

SOUTHEAST MISSOURI STATE UNIVERSITY  
POLICIES AND PROCEDURES FOR DEFINING AND ADJUDICATING SEXUAL  
HARASSMENT

Created July 2020

Modeled on the  
ATIXA 2020 Interim Model Sexual Harassment Policies and Procedures  
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**POLICY: SEXUAL HARASSMENT, INCLUDING SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE, STALKING, AND RETALIATION**

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# **POLICY: Sexual Harassment, Including Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation**

## **Section 1. Rationale for Policy**

Southeast Missouri State University (the “University”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation. The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the Complaint Resolution Process during what is often a difficult time for all those involved.

## **Section 2. Definitions**

- **Advisor** means a person chosen by a party or appointed by the University to accompany the party to meetings related to the Complaint Resolution Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Coercion** is the use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. A person’s words or conduct may be sufficient to constitute coercion if they would eliminate a reasonable person’s free will and ability to choose whether or not to engage in sexual activity.
- **Complainant** means an individual who is alleged to be the victim of conduct that could be considered Sexual Harassment or Retaliation for engaging in a Protected Activity.
- **Consent** is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

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

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>1</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of Sexual Harassment and/or Retaliation (irrespective of Clery Act Campus Security Authority status).
- **Dating violence** means violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
- **Day** means a business day when the University is in normal operation.
- **Domestic Violence** means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- **Education program or activity** means all of the operations of the University in locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

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<sup>1</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

- **Final Determination** means a conclusion reached by the decision-makers by preponderance of the evidence that the alleged conduct did or did not violate this policy.
- **Finding** means a conclusion reached by the decision-makers by preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Force** is the use of physical violence to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
- **Formal Complaint** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment or Retaliation for engaging in a Protected Activity against a Respondent and requesting that University investigate the allegation.
- **Formal Complaint Resolution Process** means the method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- **Complaint Resolution Process Pool** means the pool of hearing decision-makers, appeal decision-makers, and Advisors who are appointed by the Title IX Coordinator and may perform any or all of these roles (though not at the same time or with respect to the same Complaint Resolution Process).
- **Hearing Panel** refers to those who have decision-making and sanctioning authority within the University’s Formal Complaint Resolution Process.
- **Incapacitation** means a person cannot consent if they are unable to understand what is happening or are seriously disoriented, physically helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.
- **Investigator** means the person(s) charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigative report and file of directly related evidence.

- **Mandated Reporter** means any faculty, staff, or administrator of the University who is obligated by policy to share knowledge, notice, and/or reports of Sexual Harassment and/or Retaliation with the Title IX Coordinator.<sup>2</sup> The University has classified all faculty, staff, or administrators as Mandated Reporters of any knowledge they have that a member of the community is experiencing Sexual Harassment and/or Retaliation. All employees, however, are expected to report to the Title IX Coordinator any knowledge they have that a member of the community is experiencing Sexual Harassment and/or Retaliation.
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of the University explicitly vested with the responsibility to implement corrective measures for Sexual Harassment and/or Retaliation on behalf of the University. The University has determined that executive team members, department chairs, and the Title IX Team are to be considered Official with Authority to address and correct Sexual Harassment and/or retaliation.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Protected Activities** include the reporting of Sexual Harassment under this Policy, the filing of a Formal Complaint under this Policy, participating in a Complaint Resolution Process pursuant to this Policy, and in any other way participating in the investigation and adjudication processes set forth in this Policy.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational programs or activities.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment or Retaliation for engaging in a Protected Activity.
- **Resolution** means the result of an informal or Formal Complaint Resolution Process.
- **Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- **Sexual assault** is any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent.

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<sup>2</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

(a) **Rape:** Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.

(b) **Fondling:** Touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity.

(c) **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(d) **Statutory Rape:** Sexual intercourse with a person who is under the age of consent (18 years old).

- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, Sexual Assault, Stalking, Dating Violence, and Domestic Violence, and is defined under Title IX as conduct on the basis of sex that satisfies one or more of the following:

(1) **Quid Pro Quo:** an employee of the University conditions, explicitly or implicitly, the provision of an aid, benefit, or service of the University, on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct, determined by a reasonable person to be so severe, pervasive, and objectively offensive, that it effectively denies a person equal access to the University's education program or activity;<sup>3</sup> or

(3) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in the Violence Against Women Act.

- **Stalking** means engaging in a course of conduct directed at a specific person, that would cause a reasonable person to fear for the person's safety, the safety of others; or suffer substantial emotional distress. For the purposes of this definition—

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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<sup>3</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- **Title IX Coordinator** is the official designated by the University to ensure compliance with Title IX and the University’s Title IX program. The Assistant to the President for Equity and Diversity and Dean of Students serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating the University’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, all deputy coordinators, and all members of the Complaint Resolution Process Pool.

**Section 3. Applicable Scope**

The core purpose of this policy is the prohibition of Sexual Harassment and Retaliation, and the resolution of complaints of such conduct. When an alleged violation of this policy is reported, the allegations are subject to resolution using the University’s Formal Complaint Resolution Process outlined in this Policy, unless the Title IX Coordinator determines that the alleged conduct, if proven true, would not constitute Sexual Harassment under Title IX, as detailed below.

This Policy applies to all University administrators, faculty, staff, students,<sup>4</sup> contractors, outside vendors, and other third parties within the University’s control, including visitors, invitees, and applicants for admission or employment. It applies to conduct that occurs on University owned or controlled premises, in an education program or activity (including, but not limited to, admissions, employment, academics, athletics, housing, and student services) including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects a person’s education or employment with the University or potentially poses a risk of harm to members of the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

**Section 4. Independence and Conflict-of-Interest**

The Title IX Coordinator oversees the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

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<sup>4</sup> For the purpose of this policy, the University defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University, as well as individuals who are attempting to participate in a University program or activity (e.g., a former student who is intending to return to University programs or activities).

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving misconduct, bias or conflict of interest by the Title IX Coordinator, contact the Dr. Carlos Vargas, Office of the President, at [president@semo.edu](mailto:president@semo.edu), (573) 651-2222. Concerns of misconduct, bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

## **Section 5. Administrative Contact Information**

*Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:*

Dean Trae Mitten  
Dean of Students & Interim Title IX Coordinator  
Dean of Student Office  
Academic Hall Room 010  
1 University Plaza MS 3375  
Cape Girardeau, MO, 63701  
(573) 651-2524  
Email: [lmitten@semo.edu](mailto:lmitten@semo.edu)

Dr. Randy Carter  
Associate Dean of Students  
Office of Student Conduct  
University Center Room 422  
1 University Plaza MS 1500  
Cape Girardeau, MO, 63701  
(573) 651-2264  
Email: [lrcarter@semo.edu](mailto:lrcarter@semo.edu)

Will Atkins  
Training Manager & Interim Title IX Investigator  
Human Resources  
Academic Hall Room 012  
1 University Plaza MS 3150  
Cape Girardeau, MO, 63701  
(573) 651-2206  
Email: [watkins@semo.edu](mailto:watkins@semo.edu)

Kim Schuette  
Associate Director of Athletics/Senior Woman Administrator  
Department of Athletics  
1 University Plaza MS 0200  
Cape Girardeau, MO, 63701

(573) 651-2997  
Email: [kschuetter@semo.edu](mailto:kschuetter@semo.edu)

*Inquiries may be made externally to:*

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

Regional Office for Missouri, Arkansas, Kansas, Nebraska, Oklahoma, & South Dakota:  
Office for Civil Rights (OCR) Kansas City Office  
U.S. Department of Education  
One Petticoat Lane  
1010 Walnut Street, Suite 320  
Kansas City, MO 64106  
Telephone: (816) 268-0550  
Facsimile: (816) 268-0559  
Email: [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

For complaints involving employees:  
Equal Employment Opportunity Commission (EEOC)  
St. Louis District Field Office  
Robert A. Young Federal Building  
1222 Spruce St. Rm 8.100  
St. Louis, MO 63103  
Telephone: (800) 669-4000  
Fax: (314)539-7894  
Web: <https://www.eeoc.gov/>

**Section 6. Notice/Complaints of Sexual Harassment and/or Retaliation**

Notice or complaints of sexual harassment and/or retaliation may be made by:

(1) Filing a complaint with, or giving verbal notice to, the Title IX Coordinator, any Deputy Coordinator, any Officials with Authority. Names and contact information for these officials is listed in Section 6 above. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

(2) Report online, using the reporting form posted at <https://semo.edu/equityissues/report-form.html>. Anonymous reports are accepted by telephone, in writing or electronically through the University's online reporting form. Your decision to remain anonymous may limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.

(3) Report using the sexual harassment hotline (573) 651-5144.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

### **Section 7. Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education programs or activities, including measures designed to protect the safety of all parties or the University's educational environment, and/or to deter sexual harassment and/or retaliation. The University will implement measures in a way that does not unreasonably burden the other party.

The Title IX Coordinator promptly offers to all parties, upon request and as appropriate and reasonably available, without fee or charge, supportive measures upon receiving notice of a complaint. At the time the University offers supportive measures, the University will inform the Complainant, in writing, that they may file a formal complaint with the University if they have not done so already.

The Title IX Coordinator works with the parties to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic/occupational impact on the parties as possible.

Possible supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees

- Safety planning
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Notice Against Trespass, Letters of No Contact, or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

### **Section 8. Emergency Removal**

The University can act to remove a student Respondent entirely or partially from its education programs or activities on an emergency basis if an individualized safety and risk analysis performed by the Title IX Coordinator and/or appropriate designees has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties. Where the Respondent is an employee, interim action may be taken at the discretion of the HR Director.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the interim action and the option to request a meeting with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the interim action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 3 business days of delivery by the Title IX Coordinator of the notice required in the preceding paragraph, objections to the emergency removal will be deemed waived. A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. A Complainant and their Advisor also may be permitted to participate in

this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. A Respondent may challenge the Title IX Coordinator's emergency removal decision by submitting an appeal to the Provost (in the case of students) or the President (in the case of faculty or employees) one business day after receiving notice of the emergency removal decision.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

### **Section 9. Promptness**

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints can take up to 120 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control. Any time the general timeframes for resolution outlined in the procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **Section 10. Privacy**

Every effort is made by the University to preserve the privacy of reports.<sup>5</sup> The University will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by FERPA, or to carry out the purposes of Title IX, including the conduct of any investigation, hearing, or complaint resolution proceeding arising under these policies and procedures.

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<sup>5</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see Section 15(a).

The University reserves the right to determine which university officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA. Only a small group of officials who need to know will typically be told about the complaint. Officials who “need to know” will be limited to the following: The Office of Institutional Equity and Diversity, Human Resources, and the Department of Human Resources. Information will be shared as necessary with Investigators, Hearing Panel members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ privacy. The University may contact parents/guardians of a student to inform them of situations in which there is a significant and articulable health and/or safety risk to that student, but will in the University’s discretion, usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

### **Section 11. Jurisdiction of the University**

This Policy applies to all University administrators, faculty, staff, students, contractors, outside vendors, and other third parties within the University’s control, including visitors, invitees, and applicants for admission or employment. It applies to conduct that occurs on University owned or controlled premises, in an education program or activity (including, but not limited to, admissions, employment, academics, athletics, housing, and student services) including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects a person’s education or employment with the University or potentially poses a risk of harm to members of the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

Regardless of where the conduct occurred, even if the conduct does not fall within the Title IX definition of sexual harassment, the University will address notice/complaints to determine if other University policies have been violated.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or the Campus Violence Prevention Program [cvpp@semo.edu; (573) 986-6899].

### **Section 12. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or impossible.

The nature and extent of the University’s response to notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy, the graduation, transfer or other unavailability of key witnesses, etc.) is at the discretion of the Title

IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

### **Section 13. Online Sexual Harassment and/or Retaliation**

The policies of the University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities and use University networks, technology, or equipment.

Although the University may not control websites, social media, and other venues in which sexually harassing or retaliatory communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, engaging in unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

### **Section 14. Retaliation**

Protected Activity under this policy includes reporting an incident that may implicate this policy, participating in the Complaint Resolution Process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who reasonably fear that they may be subjected to retaliation.

The University and any member of the University community are prohibited from intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 and procedure.

Filing a complaint pursuant to any other University disciplinary procedures could be

considered retaliatory when the filing of such charges is primarily made for the purpose of interfering with or circumventing any right or privilege afforded under this Policy. Therefore, the University vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

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

Charging an individual with a violation of this Policy for making a materially false statement in bad faith in the course of a Complaint Resolution Process under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **Section 15. Mandated Reporting**

All University faculty, staff, and administrators are expected to report actual or suspected Sexual Harassment or Retaliation to the Title IX Coordinator, though there are some limited exceptions.

For Complainants considering discussing actual or suspected sexual harassment or retaliation with a University faculty, staff, or administrator, it is important to be aware of this reporting mandate. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

There are some on-campus resources, however, that may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

The following sections describe the reporting options at the University for a Complainant or third-party (including parents/guardians when appropriate):

#### **(a) Confidential Resources**

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

- On-campus licensed professional counselors
- On-campus health service providers
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a

court order requires or permits disclosure of such information. Information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

Campus counselors and/or the Employee Assistance Program are Confidential Resources and are available to help free of charge and may be consulted on an emergency basis during normal business hours.

### **(b) Mandated Reporters and Anonymity**

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves. If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information of the Complainant.

Anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated Reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

### **(c) Mandated Reporters and Formal Notice/Complaints**

The University considers officials of the University (directors, deans, vice presidents, other administrators with supervisory responsibilities, campus safety, faculty, and human resources) to be Responsible Employees (i.e., Mandated Reporters), unless those individuals are designated as Confidential Resources, and, subject to Section 15(b) next above, must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Responsible Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible Employees, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not

provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University.

Failure of a Mandated Reporter, as described above in this section, to report an incident of Sexual Harassment or Retaliation of which they become aware, is a violation of University policy and can be subject to disciplinary action for failure to comply.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **Section 16. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and may sign a Formal Complaint to initiate a Complaint Resolution Process upon completion of an appropriate violence risk assessment, if that risk assessment demonstrates a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Complaint Resolution Process fairly and effectively. The University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or Complaint Resolution Process.

When the Title IX Coordinator signs and submits the Formal Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

In cases in which the Complainant requests confidentiality/no formal action, and the circumstances allow that request to be honored, the University will offer Informal Resolution options (see Section 2(a)), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

A Complainant who initially elects to take no action can later elect to pursue a formal complaint. Upon making a formal complaint, a Complainant has the right, and can expect, to have

allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

### **Section 17. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

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

### **Section 18. False Allegations and Evidence**

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

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under the Code of Student Conduct.

### **Section 19. Amnesty for Complainants and Witnesses**

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

It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

The University maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT**

### **Section 1. Overview**

The University will act on any Formal Complaint or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator<sup>6</sup> or any other Official with Authority by applying these procedures. These procedures will only apply, however, if the allegations, if proven true, would constitute Sexual Harassment as defined in this Policy, and do not otherwise mandate dismissal under Section 2(b) below. If the Formal Complaint is dismissed under Section 2(b), the allegations will be addressed and resolved under the procedures applicable to the resolution of offenses under the *Code of Student Conduct* (for students), faculty handbook (for faculty), or Human Resources business policies and procedures (for employees).

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct, including, for example, retaliation or abuse of process. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the *Code of Student Conduct*, faculty handbook, or Human Resources business policies and procedures, as appropriate.

### **Section 2. Notice/Complaint**

Upon receipt of a Formal Complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take, typically within one to five business days. If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a Formal Complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

- If a Formal Complaint has been received, the Title IX Coordinator must assess its sufficiency and communicate with the Complainant if it is not complete in any way.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and Complaint Resolution Process.

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<sup>6</sup> Anywhere this procedure indicates “Title IX Coordinator,” the University may substitute a trained designee.

- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Complaint Resolution Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- If a Formal Complaint Resolution Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
  - If it does, the Title IX Coordinator will initiate the formal investigation and Complaint Resolution Process, directing the investigation to address:
    - an incident, and/or;
    - a pattern of alleged misconduct
  - If it does not, the Title IX Coordinator determines that Title IX does not apply and will “dismiss” that aspect of the complaint, if any, assesses which policies may apply, and refers the matter for resolution under the Student Code of Conduct or other applicable University Policy. Please note that dismissing a complaint under Title IX is a procedural requirement under Title IX guidance that does not limit the University’s authority to address a complaint with an appropriate process and remedies.

**(a) Individualized Safety and Risk Assessment**

In some cases, the Title IX Coordinator may determine that an emergency removal may be appropriate. Before any emergency removal the Title IX Coordinator and/or an appropriate designee must conduct an individualized safety and risk analysis to determine that a removal is justified because the Respondent poses an immediate threat to the physical health or safety of an individual arising from the allegations of Sexual Misconduct.

**(b) Dismissal (Mandatory and Discretionary)**

The University must dismiss a Formal Complaint. or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or
- 3) The conduct did not occur against a person in the United States; and/or

- 4) At the time of filing a formal complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the University.<sup>7</sup>

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

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

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

### **Section 3. Counterclaims**

The University is obligated to ensure that the Complaint Resolution Process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the Complaint Resolution Process procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

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<sup>7</sup> Such a Complainant is still entitled to supportive measures, but the formal Complaint Resolution Process is not applicable.

#### **Section 4. Right to an Advisor**

The parties may each have an Advisor<sup>8</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor, as long as the Advisor is eligible and available.<sup>9</sup> The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community, but if a party chooses an Advisor who is also a witness, the party should be prepared for questions by the hearing decision-makers regarding potential bias and conflict of interest.

The Title IX Coordinator will also offer to assign a trained Advisor for any party, if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and will be familiar with the University's resolution process. The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney. However, the University will undertake best efforts to provide an equally qualified Advisor to the party requesting an appointed Advisor.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

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<sup>8</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally). In some situations, University may permit more than one, at the discretion of the Title IX Coordinator. If the University allows more than one Advisor for one party, they will do so for all parties.

<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

## **Section 5. Role of the Advisor**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

The parties are not permitted to directly question each other or any witnesses at the hearing. Instead, any questioning of other parties or witnesses must be conducted by the parties' Advisors. A party may not proceed at the hearing without an Advisor.

Advisors should help the parties prepare for each meeting and hearing, and are expected to advise ethically, with integrity, and in good faith. All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address the University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other decision-maker except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

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

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

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **Section 6. Documentation Sharing With Advisors**

The parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to

the Title IX Coordinator, or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will comply with that request at the discretion of the Title IX Coordinator.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

As a public entity, the University fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses may also have union representation or Advisors in Complaint Resolution Process interviews or meetings.

### **Section 7. Resolution Process Confidentiality**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge, evidence, and opinions with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

### **Section 8. Informal Resolution**

The parties may agree to an informal resolution of allegations of violation of this Policy, except when the allegation is that an employee of the University sexually harassed a student. To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above, and then request Informal Resolution. Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties must voluntarily consent in writing to resolve the matter through Informal Resolution before the University will initiate the Informal Resolution process.

Informal Resolution could involve providing only supportive measures to remedy a situation, or could involve an alternative resolution mechanism such as mediation to resolve the allegations. An Informal Resolution also may be appropriate to fully resolve an alleged violation of this Policy if a Respondent accepts responsibility for a policy violation and agrees to accept a sanction.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Complaint Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Complaint Resolution Process.

The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any Informal Resolution that is reached, and failure to abide by the Informal Resolution agreement may result in appropriate responsive/disciplinary actions. Results of Formal Complaints resolved by Informal Resolution are not appealable.

### **Section 9. Formal Complaint Resolution Process Pool**

The Formal Complaint Resolution Process relies on a pool of faculty and staff (the “Complaint Resolution Process Pool” or “the Pool”) to carry out the process. The Title IX Coordinator appoints the Pool which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

The Pool includes:

- 3 individuals who may serve as Hearing Chairs, to chair hearings for allegations involving student and employee Respondents
- 3 or more members of the faculty
- 3 or more members of the administration/staff

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

The list of Pool members and a description of the Pool can be found on the University’s Title IX webpage.

#### **(a) Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles (though only in one role in any given proceeding under this Policy), at the direction of the Title IX Coordinator:

- Hearing Chair
- Hearing facilitator (process administrator, no decision-making role)

- Decision-maker regarding the complaint
- Advisor to the parties

**(b) Formal Complaint Resolution Process Pool Member Training**

The Pool members will receive annual training about applicable prohibited conduct, Complaint Resolution Processes, due process, and University policies related to Sexual Misconduct. All training materials used to train Title IX-related personnel will be made available on the University’s website.

**Section 10. Formal Complaint Resolution Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Complaint Resolution Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also provided to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until a determination of responsibility is made at the conclusion of the Complaint Resolution Process,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University’s policy on retaliation,
- Information about the privacy of the process,
- Information on the right of each party to have an Advisor of their choosing throughout the process, and the need for each party to have an Advisor at the hearing, along with suggestions for ways to identify an Advisor and notice that the University will provide a trained Advisor upon request,
- A statement informing the parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University’s VAWA Brochure,

- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve, and not knowingly destroy, any evidence that is directly related to the allegations, and that the knowing destruction of relevant evidence may subject the party to sanctions under this Policy, such as an adverse inference as to what the destroyed evidence may have shown.

Any notice to the parties will be made in writing and may be delivered by (1) email to the parties' University-issued email or designated accounts, (2) hand-delivery in person, or (3) mail to the local or permanent address(es) of the parties as indicated in official University records. Notice via email to the local or permanent address is presumed complete upon mailing, while notice via email is presumed upon sending of the email.

### **Section 11. Resolution Timeline**

The University will make a good faith effort to complete the resolution process within up to 120 business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and the rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **Section 12. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints the Title IX & Civil Rights Investigator and/or the Assistant Director of Human Resources (or other designee) to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

### **Section 13. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and decision-makers, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator/pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Dr. Carlos Vargas, Office of the President, at president@semo.edu, (573) 651-5026.

The Investigator will objectively evaluate all relevant evidence obtained in the course of an investigation, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a

Complainant, Respondent, or witness. The Decision-makers will objectively evaluate all relevant evidence presented at the hearing.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

#### **Section 14. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

#### **Section 15. Delays in the Investigation Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

#### **Section 16. The Investigation Process**

All investigations are thorough, reliable, impartial, as prompt as reasonably possible, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.

Prior to the conclusion of the investigation, the Investigator will provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used in the investigative report.

Upon conclusion of the investigation, the Investigator will prepare a comprehensive investigation report that fully summarizes the investigation, all witness interviews, and all relevant evidence. Appendices including relevant physical or documentary evidence will be included. A draft of this investigative report will be provided to the parties and their respective Advisors (if so desired by the parties) in secured electronic or hard copy format, providing an opportunity to inspect and review all of the evidence obtained by the Investigator as part of the investigation that is directly related to the reported misconduct for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

After receiving the parties' responses to the draft investigative report, the Investigator will finalize the investigative report and will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period. After obtaining any feedback from the Title IX coordinator and/or legal counsel, the Investigator will provide a copy of the final report to all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

### **Section 17. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are students or employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of the Code of Student Conduct and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

While it is permissible for witnesses to provide written statements in lieu of interviews, or choose to respond to written questions, if deemed appropriate by the Investigator(s), it is not preferred. If a witness submits a written statement but does not intend to be and/or is not present for cross examination at a hearing, their written statement may not be used as evidence.

### **Section 18. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording in advance.

**Section 19. Evidentiary Considerations in the Investigation**

The investigation does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the character of the parties; or (3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

**Section 20. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The University will use its best efforts to hold the hearing within twenty (20) business days of the conclusion of the investigation (i.e., when the final investigation report is transmitted to the parties and the decision-maker) unless all parties and the decision-maker agree to an expedited timeline.

**Section 21. Hearing Panel Composition**

The University will designate a three-member panel from the Pool, at the discretion of the Title IX Coordinator. A fourth member of the panel, the Chair, will facilitate the hearing but not act as a decision-maker. The Chair will be designated by the Title IX Coordinator.

The decision-makers will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as decision-makers or Advisors. Those who are serving as Advisors for any party may not serve as decision-makers in that matter.

The Title IX Coordinator may not serve as a decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time and place determined by the Title IX Coordinator.

**Section 22. Evidentiary Considerations in the Hearing**

Any evidence that the decision-makers determine(s) is relevant and credible may be considered. The hearing does not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the character of the parties; or (3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and

evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction after a determination of responsibility, as the University uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

After post-hearing deliberation, the decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

### **Section 23. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will provide notice of the hearing to the parties. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities or off-campus commitments.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the decision-makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing (including all witnesses, Advisors, and decision-makers), along with an invitation to object to any decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the decision-makers. For compelling reasons, the Title IX Coordinator may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to

ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions. If, after best efforts to make themselves available, a party's Advisor cannot be present for the hearing on the scheduled date and time, the party should provide notice to the Title IX Coordinator and the hearing will be rescheduled as soon as feasible to permit the Advisor to appear.

- A copy of all the materials provided to the decision-makers about the matter, unless they have been provided already.<sup>10</sup>
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notice that mobile phones/devices will not be permitted in the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed and if feasible, to attempt in good faith to meet the resolution timeline followed by the University and remain within the up to 120 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

#### **Section 24. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should notify the Title IX Coordinator at least five (5) business days prior to the hearing so that appropriate arrangements can be made. Even if a witness fails to provide advance notice that they will be unable to appear at the hearing in person, the Title IX Coordinator will be prepared to allow for remote attendance of a witness who cannot attend in person by videoconference technology.

#### **Section 25. Pre-Hearing Preparation**

If a witness has not been interviewed by the Investigator and has not provided a written statement or answered written questions in advance of the hearing, the witness may only

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<sup>10</sup> The final investigation report will be shared using electronic means that preclude printing, downloading, forwarding, or otherwise sharing.

participate in the hearing with the consent of all parties and the Chair. Similarly, new evidence may be presented at the hearing only with the consent of all parties and the Chair. If consent is not given, then the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

Any decision-maker who, after review of the list of individuals who will participate in the hearing, believes that they cannot make an objective determination must recuse themselves from the proceedings. If a decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

### **Section 26. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to offer the opportunity to submit anticipated lines of questioning or topics for the hearing for the Chair's review and to obtain pre-hearing relevance determinations. If proposed questions or topics are deemed not relevant, the Chair may discuss recommendations or more appropriate phrasing. A party's or Advisor's failure to submit questions in advance of the hearing will not preclude the Advisor from asking questions at the hearing. Any question not submitted in advance will be reviewed for relevance at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair may rule on these arguments pre-hearing and will provide those rulings to all parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded.

### **Section 27. Hearing Procedures**

At the hearing, the decision-makers have the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair, the three decision-makers, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services. Legal counsel for the Chair or the University also may be

present at the hearing.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the decision-makers and the parties and will then be excused.

### **Section 28. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

### **Section 29. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This includes a final opportunity for challenge or recusal of the decision-makers on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair then conducts the hearing according to appropriate procedures. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **Section 30. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the decision-makers and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to

consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

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

### **Section 31. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the decision-makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The decision-makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, but refuses to answer any cross-examination questions, then the party's or witness's statements cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The decision-makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the decision-makers may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a

University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **Section 32. Recording Hearings**

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The decision-makers, the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **Section 33. Deliberation, Decision-making, and Standard of Proof**

The decision-makers will deliberate in closed session to determine whether it has been demonstrated, by a preponderance of the evidence, that the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The decision-makers may consider any pertinent conduct history provided by the Associate Dean of Students in determining the appropriate sanction(s), in consultation with other appropriate administrators, as required.

The hearing panel will then prepare a written deliberation statement detailing the determination, rationale, the evidence used in support of its determination, a description of any evidence determined to be not relevant and an explanation of the rationale for that determination, credibility assessments, and any sanctions or recommendations. The written deliberation statement must be submitted to the Title IX Coordinator within fifteen (15) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **Section 34. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome articulating:

- the specific policy(ies) and sections thereof reported to have been violated
- the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.
- the finding on each alleged policy violation;
- the findings of fact that support the determination;
- conclusions regarding the application of the relevant policy to the facts at issue;

- a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law;
- any sanctions issued which the University is permitted to share with the Complainant according to state or federal law;
- any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent);and
- an explanation as to when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

The Notice of Outcome may be reviewed by legal counsel. The Title IX Coordinator will then simultaneously share the Notice of Outcome, including the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within fifteen (15) business days of receiving the decision-makers' deliberation statement.

### **Section 35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the decision-makers

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

#### **(a) Student Sanctions**

The following are the usual sanctions<sup>11</sup> that may be imposed upon students singly or in

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<sup>11</sup> the University policies on transcript notation will apply to these proceedings.

combination<sup>12</sup>:

- *Warning*: Written notification from the University that the student has been involved in a violation of University policies and that repetition of this or any other violation may be expected to result in a more serious sanction.
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of specified regulations. Probation indicates that the student is no longer in good standing with the University. If during the length of the probation the student is found in any further violation of the University *Code of Student Conduct*, a more severe disciplinary sanction may be imposed including suspension or dismissal.
- *Suspension from the University Held in Abeyance (with a University Behavioral Contract)*: A Behavioral Contract indicates that the student has been Suspended from the University; however, the Suspension has been held in abeyance (or put aside temporarily) as long as the student abides by the specific details of the signed contract. The student is not in good standing with the University while on the contract. Suspension is invoked immediately if further violations of the *Code of Student Conduct* occur.
- *Suspension*: Suspension involves separation from the University for a specified period of time or until certain conditions are met. Suspension involves denial of enrollment, attendance of classes, and other student privileges; the student must leave the campus. Suspension is noted on official University transcripts for the specified length of the Suspension.
- *Expulsion*: Separation from the University without the possibility of readmission. Expulsion is noted on official University transcripts.
- *Withholding Diploma*: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other discretionary sanctions as deemed appropriate.

#### **(b) Employee Sanctions/Responsive Actions**

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<sup>12</sup> Subject to the University's *Code of Student Conduct*.

Responsive actions for an employee who has engaged in Sexual Harassment and/or Retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

### **Section 36. Withdrawal or Resignation While Charges Pending**

**(a) Students:** The University may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student is found responsible for an alleged violation.

The resolution process will proceed even if a student Respondent decides not to participate unless the student Respondent permanently withdraws from the University, in which case the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student. However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of the University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions, if imposed, have been satisfied.

**(b) Employees:** Should an employee Respondent resign with unresolved allegations of Policy violations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the

University or any campus of the University, and the records retained by the Title IX Coordinator and Human Resources Department will reflect that status. All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **Section 37. Appeals**

Any party may file a request for appeal (“Request for Appeal”) in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome.

A single Appeal decision-maker will be designated by the Title IX Coordinator who has not been involved in any way in the process previously.

The Request for Appeal will be forwarded to the Appeal decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing) and has been timely filed.

Appeals may be filed only on the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or decision-makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If no valid basis for appeal has been stated, then the Appeal decision-maker will deny the appeal and notify the parties and their Advisors in writing, with an explanation of the rationale for denial. If the Request for Appeal states a valid basis for appeal, then the Appeal decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original decision-makers of the appeal, and will provide a copy of the Request for Appeal. The non-appealing parties will be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal decision-maker to all parties for review and comment.

The Appeal decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share

according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

### **(b) Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **(c) Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal decision-maker to substitute their judgment for that of the original decision-makers merely because they disagree with the finding and/or sanction(s).
- The Appeal decision-maker may consult with legal counsel and/or the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or decision-makers for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original decision-makers (as in cases of bias), the appeal may order a new hearing with a new decision-makers.

- The results of a remand to a decision-makers cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University, or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

**Section 38. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any finding of responsibility and sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

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

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

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

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

**Section 39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final decision-makers (including the Appeal decision-maker).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s) pursuant to the Code of Student Conduct (for students) or Human Resources (in the case of faculty or employees),

including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **Section 40. Recordkeeping**

The University will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

#### **Section 41. Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services or Assistant Director of Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator,

determine which accommodations are appropriate and necessary for full participation in the process.

**Section 42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX, and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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

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

This Policy and procedures are effective August 14, 2020.