Title IX Coordinator via email to titleixcoordinator@udel.edu, mail to OEI, 305 Hullihen Hall, Newark, DE 1971 or in person at 305 Hullihen Hall. Questions about Formal Complaints should be directed to the Title IX Coordinator.

A Formal Complaint may only be filed by a Complainant and must include the following information:

- a. The Complainant's physical or digital signature, or information that otherwise indicates that the Complainant is the person filing the Formal Complaint;
- b. A description of the specific conduct that is alleged to be a policy violation, with the name of the Respondent (if known); and
- c. A request for an investigation.

If a report is submitted in a form that does not meet the requirements for a Formal Complaint, the Title IX Coordinator will contact the Complainant to confirm a Complainant's intent to file a Formal Complaint and how to remedy the deficiencies. Further, if the Formal Complaint does not have sufficient information to determine whether or not the conduct as alleged will fall under Appendix C, the Title IX Coordinator will contact the Complainant to schedule an intake interview.

Upon receipt of a Formal Complaint, the Title IX Coordinator will reach out to the Complainant to conduct an intake interview. In the event that the Complainant declines to participate in an intake interview, and if the Formal Complaint contains an allegation meeting all of the jurisdictional elements of Appendix C of this Policy, and the Formal Complaint is signed (or includes an electronic submission from the Complainant), and the Formal Complaint requests an investigation, the Title IX Coordinator will, within 3 days, put the Respondent and Complainant on notice of the allegation and commence the investigation process.

The Title IX Coordinator shall have the discretion to sign a Formal Complaint and initiate an investigation when a Complainant's allegations involve violence, use of weapons, serial predation, or similar factors that threaten the University community. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become the "Complainant" for purposes of this Policy.

3. To University of Delaware Police Department (UDPD) or Other Law Enforcement Agency

A report of sexual misconduct or other criminal misconduct may be filed with the University Police Department ("UDPD"), if the alleged misconduct occurred on campus, or other law enforcement agency, if the alleged misconduct occurred off campus, for a criminal investigation. Filing a report of sexual misconduct with a law enforcement agency, including UDPD, does not preclude the Complainant from also filing a report with the University Title IX Coordinator, and filing a report with the University Title IX Coordinator does not preclude a Complainant from also reporting the incident to a law enforcement agency, including UDPD. If a report of sexual misconduct is made to both the University Title IX Coordinator and a law enforcement agency, the University will, to the extent possible, coordinate its investigation with the law enforcement agency to minimize the burden on the Complainant, Respondent and witnesses. However, the University may need to delay its fact investigation for a reasonable period of time while the police are conducting their fact investigation.

P. Responsibility to Report Prohibitive Conduct Under this Policy

All members of the University community have a responsibility to make the University a safe and supportive environment for everyone. This responsibility includes reporting safety or security concerns and crimes or policy violations, including potential violations of this Policy.

In an emergency situation, members of the University community should immediately call 911 to report any crime or other incident that poses a risk of harm to the University community.

Any University employee, including student employees, who is not a confidential resource under this Policy and who witnesses, is advised of or learns about an alleged violation of this Policy **must promptly notify** the University Title IX Coordinator of the incident by email, telephone or using the Online Reporting Form available on the [OEI Homepage](#).¹ The

¹ These reporting obligations are different from the reporting obligations of a Campus Security Authority ("CSA") under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f).

employee must report to the University Title IX Coordinator all relevant details about the alleged misconduct known to the employee or shared with them.

Any employee who learns about a report under this Policy will respect the privacy of the parties. The employee will inform only those who need to know, which will include the University Title IX Coordinator. The employee and the University Title IX Coordinator will not share information about the alleged incident with law enforcement without the Complainant's consent, unless the employee has a duty under University policy, federal or state law (e.g., mandatory reporting of child abuse) to report such an incident to law enforcement or unless the Complainant has already reported the incident to law enforcement.

The fact that a report from an employee is given to the University Title IX Coordinator does not necessarily mean the University will undertake an investigation into the allegations. The University Title IX Coordinator will ensure that the Complainant is made aware of rights and resources available to them, as well as their options and, if appropriate, how to file a Formal Complaint under Appendix C. These rights include:

1. the right to be accompanied to meetings about the incident with an advisor and a support person;
2. the availability of confidential resources both on and off campus;
3. the availability of medical assistance both on and off campus;
4. the availability of interim or supportive measures;
5. the strict prohibition against retaliation;
6. the available reporting options for an incident under this Policy, including the option to report or not report the incident to law enforcement; and
7. a copy of this Policy or a link to its location on the website, which includes a description of the University's adjudication process.

Employees should make every effort to inform a Complainant of the employee's reporting obligations before the Complainant reveals any specific information. If the Complainant wishes to maintain confidentiality, they should be encouraged to speak with one of the University's Confidential Resources.

The University provides anonymous reporting mechanisms through the University Police Department's LiveSafe App and through an EthicsPoint Compliance Hotline, <http://www.udel.edu/compliance/>. If identifying information for the Complainant is provided through either reporting mechanism, the University Title IX Coordinator will provide an outreach with support resources and may request an opportunity to meet with Complainant responsive to information included within either report.

Public awareness events such as Take Back the Night, candlelight vigils, protests, survivor speakouts or other forums in which Complainants disclose incidents of sexual misconduct or other forms of discrimination or harassment are not considered notice to the University or its employees of sexual misconduct and need not be reported to the Title IX Coordinator. The University will make an effort to provide information about rights and available resources at these and other similar events.

The only time a University employee who is not a confidential resource does not have to report an instance of Prohibited Conduct under this Policy is if that employee personally experienced such misconduct, although the University encourages those employees to report such incidents.

1. Delaware State Law Requirements:

As required by Delaware state law, all employees and University trustees must also take the following steps in incidents of sexual assault that involve one or more University students or that occur on the University campus:

- a. Tell the Complainant that you can report the incident to law enforcement.
 - (1) If the Complainant says no, you do not need to report the incident to law enforcement but should still report it to the Title IX Coordinator.
 - (2) If the Complainant would like you to report to law enforcement, contact the University Police Department (“UDPD”) at (302) 831-2222 or visit their office at 413 Academy Street within 24 hours of the Complainant asking you to make the report.
- b. Provide a copy of, or direct the Complainant to, the Delaware Victims’ Bill of Rights.
- c. Provide the Complainant with on and off campus resources for confidential counseling, medical services and advocacy services.
- d. Report your compliance with these steps to the University Title IX Coordinator at titleixcoordinator@udel.edu.

Requesting Confidentiality or Anonymity after Reporting an Incident: How the University Will Consider the Request and Respond

If the Complainant requests that the University not pursue an investigation or asks that their name be held in confidence, the University Title IX Coordinator will weigh each request very carefully. Among the factors the University will consider in assessing a Complainant’s request are:

1. whether the sexual misconduct was perpetrated with a weapon;

2. whether the Respondent has been identified as a Respondent in another alleged incident of sexual misconduct;
3. the age of the Complainant;
4. whether the University possesses other means to obtain relevant evidence (for example, if the University has surveillance camera footage that shows the incident, the University may be able to proceed without the involvement of the Complainant); and
5. whether the University has credible evidence that the Respondent has committed one or more prior violations of the sexual misconduct policy.

In cases in which the University Title IX Coordinator will advise the Complainant if the University intends to proceed with the investigation against the Complainant's wishes, if the Complainant requests that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline, the University will do so and inform the Respondent that the University made the decision to go forward with the investigation.

Q. Procedures to Respond to Reports of Violative Conduct Under this Policy

Upon receipt of a report of prohibited conduct under this Policy, the University will generally proceed as described below

1. OUTREACH FROM TITLE IX COORDINATOR TO COMPLAINANT(S), IF IDENTIFIED.

Upon receipt of information alleging a potential violation of this Policy, the Title IX Coordinator shall send to the Complainant's University email address or other email address provided an outreach communication which may include as appropriate the following information:

- a. available confidential resources;
- b. the option to report to law enforcement and the right to decline to report to law enforcement;
- c. an invitation to schedule an informational intake meeting with the Title IX Coordinator to discuss in greater detail the Complainant's rights and reporting options and the University's resolution processes.

2. INFORMATIONAL INTAKE MEETING

An informational meeting is an opportunity for a Complainant to discuss with the Title IX Coordinator in greater detail the University's response to reports of prohibited conduct under this Policy, Complainant's options to report, and

supportive measures, which are available with or without the filing of a Complaint. In this meeting, the Title IX Coordinator will also explain the process for filing a Formal Complaint, if appropriate.

For those Complainants who wish to proceed with a resolution process available under this Policy, they have the opportunity in this meeting to share specific information with the Title Coordinator to be incorporated into a Complaint for assessment. The Title IX Coordinator may ask the Complainant what actions they are requesting of OEI. The Complainant may request:

- a. No further action be taken by the University on the Complaint;
- b. To participate in the Alternative Resolution Process set forth in Appendix A;
- c. To participate in the applicable OEI adjudication process set forth in Appendices B, C or D; or
- d. More time to make a decision.

3. DECISION TO PROCEED

The Title IX Coordinator will review the information provided and assess whether the alleged misconduct, as reported, falls within the scope of this Policy. If the information provided does not allege conduct covered by this Policy, the Complainant will be notified of the appropriate University process for next steps if any. If the Complaint falls within this Policy, the Title IX Coordinator must next weigh the request from the Complainant and may determine as follows:

- a. No further action is warranted; or
- b. Further action is warranted and the Title IX Coordinator will determine the appropriate available options for resolution of the complaint, which may include proceeding under Appendix A, B, C, or D.

The assessment and determination of next steps responsive to the Complaint shall be sent via University email to the Complainant within 3 days of the filing of the Complaint. If the Title IX Coordinator determines that the Complaint is eligible for an Alternative Resolution under Appendix A, the Complainant will be given the opportunity to select that process if they choose as set forth in Appendix A.

In the event the allegation involves a sexual assault, dating or domestic violence, or stalking, within Clery geography, or some other criminal conduct under the Clery Act, the Title IX Coordinator will also notify the Clery Coordinator of the allegations.

4. TITLE IX COORDINATOR ASSESSMENT PROCESS UNDER THIS POLICY TO DETERMINE APPROPRIATE RESOLUTION PROCESS

The Title IX Coordinator will assess the information presented using the following sets to determine whether the Complaint may proceed under Appendix B, C, and/or D using the following steps:

- a. Nature of Complaint. Does the complaint allege:
 - (1) Conduct on the basis of sex that is also Dating Violence, Domestic Violence, Stalking, or Sexual Assault;
 - (2) Unwelcome conduct of a sexual nature that can be determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - (3) An employee of the University conditioned the provision of an aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct (quid pro quo sexual harassment)?
- b. Location. Does the complaint allege that the incident(s):
 - (1) Occurred on the University's campus, within the United States;
 - (2) Occurred in a building owned or controlled by a recognized organization, such as in a sorority or fraternity house of an affiliated sorority or fraternity, and within the United States; or
 - (3) Was part of one of the University's programs or activities, such as part of a field trip or team athletic event, and within the United States?
- c. Substantial Control of Respondent. Does the institution have substantial control over the Respondent, meaning the Respondent is a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed)?
- d. Status of Complainant. Is the Complainant a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed)?

If the answer is yes to at least one question under A, at least one question under B, C and D, Appendix C will apply and the case must proceed under Appendix C, unless the parties and the Title IX Coordinator agree to the Alternative Resolution Process set forth in Appendix A. In certain circumstances in which there are multiple allegations and at least one

allegation must proceed under Appendix C, all allegations will proceed under Appendix C, unless the parties and the Title IX Coordinator agree to the Alternative Resolution Process. For complaints that are not eligible to proceed under Appendix C, the Title IX Coordinator will determine whether Appendix B or D will apply and whether the complaint is eligible for the Alternative Resolution Process set forth in Appendix A.

5. COMPLAINANT AND RESPONDENT RIGHTS

- a. Be treated with respect by all University officials;
- b. Be informed of the available support resources or measures available;
- c. Be free of any form of retaliation and free to report such retaliation for disciplinary action;
- d. Obtain a mutual ban from contact with the other party upon request;
- e. Be accompanied by one Advisor and one Support Person throughout the process, including at any meetings or interviews;
- f. Experience an adequate, reliable, impartial and prompt investigation of the allegations conducted within a reasonable period of time after the complaint is filed;
- g. Receive written notice of the date, time and location of any interview scheduled with the Investigator;
- h. Be kept informed of the status of the investigation, to the extent possible;
- i. Inspect and review all evidence which is directly related to the allegations;
- j. Meet with the Investigator and present information on their own behalf, identify witnesses or other third parties who might have relevant information and identify or provide relevant documents or other information the party believes may be helpful to the investigation;
- k. Have past unrelated behavior excluded from the investigation process;
- l. Question the selection of the Title IX Coordinator, Investigator, Hearing Officer, the person(s) deciding the sanction and the Appellate Officer or members of the Appellate Board on the basis of an actual conflict of interest or demonstrated bias;
- m. Be notified of the determination and any sanctions applied, if applicable;

- n. Initiate and participate in an appeal process;
- o. Waive any of the rights contained herein.

6. WRITTEN NOTICE OF INVESTIGATION

Upon the filing of a Complaint under this Policy and the determination to proceed with a formal investigation, written notice shall be provided to the Respondent and the Complainant. Such notice shall include the following information:

- a. The specific allegation and the specific conduct that is alleged to have occurred;
- b. The identity of the Complainant(s);
- c. The date and location (if known) of the conduct that is alleged to have occurred;
- d. A copy of this Policy, which contains the process that will be followed, including an explanation that each party shall have the right to inspect and review all evidence directly related to the allegations prior to the completion of the investigation;
- e. A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the adjudication process, there is a determination of responsibility;
- f. An explanation that each party may be accompanied by an Advisor and a Support Person of their choice, who may be a parent, friend, attorney, or union representative;
- g. The date and time of the initial meeting with the Title IX Coordinator, with a minimum of two (2) days' notice;
- h. The University's alcohol and drug amnesty policy;
- i. The name and contact information for the assigned Investigator;
- j. Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.
- k. The expectation that all parties will provide truthful information as part of the investigation and hearing processes, and that the failure to do so may be referred to the appropriate office for handling.

Note: Should additional allegations be added at a later time, the Parties will again be provided with a full written notice.

APPENDIX A- Alternative Resolution Process

The Alternative Resolution Process is not available for reports of sexual harassment made by a student about an employee but may be available in other cases.

Upon filing a complaint, a Complainant may request an Alternative Resolution. The Title IX Coordinator will first determine whether the conduct, as reported in the complaint, is a potential violation of this Policy. If the Title IX Coordinator determines that it is a potential violation but is eligible for alternative resolution, if the parties agree, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- A. The specific allegation and the specific conduct that is alleged to have occurred;
- B. The requirements of the alternative resolution process including the circumstances under which it precludes the parties from resuming a complaint under Appendices B, C or D arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process and resume the adjudication process with respect to the reported misconduct;
- C. Any consequences that may result from participating in the alternative resolution process, including the records that will be maintained or could be shared;
- D. Any consequences that may result from not participating in the alternative resolution process, including the possibility of the University conducting an appropriate adjudication process;
- E. A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the formal investigation and adjudication processes, there is a determination of responsibility;
- F. An explanation that each party may be accompanied by an Advisor and a Support Person of their choice, who may be a parent, friend, union representative or attorney;
- G. An opportunity for the parties to meet with the Title IX Coordinator separately to learn more about the alternative resolution process and the adjudication process;
- H. Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant; and
- I. An explanation that the Alternative Resolution process is generally expected to be completed within thirty (30) days, and may be extended for good cause by the Title IX Coordinator and that all parties will be notified, in writing, of any extension and the reason for the extension.

Participation in the Alternative Resolution Process is voluntary, and both parties must agree, in writing. Even if the parties agree to an Alternative Resolution, it is within the discretion of the Title IX Coordinator to determine that a report must proceed through the adjudication process in certain cases (e.g., where a Respondent is alleged to have violated the Policy on multiple occasions or with multiple Complainants, or where the reported conduct, if true, presents a threat to the safety of the University community). If either party does not voluntarily agree in writing to pursue an Alternative Resolution, or if the Complainant, Respondent, or Title IX Coordinator, at any time, determines that Alternative Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through the appropriate adjudication process.

Once the final terms of an Alternative Resolution have been agreed upon by both parties, in writing, the matter shall be considered closed, and will not then proceed through the adjudication process. Any resolution reached through the Alternative Resolution Process will be confirmed in writing and provided to the parties within five (5) days of reaching a resolution.

Records of any Alternative Resolution will be maintained and can be shared with other University offices as appropriate.

APPENDIX B - Administrative Resolution Process for Non-Title IX Offenses

This appendix shall apply to complaints that involve at least one student as the Complainant or Respondent and do not fall under Appendix C.

Prohibited Conduct

For purposes of this Appendix B, the following definitions, along with the definitions of Prohibited Conduct in Appendix C shall apply:

- A. “Discrimination” means any disparate treatment of an individual based on a protected characteristic which has an adverse impact sufficient to alter the terms and conditions of an individual’s academic, employment, or other University status or opportunity.
- B. “Harassment (Hostile Environment)” means unwelcome verbal, nonverbal or physical conduct based on a protected characteristic when such conduct is:
 - 1. sufficiently severe or pervasive to alter an individual's working or academic conditions;
 - 2. creates a hostile or abusive working, living or academic environment; or
 - 3. is sufficiently severe or pervasive to limit an individual’s ability to participate in or benefit from an educational program or activity.

Factors which may be considered include the frequency and severity of the unwelcome conduct; whether it is physically threatening or humiliating; and whether it unreasonably interferes with an individual’s work or academic performance.

- C. “Dating violence” means any act of violence (other than a defensive measure to protect oneself), including but not limited to physical violence, interference with personal liberty, or sexual misconduct, committed or threatened to be committed by a person who has been involved in a social relationship of either a romantic or intimate partner nature with the Complainant. When determining whether the relationship rises to the level required for dating violence, the nature of the relationship, length, type and frequency of interaction will be considered.
- D. “Domestic violence” means any act of violence (other than a defensive measure to protect oneself), including but not limited to physical violence, sexual misconduct or interference with personal liberty, committed or threatened to be committed by:
 - 1. A current or former spouse of the Complainant;
 - 2. A person with whom the Complainant shares a child;

3. A person who is cohabiting with or has cohabited with the Complainant in a romantic relationship; or
 4. A family member of the Complainant with whom the Complainant resides or has resided.
- E. “Sexual Assault” means physical sexual acts committed when consent is not received or when a person is physically or mentally unable to give consent as defined by this Policy.
- F. “Sexual Exploitation” occurs when an individual takes non-consensual, unjust or abusive sexual advantage of another; for their own advantage or benefit; or to benefit or advantage anyone other than the one being exploited; and that behavior does not otherwise constitute sexual assault or sexual harassment. Sexual exploitation includes, but is not limited to:
1. Streaming images, photography, video, or audio recordings of sexual contact or nudity, or distributing these things, without the knowledge and consent of everyone involved;
 2. Threatening to disclose a person’s sexual orientation, gender identity, or gender expression;
 3. Voyeurism, the practice of observing others engaged in intimate of sexual acts without the persons’ consent;
 4. Knowingly exposing a person to a sexually transmitted infection or disease;
 5. Prostituting another person by offering a person for sexual activity in exchange for payment;
 6. Sexual intimidation, which means threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person;
 7. Invasion of sexual privacy, including exposing one’s sexual body parts or exposing another’s sexual body parts; and/or
 8. Child pornography as defined in federal, state or local law.
- G. “Sexual Harassment” means unwelcome verbal, nonverbal or physical conduct of a sexual nature when:
1. *Quid Pro Quo*

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic advancement;
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual;
- 2. Hostile Environment such conduct is:
 - a. sufficiently severe or pervasive to alter an individual's working or academic conditions;
 - b. creates a hostile or abusive working, living or academic environment; or
 - c. is sufficiently severe or pervasive to limit an individual's ability to participate in or benefit from an educational program or activity.
 - d. Factors which may be considered include the frequency of the unwelcome conduct; its severity; whether it is physically threatening or humiliating; and whether it unreasonably interferes with an individual's work or academic performance.
- H. "Stalking" means purposely and repeatedly engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.
- I. "Retaliation" means any attempt to seek retribution against an individual or group of individuals involved in filing a complaint or report under this Policy, filing an external complaint raising concerns under this Policy, participating in an investigation under this Policy or opposing in a reasonable manner an action believed to constitute a violation of this Policy. Retaliation can take many forms, including violence, threats or intimidation.

Investigation Process

The Investigation process, up to evidence review, is generally expected to take 40 days, which may be extended for good cause by the Title IX Coordinator. Both parties shall be notified, in writing, of any extension granted and the reason for the extension.

The Investigator will interview all Parties and relevant witnesses, and gather relevant documentary evidence provided by the Parties and any identified witnesses. Interviews may be conducted in person, or via video conference.

The Investigator shall prepare an Interview Summary of each interview. The Investigator will share the Interview Summary with the interviewee. The interviewee will have three (3) days to correct or comment on any statements made in the Interview Summary. The deadline may be extended for good cause, upon written request to the Investigator. If the interviewee has corrections or comments to the Interview Summary, the interviewee may submit a written response within three (3) days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee's statement. If no response is received from the interviewee by the deadline, their Interview Summary will be presumed to be an accurate summary of the interview. In all instances where the Investigator includes the Interview Summary as an exhibit to a report, the Investigator will either adjust the Interview Summary as may be appropriate, or include any response provided by the interviewee with the Investigation Report.

Each party shall be provided with an opportunity to offer relevant witnesses and evidence. The Investigator will consider all relevant evidence, both inculpatory and exculpatory. The investigation shall have the authority to determine the relevance of any evidence or witness; character evidence is not relevant and will not be considered.

Any and all information for consideration by the Hearing Officer must be provided to the Investigator as part the investigation process. Information that was not provided to the Investigator will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably known to or available to the Parties at the time of the investigation. In the event that new evidence is provided at the hearing, either the Hearing Officer or Title IX Coordinator may send the case back to the Investigator.

Evidence Review

At the conclusion of all interviews and fact gathering, and when the evidence has been gathered, the Investigator will provide each party the opportunity to inspect and review all of the evidence gathered that is directly related to the allegation(s). This shall include both inculpatory and exculpatory evidence. Given the sensitive nature of the information provided, the information will be provided the information in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Neither the Complainant nor the Respondent (nor their Advisors or Support Persons) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this Policy may be subject to discipline. Any Advisor or Support Person who fails to abide by this Policy may be subject to discipline and/or may be excluded from further participation in the process.

Each party will have ten (10) days to respond, in writing, to the evidence if they wish to do so. The response to the evidence may include a written request for additional investigation, additional evidence for consideration, and/or a request for a follow-up interview(s) or questions that a party would like the Investigator to ask of any party or witness.

Upon receipt of each party's response to the evidence reviewed, the Investigator will determine if any additional investigation is needed. Any evidence to be considered by the Hearing Officer must

be provided to the Investigator. Information that was not provided to the Investigator will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably known to, or available to, the Parties at the time of the investigation. Should new evidence be presented at hearing, the Hearing Officer has the authority to send the matter back for further, limited, investigation, or to exclude the new evidence.

Any evidence to be considered by the Hearing Officer must be provided to the Investigator. Information that was not provided to the Investigator will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably known to, or available to, the Parties at the time of the investigation. Should new evidence, not previously available, be presented at hearing, the Hearing Officer has the authority to send the matter back for further, limited, investigation.

Exclusion of Questions and Evidence Regarding Complainant's Past Sexual Behavior, or Predisposition

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and will not be asked, unless such questions and evidence about the Complainant's prior sexual behavior are offered for one of two reasons: (a) to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Investigative Report

The Investigator shall prepare a written report summarizing all of the relevant evidence gathered and all investigative steps taken to date. Each party and their advisor shall be provided with a copy of the draft written investigative report through a protected, read-only server, together with all attachments and each party has the opportunity to provide a written response no later than 10 days after receiving the draft investigative report. Upon receipt of any response(s), the Investigator shall then complete the Investigative Report, which shall include as an attachment all relevant evidence gathered during the investigation, as well as all interview notes and interview summaries, showing the original (as sent to each interviewee for review) and the revised version, after corrections or additions by each interviewee. The final Investigative Report shall be provided to the parties at least 10 days prior to the hearing via a protected, read-only server and the parties have the opportunity to provide a written response at least 3 days before the hearing.

Notice of Hearing

Following the completion of the Investigative Report, each party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Officer and Sanctioning Officer, and any deadlines for submission of evidence, names of witnesses, or questions to be reviewed by the Hearing Officer to ensure relevance. The hearing shall be scheduled no less than ten (10) days from the date of the Notice of Hearing. The University will make all evidence gathered by the investigator available at the hearing to give each party equal

opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Within three (3) days of receipt of the Notice of Hearing, either party may object to the Hearing Officer on the basis of an actual bias or conflict of interest. Any objection is to be in writing to the Title IX Coordinator. Should the Title IX Coordinator determine that there is a demonstrated bias or actual conflict of interest, the Title IX Coordinator shall remove the Hearing Officer and appoint another.

Hearing

Hearings may be held in person or via videoconferencing. Prior to the hearing, the Hearing Officer shall have received instruction, if appropriate, regarding the operation of any audio-visual equipment for the hearing.

The University shall record each hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University and shall be available for inspection and review by contacting the Title IX Coordinator.

The Complainant, Respondent, and the Hearing Officer all have the right to call witnesses. Witnesses must have information relevant to the incident. No party will be permitted to call as a witness anyone who was not interviewed by the Investigator as part of the University's Investigation. Each party shall submit the names of witnesses they would like to call no less than five (5) days in advance of the Hearing.

Three (3) days prior to the hearing, each party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other party or to a witness. The Hearing Officer shall have the authority to determine whether any questions are not relevant and will not pose such questions.

The Hearing Officer shall have the authority to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. Any such limitation shall be applied equally to the parties and communicated to the parties no later than three (3) days before the hearing.

The Hearing Officer shall have the authority to maintain order and decorum at the hearing. The Hearing Officer also has the authority to determine whether any questions are not relevant and may not permit such questions. Any party or witness who is disruptive may, in the discretion of the Hearing Officer, be removed and directed to continue their participation via video conferencing. Any Advisor who is disruptive may be removed, and the Hearing Officer will appoint another Advisor for the remainder of the hearing.

The hearing generally will start with an overview of the hearing process from the Hearing Officer. The Hearing Officer has discretion in the manner in which the hearing is conducted, provided that the Parties have the opportunity to provide the Hearing Officer with relevant questions and follow up questions during the hearing to ask the other party(ies) and witnesses. The Hearing Officer may refuse to allow those questions that seek information that is not relevant under this Policy.

The Hearing Officer is responsible for maintaining an orderly and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person.

If either Party does not appear, their Advisor will not be present for the purpose of submitting relevant questions and follow up questions to the Hearing Officer during the hearing to ask the other party(ies) and witnesses.

The Hearing Officer will then prepare a report. To the extent credibility determinations need to be made, they shall not be based on a person's status as Complainant, Respondent or witness. The Hearing Officer shall endeavor to complete the report 15 days after the hearing.

The Hearing Officer's report will include:

1. The allegations
2. Description of all procedural steps
3. Findings of fact
4. Conclusion of application of facts to the policy
5. Rationale for each allegation
6. The procedures and permissible bases for appeal

Sanctions and Remedies

The Hearing Officer's report shall be provided to the Title IX Coordinator. If there is no finding of responsibility, the Title IX Coordinator shall provide a copy of the Hearing Officer's report to the parties simultaneously.

If there is a finding of responsibility, the Title IX Coordinator shall contact the appropriate sanctioning officer and provide them with the Hearing Officer's report so the sanctioning officer may determine the sanction. The Title IX Coordinator will then provide each party with the Hearing Officer's report, the determination of the appropriate sanction, inform the Complainant (and Respondent if appropriate) of any remedies designed to restore or preserve equal access to the University's education program or activity, and will inform both parties of the procedure for appeals.

The following sanctions may apply to student respondents. Definitions of each type of sanction can be found in the Student Guide to University Policies:

1. Educational

Educational sanctions provide a student the opportunity to review conduct expectations, understand how behavior can contribute to a positive and beneficial University experience and learn of campus resources which support academic and non-academic success. Examples of educational sanctions include writing a research or reflective paper, attending a seminar, or meeting with members of various University offices.

2. Administrative

The following administrative sanctions, listed alphabetically, may be applied in order to hold students accountable for their behavior, to protect the safety of the campus community or to repair harm to the community. This list is not exhaustive, and any number of the sanctions listed below may be applied simultaneously in any case.

- a. Deferred Suspension from the University
- b. Deferred Suspension from University Housing
- c. Disciplinary Probation
- d. Disciplinary Warning
- e. Expulsion from the University
- f. Notice of Reprimand
- g. Parental Notification
- h. Suspension and Ban from the University
- i. Suspension and Ban from University Housing

The following sanctions may apply to staff/faculty respondents:

1. Educational
2. Administrative
 - a. Verbal warning
 - b. Written reprimand
 - c. Demotion
 - d. Suspension without pay

e. Termination

Appeals

Appeals may be filed by either party. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal. The appeals process is documentary only, and no hearing is held

The Appellate Officer or members of the Appellate Board, as applicable, shall not have any actual conflict of interest or bias. Within three (3) days learning the identity of the Appellate Officer or the members of the Appellate Board, as applicable, either party may object to the Appellate Officer or members of the Appellate Board on the basis of an actual bias or conflict of interest. Any objection is to be made in writing to the Title IX Coordinator. Should the Title IX Coordinator determine that there is a bias or conflict of interest, the Title IX Coordinator shall remove the Appellate Officer or member of the Appellate Board and appoint a replacement.

The Complainant and Respondent both have the opportunity to seek an appeal of the decision and the sanction(s). The avenue of appeal and appellate body will depend on the employment or student status of the Respondent. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal must allege one or more of the following reasons:

1. The factual findings on which the final decision is based are clearly erroneous and affected the outcome, meaning that they are not supported by any credible evidence in the record.
2. New evidence or information has arisen that was not available or known to the party during the investigation or hearing and that could significantly impact the decision or sanction. Information that was known to the Appellant during the investigation or hearing but which they chose not to present for any reason is not considered new evidence. A summary of the new evidence or information, an explanation of why it was not known during the investigation or hearing and its potential impact on the decision and sanction must be included in the appeal.
3. The Title IX Coordinator, investigator, hearing officer or the person or panel imposing the sanction that impacted the outcome had an actual conflict of interest or demonstrated bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. If a party believes there is a conflict of interest or bias, that party should raise the issue as early as possible in the process to the Title IX Coordinator.
4. A procedural error occurred that significantly impacted the outcome of the investigation, hearing or sanction. A description of the error and its impact on the outcome of the case must be included in the appeal.

5. One or more of the sanctions imposed are inappropriate or unreasonable.

The failure of the University to adhere to notice requirements or time periods shall not be cause for dismissal nor grounds for appeal unless such failure materially prejudiced the party submitting the appeal.

Appeals Process

The Complainant or Respondent may appeal the decision and/or sanctions by submitting an appeal request to the Title IX Coordinator in writing within 5 days of the date on which the finding of not responsible or the sanctioning decision was sent.

The appeal request shall be filed online using the form provided for appeal requests. The appeal shall be limited to the facts of the matter that was investigated and the application of this Policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board or Appellate Officer in its decision making process. Upon receipt of the appeal request, the Title IX Coordinator or designee will send a copy of the request to the non-appealing party (or parties), who may submit a response, also to be filed online using the form provided for appeal responses with the Title IX Coordinator within five (5) days of the date on which the non-appealing party (or parties) were notified that an appeal was filed.

The written appeal and responses received from all appropriate parties and all documentation contained within the Investigator's file and the Respondent's disciplinary file will be provided to the appropriate Appellate Board or Appellate Officer, depending on the status of the Respondent. The Appellate Board or Appellate Officer will review the materials and make a decision in a closed meeting.

The Appellate Board, by majority vote, may decide to:

1. Grant the appeal and send the report back to the Title IX Coordinator with instructions to either (a) consider the new evidence, if any, or (b) cure the error, which may include additional investigation, a new investigation, or a new hearing;
2. Deny the appeal, in which case the matter is closed; or
3. Grant the appeal and change the sanction(s) applied or send the report back to the Sanctioning Official to reconsider the sanction.

The Appellate Board's decision is final and will be implemented immediately by the University. The Appellate Board will offer a written explanation for its decision on appeal. The Complainant, the Respondent, and the Title IX Coordinator will receive simultaneous written notice of the final decision. If the Respondent is a student, a copy of this notice will be entered into the student's disciplinary file and will be maintained in the Office of Student Conduct in accordance with the

retention policy, as defined in the Student Guide to University Policies. If the Respondent is an employee, a copy of this notice will be placed in the employee's personnel file and will be maintained in accordance with the document retention policy applicable to employee records.

APPENDIX C- Title IX Resolution Process

This Appendix shall apply to cases that fall within the definition of sexual harassment and the jurisdictional limits set forth in the Title IX Regulations. See Section III.P.4 above.

Prohibited Conduct

For purposes of this Appendix C, the following definitions shall apply:

- A. Sexual Harassment: conduct committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved which is one of the following:
 - 1. Quid Pro Quo: When a University employee conditions the provision of a benefit or service of the University on an individual's participation in unwelcome sexual conduct; and/or
 - 2. Sexual Harassment: Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to an educational program or activity of the University.

- B. Sexual Assault: includes both forcible and non-forcible sexual offenses:
 - 1. Sexual offenses, Forcible: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 - a. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - b. Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensual), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - c. The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- d. The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
2. Sexual Offenses, Non-forcible, includes any of the following:
 - a. Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Delaware Law.
 - b. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years of age.
- C. Dating Violence: Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- D. Domestic Violence: Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Delaware, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Delaware or the state in which the conduct occurred.
- E. Stalking: Engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others or suffer substantial emotional distress.
 1. For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Title IX Jurisdictional Limits

In order to proceed with a complaint under this Appendix C, the University must receive a Formal Complaint and the Prohibited Conduct alleged in the Formal Complaint must have occurred in an education program or activity of the University against a person in the United States, including locations, events or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Prohibited Conduct occurred, and also includes any building owned or controlled by a recognized student organization.

Mandatory Dismissal

In accordance with the Title IX Regulations, at any time prior to the commencement of a hearing, any case proceeding under this Appendix C will be dismissed if it is determined that the conduct at issue does not fall within the Title IX Jurisdictional Limits or does not fall within the Prohibited Conduct for Appendix C, even if proved. If the alleged conduct would, if true, support a finding that another University policy has been violated, the University may, in its sole authority, transfer the case for further handling under the appropriate policy, which may include Appendix B or Appendix D of this Policy.

Upon dismissal, both parties shall be notified in writing of the decision and rationale for the decision. The decision to dismiss is subject to appeal by the parties. Both parties will be notified of any determination made upon their request for appeal.

To appeal a mandatory dismissal, the written request should state the basis for the appeal and be directed to:

- A. For students: Dean of Students, deanofstudents@udel.edu
- B. For staff or administrators: Human Resources Employee and Labor Relations Director, employee-relations@udel.edu
- C. For faculty members: Vice Provost for Faculty Affairs, vpfaculty@udel.edu

Discretionary Dismissal

The University may dismiss a complaint at any time during an investigation or hearing, when: a) Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint; b) the Respondent is no longer enrolled or employed at the University; or c) circumstances prevent the University from gathering evidence sufficient to reach a determination. If the alleged conduct

would, if true, support a finding that another University Policy has been violated, the University may, in its sole authority, transfer the case for further handling under the appropriate Policy, which may include Appendix B or D under this Policy. The University may use evidence already gathered during the investigation process for the further handling of the complaint.

Upon dismissal, both parties shall be notified in writing of the decision and the rationale for the decision. The decision to dismiss is subject to appeal. Both parties will be notified in writing of any determination made following the appeal.

To appeal a discretionary dismissal, the written request should state the basis for the appeal and be directed to:

- A. For students: Dean of Students, deanofstudents@udel.edu
- B. For staff or administrators: Human Resources Employee and Labor Relations Director, employee-relations@udel.edu
- C. For faculty members: Vice Provost for Faculty Affairs, vpfaculty@udel.edu

Investigation Process

The Investigation process, up to evidence review, is generally expected to take 40 days, which may be extended for good cause by the Title IX Coordinator. Both parties shall be notified, in writing, of any extension granted and the reason for the extension.

The Investigator will interview all Parties and relevant witnesses and gather relevant documentary evidence on their own or from the Parties and any identified witnesses. Interviews may be conducted in person or via video conference.

The Investigator shall prepare an Interview Summary of each interview. The Investigator will share the Interview Summary with the interviewee. The interviewee will have three (3) days to correct or comment on any statements made in the Interview Summary. The deadline may be extended for good cause, upon written request to the Investigator. If the interviewee has corrections or comments to the Interview Summary, the interviewee may submit a written response within three (3) days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee's statement. If no response is received from the interviewee by the deadline, their Interview Summary will be presumed to be an accurate summary of the interview. In all instances where the Investigator includes the Interview Summary as an exhibit to a report, the Investigator will either adjust the Interview Summary as may be appropriate based on the response from the interviewee, or include any response provided by the interviewee with the Investigation Report.

Each party shall be provided with an opportunity to offer relevant witnesses and evidence. The Investigator will consider all relevant evidence, both inculpatory and exculpatory.

Any and all information for consideration by the Hearing Officer must be provided to the Investigator as part the investigation process. Information that was not provided to the Investigator will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably known to or available to the Parties at the time of the investigation. In the event that new evidence is provided at the hearing, either the Hearing Officer or Title IX Coordinator may send the case back to the Investigator, or may determine that the new information will not be considered.

Evidence Review

At the conclusion of all interviews and fact gathering, and when the evidence has been gathered, the Investigator will provide each party the opportunity to inspect and review all of the evidence gathered that is related to the allegation(s). This shall include both inculpatory and exculpatory evidence. Given the sensitive nature of the information provided, the information will be provided in a secure manner (e.g., by providing digital copies of the materials through a protected, “read-only” web portal). Neither the Complainant nor the Respondent (nor their Advisors or Support Persons) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this Policy may be subject to discipline. Any Advisor or Support Person who fails to abide by this Policy may be subject to discipline and/or may be excluded from further participation in the process.

Each party will have ten (10) days in which to respond, in writing, to the evidence if they wish to do so. The response to the evidence may include a written request for additional investigation, additional evidence for consideration, and/or a request for a follow-up interview(s) or questions that a party would like the Investigator to ask of any party or witness.

Upon receipt of each party’s response to the evidence reviewed, the Investigator will determine if any additional investigation is needed. Any evidence to be considered by the Hearing Officer must be provided to the Investigator. Information that was not provided to the Investigator will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably known to, or available to, the Parties at the time of the investigation. Should new evidence be presented at hearing, the Hearing Officer has the authority to send the matter back for further, limited, investigation, or to exclude the new evidence.

Exclusion of Questions and Evidence Regarding Complainant’s Past Sexual Behavior, or Predisposition

Questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant and will not be asked, unless such questions and evidence about the Complainant’s prior sexual behavior are offered for one of two reasons: (a) to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Investigative Report

The Investigator shall prepare a written report summarizing all of the relevant evidence gathered and all investigative steps taken to date. Each party and their advisor shall be provided with a copy of the draft written investigative report through a protected, read-only server, together with all attachments and each party has the opportunity to provide a written response no later than 10 days after receiving the draft investigative report. Upon receipt of any response(s), the Investigator shall then complete the Investigative Report, which shall include as an attachment all relevant evidence gathered during the investigation, as well as all interview notes and interview summaries, showing the original (as sent to each interviewee for review) and the revised version, after corrections or additions by each interviewee. The final Investigative Report shall be provided to the parties at least 10 days prior to the hearing via a protected, read-only server and the parties have the opportunity to provide a written response at least 3 days before the hearing.

Notice of Hearing

Following the completion of the Investigative Report, each party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Officer and Sanctioning Officer, and any deadlines for submission of evidence, names of witnesses, or questions to be reviewed by the Hearing Officer to ensure relevance. The hearing shall be scheduled no less than ten (10) days from the date of the Notice of Hearing. The University will make all evidence gathered by the investigator available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Within three (3) days of receipt of the Notice of Hearing, either party may object to the Hearing Officer, or hearing panel, on the basis of an actual bias or conflict of interest. Any objection is to be in writing to the Title IX Coordinator. Should the Title IX Coordinator determine that there is a bias or conflict of interest, the Title IX Coordinator shall remove the Hearing Officer and appoint another.

Advisor for Hearing

Each party is entitled to one Advisor at the hearing. The role of the Advisor is to ask questions of the other Party and of witnesses, but not to advocate for, or otherwise speak on behalf of, the advisee during the hearing. No Party shall be permitted to ask questions of the other Party, or of a witness. An Advisor of the University's choosing shall be provided for any party who does not have an Advisor. In the event that a party does not appear for the Hearing, the Advisor for that party shall appear and question the other party, and witnesses.

Hearing

Hearings may be held in person or via videoconferencing. Prior to the hearing, the Hearing Officer shall have received instruction regarding the operation of any audio-visual equipment for the hearing.

The University shall record each hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for inspection and review by contacting the Title IX Coordinator.

The Complainant, Respondent, and the Hearing Officer all have the right to call witnesses. Witnesses must have information relevant to the incident. No party will be permitted to call as a witness anyone who was not interviewed by the Investigator as part of the University's Investigation. Each party shall submit to the Hearing Officer the names of witnesses they would like to call no less than five (5) days in advance of the Hearing.

The Hearing Officer shall have the authority to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. Any such limitation shall be applied equally and communicated to the parties no later than three (3) days before the hearing.

Three days prior to the hearing, each party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other party, or to a witness. If the Hearing Officer determines that any are not relevant, the Hearing Officer shall explain the reason for the exclusion of the question at the hearing. Each party, through their Advisor, shall also be permitted to ask additional questions at the hearing. If the Hearing Officer determines that any are not relevant, the Hearing Officer shall explain the reason for the exclusion of the question.

The Hearing Officer shall have the authority to maintain order and decorum at the hearing. The Hearing Officer also has the authority to determine whether any questions posed by the Advisors are not relevant, abusive or threatening and may not permit such questions. Any party or witness who is disruptive may, in the discretion of the Hearing Officer, be removed and directed to continue their participation via video conferencing. Any Advisor who is disruptive may be removed, and the Hearing Officer will appoint another Advisor for the remainder of the hearing.

The hearing generally will start with an overview of the hearing process from the Hearing Officer. The Hearing Officer has discretion in the manner in which the hearing is conducted, provided that the Party's Advisors have the opportunity to ask relevant questions of the other party(ies) and witnesses. The Hearing Officer may refuse to allow those questions that seek information that is not relevant under this Policy. The Hearing Officer is not required to provide a lengthy or complicated explanation but is required only to explain the reason why a question is not relevant.

If either Party does not appear, their Advisor will be present for the purpose of asking questions of the other party, or of witnesses.

At the hearing, the Hearing Officer will not consider any statement(s) of any Party or witness who does not appear at the hearing, and who does not agree to be cross-examined. The Hearing Officer will not draw an inference about the determination regarding responsibility based solely on the party's or witness's absence from the hearing or refusal to answer cross-examination or other questions. In the event that neither party has any questions for a particular witness, that witness's testimony shall not be excluded.

The Hearing Officer will then prepare a report. To the extent credibility determinations need to be made, such a determination shall not be based on a person's status as Complainant, Respondent or witness. The Hearing Officer shall endeavor to complete the report 15 days after the hearing.

The Hearing Officer's report will include:

1. The allegations
2. Description of all procedural steps
3. Findings of fact
4. Conclusion of application of facts to the policy
5. Rationale for each allegation
6. The procedures and permissible bases for appeal

Sanctions and Remedies

The Hearing Officer's report shall be provided to the Title IX Coordinator. If there is no finding of responsibility, the Title IX Coordinator shall provide a copy of the Hearing Officer's report to the parties simultaneously.

If there is a finding of responsibility, the Title IX Coordinator shall contact the appropriate sanctioning officer and provide them with the Hearing Officer's report so the sanctioning officer may determine the sanction. The Title IX Coordinator will then provide each party with the Hearing Officer's report and written decision, as well as the determination of the appropriate sanction(s), inform the Complainant (and Respondent if appropriate) of remedies designed to restore or preserve equal access to the University's education program or activity, and will inform both parties of the procedure for appeals.

The following sanctions may apply to student respondents. Definitions of each type of sanction can be found in the Student Guide to University Policies:

A. Educational

Educational sanctions provide a student the opportunity to review conduct expectations, understand how behavior can contribute to a positive and beneficial University experience and learn of campus resources which support academic and non-academic success. Examples of educational sanctions include writing a research or reflective paper, attending a seminar, or meeting with members of various University offices.

B. Administrative

The following administrative sanctions may be applied to hold students accountable for their behavior, to protect the safety of the campus community or to repair harm to the community. This list is not exhaustive and any number of the sanctions listed below may be applied simultaneously in any case.

1. Deferred Suspension from the University
2. Deferred Suspension from University Housing
3. Disciplinary Probation
4. Disciplinary Warning
5. Expulsion from the University
6. Notice of Reprimand
7. Parental Notification
8. Suspension and Ban from the University
9. Suspension and Ban from University Housing

The following sanctions may apply to staff/faculty respondents:

- A. Educational
- B. Administrative
 1. Verbal warning
 2. Written reprimand
 3. Demotion
 4. Suspension without pay
 5. Termination

Appeals

Appeals may be filed by either party. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal. The appeals process is documentary only, and no hearing is held

The Appellate Officer or members of the Appellate Board, as appropriate, shall not have any actual conflict of interest or bias. Within three (3) days of learning the identity of the Appellate Officer

or members of the Appellate Board, either party may object to the Appeals Officer on the basis of an actual bias or conflict of interest. Any objection is to be in writing to the Title IX Coordinator. Should the Title IX Coordinator determine that there is a bias or conflict of interest, the Title IX Coordinator shall remove the Appellate Officer or member of the Appellate Board and appoint a replacement.

The Complainant and Respondent both have the opportunity to seek an appeal of the decision and the sanction(s). The avenue of appeal and the appellate body will depend on the employment or student status of the Respondent. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal must allege one or more of the following reasons:

- A. The factual findings on which the final decision is based are clearly erroneous and affected the outcome, meaning that they are not supported by any credible evidence in the record.
- B. New evidence or information has arisen that was not available or known to the party during the investigation or hearing and that could significantly impact the decision or sanction. Information that was known to the Appellant during the investigation or hearing but which they chose not to present for any reason is not considered new evidence. A summary of the new evidence or information, an explanation of why it was not known during the investigation or hearing and its potential impact on the decision and sanction must be included in the appeal.
- C. The Title IX Coordinator, investigator, hearing officer or the person or panel imposing the sanction that impacted the outcome had an actual conflict of interest or demonstrated bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. If a party believes there is a conflict of interest or bias, that party should raise the issue as early as possible in the process to the Title IX Coordinator.
- D. A procedural error occurred that significantly impacted the outcome of the investigation, hearing or sanction. A description of the error and its impact on the outcome of the case must be included in the appeal.
- E. One or more of the sanctions imposed are inappropriate or unreasonable.

The failure of the University to adhere to notice requirements or time periods shall not be cause for dismissal nor grounds for appeal unless such failure materially prejudiced the party submitting the appeal.

Appeals Process

The Complainant or Respondent may appeal the Hearing Officer's decision and/or sanctions by submitting an appeal request to the Title IX Coordinator in writing within five (5) days of the date on which the finding of not responsible or the sanctioning decision was sent.

The appeal request shall be filed online using the form provided for appeal requests. The appeal shall be limited to the facts of the matter that was investigated and the application of this Policy to that matter. Citations to outside authorities should not be included, as that information will not aid the Appellate Officer or Appellate Board in its decision making process. Upon receipt of the appeal request, the Title IX Coordinator or designee will send a copy of the request to the non-appealing party (or parties), who may submit a response, also to be filed online using the form provided for appeal responses with the Title IX Coordinator within five (5) days of the date on which the non-appealing party (or parties) were notified that an appeal was filed.

The written appeal and responses received from all appropriate parties and all documentation contained within the Investigator's file and the Respondent's disciplinary file will be provided to the appropriate Appellate Officer or Appellate Board, depending on the status of the Respondent. The Appellate Board of Appellate Officer will review the materials and make a decision in a closed meeting.

The Appellate Officer or Appellate Board, by majority vote, may decide to:

- A. Grant the appeal and send the report back to the Title IX Coordinator with instructions to either (a) consider the new evidence, if any, or (b) cure the error, which may include additional investigation, a new investigation, or a new hearing;
- B. Deny the appeal, in which case the matter is closed and there shall be no additional University action; or
- C. Grant the appeal and change the sanction(s) applied or send the report back to the Sanctioning Official to reconsider the sanction.

The Appellate Board's decision is final and will be implemented immediately by the University. The Appellate Board will offer a written explanation for its decision on appeal. The Complainant, the Respondent, and the Title IX Coordinator will receive simultaneous written notice of the final decision. If the Respondent is a student, a copy of this notice will be entered into the student's disciplinary file and will be maintained in the Office of Student Conduct in accordance with the retention policy, as defined in the Student Guide to University Policies. If the Respondent is an employee, a copy of this notice will be placed in the employee's personnel file and will be maintained in accordance with the document retention policy applicable to employee records.

APPENDIX D - Administrative Resolution Process for Non-Title IX Offenses for Employees

This appendix shall apply only to complaints that do not fall under Appendix C and involve only employees, volunteers, visitors, guests or vendors. This appendix does not apply to complaints in which a student is the complainant or respondent. The University reserves the right to terminate any investigation initiated under this Appendix D at any time.

Prohibited Conduct

For purposes of this Appendix D, the definitions of Prohibited Conduct contained in Appendix B and Appendix C shall apply.

Investigation Process

The Investigation process, up to evidence review, is generally expected to take 40 days, which may be extended for good cause by the Title IX Coordinator. Both parties shall be notified, in writing, of any extension granted and the reason for the extension.

The Investigator will interview all Parties and relevant witnesses and gather relevant documentary evidence provided by the Parties and any identified witnesses. Interviews may be conducted in person, via video conference or, in limited circumstances, via telephone.

The Investigator shall also prepare an Interview Summary of each interview. The Investigator will share the Interview Summary with the interviewee. The interviewee will have three (3) days to correct or comment in writing on any statements made in the Interview Summary. The deadline may be extended for good cause, upon written request to the Investigator. If no response is received from the interviewee by the deadline, their Interview Summary will be presumed to be an accurate summary of the interview. In all instances where the Investigator includes the Interview summary as an exhibit to a report, the Investigator will either adjust the Interview Summary as may be appropriate or include any response provided by the interviewee with the investigative report.

Each party shall be provided with an opportunity to offer relevant witnesses and evidence. The Investigator will consider all relevant evidence, both inculpatory and exculpatory. The Investigator shall have the authority to determine the relevance of any evidence or witness; character evidence is not relevant and will not be considered. Any and all information for consideration by the Investigator must be provided to the Investigator as part the investigation process.

Evidence Review

At the conclusion of all interviews and fact gathering, and when the evidence has been gathered, the Investigator will provide each party the opportunity to inspect and review all of the evidence gathered that is directly related to the allegation(s). This shall include both inculpatory and exculpatory evidence. Given the sensitive nature, the information will be provided in a secure manner (e.g., by providing digital copies of the materials through a protected, “read-only” web portal). Neither the Complainant nor the Respondent (nor their Advisors or Support Persons) may

copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this Policy may be subject to discipline. Any Advisor or Support Person who fails to abide by this Policy may be subject to discipline and/or may be excluded from further participation in the process.

Each party may respond to the evidence gathered. Within ten (10) days of receiving the evidence from the Investigator, each may provide a response in writing to the Investigator regarding the evidence, including citing additional evidence or witnesses the Investigator should gather or interview and any questions the party believes should be asked of the other party or witnesses. The Investigator will incorporate any response provided by the Parties into the Summary of Evidence Report. The Investigator will take into account the responses provided, and take appropriate action, if necessary which may include conducting an additional investigation, posing new questions to parties or witnesses as appropriate, interviewing new witnesses, and finding and accepting new, relevant, evidence.

If new relevant evidence is provided by either party, or gathered by the Investigator, the newly-gathered evidence (including answers to clarifying questions) will be made available for review by each party. Each party shall have five (5) days in which to respond to the new evidence. Each may provide a response in writing to the Investigator. The Investigator will incorporate any written response provided by the Parties into the Final Investigative Report.

Exclusion of Questions and Evidence Regarding Complainant's Past Sexual Behavior, or Predisposition

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and will not be asked, unless such questions and evidence about the Complainant's prior sexual behavior are offered for one of two reasons: (a) to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Investigative Report and Notice of Outcome

The Investigator shall then prepare a written report summarizing all of the relevant evidence gathered and all investigative steps taken to date. The Investigator shall also make factual findings and, based upon those factual findings, come to as conclusion as to whether this Policy was violated. The final Investigative Report shall include:

1. The allegations
2. Description of all procedural steps
3. Findings of fact
4. Conclusion of application of facts to the policy

5. Rationale for each allegation

Once the Investigative Report is final, the Title IX Coordinator shall issue a Notice of Outcome to the parties simultaneously via email which will include the identity of the Sanctioning Officer, as appropriate.

If there is no finding of responsibility, the Title IX Coordinator shall communicate the findings, along with a copy of the Final Investigative report, to the parties, together with procedures for appeal. If there is a finding of responsibility, the Title IX Coordinator shall contact the appropriate Sanctioning Officer and provide them with a copy of the Investigative Report in order to determine the sanction. The Title IX Coordinator will then provide each party with the Final Investigative Report, together with the sanction, will inform the Complainant (and Respondent as appropriate) of any appropriate Remedies, and will inform both parties of the procedure for appeals.

The following sanctions may apply to staff/faculty respondents:

- A. Educational
- B. Administrative
 - 1. Verbal warning
 - 2. Written reprimand
 - 3. Demotion
 - 4. Suspension without pay
 - 5. Termination

Guests, vendors, visitors and volunteers may be banned from campus if the University determines such sanction is appropriate.

Appeals

Appeals may be filed by either party. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal. The appeals process is documentary only, and no hearing is held

The Appellate Officer or members of the Appellate Board, as appropriate, shall not have any actual conflict of interest or bias. Within three (3) days of learning the identity of the Appellate Officer or members of the Appellate Board, either party may object to the Appellate Officer or member of the Appellate Board on the basis of an actual bias or conflict of interest. Any objection is to be in writing to the Title IX Coordinator. Should the Title IX Coordinator determine that there is a bias or conflict of interest, the Title IX Coordinator shall remove the Appellate Officer or member of the Appellate Board and appoint a replacement.

The Complainant and Respondent both have the opportunity to seek an appeal of the decision and the sanction(s). The avenue of appeal and appellate body will depend on the employment status of the Respondent. In any request for an appeal, the burden of proof lies with the party requesting the appeal. The appeal must allege one or more of the following reasons:

- A. The factual findings on which the final decision is based are clearly erroneous and affected the outcome, meaning that they are not supported by any credible evidence in the record.
- B. New evidence or information has arisen that was not available or known to the party during the investigation or hearing and that could significantly impact the decision or sanction. Information that was known to the Appellant during the investigation or hearing but which they chose not to present for any reason is not considered new evidence. A summary of the new evidence or information, an explanation of why it was not known during the investigation or hearing and its potential impact on the decision and sanction must be included in the appeal.
- C. The Title IX Coordinator, investigator, hearing officer or the person or panel imposing the sanction that impacted the outcome had an actual conflict of interest or demonstrated bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. If a party believes there is a conflict of interest or bias, that party should raise the issue as early as possible in the process to the Title IX Coordinator.
- D. A procedural error occurred that significantly impacted the outcome of the investigation, hearing or sanction. A description of the error and its impact on the outcome of the case must be included in the appeal.
- E. One or more of the sanctions imposed are inappropriate or unreasonable.

The failure of the University to adhere to notice requirements or time periods shall not be cause for dismissal nor grounds for appeal unless such failure materially prejudiced the party submitting the appeal.

Appeals Process

The Complainant or Respondent may appeal the decision and/or sanctions by submitting an appeal request to the Title IX Coordinator in writing within 5 days of the date on which the finding of not responsible or the sanctioning decision was sent.

The appeal request shall be filed online using the form provided for appeal requests. The appeal shall be limited to the facts of the matter that was investigated and the application of this Policy to that matter. Character information and citations to outside authorities should not be included, as that information will not aid the Appellate Board or Appellate Officer in its decision making process. Upon receipt of the appeal request, the Title IX Coordinator or designee will send a copy

of the request to the non-appealing party (or parties), who may submit a response, also to be filed online using the form provided for appeal responses with the Title IX Coordinator within 5 days of the date on which the non-appealing party was notified that an appeal was filed.

The written appeal and responses received from all appropriate parties and all documentation contained within the Investigator's file and the Respondent's disciplinary file will be provided to the appropriate Appellate Board or Appellate Officer, depending on the status of the Respondent. The Appellate Board or the Appellate Officer will review the materials and make a decision in a closed meeting.

The Appellate Board, by majority vote, may decide to:

- A. Grant the appeal and send the report back to the Title IX Coordinator with instructions to either (a) consider the new evidence, if any, or (b) cure the error, which may include additional investigation, a new investigation, or a new hearing;
- B. Deny the appeal, in which case the matter is closed and there shall be no additional University action; or
- C. Grant the appeal and change the sanction(s) applied or send the report back to the Sanctioning Official to reconsider the sanction.

The Appellate Board's decision is final and will be implemented immediately by the University. The Appellate Board will offer a written explanation for its decision on appeal. The Complainant, the Respondent, and the Title IX Coordinator will receive simultaneous written notice of the final decision. A copy of this notice will be entered into the Respondent's personnel file and will be maintained in accordance with the document retention policy applicable to employee records.