

**University of Rochester Policy  
on Title IX Sex Discrimination,  
Sex-based Harassment,  
and Sex- and Gender-based Misconduct**

**TABLE OF CONTENTS**

- I. NOTICE OF NON-DISCRIMINATION ..... 1
- II. STATEMENT OF POLICY AGAINST SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION..... 1
- III. SCOPE OF THIS POLICY ..... 2
- IV. CONDUCT PROHIBITED BY TITLE IX..... 4
  - (A) SEX DISCRIMINATION..... 4
  - (B) SEX-BASED HARASSMENT ..... 4
- V. ADDITIONAL PROHIBITED SEX- AND GENDER-BASED MISCONDUCT INVOLVING STUDENTS ..... 8
  - (A) OFF-CAMPUS/EXTRATERRITORIAL SEXUAL ASSAULT ..... 8
  - (B) OFF-CAMPUS/EXTRATERRITORIAL DATING VIOLENCE OR DOMESTIC VIOLENCE ..... 9
  - (C) OFF-CAMPUS/EXTRATERRITORIAL STALKING ..... 9
  - (D) SEXUAL EXPLOITATION ..... 9
  - (E) ONLINE HARASSMENT..... 10
  - (F) RELATIONSHIP ABUSE..... 10
- VI. AFFIRMATIVE CONSENT ..... 11
- VII. PROCESS-RELATED MISCONDUCT ..... 13
  - (A) UNAUTHORIZED DISCLOSURE..... 13
  - (B) FAILURE TO COMPLY/PROCESS INTERFERENCE ..... 13
- VIII. REPORTING POTENTIAL VIOLATIONS OF THIS POLICY ..... 14
  - (A) CONFIDENTIAL REPORTING OPTIONS ..... 14
  - (B) REPORTS TO NON-CONFIDENTIAL EMPLOYEES AND ASSOCIATED RESPONSE OBLIGATIONS ..... 17
  - (C) DISCLOSURES OF SEX-BASED HARASSMENT AT UNIVERSITY-HOSTED PUBLIC AWARENESS EVENTS..... 17
- IX. EMERGENCY SUPPORT SERVICES ..... 18
  - (A) EMERGENCY HEALTHCARE ..... 18
  - (B) CRISIS SERVICES ..... 18
  - (C) LAW ENFORCEMENT ..... 18

X.	STUDENT POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY .....	19
XI.	RESPONSE TO POTENTIAL VIOLATIONS OF THIS POLICY .....	19
	(A) INITIAL ASSESSMENT.....	20
	(B) DETERMINATION OF NEXT STEP .....	21
XII.	INITIATING COMPLAINT OR GRIEVANCE PROCESS WITHOUT COMPLAINANT APPROVAL OR PARTICIPATION.....	23
	(A) DESCRIPTION OF EVALUATION PROCESS.....	23
	(B) DECISION TO PROCEED .....	24
XIII.	SUPPORTIVE MEASURES.....	25
	(A) EVALUATION OF APPROPRIATE, REASONABLY AVAILABLE SUPPORTIVE MEASURES .....	25
	(B) CONFIDENTIALITY OF SUPPORTIVE MEASURES.....	26
	(C) OPPORTUNITY TO REQUEST REVIEW OF SUPPORTIVE MEASURES.....	26
XIV.	REMOVAL OF A RESPONDENT PENDING A GRIEVANCE PROCESS .....	27
	(A) EMERGENCY REMOVAL OF A RESPONDENT.....	27
	(B) PLACEMENT OF EMPLOYEE ON ADMINISTRATIVE LEAVE .....	29
XV.	INFORMAL RESOLUTION PROCESS.....	29
	(A) NOTICE INITIATING INFORMAL RESOLUTION PROCESS.....	30
	(B) COMMENCEMENT OF INFORMAL RESOLUTION PROCESS AND ITS EFFECT ON A PENDING GRIEVANCE PROCESS AND ASSOCIATED TIMELINES.....	30
	(C) THE PROCESS .....	31
	(D) RECORDKEEPING.....	31
XVI.	OPPORTUNITIES FOR REVIEW, APPEAL OR OBJECTION TO INDIVIDUALS SERVING IN KEY ROLES IN GRIEVANCE PROCESSES .....	32
	(A) REVIEW OR APPEAL .....	32
	(B) REQUEST TO REMOVE TITLE IX COORDINATOR, AN INVESTIGATOR OR DECISION-MAKER .....	34
XVII.	GRIEVANCE PROCESS COMMON TO ALL COMPLAINTS ALLEGING SEX DISCRIMINATION, INCLUDING SEX-BASED HARASSMENT.....	35
	(A) OVERVIEW .....	35
	(B) LENGTH OF PROCESS AND GOOD CAUSE EXTENSIONS OF TIME .....	35

(C)	PRIVACY OF PROCESS.....	35
(D)	CONCURRENT LAW ENFORCEMENT ACTIVITY .....	36
(E)	CONSOLIDATION OF CERTAIN COMPLAINTS.....	36
(F)	PROCESS FOR INVESTIGATING ALLEGATIONS OF RETALIATION.....	36
XVIII.	PROCEDURE FOR COMPLAINTS OF SEX-BASED HARASSMENT INCLUDING A STUDENT PARTY AND SEX- AND GENDER-BASED MISCONDUCT INVOLVING STUDENTS.....	37
(A)	VOLUNTARY PARTICIPATION IN GRIEVANCE PROCESS.....	37
(B)	INITIATING AN INVESTIGATION .....	37
(C)	RIGHT TO AN ADVISOR AND ADVISOR ROLE.....	38
(D)	INVESTIGATION .....	39
(E)	DETERMINATION AFTER INVESTIGATION.....	42
(F)	HEARINGS .....	43
(G)	DECISION-MAKER DELIBERATIONS AND WRITTEN DETERMINATION.....	47
(H)	EFFECTIVE DATE OF THE WRITTEN DETERMINATION AND POSSIBLE NOTICE TO PARENTS.....	49
(I)	APPEALS .....	50
XIX.	PROCEDURES AND RIGHTS FOR COMPLAINTS ALLEGING SEX DISCRIMINATION AND/OR EMPLOYEE-ONLY SEX-BASED HARASSMENT.....	50
(A)	PARTICIPATION IN GRIEVANCE PROCESS .....	50
(B)	INITIATING AN INVESTIGATION .....	50
(D)	INVESTIGATION .....	52
(E)	DETERMINATION AFTER INVESTIGATION.....	54
(F)	ADMINISTRATIVE HEARING.....	55
(G)	EFFECTIVE DATE OF THE WRITTEN DETERMINATION .....	60
(H)	APPEALS .....	60
XX.	DISCIPLINARY SANCTIONS .....	61
(A)	POSSIBLE DISCIPLINARY SANCTIONS .....	61
(B)	FACTORS IN DETERMINING SANCTIONS.....	62
(C)	REMEDIES.....	63
(D)	FAILURE TO COMPLY WITH SANCTIONS.....	63

XXI. APPEALS .....	64
(A) APPEAL FROM DISMISSAL OF A COMPLAINT .....	64
(B) APPEALING A WRITTEN DETERMINATION AT THE CONCLUSION OF A GRIEVANCE PROCESS .....	64
(C) APPEAL DECISIONS ARE FINAL.....	66
(D) WHEN AN APPEAL IS NOT FILED .....	67
XXII. STUDENT TRANSCRIPT NOTATIONS .....	67
XXIII. GRIEVANCE PROCESS TIMEFRAMES .....	67
1. NOTICE OF ALLEGATIONS AND INVESTIGATION.....	68
2. INVESTIGATION .....	68
3. OPPORTUNITY TO REVIEW/RESPOND TO INVESTIGATION REPORT IN COMPLAINTS PROCEEDING THROUGH THE GRIEVANCE PROCESS DESCRIBED IN SECTION XVIII.....	68
4. OPPORTUNITY TO REVIEW/RESPOND TO EVIDENCE IN COMPLAINTS PROCEEDING THROUGH THE GRIEVANCE PROCESS DESCRIBED IN SECTION XIX: .....	68
5. NOTICE OF HEARING.....	68
6. CHALLENGE TO DECISION-MAKER .....	68
7. HEARING .....	68
8. WRITTEN DETERMINATION FOLLOWING A HEARING.....	69
9. APPEALS .....	69
XXIV. RECORDKEEPING.....	69
XXV. MODIFICATIONS TO THIS POLICY.....	70
XXVI. GLOSSARY OF DEFINED TERMS.....	70
APPENDIX A .....	81
APPENDIX B.....	83
APPENDIX C.....	85

## **I. NOTICE OF NON-DISCRIMINATION**

The University of Rochester prohibits and will not engage in discrimination or harassment on the basis of age, color, disability, domestic violence victim status, ethnicity, gender identity or expression, genetic information, marital status, familial status or an individual's reproductive health decision making, military/veteran status, national origin, race (including hair style), religion/creed (including religious attire and facial hair), sex, sexual orientation, citizenship status, non-pending arrest or conviction record or any other status protected by law (Protected Class). Discrimination and harassment (including hostile work environment harassment) based on Protected Class will not be tolerated, and is considered misconduct that will be subject to discipline.

The University is committed to fostering, cultivating, and preserving a culture of diversity, equity, and inclusion, a central tenet of our institutional vision and values. This commitment extends to policies and practices for admissions, recruitment, and employment.

The University complies with all federal and state laws that prohibit discrimination based on the protected categories listed above, including Title IX of the Education Amendments of 1972 (20 U.S.C. §1681, *et seq.*), which as described further below, prohibits Sex Discrimination, including Sex-based Harassment, in the University's Education Programs and Activities.

## **II. STATEMENT OF POLICY AGAINST SEX DISCRIMINATION, SEX-BASED HARASSMENT, AND RETALIATION**

Title IX and its implementing regulations (34 C.F.R. Part 106) prohibit sex discrimination in education programs and activities.

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any Education Program or Activity receiving Federal financial assistance.

Title IX also prohibits Retaliation. In addition, sex discrimination is prohibited by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York State Education Law (focused on students).

In compliance with Title IX, the University of Rochester does not discriminate on the basis of sex and prohibits Sex Discrimination in any Education Program or Activity that it operates, including in admission and employment, and is committed to providing educational and employment settings free from discrimination and harassment on the basis of sex. This

Policy on Title IX Sex Discrimination, Sex-based Harassment, and Sex- and Gender-based Misconduct (Policy) defines Prohibited Conduct<sup>1</sup> and explains how the University will respond to Reports alleging such Prohibited Conduct, including applicable Grievance Processes used to resolve Complaints. You can access this Policy at the following link:

<https://www.rochester.edu/policies/policy/title-ix/>

The University's Title IX Coordinator is Julia Green. The Title IX Coordinator's responsibilities are described in Appendix A of this Policy, and inquiries about Title IX and this Policy may be made by contacting the Title IX Office or Title IX Coordinator using any of the methods described immediately below. Reports or Complaints of conduct that may violate this Policy can be made through the below Title IX contact information or the online reporting form, or by reporting to individuals identified in Section VIII(B).

**The University's Title IX Office:**

- *Email:* [titleix@rochester.edu](mailto:titleix@rochester.edu)
- *Online reporting form:* <https://www.rochester.edu/sexual-misconduct-report-form/><sup>2</sup>

**The University's Title IX Coordinator:**

- *Email:* [julia.green@rochester.edu](mailto:julia.green@rochester.edu)
- *Phone:* (585) 275-1654
- *Office:* Wallis Hall 147A (within the University's Office of Equity and Inclusion suite)
- *Online reporting form:* <https://www.rochester.edu/sexual-misconduct-report-form/>

Appendix B includes information about outside agencies to which inquiries related to the application of Title IX can be made.

### **III. SCOPE OF THIS POLICY**

Pursuant to Title IX, discrimination on the basis of sex can take multiple forms:

- **Sex Discrimination**, including discrimination on the basis of Sex Stereotypes, Sex Characteristics, sexual orientation, Gender Identity, and Pregnancy or Related Conditions, and

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<sup>1</sup> Capitalized terms are defined in the Glossary at Section XXVI.

<sup>2</sup> Additional reporting options, including Confidential resources, are explained in Section VIII of this Policy.

- **Sex-based Harassment**, a specific subset of Sex Discrimination consisting of Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

This Policy also defines other types of prohibited Sex- and Gender-Based Harassment between Students. Definitions of Prohibited Conduct, as well as other important terms, are included in Sections IV, V, VI, and VII. Other capitalized terms used throughout this Policy are defined in the Glossary at Section XXVI.

This Policy applies to all Students, Employees (faculty, staff, all other employees), contractors, visitors, patients, and other third parties participating or attempting to participate in the University's Education Program or Activity within the United States<sup>3</sup> at the time of the alleged conduct potentially in violation of Title IX. The University must address a sex-based hostile environment (described further below), even when some conduct alleged to be contributing to the hostile environment occurred outside of the University's Education Program or Activity or outside of the United States.

This Policy only addresses Prohibited Conduct as defined in this Policy. In certain circumstances, another University policy or policies may apply in addition to this Policy. The University retains full authority to rely on all appropriate University policies when determining how to proceed based on the alleged conduct.

All other protected status discrimination and harassment allegations are addressed through the University's [Policy Against Discrimination, Harassment, and Discriminatory Employment/Service Practices](#) (allegations against faculty/staff/employees) or the [Standards of Student Conduct](#) (allegations against students).

Given this Policy is required by federal law, this Policy and associated procedures will apply to the extent there are inconsistencies with any provisions of any faculty or Employee handbook, policy or procedure.

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<sup>3</sup> Based on Article 129-B of the New York State Education Law, the University may determine that it must or will address other types of Prohibited Conduct involving Students that occurred outside of the United States. This conduct is defined in Section V.



#### IV. CONDUCT PROHIBITED BY TITLE IX

##### (A) **Sex Discrimination**<sup>4</sup>

Sex Discrimination is discrimination on the basis of sex, Sex Stereotypes, Sex Characteristics, Pregnancy or Related Conditions, sexual orientation, and/or Gender Identity.

Sex Discrimination may manifest as follows:

##### ***(1) Disparate Treatment Discrimination***

Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived sex and that:

- (a) Excludes an individual from participation in;
- (b) Denies the individual benefits of; or
- (c) Otherwise adversely affects a term or condition of an individual's participation in the University's Education Program or Activity.

##### ***(2) Disparate Impact Discrimination***

When policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:

- (a) Excludes an individual from participation in;
- (b) Denies the individual benefits of; or
- (c) Otherwise adversely affects a term or condition of an individual's participation in the University's Education Program or Activity.

##### (B) **Sex-based Harassment**

Sex-based Harassment is a form of Sex Discrimination and means sexual harassment and other harassment on the basis of sex, including other specific offenses defined below:

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<sup>4</sup> This definition was adapted from the ATIXA Title IX Model Policy and Procedures (AMPP). ©2024 ATIXA. Used with permission.

### ***(1) Quid pro quo harassment***

When an employee, agent, or other person the University has authorized to provide an aid, benefit, or service under the University's Education Program or Activity explicitly or impliedly conditions the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

### ***(2) Hostile environment harassment***

Unwelcome sex-based conduct that:

- (a) based on the totality of the circumstances,
- (b) is subjectively and objectively offensive, **and**
- (c) is so severe or pervasive,
- (d) that it limits or denies a person's ability to participate in or benefit from the University's Education Program or Activity (*i.e.*, creates a hostile environment)

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant's ability to access the University's Education Program or Activity;
- The type, frequency, and duration of the conduct;
- The parties' ages, roles within the University's Education Program or Activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the University's Education Program or Activity.

### ***(3) Sexual Assault***

Any conduct that would constitute a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault includes the following:

- (a) *Rape*:
  - i. Non-consensual 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; and
  - ii. Non-consensual oral or anal sexual intercourse with another person.
- (b) *Fondling*: Non-consensual touching of the private body parts (buttocks, groin, breasts) of another person for the purpose of sexual gratification.
- (c) *Incest*: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (d) *Statutory Rape*: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

***See Affirmative Consent definition in Section VI below.***

#### ***(4) Dating Violence***

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 reporting party's statement;
  - ii. The length of the relationship;
  - iii. The type of relationship; and
  - iv. The frequency of interaction between the persons involved in the relationship

For the purposes of this definition, dating violence:

- includes, but is not limited to, sexual or physical abuse or the threat of such abuse; and

- does not include acts covered under the definition of Domestic Violence

***(5) Domestic Violence***

Felony or misdemeanor crimes committed by a person who:

- (a) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws New York State, or a person similarly situated to a spouse of the victim;
- (b) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (c) Shares a child in common with the victim; or
- (d) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

***(6) Stalking***

Engaging in:

- (a) a course of conduct (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)
- (b) directed at a specific person;
- (c) that would cause a reasonable person (person under similar circumstances and with similar identities to the Complainant);
- (d) to fear for the person's safety or the safety of others; or
- (e) suffer substantial emotional distress (significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling)

***(7) Retaliation -***

Intimidation, threats, coercion, discrimination, and/or adverse employment or educational actions made or taken against any person:

- (a) by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's Education Program or Activity,
- (b) for the purpose of interfering with any right or privilege secured by Title IX, or
- (c) because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution process, in grievance procedures, and in any other actions taken by the University to address complaints of sex discrimination

Requiring an employee or other person authorized by the University to provide aid, benefit, or service under the University's Education Program or Activity to participate as a witness or otherwise assist with an investigation, proceeding, or hearing pursuant to this Policy **does not** constitute Retaliation.

The exercise of rights protected under the First Amendment does not constitute Retaliation. It is also not Retaliation for the University to pursue conduct action or discipline against those who make materially false statements in bad faith in the course of a resolution under this Policy. A determination of responsibility, by itself, is not sufficient to conclude that an individual has made a materially false statement in bad faith.

## **V. ADDITIONAL PROHIBITED SEX- AND GENDER-BASED MISCONDUCT INVOLVING STUDENTS<sup>5</sup>**

### **(A) Off-campus/Extraterritorial Sexual Assault**

Any form of Sexual Assault as defined above that:

1. involves students participating in any of the University's Education Programs or Activities; and
2. occurs off campus and/or outside of the United States

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<sup>5</sup> Certain of these definitions were adapted from the AMPP. ©2024 ATIXA. Used with permission.

**(B) Off-campus/Extraterritorial Dating Violence or Domestic Violence**

Dating Violence or Domestic Violence as defined above that:

1. involves students participating in any of the University's Education Programs or Activities; and
2. occurs off campus and/or outside of the United States

**(C) Off-campus/Extraterritorial Stalking**

Stalking as defined above that:

1. involves students participating in any of the University's Education Programs or Activities; and
2. occurs off campus and/or outside of the United States

**(D) Sexual Exploitation**

When a person takes non-consensual, sexual advantage of another for one's benefit or the benefit of another party. Examples of Sexual Exploitation include but are not limited to:

- Observing or recording others engaged in sexual or private activity (such as undressing or showering) without the consent of all involved;
- Non-consensual sharing, streaming or otherwise distributing intimate images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such images or recordings without the knowledge and consent of all parties involved;
- Exposing one's genitals in non-consensual circumstances;
- Engaging in sexual activity with another individual while knowingly infected with a sexually transmitted disease (STD) or sexually transmitted infection (STI) without informing the other person of such infection;
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Demanding financial compensation, sexual contact, or some other benefit under threat of disseminating or posting images, video or other recording, of private sexual or intimate activity and/or a person's genitalia, groin, breasts and/or buttocks;
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity;

- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (spoofing);
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (deepfakes);
- The recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a sexual act where such an act is induced by force, fraud, or coercion.

**(E) Online Harassment**

Includes, but is not limited to, unwelcome conduct on social media platforms, such as sex-based derogatory name-calling, the nonconsensual distribution of intimate images (including authentic images and images that have been altered or generated by artificial intelligence (AI) technologies), cyberstalking, sending sex-based pictures or cartoons, and other sex-based conduct that,

1. based on the totality of the circumstances
2. is subjectively and objectively offensive, **and**
3. so severe or pervasive
4. that it limits or denies a person’s ability to participate in or benefit from the University’s Education Program or Activity.

**(F) Relationship Abuse**

Non-physical abuse and tactics used by a person who is or has been in a social relationship of a romantic, sexual, or intimate nature with the person subjected to such abuse to knowingly or unknowingly seek to establish power and control over the Complainant.

**For the purposes of this definition:**

- Whether the relationship is of a romantic, sexual, or intimate nature is determined by a variety of factors, including the reporting party’s statement, the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- A relationship of a romantic or intimate nature is characterized by ongoing or past physical and/or emotional intimacy between the parties.

Relationship Abuse can manifest through the following behaviors<sup>6</sup>:

- Purposefully or knowingly causing reasonable fear of bodily injury to oneself or another person for the benefit of staying in the relationship or used as a tactic to keep a person in a relationship.
- Creating fear of bodily injury or property damage.
- Repeated communication through any means, anonymously or not, with intent to intimidate, terrify or threaten.
- Emotional or verbal abuse that causes substantial emotional distress, such as demanding that a partner be in constant contact; acting jealous, isolating the partner, preventing the partner from seeing friends or family; getting angry in a way that frightens or terrifies; humiliates a partner in front of others; threatening to “out” the partner to family, friends, employer, or community; stating that the authorities won’t help a lesbian, bisexual, transgender, or other nonconforming person; forcing a partner to “prove” their sexuality by performing nonconsensual sex acts; threatening self-harm as leverage to maintain the relationship or connection; gaslighting.
- Digital abuse, such as demanding passwords and/or access to a partner’s phone, email, social media; unwanted calls or texts, harassment on social media, pressure to send nude pictures, demanding immediate response to texts, emails, and calls.
- Financial abuse

## **VI. AFFIRMATIVE CONSENT<sup>7</sup>**

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.

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<sup>6</sup> Many of these examples come from the U.S. Department of Health & Human Services’s Office on Women’s Health’s website: << <https://www.womenshealth.gov/relationships-and-safety/other-types> >>

<sup>7</sup> New York State Education Law article 129-B requires New York colleges and universities to use this Affirmative Consent definition in on-campus sexual misconduct processes involving students; the University will also use this definition for matters involving University faculty and staff. The New York Penal Law defines consent differently. The University’s on-campus process and New York’s criminal law process not only use different definitions of consent, but also different standards of evidence and processes to determine whether a violation occurred.



Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

There are several important principles to keep in mind:

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual cannot otherwise consent. Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- New York State law dictates that an individual cannot give valid consent if they are under 17 years old.

Relying solely upon non-verbal communication can lead to miscommunication. It is important not to make assumptions and—when there is confusion or ambiguity on the issue of consent at any time during a sexual interaction—it is essential that each person stops and clarifies, verbally, willingness to continue.

## VII. PROCESS-RELATED MISCONDUCT<sup>8</sup>

### (A) Unauthorized Disclosure<sup>9</sup>

- Distributing or otherwise publicizing materials created or produced during an investigation, Informal Resolution or Grievance Process except as required by law or as expressly permitted by the University; or
- Publicly disclosing a party's personally identifiable information learned during an investigation, Informal Resolution or Grievance Process without authorization or consent.

### (B) Failure to Comply/Process Interference

- Intentional failure to comply with the reasonable directives of a University administrator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Title IX resolution process, including but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

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<sup>8</sup> These definitions are based on the AMPP. ©2024 ATIXA. Used with permission.

<sup>9</sup> Nothing in this section restricts the ability of parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute Retaliation under this Policy), consult with their family members, confidential resources or Advisors; or otherwise prepare for or participate in the University's process.

## VIII. REPORTING POTENTIAL VIOLATIONS OF THIS POLICY

**An individual requiring emergency support or response should contact:**

- the University's Department of Public Safety at 585-275-3333 or by picking up a Campus Blue Phone, or
- another appropriate Emergency Support Resource listed in Section VII.

A **Complaint** is an oral or written request to the University that can be understood as a request to investigate and make a determination about Prohibited Conduct as defined in this Policy.

A **Report** is the submission of information to the Title IX Coordinator or an Employee regarding a potential violation of this Policy.

The University strongly encourages anyone who has been subject to Prohibited Conduct, including Retaliation, to make a Report or Complaint to the Title IX Office using the online reporting form available here: [Sexual Misconduct Form – University of Rochester](#)

In addition, any person may make a Report of a potential violation to the Title IX Coordinator using the linked online form (above), in person, by mail, by telephone (585-275-1654) or by email ([titleix@rochester.edu](mailto:titleix@rochester.edu)). Reports by mail, telephone or email may be made at any time, including outside of regular business hours. An individual may speak with the Title IX Coordinator prior to making a Complaint and, to do so, should reach out to schedule a meeting through the Title IX Office email provided above.

This section provides information about Confidential and Non-Confidential Reporting Options and the reporting obligations of University employees who learn of conduct that reasonably may constitute Sex Discrimination and/or Sex-based Harassment.

### **(A) Confidential Reporting Options**

Not everyone who has experienced Sex Discrimination or Sex-based Harassment will immediately know whether they want to make a Report or Complaint to the Title IX Office. University community members can connect with the following Confidential Employees and external confidential resources to discuss their experience and options, without any concern that the information will be passed along to the Title IX Office.

**(1) On-Campus**

Confidential Employees providing services in the following offices can offer Legal Confidentiality due to their status as licensed medical/healthcare professionals acting within the scope of their professional responsibilities:

<b>University Counseling Center (UCC)</b> <a href="https://www.rochester.edu/uhs/ucc/">https://www.rochester.edu/uhs/ucc/</a>		
<p><b>River Campus</b> 585-275-3113 UHS building, 3rd Floor 738 Library Road Susan B. Anthony Circle</p>	<p><b>Eastman School of Music</b> 585-275-3113 ESM Living Center, Room 107 (Limited number of appointments available)</p>	
<b>University Health Service (UHS)</b> <a href="https://www.rochester.edu/uhs/">https://www.rochester.edu/uhs/</a>		
<p><b>River Campus</b> 585-275-2662 UHS Building, 1st Floor 738 Library Road</p>	<p><b>Eastman School of Music</b> 585-274-1230 Room 106, ESM Student Living Center</p>	<p><b>Medical Center</b> 585-275-2662 Room 1-5077 (NOTE: Enter at 250 Crittenden Blvd.)</p>
<b>Employee Assistance Program</b>		<b>University Chaplains<sup>10</sup></b>
<p>585-276-9110 Main Office: 179 Sully’s Trail, Suite 200 URMC: 300 Crittenden Boulevard <a href="https://www.urmc.rochester.edu/eap.aspx">https://www.urmc.rochester.edu/eap.aspx</a> <a href="https://www.rochester.edu/human-resources/benefits/well-u/programs-resources/emotional-mental-health/">https://www.rochester.edu/human-resources/benefits/well-u/programs-resources/emotional-mental-health/</a></p>		<p>585-275-4321 500 Wilson Boulevard <a href="https://www.rochester.edu/chapel/">https://www.rochester.edu/chapel/</a></p>

Athletic trainers, who work with varsity student-athletes, will also maintain confidentiality when a disclosure is made while they are providing athletic training services.

The University Ombuds are designated Confidential Employees, meaning they can maintain confidentiality when acting in their role as Ombuds<sup>11</sup>:

<sup>10</sup> Please note that only ordained clergy and faith leaders can offer legal confidentiality.

<sup>11</sup> University Ombuds will maintain confidentiality on campus, but cannot offer legal confidentiality in a process external to the University, such as a court proceeding.

<b>University Ombuds Office</b>	
<a href="https://www.rochester.edu/ombuds/contact/">https://www.rochester.edu/ombuds/contact/</a> or 585-275-9125	
Lynnett Van Slyke, MS, MEd <a href="mailto:l.vanslyke@rochester.edu">l.vanslyke@rochester.edu</a>	Frederick C. Jefferson, Jr, EdD, MA, MS, BS <a href="mailto:fjefferson@admin.rochester.edu">fjefferson@admin.rochester.edu</a>

All of the above Confidential Employees must provide the following information to an individual who makes a disclosure of conduct that may reasonably constitute Sex Discrimination or Sex-based Harassment:

- (a) The employee’s status as confidential, including the scope of their confidentiality and that, absent certain specific circumstances, the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination and will not do so without the informed consent of the individual who disclosed;
- (b) How to contact the Title IX Coordinator and how to make a complaint of Sex Discrimination, including Sex-based Harassment; and
- (c) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures established in this Policy.

***(2) Off-Campus***

<b>RESTORE Sexual Assault Services</b>	<b>Willow Domestic Violence Center</b>
24 Hour Hotline: 585-546-2777 <a href="https://restoresas.org/">https://restoresas.org/</a> <i>Confidential crisis support after an instance of sexual assault, can accompany you to the hospital, or escort you to the police station at your request to file a report.</i>	24 Hour Hotline: 585-222-7233 Text: 585-348-7233 <a href="https://willowcenterny.org/">https://willowcenterny.org/</a> <i>Crisis hotline, emergency shelter, court accompaniment, short-term counseling and support.</i>

A full list of confidential or other resources including Rochester area, New York State, and national resources can be found on the Title IX Office website: <https://rochester.edu/sexualmisconduct/resources/>.

**(B) Reports to Non-Confidential Employees and Associated Response Obligations<sup>12</sup>**

All employees, staff, and faculty of the University **who do not serve** in a Confidential Employee role (identified above and defined in Section XXVI) must notify the Title IX Office or Title IX Coordinator directly when they receive information about conduct that reasonably may constitute Prohibited Conduct as defined in this Policy, including Retaliation.

The following student-employees who receive disclosures while acting in their student-employment capacity are also expected to make a report directly to the Title IX Office:

- (a) Residential Life Staff
- (b) All student employees with responsibility for teaching or advising

Employees, staff, and faculty can use either of the following methods to make a Report to the Title IX Office:

[Sexual Misconduct Form – University of Rochester](#)

[titleix@rochester.edu](mailto:titleix@rochester.edu)

**(C) Disclosures of Sex-based Harassment at University-Hosted Public Awareness Events**

When the Title IX Office or Title IX Coordinator is notified that there was a disclosure of information about conduct that reasonably may constitute Sex-based Harassment during a public awareness event about Sex-based Harassment hosted by the University in person on campus or online, the University will not act in response to this information unless the disclosure indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees or other persons. However, the Title IX Office will use these disclosures to inform efforts to prevent Sex-based Harassment, including by providing tailored training to address such conduct in a particular part of the Education Program or Activity or a specific location the disclosure indicates there has been multiple incidents of Sex-based Harassment.

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<sup>12</sup> Please note that all employees also have obligations to inform students about the Title IX Office and provide Title IX Office contact information upon disclosure of their Pregnancy or Related Condition. For more information, see the University's Pregnancy and Related Conditions Policy.

**IX. EMERGENCY SUPPORT SERVICES**

**(A) Emergency Healthcare**

The following designated [Sexual Assault Forensic Examination Centers \(SAFE\)](#) provide medical treatment and forensic exams:

- Emergency Department at Strong Memorial Hospital, 601 Elmwood Ave., Rochester, NY 14642
- Emergency Department at Rochester General Hospital, 1425 Portland Ave., Rochester, NY 14621
- Emergency Department at Unity Hospital, 1555 Long Pond Road, Rochester, NY 14626

**Please note:** Medical providers who treat a physical injury sustained from an assault, physical or sexual, are required by state law to report the assault to law enforcement. A SANE is a registered nurse specially trained to provide care to patients who have experienced sexual assault. In addition, medical office and insurance billing practices may reveal information to the insurance policy holder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. Options can be explored at this website: <https://ovs.ny.gov/help-crime-victims>, or by calling 1-800-247-8035.

**(B) Crisis Services**

Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency’s policies on confidentiality may be obtained directly from the agency.

<b>RESTORE Sexual Assault Services</b>	<b>Willow Domestic Violence Center</b>
24 Hour Hotline: 585-546-2777 <a href="https://restoresas.org/">https://restoresas.org/</a> <i>Confidential crisis support after an instance of sexual assault, can accompany you to the hospital, or escort you to the police station at your request to file a report.</i>	24 Hour Hotline: 585-222-7233 Text: 585-348-7233 <a href="https://willowcenterny.org/">https://willowcenterny.org/</a> <i>Crisis hotline, emergency shelter, court accompaniment, short-term counseling and support.</i>

**(C) Law Enforcement**

- University of Rochester Department of Public Safety: 585-275-3333
- Monroe County Sheriff’s Office: 911

The University encourages individuals to consider pursuing criminal action for sexual misconduct that may also be crimes under New York criminal statutes, however, this decision remains an individual choice. UR community members who wish to pursue a complaint with local law enforcement can enlist the help of the Title IX Coordinator or the Department of Public Safety, or call the Monroe County Sheriff's Office (MCSO) directly by dialing 911.

Except when the Complainant is less than 18 years old, the University will generally respect a Complainant's choice whether or not to report an incident to local law enforcement, unless the University determines that there is an overriding issue with respect to the safety or welfare of the campus community. Where a report involves suspected abuse of a minor, certain individuals at the University may be required by state law to notify law enforcement and/or the New York Statewide Central Register of Child Abuse and Maltreatment.

Whether a Respondent is charged with a violation of criminal law or found responsible in a criminal justice system is irrelevant to a determination of whether Prohibited Conduct as defined in this Policy has or has not occurred. The effect of concurrent on-campus and criminal processes is discussed further in Section XVII(D) below.

## **X. STUDENT POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY**

The health and safety of every student at the University of Rochester is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to Domestic Violence, Dating Violence, Stalking, or Sexual Assault, occurs may be hesitant to report such incident due to fear of potential consequences for their own conduct. The University strongly encourages students to report Domestic Violence, Dating Violence, Stalking, or Sexual Assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of Domestic Violence, Dating Violence, Stalking, or Sexual Assault to University officials or law enforcement will not be subject to University code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the Domestic Violence, Dating Violence, Stalking, or Sexual Assault.

## **XI. RESPONSE TO POTENTIAL VIOLATIONS OF THIS POLICY**

When the Title IX Office receives a Report or Complaint alleging conduct that could reasonably constitute Prohibited Conduct under this Policy, the Title IX Coordinator will respond by: (A) conducting an initial assessment, including inviting a meeting with the individual alleged to have been subject to Prohibited Conduct, to determine appropriate next



steps; (B) equitably offering Supportive Measures to the Complainant and, at the appropriate time, the Respondent; and (C) refraining from imposing upon Respondent disciplinary sanctions or other actions that are not Supportive Measures unless and until the Respondent is found responsible for a violation of this Policy through a completed Grievance Process. In certain circumstances, the University may impose an Emergency Removal or Administrative Leave as explained in Section XIV below.

**(A) Initial Assessment**

***(1) Purpose***

When the Title IX Coordinator receives a Report or Complaint, the Title IX Coordinator will seek to gather additional information regarding the alleged Sex Discrimination or Sex-based Harassment to evaluate any risk of harm to individuals or to the campus community<sup>13</sup>, and to address the immediate physical safety and emotional well-being of the Complainant. Typically, the Title IX Office will send an email to the individual alleged to have been subject to Prohibited Conduct with information about their rights, resources, and options, and will invite a meeting to discuss further. The individual is not required to meet with the Title IX Office, but participating in this meeting will allow for more informed decision-making about next steps.

During this discussion, the Title IX Coordinator will, as applicable:

- notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- notify the Complainant of the importance of preservation of evidence;
- provide the Complainant with information about on- and off-campus resources;
- notify the Complainant that the institution can provide assistance in initiating legal proceedings in family court or civil court;
- notify the Complainant of the range of Supportive Measures available with or without filing a Complaint;
- provide the Complainant with an explanation of the on-campus procedural options; and
- explain the University's policy prohibiting Retaliation.

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<sup>13</sup> The Clery Act requires the University to assess reported conduct to determine whether to issue a timely warning and, as applicable, enter the Report into its daily crime log.

## ***(2) Evaluating Risk of Harm***

The Title IX Coordinator will take necessary action to address any identified risk of harm, including implementation of Supportive Measures for either or both Parties, as appropriate, and actions designed to protect a Complainant and/or the larger campus community. Supportive Measures are described in Section XIII. Any decision to remove a Respondent from campus based on a Complaint or pending the Grievance Process will follow the appropriate process explained in Section XIV of this Policy. At the Title IX Coordinator's discretion, one or more other appropriate campus partners may also be included in the initial assessment or in evaluating information gathered in the initial assessment.

### **(B) Determination of Next Step**

After assessing the information gathered, the Title IX Coordinator will take one of the following steps:

#### ***(1) Dismiss Complaint***

The Title IX Coordinator may dismiss a Complaint on any of the following grounds:

- i. The University is unable to identify the Respondent after taking reasonable steps to do so;
- ii. The Respondent is not participating in the University's Education Program or Activity and is not employed by the University;
- iii. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Prohibited Conduct even if proven; or
- iv. The Title IX Coordinator determines the conduct alleged in the Complaint, even if proven, would not constitute Prohibited Conduct. Before dismissing the complaint, the Title IX Coordinator will make reasonable efforts to clarify the allegations with the Complainant.

If the Title IX Coordinator dismisses a Complaint, a Notice of Dismissal explaining the basis for the dismissal will be issued within ten (10) Business Days of receipt of the Complaint. If the Respondent was not notified of the allegations in the Complaint prior to its dismissal, only the Complainant will be sent the Notice of Dismissal. If the Respondent was notified of

the allegations prior to the dismissal, then the Title IX Coordinator will simultaneously send both the Complainant and Respondent the Notice of Dismissal to the Respondent.

Any Party notified of the dismissal has an opportunity to appeal the dismissal as described in Section XXI(A) below.

Even when a Complaint is dismissed, the Title IX Coordinator will, as appropriate, offer Supportive Measures to the Complainant and Respondent, if the Respondent has been notified. The Title IX Coordinator may also take other prompt and effective steps to ensure that Sex Discrimination does not continue or recur within the University's Education Program or Activity.

### ***(2) Initiate Grievance Process***

When there is a Complaint and the Title IX Coordinator determines that the alleged misconduct falls within this Policy, the Title IX Coordinator will proceed with the appropriate Grievance Process<sup>14</sup>:

- Section XVIII below describes the procedures for Complaints alleging Sex-based Harassment involving a Student party and matters involving students alleging conduct that falls within Section V of this Policy.
- Section XIX below describes the procedures for Complaints Alleging Sex Discrimination and Employee-Only Sex-based Harassment.

The Title IX Coordinator may initiate a Grievance Process without a Complaint or Complainant under the circumstances and through the process described in Section XII below and under any other circumstances that, in the Title IX Coordinator's discretion, require the institution to investigate the allegations underlying a Complaint.

### ***(3) Offer Informal Resolution***

Informal Resolution is an option that may be offered by the Title IX Coordinator at their discretion and at any time prior to a determination whether Sex Discrimination or Sex-based Harassment occurred through a completed Grievance Process. The Title IX Coordinator may decline to offer Informal Resolution despite one or more of the parties' wishes, such as when the alleged conduct would present a future risk of harm to others.

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<sup>14</sup> When a non-UR community member makes a Complaint against a UR community member, the (a) alleged misconduct and (b) UR community member's status will determine the applicable Grievance Policy.

The Informal Resolution Process is described in more detail in Section XV below.

***(4) Refer for Action Pursuant to Different University Policy***

When the initial assessment concludes with a determination that the alleged conduct does not fall within the scope of this Policy but involves conduct that, if found to have occurred, violates another University policy, the matter will be referred for further action. The determination regarding next steps will be communicated in a Notice of Dismissal sent to the Complainant and Respondent, if the Respondent has received notice of the allegations. The Parties have the right to submit an Appeal from dismissal of a Complaint as explained in Section XXI(A) below.

**XII. INITIATING COMPLAINT OR GRIEVANCE PROCESS WITHOUT COMPLAINANT APPROVAL OR PARTICIPATION**

**(A) Description of Evaluation Process**

When the Title IX Coordinator is notified of conduct that may constitute Sex Discrimination or Sex-based Harassment and there is no Complaint, a Complainant has withdrawn any or all of the allegations in a Complaint, and/or no informal resolution process has been commenced or an informal resolution process is terminated, the Title IX Coordinator must determine whether to initiate a Complaint and/or the appropriate Grievance Process. To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:

- (a) The Complainant's request not to proceed with initiation of a Complaint;
- (b) The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- (c) The risk that additional acts of sex discrimination would occur if a complaint is not initiated;
- (d) The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- (e) The age and relationship of the parties, including whether the respondent is an employee of the University;

- (f) The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- (g) Whether the allegations involve violence, threats of violence, escalation of or repeated conduct or use of weapons;
- (h) The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred; and
- (i) Whether the University could end the alleged sex discrimination and prevent its recurrence without initiating the relevant grievance process.

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint. In these circumstances, the Title IX Coordinator will notify the Complainant prior to initiating a Complaint and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures.

In the event the Title IX Coordinator decides to proceed, the Complainant will still be treated as a Party within the relevant Grievance Process. Even a non-participating Complainant will be offered Supportive Measures, which will be reviewed and evaluated on an ongoing basis, and will be provided information regarding their right to report a crime to campus or local law enforcement and with assistance if they wish to do so.

Regardless whether a Complaint is initiated, the Title IX Coordinator will take other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue or recur within the University's Education Program or Activity.

**(B) Decision to Proceed**

If the University determines that it must proceed with the Grievance Process, the Title IX Coordinator will notify both Parties in the normal course prior to commencing an investigation.

The Procedures for Complaints Alleging Sex-based Harassment Involving a Student Party and Sex- and Gender-Based Misconduct Involving Students are described in Section XVIII

below. The Procedures for Complaints Alleging Sex Discrimination and Employee-Only Sex-based Harassment are described in Section XIX below.

### **XIII. SUPPORTIVE MEASURES**

Upon notification of conduct that reasonably may constitute Sex Discrimination<sup>15</sup>, including Sex-based Harassment, the Title IX Coordinator will contact the Complainant and Respondent (if identified or identifiable based upon the Complaint and at the appropriate time) to discuss the availability of Supportive Measures.

#### **(A) Evaluation of Appropriate, Reasonably Available Supportive Measures**

In evaluating the Supportive Measures to be provided, the Title IX Coordinator will make an individualized determination, considering Complainant's wishes and other relevant factors, of the reasonably available, non-disciplinary, non-punitive measures that will be provided to the Complainant and Respondent to restore or preserve equal access to the University's Education Programs or Activities, to protect the safety of the Parties, and/or to deter Sex Discrimination as defined in this Policy.

All Supportive Measures will be provided without fee or charge. While individualized Supportive Measures may place a burden on both a Complainant and a Respondent, they may not unreasonably burden either Party. Supportive Measures must be designed to protect the safety of the Parties or the University's educational and working environment, or to provide support during the University's Grievance Process and/or Informal Resolution process (described further in relevant Policy sections below). Examples of Supportive Measures include but are not limited to:

- counseling;
- extensions of deadlines and other course-related adjustments;
- campus escort services;
- increased security and monitoring of certain areas of the campus;

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<sup>15</sup> For allegations of Sex Discrimination other than Sex-based Harassment or Retaliation, the University is not required to alter the alleged discriminatory conduct in order to provide a Supportive Measure.

- restrictions on contact applied to one or more parties<sup>16</sup>;
- leaves of absence;
- changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and
- training and education programs related to Sex-based Harassment.

The University may, as appropriate, modify or terminate supportive measures at the conclusion of a Grievance Process or Informal Resolution process, or may continue them beyond conclusion of either process.

**(B) Confidentiality of Supportive Measures**

The Title IX Office will not disclose information about the Supportive Measures to anyone other than the person to whom they apply, unless such disclosure is: necessary to provide the Supportive Measures; necessary to restore or preserve the Party's access to the Education Program or Activity; for use in a Grievance Process; with authorization from the Party to whom the Supportive Measures apply; or if disclosure is permitted or required by law.

**(C) Opportunity to Request Review of Supportive Measures**

Parties may request review of a Supportive Measure implemented by the Title IX Office, including a request for modification or reversal of the decision to provide, deny, modify or terminate supportive measures applicable to them. A Party may also request additional modification or termination of a Supportive Measure applicable to them if there is a material change in circumstances.

The person who decides the request for review will be someone other than the employee who made the initial Supportive Measure decision, and will be impartial, trained, and have authority to modify or reverse the decision. See Section XVI(A)(1) below for the process to request a review.

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<sup>16</sup> Students can learn more about restrictions on contact in the Policies and Procedures section of the [Standards of Student Conduct](#).

#### **XIV. REMOVAL OF A RESPONDENT PENDING A GRIEVANCE PROCESS**

##### **(A) Emergency Removal of a Respondent<sup>17</sup>**

The Title IX Coordinator may implement Emergency Removal of a Respondent from the Education program or Activity based on an individualized safety and risk analysis resulting in a determination that (1) there is an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons (2) arising from the allegations of Prohibited Conduct (3) that justifies removal.

Prior to implementing an emergency removal, the Title IX Coordinator will first gather information to undertake the individualized safety and risk analysis. The analysis will be conducted by an individual or Team who is free from bias or conflict of interest; who has relevant knowledge and experience; and who will not be involved as an Investigator, Decision-maker or Informal Resolution Facilitator in any later Grievance Process related to the Respondent who is being evaluated for potential removal.

##### ***(1) Factors to be Considered***

The Emergency Removal analysis will focus on the specific Respondent at issue and examine the specific circumstances arising from the allegations that potentially pose an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons.

To evaluate the presence of an “imminent threat,” the University will consider a Complainant’s stated subjective fear and will also apply an objective reasonable person standard. The University will consider the Respondent’s propensity, opportunity, and ability to carry out a stated or potential threat. The analysis will evaluate whether Supportive Measures are a more appropriate and less restrictive means to negate or sufficiently minimize the likelihood of a threat being carried out. As part of its analysis, the University may rely on objective evidence and current medical knowledge, and may consult with a licensed evaluator to analyze the information gathered. The University shall also consider Respondent’s rights, if any, under applicable federal and/or state disability laws.

In addition, the relationship between a threat and the health or safety of any student or other individual will also be carefully evaluated. In some but not all cases, threatening speech or virtual interactions without an associated action may rise to the level of a threat to health or

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<sup>17</sup> The University may disclose to a parent personally identifiable information from an education record in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. For more information, see the [Family Educational Rights and Privacy Act Regulations, 34 CFR §99.31\(a\)\(8\) & \(a\)\(10\)](#).



safety. If a Respondent poses a threat in the nature of potential emotional impact only, the University may determine that a more appropriate course of action is to offer appropriate Supportive Measures.

The University will also closely examine whether the imminent threat arises from the allegations of conduct that could constitute Prohibited Conduct. Threats of physical self-harm will be addressed under separate, applicable policies. If the individualized safety and risk analysis results in a determination that a Respondent's actions pose an imminent and identified threat, but do not arise from allegations of Prohibited Conduct as defined by this Policy, the University will respond pursuant to other applicable policies and/or procedures.

The University's assessment of the appropriateness of Emergency Removal will account for its multiple potential impacts, including: whether providing the Complainant Supportive Measures will be sufficient to ensure equal educational access; the adverse impacts of separating a Respondent from educational opportunities and benefits and/or the workplace; and the protection of the health and safety of the broader University community. Given these evaluations are necessarily fact specific, in some cases the University may determine that restricting a Respondent's participation in specific Programs or Activities will adequately address the situation. This process will respect a Respondent's rights under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.*

### ***(2) Emergency Removal is Not Discipline Nor a Determination of Responsibility***

At all stages, the University will ensure that the Emergency Removal will not impose a premature sanction on the Respondent or circumvent the relevant Grievance Process. An Emergency Removal does not equate to a Determination of Responsibility for a Policy violation and will not result in a presumption of responsibility in any subsequent Grievance Process.

### ***(3) Ongoing Evaluation***

The Title IX Coordinator will continually evaluate whether the presence of an imminent and serious threat to the health or safety of a complainant or any students, employees, or other persons has remained the same or changed such that the removed Respondent can be safely returned to programs or activities in a partial or complete manner.

### ***(4) Notice of Emergency Removal and Opportunity to Request Review***

In the event the University determines that Emergency Removal of a Respondent is appropriate, the Respondent will be notified in writing within two (2) Business Days of the

removal decision. This written notice will include details about the specifically identified imminent and serious threat to the health or safety underlying the decision, as well as information about the Respondent's immediate opportunity to request review of the Emergency Removal decision. See Section XVI(A)(2) below for the process to request review.

**(B) Placement of Employee on Administrative Leave**

In the event a Complaint alleges conduct that could reasonably constitute Prohibited Conduct and identifies an Employee as a Respondent, the Title IX Coordinator may decide to place the Respondent on Administrative Leave. The purpose of such an administrative leave is to allow a temporary separation of the Employee while the Grievance Process is ongoing; the University will determine the terms and conditions of each leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and all other applicable employment laws.

The Title IX Coordinator may also place a Student-Employee on administrative leave from on-campus employment in a non-emergency situation in order to provide Supportive Measures to a Complainant. The University will make its best efforts not to unreasonably burden the Student-Employee with placement on leave and will fully evaluate whether there are alternative and less restrictive measures that would preserve the Complainant's access to the University's Education Program or Activity. In most situations, a Student-Employee placed on administrative leave from on-campus employment as a Supportive Measure will continue to receive pay until the conclusion of the Grievance Process.

**XV. INFORMAL RESOLUTION PROCESS**

In circumstances deemed appropriate by the Title IX Coordinator, the Parties may be offered the option to participate in an Informal Resolution process to resolve a Complaint. The Title IX Coordinator may offer this option at any time before the conclusion of a Grievance Process resulting in a determination whether Sex Discrimination or Sex-based Harassment occurred, including upon receiving information about potential Prohibited Conduct or after initial assessment of a Complaint.

Participating in an Informal Resolution process is voluntary. Initiating this process requires specific notifications to the Parties, as well as the Parties' voluntary written consent to participate.

**(A) Notice Initiating Informal Resolution Process**

If both Parties agree to attempt informal resolution, the Title IX Coordinator initiates the process by simultaneously providing the Parties a written notice with the following information:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume the Grievance Process;
- That the Parties' agreement to a resolution would prohibit the parties from initiating or resuming a Grievance Process arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement (e.g. limits on contact between the Parties, restrictions on Respondent's participation in one or more University programs or activities, or on attendance specific events, or any restriction that could be imposed on a Respondent as a remedy or sanction at the conclusion of a completed Grievance Process);
- Notice that an informal resolution agreement is binding only on the Parties; and
- Information learned during the informal resolution process that the University will maintain and whether and how the University might disclose and use the information if the Grievance Process is initiated or resumed.

The Informal Resolution consent form will be enclosed with this Notice.

**(B) Commencement of Informal Resolution Process and Its Effect on a Pending Grievance Process and Associated Timelines**

When all Parties have submitted signed consent forms, the University will identify a Facilitator(s), who may be the Title IX Coordinator. The Facilitator(s) will be trained, will be free from conflict of interest or bias for or against complainants or respondents generally or the specific Parties, and will not be the same person as the Investigator or the Decision-maker. The Facilitator(s) may not be called to serve as a Witness in the Grievance Process.

Initiation of an Informal Resolution process based on a Report or Complaint will pause the timelines established in Section XXIII for twenty (20) Business Days while the process proceeds. At the end of the 20 Business Days, the Title IX Coordinator will reassess the appropriateness of Informal Resolution for the specific matter.

If a Grievance Process is underway when Informal Resolution is initiated, the Grievance Process will be paused for a period of fifteen (15) Business Days (unless a shorter or longer time is set by the Title IX Coordinator) to allow the Informal Resolution Process to move forward. The time period during which the Grievance Process is paused for the Informal Resolution process shall not count toward the time periods set forth in Section XXII below.

**(C) The Process**

The Facilitator(s) will decide the process and method to be used in each Informal Resolution process, but shall not take actions inconsistent with this Policy. The Facilitator(s) will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during the Informal Resolution process. The Facilitator(s) may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution.

The Facilitator(s) shall not require the Parties to meet together, in person; the Parties will meet together only if they choose to do so.

***(1) Informal Resolution Agreements***

If the Parties reach an agreement, the Facilitator(s) shall complete a written agreement that lists the terms of the Informal Resolution for the Parties to sign.

A Party may withdraw from the Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution of a Complaint.

***(2) Title IX Coordinator Approval of Agreement***

The Title IX Coordinator will defer to the Parties' agreement unless the Title IX Coordinator determines that it is impractical, unduly burdensome or inconsistent with the University's obligations under this Policy, Title IX or another applicable law or policy. If the Title IX Coordinator declines to approve the written agreement on one of these bases, with the assistance of the Facilitator(s), the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, the Grievance Process will resume.

**(D) Recordkeeping**

When a Complaint is informally resolved through a written agreement approved by the Title IX Coordinator, the Title IX Office shall retain the Complaint, any documents prepared in the course of the Grievance Process (if one had been initiated), any documents prepared in the

course of the Informal Resolution process, the final approved written agreement documenting the Informal Resolution, and any documentation of the implementation of the Informal Resolution. These documents shall be retained in accordance with the Recordkeeping requirements set forth in this Policy at Section XXIV.

## **XVI. OPPORTUNITIES FOR REVIEW, APPEAL OR OBJECTION TO INDIVIDUALS SERVING IN KEY ROLES IN GRIEVANCE PROCESSES**

### **(A) Review or Appeal**

This Policy provides individuals with opportunities to seek review of or appeal from a number of decisions and actions the University is authorized to make pursuant to this Policy:

#### ***(1) Request to Review Supportive Measures***

A request to review a Supportive Measure may be submitted at any time that it remains effective, as circumstances underlying the Supportive Measure may change.

To request review of a Supportive Measure, the requesting Party must submit a writing to the appropriate individual listed below, explaining in detail the reasons that the Supportive Measure be removed or modified. At the discretion of the individual conducting the review, this determination may be made with or without individual meetings with the involved Parties and/or in consultation with other University officials with relevant information. While the other Party will not necessarily be advised of a request for review of Supportive Measures, all involved Parties will be notified of the outcome of a request for review of a Supportive Measure. The person who will conduct the review will be based on the status of the party requesting review.

- For River Campus and ESM students: Dean of Students or designee
- For students in the School of Nursing: Associate Dean for Enrollment Management & Student Affairs or designee
- For students in the Eastman Institute of Oral Health: Director of EIOH or designee
- For medical students: Senior Associate Dean for Medical School Education or designee
- For graduate students in the School of Medicine and Dentistry: Senior Associate Dean for GEPA or designee

- For URM Residents: Senior Associate Dean for Graduate Medical Education/Designated Institutional Officer or designee
- For URM Faculty: Senior Vice President for Health Sciences or designee
- For all Faculty except URM Faculty: Provost or designee
- For staff, including LLE and MAG: appropriate Director of HR Business Partners or designee

***(2) Request to Review an Emergency Removal***

A request to review an Emergency Removal must be made within five (5) Business Days of issuance of the Emergency Removal notice.

To request review of an Emergency Removal, the requesting Party must submit a writing to the appropriate individual listed below, explaining in detail the reasons that any of the elements of the Emergency Removal analysis are not present and/or do not support the presence of an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons. At the discretion of the individual conducting the review, this determination may be made with or without individual meetings with the involved Parties and/or in consultation with other University officials with relevant information. While the other Party will not necessarily be advised of a request for review of Supportive Measures, all involved Parties will be notified of the outcome of a request for review of a Supportive Measure.

- For River Campus and ESM students: Dean of Students or designee
- For students in the School of Nursing: Associate Dean for Enrollment Management & Student Affairs or designee
- For students in the Eastman Institute of Oral Health: Director of EIOH or designee
- For medical students: Senior Associate Dean for Medical School Education or designee
- For graduate students in the School of Medicine and Dentistry: Senior Associate Dean for GEPA or designee
- For URM Residents: Senior Associate Dean for Graduate Medical Education/Designated Institutional Officer or designee
- For URM Faculty: Senior Vice President for Health Sciences or designee

- For all Faculty except URM Faculty: Provost or designee
- For staff, including LLE and MAG: appropriate Director of HR Business Partners or designee

***(3) Appeals from Notice of Dismissal or Written Determination***

Information about appealing either a dismissal of a Complaint or a Written Determination at the conclusion of a Grievance Process are explained in Section XXI below.

**(B) Request to Remove Title IX Coordinator, an Investigator or Decision-maker**

Parties have the right to request that someone other than the Title IX Coordinator oversee the Grievance Process or that the Title IX Coordinator remove an Investigator or the Decision-maker. Such requests must be based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

***(1) Request to Remove the Title IX Coordinator***

A request to remove the Title IX Coordinator should be submitted in writing to the Vice President for Equity & Inclusion as soon as a Party becomes aware of any such grounds for removal. The Vice President for Equity & Inclusion will determine whether to delegate the Title IX Coordinator duties to someone else. The Grievance Process timeline will be paused until the Title IX Coordinator identifies a delegate.

***(2) Challenge to an Investigator***

A challenge to an Investigator must be raised in writing within two (2) Business Days of receipt of the Notice of Investigation. The Title IX Coordinator will determine whether to remove the Investigator. If the Investigator is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If an Investigator is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Investigator. The Grievance Process timeline will be paused until the Title IX Coordinator assigns a new Investigator.

***(3) Request to Remove a Decision-maker***

A challenge to the Decision-maker must be raised in writing within two (2) Business Days of receipt of the Notice of Hearing. The Title IX Coordinator will determine whether to remove the Decision-maker. If the Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If a Decision-maker is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new

Decision-maker. The Hearing will likely need to be postponed to identify a new Decision-maker.

## **XVII. GRIEVANCE PROCESS COMMON TO ALL COMPLAINTS ALLEGING SEX DISCRIMINATION, INCLUDING SEX-BASED HARASSMENT**

### **(A) Overview**

All entitlements established in the sections describing each Grievance Process apply equally to the involved Parties. Both processes are grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility at the conclusion of the relevant Grievance Process. The University is committed to providing adequate, reliable, and impartial investigations. While it is the University's burden to gather Relevant, Admissible evidence and information—both Inculpatory and Exculpatory, the Parties will have multiple opportunities to submit evidence and information and suggest fact Witnesses who may have Relevant, Admissible evidence and/or information.

The standard of evidence for findings of fact and determinations regarding responsibility at the conclusion of this process is the preponderance of evidence (more likely than not).

In general, Complaints are resolved either through a hearing process or Informal Resolution.

### **(B) Length of Process and Good Cause Extensions of Time**

The University seeks to resolve all Complaints of Sex Discrimination and Sex-based Harassment thoroughly, fairly, equitably, and as promptly as possible based on the allegations. The timeframes the University strives to meet can be found at Section XXII. The University will inform the Parties at regular intervals of the status of the Grievance Process.

Circumstances may arise that justify a good cause extension of anticipated timeframes at the University's initiative or at the request of a Party. Such circumstances may include, but are not limited to: the complexity of the allegations; expansion of the scope of the allegations as the investigation proceeds; the number of Witnesses involved; the availability of the Parties, Witnesses or others involved; the effect of a concurrent criminal investigation; breaks or other closures of campus; faculty sabbatical; approved employee leave; or unforeseen circumstances. In the event timelines are modified, the University will provide written notice to the Parties.

### **(C) Privacy of Process**

The Title IX Office will keep private and confidential the identity of any individual who has made a Report or Complaint, and the identity of any Complainant, Respondent, and Witness



except as permitted by FERPA, required by law, or as necessary for the University to take action under this Policy.

**(D) Concurrent Law Enforcement Activity**

When the University receives a Report or Complaint alleging Prohibited Conduct and a Complainant has made or decides to make a report to law enforcement, the University's Grievance Process typically will continue. At the University's discretion, the Grievance Process may be temporarily paused, including at the request of law enforcement. Extension of timelines at the request of law enforcement typically will not exceed ten (10) Business Days unless law enforcement specifically requests and justifies a longer extension that the Title IX Coordinator determines to be good cause to further extend Grievance Process timelines. In these circumstances, one or both Parties (if a Respondent has already been notified of the allegations) will be sent a written notice explaining the reason for pausing the Grievance Process.

**(E) Consolidation of Certain Complaints**

The University may consolidate its processing of Complaints against more than one Respondent, by more than one Complainant against one or more Respondent or by one Party against the other Party (cross-complaint) when allegations arise out of the same facts or circumstances. The decision to consolidate is a case-by-case analysis that requires evaluation of, for example, whether the multiple Complainants' allegations are so intertwined that their allegations directly relate to all the parties. All parties will be notified in writing of a decision to consolidate Complaints. The Grievance Process described in Section XVIII will apply when one of the Complaints to be consolidated involves at least one student Party and includes allegations in the nature of Sex-based Harassment.

**(F) Process for Investigating Allegations of Retaliation**

When the Title IX Coordinator receives information about conduct that reasonably may constitute Retaliation, the Title IX Coordinator is obligated to undertake the response obligations set out in Section XI above. Upon receiving a Complaint alleging Retaliation, the Title IX Office must initiate the appropriate Grievance Process based on the allegations and status of the Parties. The Title IX Coordinator may also determine that Informal Resolution may be an appropriate resolution option, and in that case, will offer Informal Resolution to the Parties.

## **XVIII. PROCEDURE FOR COMPLAINTS OF SEX-BASED HARASSMENT INCLUDING A STUDENT<sup>18</sup> PARTY AND SEX- AND GENDER-BASED MISCONDUCT INVOLVING STUDENTS**

### **(A) Voluntary Participation in Grievance Process**

Neither Parties nor Witnesses are required to participate in the Grievance Process, but their participation is important and often critical to assembling a record during the investigation and Hearing that enables Decision-makers to find facts and make determinations regarding responsibility by a Preponderance of the Evidence. The University may not threaten, coerce or intimidate a Party or Witness into participating, nor may the University retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

### **(B) Initiating an Investigation**

To initiate an investigation, the Title IX Coordinator will issue a Notice of Allegations and Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. The Notice of Allegations and Investigation will include:

1. Notice of this Grievance Process, including the Informal Resolution process, and an electronic link to this Policy and any other potentially applicable University policy based on the allegations;
2. The conduct alleged to violate this Policy and any other potentially applicable University policy based on the allegations, and the date and location of the alleged misconduct, if known;
3. Parties whose identities are known;
4. A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the Grievance Process;
5. Notice of the Parties' right to an Advisor of choice;
6. Information about the range of outcomes and Disciplinary Sanctions that may result;
7. A statement that Retaliation is prohibited;

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<sup>18</sup> The Student Bill of Rights is included in Appendix C to this Policy.

8. Description of the opportunity to review and respond in writing to a preliminary investigation report and the Relevant, Admissible evidence and information gathered during the Investigation;
9. Notice of and citation to University's prohibition on knowingly making false Statements or submitting false information during an on-campus process;
10. The name(s) and title(s) of the Investigator; and
11. Information about next steps in the process.

Any objection to a named Investigator must be submitted as provided in Section XVI(B)(2) above.

The University may delay issuing this Notice to appropriately address reasonable concerns about any person's safety that may arise upon delivery of the Notice. The presence of a reasonable concern will be based on an individualized safety and risk analysis.

If, during the course of an investigation, new or additional allegations arise that require investigation, the Title IX Coordinator will send the Parties an updated Notice of Allegations and Investigation revising the scope of the Investigation.

**(C) Right to an Advisor and Advisor Role**

Each Party has the right to choose an Advisor to assist and advise them (at the Party's own expense, if the Advisor is paid). Each Party has the right to be accompanied by their Advisor throughout the Grievance Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role. Advisors:

1. provide support to the Party but do not serve as a proxy voice for the Party;
2. can confer quietly with their Party as needed, but if there is a need for an extended discussion, the Party should ask for a break in the meeting, interview or Hearing;
3. may not make statements or arguments or answer questions on behalf of Parties during meetings, interviews or during the Hearing;
4. may not speak during the hearing process, except in connection with Advisor-conducted Questions, described in Section XVIII(F)(4)(c) below;
5. cannot direct the Party how to answer a question; and

6. must conduct themselves quietly and professionally, must not disrupt any meeting, interview or proceeding, and must comply with the Rules of Decorum established by the University.

An Advisor who does not follow the Rules of Decorum and other guidelines above may be removed from the meeting, interview or Hearing.

Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisors and any change in their Advisor. The University can connect a Party with a trained on-campus Advisor upon request.

The role of Advisors during the Grievance Process is explained in Sections XVIII(D)(2)(b) & XVIII(F)(4)(a), (c), & (d).

#### **(D) Investigation**

The University's investigation process is designed to (1) allow for the thorough, impartial, and reliable gathering of evidence and information and (2) result in a comprehensive investigation report summarizing Relevant, Admissible evidence.

##### ***(1) Process Overview***

The Investigator will be trained, will conduct the investigation with a presumption that the Respondent is not responsible, and will be free of bias and conflict of interest. The burden of gathering Relevant, Admissible evidence and information—both Inculpatory Evidence and Exculpatory Evidence—rests on the University, however the Parties will have an equal opportunity to submit evidence and suggest Witnesses.

The Investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator will provide advance written notice to each Party of the date, time, location, participants, and purpose of any meeting(s) the Investigator requests with them. Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

The Investigator will decide which individuals to interview based on the information the Investigator gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator will ask the Party to describe the information the Party expects the Witness to provide. The Title IX Coordinator may also direct that additional interviews be conducted. Interviews will be supplemented by gathering any physical, documentary, and other evidence, as appropriate and available.

The Investigator will not ask questions or gather information or documents protected by a legally recognized privilege or confidentiality, including treatment records of a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Grievance Process from the person protected by the privilege.

Further, the Investigator will not seek information about a Complainant's sexual interests and will only allow submission of or pursue information about a Complainant's prior sexual conduct if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct or (2) concern specific incidents of the Complainant's prior sexual conduct with respect to the Respondent and are offered to establish Consent.

(a) Confidentiality Cannot be Promised

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence.

(b) Parties' Rights to Discuss the Allegations and Consequences for Providing False or Manipulated Information

The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, conduct charges may result.

(c) Expert Witnesses

The Title IX Coordinator has discretion to allow expert witness testimony on a case-by-case basis when such testimony is (1) related to the allegations, (2) essential to fully understanding and/or resolving a material issue in dispute that could affect the outcome, and (3) which cannot be resolved through questioning Parties or Witnesses or collection or analysis of other information or evidence. The Party who requests and obtains approval for an expert witness should expect that the expert will be interviewed by the Investigator and may be called to the Hearing to answer questions posed by the Decision-maker and Advisors. The expert's testimony, report, and/or other analysis will be considered evidence in the Grievance Process to which both Parties will have equal access in the normal course of the investigation. The Investigator and/or Decision-maker retains discretion to decide the Relevance and weight to be afforded the expert's testimony and/or report. Any costs

associated with an expert witness's participation in the Grievance Process will be borne by the requesting Party.

The Title IX Coordinator will also evaluate Investigator or Decision-maker requests for the assistance of an expert. In the event the Title IX Coordinator approves the request, the University will bear those costs, and the Parties and Advisors will have equal access to the expert report or testimony in the normal course of the investigation.

The University has no authority to require either Party to produce information, documents or physical equipment/devices/hardware to the other Party's or the University's expert witness for analysis or evaluation.

## ***(2) Preliminary Investigation Report***

### **(a) Preparation of Preliminary Investigation Report**

The Investigator will prepare a preliminary investigation report summarizing and attaching the Relevant, Admissible evidence and information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator may redact information that is not Relevant and/or unrelated to the allegations of the Complaint or that is otherwise not Admissible Evidence. To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

### **(b) Opportunity to Review and Submit Written Response to Preliminary Investigation Report**

The University strives to share the preliminary investigation report with each Party and their Advisor within the timeframes provided in Section XXIII below, understanding that numerous issues may arise during an investigation that may justify a good cause extension of the timeline as described in Section XVII(B) above.

The report will be provided to each Party and their Advisor in an electronic format, and each Party will have ten (10) Business Days to review and respond to the report in writing.

The University may require Parties to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process, with limited exceptions established in law.

### ***(3) Finalizing the Investigation Report***

The Investigator will review any written response submitted by the Parties to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Party responses and develop a plan to complete the investigation.

The Investigator will incorporate Party responses to the report, as well as an explanation of any additional steps taken after receipt of Party responses, and include any related materials. All of these written submissions and all Relevant, Admissible information gathered during the investigation will collectively be considered part of the final investigation report.

Note that, absent extraordinary circumstances, Parties will not be permitted to introduce for the first time at the Hearing stage of the Grievance Process Relevant evidence and information known or suspected to exist during the Investigation.

#### **(E) Determination After Investigation**

The Title IX Coordinator will review the final investigation report to ensure that the investigation is complete, at which point the Parties will be notified that the investigation phase has concluded and provided information about next steps in the process, options for which are described below.

##### ***(1) Proceed to Hearing***

At the conclusion of the investigation, the Title IX Coordinator will review the final investigation report to determine whether the alleged conduct, if proved, falls within this Policy. When the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Hearing based on information contained in the investigation report.

##### ***(2) Informal Resolution***

If appropriate and in lieu of sending the matter to a Hearing, the Title IX Coordinator may offer the Parties the option to pursue an Informal Resolution, as described in Section XV above.

##### ***(3) Dismissal of Complaint***

The Title IX Coordinator may dismiss the Complaint on any of the grounds set forth in Section XI(B)(1). The decision will be communicated to the Parties in a Notice of Dismissal, including the reasons for the dismissal, sent simultaneously within ten (10) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different

University policy, the Notice of Dismissal will include information about the referral to the applicable policy and process and immediate next steps.

The process to appeal dismissal of a Complaint at this point in the process is also the same as explained in Section XXI(A).

**(F) Hearings**

All Hearings will be conducted in a virtual format with the parties physically present in separate locations, with technology enabling the Decision-maker and Parties to simultaneously see and hear the Party or the Witness while that person is speaking.

The Hearing will be recorded and the University will create and retain a written transcript of the recording in accordance with the section on Recordkeeping below (Section XXIV).

***(1) Notice of Hearing and Assignment of Decision-maker***

The Notice of Hearing will be sent to the Parties and their Advisors no later than (10) Business Days before the Hearing. The Notice of Hearing will include the following information:

- the Decision-maker and date(s) and time(s) of the Hearing;
- a brief summary of the conduct alleged to have violated the Policy (and any other potentially applicable University policy), including date(s), time(s), and location(s);
- the specific Policy provision(s) at issue (and any relevant provisions of any other University policy the alleged conduct, if proven, would violate);
- possible sanctions associated with a finding of responsibility for the alleged violation(s);
- the Parties' right to be accompanied by an Advisor at the Hearing and the obligation to notify the Title IX Coordinator within three (3) Business Days of receipt of the Notice of Hearing of: (1) the name, title, and contact information for their Advisors, (2) whether they will continue to be advised by the same Advisor as during the investigation (if applicable) or (3) that they do not intend to select an advisor;
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a Determination regarding responsibility is made at the conclusion of the Grievance Process;
- reference to the applicable University prohibition on knowingly making false statements or knowingly submitting false information during the Grievance Process; and



- a web link to this Policy.

If the Title IX Coordinator has not yet identified the Decision-maker at the time the Notice of Hearing is issued, that information will be provided as soon as possible.

(a) Scope of Hearing

The Hearing will relate solely to policy charges set forth in the Notice of Hearing issued by the Title IX Coordinator. If the Parties or any Witnesses share information that goes beyond the listed charges, the Decision-maker will redirect the speaker to the charges at hand. Parties may be held accountable for additional violations discovered through the Grievance Process even if they do not appear in the Notice of Hearing. In this instance, a separate Grievance Process under this Policy or under other applicable policies will commence.

(b) Appointment of Advisor

If a Party does not select an Advisor at the point the matter proceeds to a Hearing, the University will appoint an Advisor, at no fee to the Party, to engage in Advisor-conducted questioning on that Party's behalf as described further in Section XVIII(F)(4)(c) below.

(c) Opportunity to Object to Decision-maker for Conflict of Interest or Bias

Within three (3) Business Days of learning of the Decision-maker assignment, a Party may object to a Decision-maker by submitting a written objection articulating an actual conflict of interest, identifying evidence of bias for or against complainants or respondents generally, or the specific Complainant or Respondent, or an inability to be fair and impartial. The Title IX Coordinator will evaluate the objection and inform the objecting Party in writing whether the Decision-maker will remain the same or be replaced.

(d) Access to Final Investigation Report and Evidence

Electronic access to the final investigation report and evidence will be provided to the Parties and Advisors no later than ten (10) Business Days prior to the Hearing. The Decision-maker will be afforded access to the same final investigation report and evidence provided to the Parties.

***(2) Title IX Coordinator as Process/Policy Advisor***

The Title IX Coordinator oversees all Hearings as a process and policy advisor. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to serve in this role, the Title IX Coordinator will appoint a delegate to serve in this role for a Hearing process.

### ***(3) Hearing Chair***

The Decision-maker may be referred to as the Hearing Chair. When more than one individual is convened as a panel of Decision-makers, one member will be designated as the Hearing Chair.

### ***(4) Summary of the Hearing Process***

Participation in Hearings is governed by Rules of Decorum, which will be provided to Parties and Advisors in advance of the Hearing.

#### **(a) Pre-Hearing Conference**

Each Party and their Advisor will be invited to a Pre-Hearing Conference with the Title IX Coordinator and the Decision-maker to: review the Hearing process in detail; discuss the final Witness list for the Hearing; and answer Party and Advisor questions about the Hearing process. This conference will be scheduled to occur no later than two (2) Business Days before the Hearing.

#### **(b) Decision-maker Questioning of Parties and Witnesses**

At the hearing, the Decision-maker has the right and responsibility to ask questions and elicit information from Parties and Witnesses to aid in obtaining Relevant, Admissible evidence and information, both Inculpatory and Exculpatory. The Parties have equal rights to present information to the Decision-maker, which ensures that the Decision-maker has the benefit of each Party's perspectives about the allegations and evidence.

The Decision-maker will focus questions on areas needing clarification or more information, as well as information that helps with determining Credibility of Parties and Witnesses, to the extent Credibility is both in dispute and relevant to evaluating one or more of the allegations to be decided at the Hearing. At times, the Decision-maker will need to ask difficult or sensitive questions in order to understand the allegations, related information, and to gain a full understanding of the context.

The Decision-maker reserves the right to recall any Party or Witness for further questions and to seek additional information as it deems necessary.

Relevant, Admissible evidence known to exist but not offered during the Investigation can be introduced for the first time at the Hearing only in extraordinary circumstances as determined by the Decision-maker in consultation with the Title IX Coordinator. A request to offer such evidence and information may result in pausing the Hearing and reopening the Investigation to evaluate whether the evidence is Relevant and Admissible.

(c) Advisor-conducted Questioning of Parties and Witnesses

At the Hearing, Advisors will be given the opportunity to ask each Party and Witness questions seeking Relevant, Admissible evidence and information, including questions challenging Credibility. Advisor-conducted questioning is subject to the Rules of Decorum.

Parties and Witnesses should understand that the process of Advisor-conducted Questioning may be difficult and may feel uncomfortable because its purpose is to promote the perspective of one Party. However, the Chair will not permit questions that are unclear or harassing of the Party or Witness being questioned. If a question is determined to be unclear or harassing, the Chair will allow one opportunity to clarify or revise the question, after which the question may be asked at the Chair's discretion. Duplicative questions are irrelevant.

In all instances other than the opportunity to question the other Party and Witnesses at the Hearing, the Advisors may not speak to the Decision-maker, make statements or arguments, or answer questions on behalf of a Party. The Advisor's role and consequences for exceeding that role are set forth at Section XVIII(C) above and in the Rules of Decorum that will be provided to all Parties and Advisors prior to the Hearing.

(d) Relevance and Admissibility Determination Before Answering

The requirement of relevancy (see definition of Relevance at Section XXVI) applies throughout the Hearing, including during questioning by Advisors. Specifically, before a Party or Witness answers a question posed by an Advisor, the Hearing Chair must determine and communicate whether the question is Relevant and Admissible, and thus permissible.

All questions and evidence about Complainant's sexual interests are not Admissible. All questions and evidence about a Complainant's prior sexual conduct are not Admissible unless (a) offered to prove that someone other than the Respondent committed the alleged misconduct or (b) related to prior sexual conduct with the Respondent and offered to prove Consent.

To the extent the Hearing Chair determines a question should be excluded as not Relevant or not Admissible, that decision must be explained on the record. After a Relevance determination is made, the questioning Advisor may request an opportunity to articulate reasons that the Relevance determination should be revisited. In that event, the Hearing Chair may, at their discretion, offer the non-questioning Advisor the opportunity to state their position on the Relevance determination. The Chair will then state on the record whether the prior Relevance determination will be modified or maintained. Relevance

determinations may be raised on appeal as part of the grounds enumerated in the Appeals section below (Section XXI).

***(5) Other Important Information About Hearings***

(a) Effect of Not Answering Questions Posed at a Hearing

Parties and Witnesses are not required to answer questions posed by the Decision-maker or an Advisor. The Decision-maker may rely on statements a Party or Witness made and offered as part of the Investigation and/or Hearing whether or not that Party or Witness answers question(s). However, the Decision-maker may choose to place less or no weight upon statements by a Party or Witness who refuses to respond to questions deemed Relevant and Admissible. The Decision-maker may not draw an inference as to responsibility based solely on a Party's or Witness's refusal to answer such questions.

(b) Attendance at the Hearing

The Hearing is not open to the public. Advisors and Parties may be present throughout the proceeding. Witnesses will be present only for their individual testimony.

If a Party, after having been given notice, does not appear at the Hearing, the Hearing will be conducted in their absence, and the Party's Advisor may appear and conduct Advisor-conducted questioning.

(c) Expectation of Honesty

Parties and other individuals who offer information at a Hearing are expected to respond honestly and to the best of their knowledge. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

**(G) Decision-maker Deliberations and Written Determination**

***(1) Deliberations and Evaluating Information***

When the Hearing concludes, the Decision-maker will deliberate and make a decision in accordance with the Preponderance of the Evidence. Deliberations are closed to others, although the Decision-maker may continue to rely on the Title IX Coordinator as a policy and process advisor.

In order to make Findings of Fact by a preponderance of the evidence, the Decision-maker must objectively evaluate all Relevant, Admissible evidence (both inculpatory and

exculpatory) for weight or Credibility, to the extent Credibility is both in dispute and relevant to evaluating one or more of the allegations.

Determinations of Credibility must be based on objective evaluation of Relevant, Admissible evidence, not on a person's status as a Complainant, Respondent or Witness, or inferences from Party or Witness status. Credibility determinations are based on a number of factors, including demeanor (but *never* only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility. The evaluation of Credibility also takes into account the normal fallibility of human memory.

Party and Witness answers to questions will be evaluated in context, taking into account that a Party or Witness may experience stress while answering questions at the Hearing. Parties and Witnesses will not be unfairly judged if they are unable to recount every specific detail in sequence, whether such inability is, for example, due to the effects of drugs or alcohol or simple fallibility of human memory. These factors will also be considered as part of the Credibility assessment.

### ***(2) Finding of Policy Violation and Associated Sanctions and Remedies***

In the event of a finding that the Respondent violated this and/or another University policy, the Decision-maker will determine the appropriate Sanctions and/or Remedies. In determining Sanctions and/or Remedies, the Decision-maker may request that the Title IX Coordinator provide information about findings of prior misconduct and/or policy violations in the Respondent's student conduct file or personnel file.

When determining the appropriate Sanction after a finding of Responsibility for a Policy violation, the Decision-maker will review the factors listed in Section XX(B) below, and may also directly consult with the Title IX Coordinator and/or the appropriate University administrator or senior leader. If the Decision-maker consults with a University administrator or senior leader, the Title IX Coordinator will be present.

### ***(3) Delivery and Contents of Written Determination***

The Decision-maker will issue a Written Determination to each Party and their Advisor, which will include:

- (a) Procedural History;
- (b) Summary of allegations in Notice of Hearing;
- (c) Applicable Grievance Process and Prohibited Conduct at issue;
- (d) Findings of Fact related to each allegation;
- (e) Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which may include an evaluation of the weight or Credibility of Relevant, Admissible evidence;
- (f) A determination whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility);
- (g) Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility;
- (h) A statement of any Disciplinary Sanctions imposed on the Respondent and the rationale for the sanctions;
- (i) Whether Remedies<sup>19</sup> will be provided to the Complainant or, if appropriate, other students identified as experiencing effects of the Sex-based Harassment; and
- (j) Information about how to file an Appeal and how to access the transcript of the Hearing before the time to file an Appeal lapses.

**(H) Effective Date of the Written Determination and Possible Notice to Parents**

The Written Determination becomes final only after the time period to file an Appeal has expired (*see* Section XXI) or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed and refer to the section of this Policy that explains the Appeal process.

The University reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary findings and sanctions.

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<sup>19</sup> A Respondent will not be informed of any Remedies that do not directly affect them.

**(I) Appeals**

Information about appealing a Written Determination is provided in Section XXI(B) below.

**XIX. PROCEDURES AND RIGHTS FOR COMPLAINTS ALLEGING SEX DISCRIMINATION AND/OR EMPLOYEE-ONLY SEX-BASED HARASSMENT**

**(A) Participation in Grievance Process**

Neither Parties nor Witnesses are required to participate in the Grievance Process, but their participation is important and often critical to assembling a record during the investigation and Administrative Hearing that enables Decision-makers to find facts and make determinations regarding responsibility by a Preponderance of the Evidence. The University may not threaten, coerce or intimidate a Party or Witness into participating, nor may the University retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

**(B) Initiating an Investigation**

To initiate an investigation, the Title IX Coordinator will issue a Notice of Allegations and Investigation to known Parties sufficiently in advance of any request to meet with the Investigator. The Notice of Allegations and Investigation will include:

1. Notice of the applicable grievance procedures, including the Informal Resolution process, and an electronic link to this Policy and any other potentially applicable University policy based on the allegations;
2. Details of the conduct alleged to violate this Policy and any other potentially applicable University policy based on the allegations, and the date and location of the alleged incident(s), if known;
3. Known Parties involved in the alleged incident(s);
4. A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the Grievance Process;
5. Notice of Parties' right to an Advisor of choice;
6. A statement that retaliation is prohibited;

7. A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence (Admissible Evidence);
8. The name(s) and title(s) of the Investigator; and
9. Information about next steps in the process.

Any objection to a named Investigator must be submitted as provided in Section XVI(B)(2) above.

If during the course of an investigation new or additional allegations arise that require investigation, the Title IX Coordinator will send the Parties an updated Notice of Allegations and Investigation revising the scope of the Investigation.

**(C) Right to an Advisor and Advisor Role**

Each Party has the right to choose an Advisor to assist and advise them (at the Party's own expense, if the Advisor is paid). Each Party has the right to be accompanied by their Advisor throughout the Grievance Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role. Advisors:

1. provide support to the Party but do not serve as a proxy voice for the Party;
2. can confer quietly with their Party as needed, but if there is a need for an extended discussion, the Party should ask for a break in the meeting, interview or Administrative Hearing;
3. may not make statements or arguments or answer questions on behalf of Parties during meetings, interviews or during the Administrative Hearing;
4. cannot direct the Party how to answer a question; and
5. must conduct themselves quietly and professionally, must not disrupt any meeting, interview or proceeding, and must comply with the Rules of Decorum established by the University.

An Advisor who does not follow the Rules of Decorum and other guidelines above may be removed from the meeting, interview or Administrative Hearing.

Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisors and any change in their Advisor. The University can connect a Party with a trained on-campus Advisor upon request.



## **(D) Investigation**

The University's investigation process is designed to (1) allow for the thorough, impartial, and reliable gathering of evidence and information and (2) result in a comprehensive investigation report summarizing Relevant, Admissible evidence.

### ***(1) Process Overview***

The Investigator will conduct the investigation with a presumption that the Respondent is not responsible and will investigate free of bias and conflict of interest. The burden of gathering Relevant, Admissible evidence and information—both Inculpatory Evidence and Exculpatory Evidence—rests on the University, however the Parties will have an equal opportunity to submit evidence and suggest Witnesses.

The Investigator will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator will provide advance written notice to each Party of the date, time, location, participants, and purpose of any meeting(s) the Investigator request with them. Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

The Investigator will decide which individuals to interview based on the information the Investigator gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator will ask the Party to describe the information the Party expects the Witness to provide. The Title IX Coordinator may also direct that additional interviews be conducted. Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available.

The Investigator will not ask questions or gather information or documents protected by a legally recognized privilege or confidentiality, including treatment records of a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Grievance Process from the person protected by the privilege.

Further, the Investigator will not seek information about a Complainant's sexual interests and will only allow submission of or pursue information about a Complainant's prior sexual conduct if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct or (2) concern specific incidents of the Complainant's prior sexual conduct with respect to the Respondent and are offered to establish Consent.

(a) Confidentiality Cannot be Promised

The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence.

(b) Parties' Rights to Discuss the Allegations and Consequences for Providing False or Manipulated Information

The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant and Admissible Evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, discipline may result.

***(2) Parties' Review of and Response to Evidence and Information Gathered as Part of Investigation***

(a) Assembling Relevant, Admissible Evidence

At the conclusion of the investigation, the Investigator will assemble all Inculpatory and Exculpatory Relevant, Admissible evidence and information gathered during the investigation. The Investigator may redact information that is not Relevant and/or unrelated to the allegations of the Complaint or that is otherwise not Admissible Evidence.

(b) Opportunity to Review and Submit Written Response to Relevant, Admissible Evidence

The University strives to share the Relevant, Admissible Evidence with each Party and their Advisor for review and written response within the timeframes provided in Section XXIII below, understanding that numerous issues may arise during an investigation that may justify a good cause extension of the timeline as described in Section XVII(B) above.

The assembled evidence and information will be shared with each Party and their Advisor in an electronic format with at least ten (10) Business Days to review and submit a written response.

The University may require Parties and Advisors to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process, with limited exceptions established in law.

Upon receipt of the Parties' responses after review, the Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

Note that, absent extraordinary circumstances, Parties will not be permitted to introduce for the first time at the Administrative Hearing stage of the Grievance Process Relevant evidence and information known or suspected to exist during the Investigation.

### ***(3) Preparation of Investigation Report***

The Investigator will prepare a report summarizing all of the Relevant, Admissible evidence and information gathered during the investigation. The Investigator will also incorporate into and/or attach to the report the Parties' responses after review of the Relevant, Admissible Evidence and information, as well as an explanation of any additional steps taken after receipt of Party responses and any related materials. To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.

All of these written submissions and all Relevant, Admissible Evidence gathered during the investigation will collectively be considered the final investigation report.

### **(E) Determination After Investigation**

The Title IX Coordinator will review the final investigation report to ensure that the investigation is complete, at which point the Parties will be notified that the investigation phase has concluded and provided information about next steps in the process, options for which are described below.

#### ***(1) Proceed to Administrative Hearing***

If upon review of the final investigation report the Title IX Coordinator determines that the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Administrative Hearing based on information contained in the investigation report. (See Section XVIII(F)(1) above.)

#### ***(2) Offer Informal Resolution***

If appropriate and in lieu of sending the matter to an Administrative Hearing, the Title IX Coordinator may offer the Parties the option to pursue an Informal Resolution, as described in Section XV above.

### ***(3) Dismissal of Complaint***

The Title IX Coordinator may dismiss the Complaint on any of the grounds set forth in Section XI(B)(1). The decision will be communicated to the Parties in a Notice of Dismissal, including the reasons for the dismissal, sent simultaneously within ten (10) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different University policy, the Notice of Dismissal will include information about the referral to the applicable policy and process and immediate next steps.

The process to appeal dismissal of a Complaint is explained in Section XXI(A).

#### **(F) Administrative Hearing**

##### ***(1) Notice of Administrative Hearing and Assignment of Decision-maker***

The Notice of Administrative Hearing will be sent to the Parties and their Advisors no later than (10) Business Days before the Hearing. The Notice of Administrative Hearing will include the following information:

- the Decision-maker and date(s), time(s), and location of the Administrative Hearing;
- a brief summary of the conduct alleged to have violated the Policy (and any other potentially applicable University policy), including date(s), time(s), and location(s);
- the specific Policy provision(s) at issue (and any relevant provisions of any other University policy the alleged conduct, if proven, would violate);
- possible sanctions associated with a finding of responsibility for the alleged violation(s);
- the Parties' right to be accompanied by an Advisor at the Administrative Hearing and the obligation to notify the Title IX Coordinator within three (3) Business Days of receipt of the Notice of Administrative Hearing of: (1) the name, title, and contact information for their Advisors, (2) whether they will continue to be advised by the same Advisor as during the investigation (if applicable) or (3) that they do not intend to select an advisor;
- a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Grievance Process; and
- a web link to this Policy.

If the Title IX Coordinator has not yet identified a Decision-maker at the time of issuing the Notice of Administrative Hearing, that information will be provided as soon as possible.

(a) Scope of Hearing

The Administrative Hearing will relate solely to policy charges set forth in the Notice issued by the Title IX Coordinator. If the Parties or any Witnesses share information that goes beyond the listed charges, the Decision-maker will redirect the speaker to the charges at hand. Parties may be held accountable for additional violations discovered through the Grievance Process even if they do not appear in the Notice of Administrative Hearing. In this instance, a separate Grievance Process under this Policy or under other applicable policies will commence.

(b) Opportunity to Object to Decision-maker for Conflict of Interest or Bias

Within three (3) Business Days of learning of the Decision-maker assignment, a Party may object to a Decision-maker by submitting a written objection articulating an actual conflict of interest, identifying evidence of bias for or against complainants or respondents generally, or the specific Complainant or Respondent, or an inability to be fair and impartial. The Title IX Coordinator will evaluate the objection and inform the objecting Party in writing whether the Decision-maker will remain the same or be replaced.

(c) Release of Final Investigation Report to Decision-maker and Parties

After the time to object to the Decision-maker has passed without objection, or any objection has been evaluated and determined and, as applicable, a new Decision-maker is appointed, the Title IX Coordinator will provide the Decision-maker and the Parties and their Advisors electronic access to the final investigation report to prepare for the Administrative Hearing.

***(2) Title IX Coordinator as Process/Policy Advisor***

The Title IX Coordinator oversees all Hearings as a process and policy advisor. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to serve in this role, the Title IX Coordinator will appoint a delegate to serve in this role for an Administrative Hearing process.

***(3) Expectation of Honesty***

Parties and other individuals who offer information at a Hearing are expected to respond honestly and to the best of their knowledge. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

#### ***(4) Summary of Administrative Hearing Process***

##### **(a) Identification of Witnesses**

Upon completion of the Decision-maker's review of the final investigation report, they will notify the Title IX Coordinator of the Witnesses with whom they wish to meet as part of the Administrative Hearing.

The Title IX Coordinator will share with the Parties the names of Witnesses identified by the Decision-maker, and will provide five (5) Business Days for each Party to submit questions they would like the Decision-maker to ask the other Party (or Parties) and the Witnesses that will be invited to meet with the Decision-maker.

##### **(b) Pre-Hearing Conference**

Each Party will be invited to a separate pre-hearing conference at which both the Decision-maker and the Title IX Coordinator will be present. This conference will be scheduled to occur no later than two (2) Business Days before the Administrative Hearing.

At this meeting, the Administrative Hearing process and Witness list will be reviewed, and the parties will have the opportunity to ask questions about the process. The Decision-maker may also decide to provide feedback on the questions each Party submitted for the other Party and witnesses, and may allow a Party to resubmit questions no later than two (2) Business Days after the pre-hearing conference.

##### **(c) Decision-maker Meetings**

The Decision-maker has the right and responsibility to ask questions and elicit information from Parties and Witnesses to aid in obtaining Relevant, Admissible evidence and information, both Inculpatory and Exculpatory. The Parties have equal rights to present information to the Decision-maker, which ensures that the Decision-maker has the benefit of each Party's perspectives about the allegations and evidence.

The Decision-maker will focus questions on areas needing clarification or more information, as well as information that helps with determining Credibility of Parties and Witnesses, to the extent Credibility is both in dispute and relevant to evaluating one or more of the allegations to be decided at the Administrative Hearing. At times, the Decision-maker will need to ask difficult or sensitive questions in order to understand the allegations, related information, and to gain a full understanding of the context.

The Decision-maker reserves the right to recall any Party or Witness for further questions and to seek additional information as it deems necessary.

Relevant, Admissible evidence known to exist but not offered during the Investigation can be introduced for the first time at the Administrative Hearing only in extraordinary circumstances as determined by the Decision-maker in consultation with the Title IX Coordinator. A request to offer such evidence and information may result in pausing the Administrative Hearing and reopening the Investigation to evaluate whether the evidence is Relevant and Admissible.

i. With Parties

Starting with the Complainant (if there is one), each Party (accompanied by their Advisor) will have the opportunity to meet individually with the Decision-maker to provide a statement. The Decision-maker may pose their own questions to a Party, and will also ask the questions proposed by the Other Party that the Decision-maker has deemed appropriate.

To the extent that a meeting with either of the Parties results in the Decision-maker identifying an additional Witness, the Parties will be notified and provided a reasonable opportunity to submit questions for that Witness for the Decision-maker's consideration.

ii. With Witnesses

After meeting with the Parties, the Decision-maker will meet with each of the Witnesses that have been disclosed to the Parties. In these individual meetings, the Decision-maker will pose their own questions to the Witness, as well as those questions proposed by the Parties that the Decision-maker has deemed appropriate.

iii. Optional Final Meetings

If, after completing meetings with the Parties and Witnesses, the Decision-maker has additional questions for one or more Parties, the Decision-maker will meet with each Party before closing the Administrative Hearing.

After all meetings have concluded, the Title IX Coordinator will send the Parties a written notice advising that the Hearing has concluded.

***(5) Decision-maker Deliberations and Written Determination***

(a) Deliberations and Evaluating Information

When the Administrative Hearing concludes, the Decision-maker will privately deliberate and make a decision in accordance with the Preponderance of the Evidence.

In order to make Findings of Fact by a preponderance of the evidence, the Decision-maker must objectively evaluate all relevant, Admissible evidence for weight or Credibility, including both Inculpatory Evidence and Exculpatory Evidence.

Determinations of Credibility must be based on objective evaluation of relevant, Admissible evidence, not on a person's status as a Complainant, Respondent or Witness, or inferences from Party or Witness status. Credibility determinations are based on a number of factors, including demeanor (but *never* only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility. The evaluation of Credibility also takes into account the normal fallibility of human memory.

Party and Witness answers to questions will be evaluated in context, taking into account that a Party or Witness may experience stress while answering questions at the Hearing. Parties and Witnesses will not be unfairly judged if they are unable to recount every specific detail in sequence, whether such inability is, for example, due to the effects of drugs or alcohol or simple fallibility of human memory. These factors will also be considered as part of the Credibility assessment.

(b) Finding of Policy Violation and Associated Sanctions and Remedies

In the event of a finding that the Respondent violated this and/or another University policy, the Decision-maker will determine the appropriate Sanctions and/or Remedies. In determining Sanctions and/or Remedies, the Decision-maker may request that the Title IX Coordinator provide information about findings of prior misconduct and/or policy violations in the Respondent's student conduct file or personnel file.

When determining the appropriate Sanction after a finding of Responsibility for a Policy violation, the Decision-maker will review the factors listed in Section XX(B) below, and may also directly consult with the Title IX Coordinator or the appropriate University administrator or senior leader. If the Decision-maker consults with a University administrator or senior leader, the Title IX Coordinator will be present.

(c) Delivery and Contents of Written Determination

The Written Determination will include factual findings, specific policy provisions determined to have been violated, if any, and Sanctions and/or Remedies imposed, if any, and will include an explanation of the rationale for these determinations.

The Decision-maker will issue a Written Determination, which will include:



- (d) Summary of allegations in Notice of Administrative Hearing;
- (e) Policy provisions at issue;
- (f) Findings of Fact related to each allegation;
- (g) Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which may include an evaluation of the weight or Credibility of Relevant, Admissible evidence;
- (h) A determination whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility);
- (i) Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility;
- (j) A statement of any Disciplinary Sanctions imposed on the Respondent and the rationale for the Sanctions;
- (k) Whether Remedies will be provided to the Complainant, but without disclosing to the Respondent any Remedies that do not directly affect them; and
- (l) Information about how to file an Appeal and how to access the transcript of the Administrative Hearing before the time to file an Appeal lapses.

**(G) Effective Date of the Written Determination**

The Written Determination becomes final only after the time period to file an Appeal has expired (*see* Section XXI) or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed and refer to the section of this Policy that explains the Appeal process.

**(H) Appeals**

Information about appealing a Written Determination is provided in Section XXI(B) below.

## **XX. DISCIPLINARY SANCTIONS**

### **(A) Possible Disciplinary Sanctions**

The following is a non-exhaustive list of Sanctions and/or Remedies that may be imposed following a Determination of Responsibility for a violation of this Policy through either Grievance Process described above. Supportive Measures, such as those defined in Section XIII, may also be Remedies implemented at the conclusion of the Grievance Process. Respondents will only be notified of Remedies that directly affect them.

#### ***(1) Students***

- Expulsion (permanent separation)
- Suspension
- Deferred Suspension
- Disciplinary Probation
- Disciplinary Probation with deferred removal from the residence halls
- Loss of housing contract
- Residence hall probation
- Conduct warning
- Title IX education or other relevant education
- Parent or guardian notification (subject to privacy restrictions)
- Financial restitution
- Organizational sanctions including probation and rescinding recognition or other organizational restrictions
- Fine
- Community restoration and/or community service
- Loss of campus privileges
- Loss of campus employment and/or opportunities for campus employment
- Withholding records or degree

- Revocation of admission and/or degree
- Bar against registration
- Discretionary action
- Substance abuse education and/or evaluation

***(2) Employees/Faculty/Staff***

- Termination of employment
- Revocation or denial of tenure
- Suspension
- Demotion
- Progressive discipline
- Warning
- Loss of pay or other pay adjustments
- Job transfer
- Change or restrictions in work location and/or job responsibilities
- Title IX education
- Restrictions on the Employee's communications
- Limitations on the Employee's movement in or on the University's campus, programs, and activities

***(3) Non-community members (e.g. Visitors, Vendors, Contractors, Patients)***

- Campus Ban
- Restrictions on accessing University property only for medical care
- Termination of contract

**(B) Factors in Determining Sanctions**

In considering the appropriate sanction within the recommended outcomes, the Decision-maker may consider the following factors:

- Respondent's prior discipline history;

- how the University has sanctioned similar incidents in the past;
- the nature of the conduct at issue, including whether there was violence or other use of force;
- the impact of the conduct on the Complainant;
- the impact of the conduct on the University community, its members or University property;
- whether the Respondent accepted responsibility;
- whether the Respondent is reasonably likely to engage in the conduct in the future;
- any other mitigating or aggravating circumstances, including the University's values; and
- the University's obligation to eliminate Sex Discrimination, including Sex-based Harassment, prevent its recurrence, remedy its effects, and to maintain an environment free from Sex Discrimination.

Respondent's lack of comprehension that conduct constituting Sex-based Harassment violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in the Decision-maker's discretion, factor into the sanction decision.

**(C) Remedies**

The Decision-maker may consider other Remedies that may be taken to address and resolve any incident of Sex-based Harassment and to prevent its recurrence, including: strategies to protect the Complainant and any Witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any Witnesses, and the broader campus community, and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

**(D) Failure to Comply with Sanctions**

Failure to comply with the sanctions or conditions imposed by the Decision-maker will result in action under the applicable standards of conduct based on the Respondent's status as a student, faculty member, employee, visitor, vendor, contractor or patient.

## **XXI. APPEALS**

### **(A) Appeal from Dismissal of a Complaint**

Any Party notified of the dismissal of a Complaint has an opportunity to appeal the dismissal based on the following grounds:

- i. Procedural Irregularity that would change the outcome;
- ii. New evidence that would change the outcome and was not reasonably available when the dismissal was effectuated; and/or,
- iii. The Title IX Coordinator, Investigator or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome

Appeals from a Notice of Dismissal must be submitted in writing to the individual identified in the Notice within five (5) of Business Days from delivery of the Notice of Dismissal and in the method described in the Notice of Dismissal.

If the dismissal is appealed, the Title IX Coordinator will notify the parties of any appeal, including providing the Respondent a notice of the allegations, if not previously provided. Appeal procedures will be implemented equally for the parties, and the Decision-maker who decides the appeal will not have taken part in any investigation of the allegations or the decision to dismiss the complaint. The Parties will have five (5) Business Days after notification of the Appeal to submit a written statement in support of, or challenging, the dismissal decision. Upon determination of the appeal, the Parties will be simultaneously notified in a writing explaining the result and related rationale.

Even when a complaint is dismissed, the Title IX Coordinator will, as appropriate, offer Supportive Measures to the Complainant and Respondent, if the Respondent has been notified. The Title IX Coordinator may also take other prompt and effective steps to ensure that Sex Discrimination does not continue or recur within the University's Education Program or Activity.

### **(B) Appealing a Written Determination at the Conclusion of a Grievance Process**

The Parties have equal rights to file an Appeal. Appeals must be submitted to the individual identified in the Written Determination on or before the date specified in the Written Determination.

### ***(1) Appeal Grounds***

An Appeal is not intended to be a rehearing of the information presented at the Hearing. An Appeal may only be based upon one or more of the following grounds:

- i. Procedural Irregularity that would change the outcome;
- ii. New evidence that would change the outcome and was not reasonably available when the dismissal was effectuated;
- iii. The Title IX Coordinator, Investigator or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome; and/or
- iv. The Sanction(s) imposed was inappropriate or too severe.

### ***(2) Actions upon Receipt of Appeal***

- (a) When the Title IX Coordinator receives an Appeal, the Title IX Coordinator will provide the request to the Appeal Decision-makers.
- (b) Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant will be given notice of the receipt of the Appeal, which will also serve as notice to the non-appealing Party of the Appeal, and notice to the Parties of the Appeal Decision-makers.
- (c) The Parties will have two (2) Business Days after notice of receipt of the Appeal to request that the Title IX Coordinator remove an Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. The Title IX Coordinator will determine whether to remove the specified Appeal Decision-maker. If the specified Appeal Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If the specified Appeal Decision-maker is removed and replaced, the Parties will be sent simultaneous written notification of the name of the new Appeal Decision-maker.
- (d) When the time to request removal of an Appeal Decision-maker has run, the Appeal Decision-makers will be given access to the entire file

provided to the Decision-maker, together with the Written Determination.

- (e) The Appeal Decision-makers will first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal Grounds set forth above has been properly alleged by the Appellant. Within seven (7) Business Days of the receipt of the Appeal, the Appeal Decision-makers will send written notice to the Parties simultaneously:
  - i. That the Appeal has been rejected due to insufficient grounds, with the Appeal Decision-makers' rationale, or
  - ii. That the Appeal has been accepted.
- (f) The non-appealing Party/ies will be entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Business Days of receipt of notice that the Appeal was accepted.
- (g) The Appeal Decision-makers will then analyze all of the materials related to the Appeal and will take one of the following actions:
  - i. Uphold the original decision;
  - ii. Send the matter back to the Decision-maker for further consideration;
  - iii. Refer the matter to the Title IX Coordinator for further investigation or a new hearing with a new Decision-maker
- (h) The written Appeal decision, which will include the Appeal Decision-makers' rationale, will be sent to the Parties simultaneously.
- (i) The Appeal Decision-makers will issue the written decision on Appeal within twenty (20) Business Days of the notice to the Parties that the Appeal was accepted (step 2 (b) above).
- (j) The Parties will be notified if any of the timeframes above must be extended.

**(C) Appeal Decisions are Final**

A decision denying the entitlement to an Appeal and all decisions made by the Appeal Decision-makers are final.

**(D) When an Appeal is not Filed**

The Parties will be notified if the time to file an Appeal has expired without any Appeal having been submitted.

**XXII. STUDENT TRANSCRIPT NOTATIONS**

New York law requires the University to make specific notations on the transcripts of Respondents found responsible for the following conduct prohibited by this Policy: Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

- Students suspended after a finding of responsibility will receive the following notation on their transcript: “suspended after a finding of responsibility for a code of conduct violation.” Such notations will remain for at least one year after the conclusion of the suspension, at which point a suspended student can seek removal of the notation. Students seeking removal of a transcript notation should contact the Title IX Office by emailing [titleix@rochester.edu](mailto:titleix@rochester.edu) for appeal procedures. The Title IX Office’s communication explaining the appeal procedures will also identify the specific Dean of Students to whom the appeal should be directed. The identified Dean of Students will communicate their decision to the appealing student and the Title IX Coordinator and, if the appeal is granted, the Title IX Office will coordinate with the Registrar’s Office to remove the notation.
- Students expelled after a finding of responsibility will receive the following notation on their transcript: “expelled after a finding of responsibility for a code of conduct violation.” Such notation shall not be eligible for removal.
- Students who withdraw pending resolution of alleged violations of this Policy will receive the following notation on their transcript: “withdrew with conduct charges pending.” Such notation shall not be eligible for removal unless the charges are later resolved.
- If the University vacates a finding of responsibility for any reason, any such transcript notation shall be removed.

**XXIII. GRIEVANCE PROCESS TIMEFRAMES**

The University strives to meet the following timeframes for the Grievance Process. All days are measured in Business Days with the Grievance Process timeline commencing as of date of the Notice of Allegations and Investigation. Unless otherwise noted, these timelines apply to both Grievance Processes described in Section XVIII and XIX above.



1. Notice of Allegations and Investigation: Within ten (10) Business Days of the Title IX Office's Initial Assessment described in Section XI(A) above, when the Initial Assessment results in a conclusion that it is appropriate to initiate an Investigation based on a Complaint. If the Title IX Coordinator must evaluate a Report and/or conduct the required analysis regarding initiating a Complaint without the participation of a Complainant, this ten-day timeline will begin at the conclusion of the Title IX Coordinator's analysis.
2. Investigation: The initial investigation process will typically be completed within seventy (70) to ninety (90) Business Days of issuance of the Notice of Allegations and Investigation.
3. Opportunity to Review/Respond to Investigation Report in Complaints Proceeding through the Grievance Process described in Section XVIII: The Preliminary Investigation Report will be provided to the Parties and their Advisors in electronic format within seventy-five (75) to ninety-five (95) Business Days of issuance of the Notice of Allegations and Investigation. Parties and their Advisors have ten (10) Business Days from the delivery of the Preliminary Investigation Report to review and submit a response, if they elect to do so. The Investigation is considered concluded after receipt of the Parties' response to the Investigation Report and a determination that no further investigation is warranted.
4. Opportunity to Review/Respond to Evidence in Complaints Proceeding through the Grievance Process described in Section XIX: The Relevant, Admissible Evidence and information will be provided in electronic format to Parties and their Advisors, if any, within seventy-five (75) to ninety-five (95) Business Days of issuance of the Notice of Investigation. Parties have ten (10) Business Days to review and respond.
5. Notice of Hearing: As applicable, a hearing notice will be sent the Parties simultaneously no later than ten (10) Business Days prior to the Hearing.
6. Challenge to Decision-maker: Within two (2) Business Days of being notified that the matter will proceed to a hearing and/or learns the identity of a Decision-maker, the Parties have the right to make a written request that the Title IX Coordinator remove a Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.
7. Hearing: The Hearing will begin no sooner than eleven (11) Business Days and no more than twenty-one (21) Business Days after issuance of the hearing notice. This timeline may be extended at the Title IX Coordinator's discretion based on availability of the Title IX Coordinator and necessary Title IX Staff, the Decision-maker, and/or the Parties and their Advisors. Parties and Advisors are expected to

make themselves reasonably available for the hearing, and a Hearing may be scheduled on a date that requires an Advisor to reschedule competing obligations.

8. **Written Determination following a Hearing:** Following a Hearing, the Written Determination will be sent to the Parties simultaneously within twenty (20) to thirty (30) Business Days of the conclusion of the Hearing. A Hearing is not concluded until Decision-maker deliberations have ended. The Title IX Coordinator will notify the Parties and Advisors if the Decision-maker requires an extension of this timeline.
9. **Appeals:** Appeals will typically be concluded within twenty-five (25) Business Days of receipt. The specific timelines for each step of the Appeal process are included in Section XXI above.

#### **XXIV. RECORDKEEPING**

The University will maintain the following general categories of records for a period of seven (7) years:

1. For each Complaint of Sex Discrimination, including Sex-based Harassment, records documenting any Informal Resolution process and/or applicable Grievance Process, and the resulting outcome.
2. For each Report or notification to the Title IX Coordinator of information about conduct that reasonably may constitute Sex Discrimination, Sex-Based Harassment, and/or other Prohibited Conduct as defined in this Policy, records documenting the steps the Title IX Coordinator and/or University took in response.
3. All materials used to provide training required by the Title IX regulations: for all employees; Investigators, Decision-makers, individuals responsible for implementing the Grievance Processes described in this Policy, individuals with authority to modify or terminate Supportive Measures; Facilitators of Informal Resolution processes; and the Title IX Coordinator and designees. These training materials will be made available for inspection upon request.

Below are examples of the records that will be maintained, to the extent they exist:

- Reports and Complaints of alleged Sex Discrimination, including Sex-based Harassment
- Supportive Measures provided
- Notice of Dismissal of Complaint and any associated documents

- documentary evidence gathered in the course of an investigation and photographs or descriptions of nondocumentary/tangible evidence gathered in the course of an investigation
- the final investigation Report provided to the Parties and Decision-maker for a Hearing, which includes any written responses of the Parties after review of the report
- the audio recording, audiovisual recording, or transcript of any Hearing
- the Written Determination
- any Appeal and Written Appeal Decision
- records of the Sanctions and/or Remedies
- records of any other steps taken to restore or preserve equal access to the University's Education Program or Activity
- any written agreement of an Informal Resolution

The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained in paper or digital files.

## **XXV. MODIFICATIONS TO THIS POLICY**

This Policy may be modified from time-to-time, during an academic year or otherwise, in the University's discretion and as may be required by law. Employees and Students will be notified whenever this Policy is modified. Posting an updated version of this Policy on the Title IX Office's website is sufficient notice of modification.

## **XXVI. GLOSSARY OF DEFINED TERMS**

- **Administrative Hearing:** A hearing process in which a Decision-maker holds individual meetings with Parties (and their Advisors) and Witnesses to pose questions seeking Relevant, Admissible evidence; the Decision-maker poses their own questions and, at their discretion, may pose questions submitted by the Parties. *See* Section XIX.
- **Administrative Leave:** Temporary separation from a person's job, with or without pay and benefits intact, as determined by the University and any relevant obligations binding the University.

- **Admissible Evidence:** Evidence that is Relevant and not otherwise impermissible. A non-exhaustive list of the format of Admissible Evidence includes: testimony by Parties and fact Witnesses, documents, recordings, writings, photographs, screenshots, video recordings, and audio recordings.
  - Evidence is not Admissible, and thus impermissible, if it constitutes:
    - information protected by a legally recognized privilege, including any Party’s medical, psychological, and similar records, unless the Party has provided voluntary, written consent for use of the information or documents in the Grievance Process;
    - evidence about a Complainant’s sexual interests; and
    - evidence about a Complainant’s prior sexual conduct unless offered to prove (1) that someone other than the Respondent committed the conduct alleged by the Complainant or (2) Consent to the alleged Sex-based Harassment, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent).
  - Pursuant to New York State law, Student Parties can also prohibit admission of the following evidence during the stage of the Grievance Process that determines responsibility:
    - prior sexual history with persons other than the other Party/ies; and
    - their own mental health diagnosis and/or treatment

After a finding of responsibility in the Grievance Process, New York state law permits a Decision-maker to consider past findings of Sexual Assault, Dating Violence, Domestic Violence, and/or Stalking when determining the Sanction.

- **Admission:** Selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by a recipient of federal funds.
- **Advisor:** A person selected by a Complainant or Respondent to assist them during the Grievance Process; or appointed by the University to support Complainant or Respondent pursuant to this Policy. When serving in the role of Advisor, campus security authorities pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1980 (Clery Act) are not subject to Clery Act disclosure obligations.

- **Advisor-conducted Questions:** Part of the Grievance Process applicable to matters involving a Student Party and alleging Prohibited Conduct as defined in Sections IV and V, questions posed by a Party's Advisor to the other Party and Witnesses during a Hearing that seek Relevant, Admissible evidence and information. Such questions may challenge Credibility when credibility is at issue and Relevant to an allegation of Sex-based Harassment.
- **Appeal:** An objective review of the prior process (including Dismissal of a Complaint) and outcome, unless new evidence must be considered.
- **Appeal Decision-maker:** An individual or a group of people that makes decisions when Parties submit an Appeal. An Appeal Decision-maker cannot be the Investigator, the Title IX Coordinator or the Decision-maker.
- **Appellant:** A person who files an Appeal.
- **Business Days:** Any day, excluding Saturday, Sunday, federal and state holidays, and days that the University is closed for business.
- **Complaint:** An oral or written request to the University that objectively can be understood as a request for an investigation and determination about alleged Sex Discrimination and/or Sex-based Harassment as defined in this Policy.
  - The following individuals have a right to make a Complaint of Sex Discrimination and/or Sex-based Harassment:
    - A Complainant (defined below);
    - A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; and
    - The Title IX Coordinator, after conducting the analysis set forth in Section XII.
  - The following individuals can make a complaint of Sex Discrimination (other than Sex-based Harassment):
    - Any student or employee; or
    - Any person other than a student or employee who was participating or attempting to participate in the University's Education Program or Activity at the time of the alleged Sex Discrimination.
- **Complainant:**

- A student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination, including Sex-based Harassment and other Prohibited Conduct as defined in this Policy; or
- A person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination, including Sex-based Harassment and other Prohibited Conduct as defined in this Policy, and who was participating or attempting to participate in the University's Education Program or Activity at the time of the alleged sex discrimination.
- **Confidential Employee:** There are three categories of Confidential Employees:
  - a University employee whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - a University employee whom the University has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services (**PLEASE NOTE:** these individuals will not be able to invoke "confidentiality" in a process external to the University's process); or
  - a University employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.
- **Consent (or Affirmative Consent):** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
  - Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Consent is withdrawn or can no longer be given, sexual activity must stop.

This definition is required by New York State Education Law Article 129B.

- **Credibility:** The reliability and worthiness of belief of information shared by a Party or a Witness. This Policy sets forth a non-exhaustive list of factors a Decision-maker will use to evaluate Credibility in the course of a Grievance Process.
- **Decision-maker:** A person or persons designated to conduct any format of Hearing permitted pursuant to this Policy, to make findings of fact by a Preponderance of the Evidence, to apply the applicable provisions of this Policy to the factual findings to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals. Decision-makers may or may not be Employees of the University or other trained individuals external to the University. Decision-makers are trained on the definition of Sex Discrimination and Sex-based Harassment, the University's obligation to respond to Sex Discrimination and Sex-based Harassment in its Education Program or Activity, employee reporting and notification obligations, the University's Grievance Processes, Relevance, Admissible evidence, how to conduct Hearings and Appeals, and how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias.
- **Determination of Responsibility or No Responsibility:** A determination by the Decision-maker regarding whether or not the Respondent violated this Policy.
- **Disciplinary Sanction (or Sanction):** consequences imposed on a Respondent following a determination that the Respondent engaged in Prohibited Conduct as defined in this Policy.
- **Education Program or Activity:** academic, extracurricular, research, occupational training or other Education Program or Activity operated by the University in the United

States. Conduct that occurs within the University's Education Program or Activity includes, but is not limited to: locations, events or circumstances over which the University exercised substantial control over the Respondent and the context; any building owned or controlled by the University and/or by a student organization that is officially recognized by the University; and conduct subject to the University's disciplinary authority.

- **Emergency Removal:** A decision to remove a Respondent after an individualized analysis concluding that there is an imminent and serious threat to the health or safety of a Complainant or any students, employees or other persons arising from allegations of Sex Discrimination, including Sex-based Harassment. Respondents can request review of an Emergency Removal.
- **Employee:** Faculty, staff, administrator, and any other individual employed by the University in any capacity or role. Students may also be Employees.
- **Exculpatory Evidence:** Evidence that shows or suggests that a Respondent did not engage in the alleged Sex Discrimination or Sex-based Harassment.
- **Facilitator:** A person or persons designated to facilitate an Informal Resolution of a Complaint. Facilitators may or may not be Employees of the University. Facilitators are trained on the definition of Sex Discrimination and Sex-based Harassment, the University's obligation to respond to Sex Discrimination and Sex-based Harassment in its Education Program or Activity, employee reporting and notification obligations, the rules and practices of the University's Informal Resolution process, and how to serve impartially, including by avoiding conflicts of interest and bias.
- **Findings of Fact:** A Decision-maker's decision regarding what occurred based on evaluation of the preponderance of the Relevant, Admissible evidence.
- **Gender Identity:** Describes an individual's sense of their gender, which may or may not be different from their sex assigned at birth.
- **Grievance Process:** The applicable process for investigating and resolving a Complaint.
- **Hearing:** A process that involves real-time, remote appearances by the Parties and Witnesses before the Decision-maker, during which the Decision-maker and Parties' Advisors will be given the opportunity to pose questions seeking Relevant, Admissible evidence and information. *See* Section XVIII.
- **Inculpatory Evidence:** Evidence that shows or suggests that a Respondent engaged in the alleged Sex Discrimination or Sex-based Harassment.



- **Informal Resolution:** A voluntary process that allows the Parties and the University to engage in discussions in an attempt to come to an agreement to resolve a Complaint that does not involve a full investigation and/or hearing and adjudication.
- **Investigator:** A person or persons, who may be from the University's Civil Rights Compliance Team or external to the University, designated by the Title IX Coordinator to investigate the allegations of a Complaint. An Investigator may also be the Title IX Coordinator. Investigators are trained on the definition of Sex Discrimination and Sex-based Harassment, the University's obligation to respond to Sex Discrimination and Sex-based Harassment in its Education Program or Activity, employee reporting and notification obligations, the University's Grievance Processes, Relevance, Admissible evidence, and how to serve impartially, including by avoiding prejudgment of the facts, conflicts of interest, and bias.
- **Legal Confidentiality:** Confidentiality conferred by law based on licensure or other legally-recognized status. Individuals with Legal Confidentiality cannot be compelled to disclose information shared with them in their professional capacity unless the individual protected by the confidential relationship/legal privilege gives informed consent waiving the privilege. Examples of roles that have legal confidentiality are: licensed mental health counselors, medical providers, and pastoral counselors (ordained clergy or religious leaders).
- **Notice of Dismissal:** written notice of the Title IX Coordinator's decision to dismiss a Complaint, including the basis of the decision. A Complainant, and in some cases a Respondent, may submit an Appeal of a dismissal of a Complaint.
- **Notice of Informal Resolution:** As applicable, a Notice of Informal Resolution will be sent to the Parties simultaneously; the process is initiated following receipt of each Party's completed Informal Resolution consent form.
- **Notice of Allegations and Investigation:** A written notice to the Parties commencing the applicable Grievance Process.
- **Notice of Hearing:** The letter sent to the Parties detailing and providing notice of the allegations falling within the scope of this Policy that will proceed to a Hearing and other information about the Hearing.
- **Parental status:** The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

- A biological parent;
  - An adoptive parent;
  - A foster parent;
  - A stepparent;
  - A legal custodian or guardian;
  - In loco parentis with respect to such a person; or
  - Actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- **Party or Parties:** a Complainant or Respondent. When referencing the Complainant, the Respondent may be referred to as the “other Party” and when referencing the Respondent, the Complainant may be referred to as the “other Party.”
  - **Peer Retaliation:** Retaliation (defined further below) by a Student against another Student.
  - **Pregnancy or related conditions:**
    - Pregnancy, childbirth, termination of pregnancy, or lactation;
    - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
    - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
  - **Procedural History:** A section of the Written Determination describing the procedural steps taken from the receipt of the Complaint through the determination, including notifications to the Parties; the date Respondent received the Notice of Investigation; the investigation process; and hearings held.
  - **Procedural Irregularity:** A failure to follow the University’s own procedures.
  - **Prohibited Conduct:** Conduct prohibited by Title IX (Sex Discrimination; Quid Pro Quo Sexual Harassment; Hostile Environment Sexual Harassment; Sexual Assault; Dating Violence; Domestic Violence; Stalking) as defined in Section IV and other conduct prohibited by the University as defined in Sections V and VII.

- **Relevant or Relevance:** means related to the allegations of Sex Discrimination or Sex-based Harassment under investigation as part of the applicable Grievance Process established in this Policy (Sections XVIII and XIX). Questions are relevant when they seek evidence and information that may aid in showing whether the alleged Sex Discrimination and/or Sex-based Harassment occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged Sex Discrimination and/or Sex-based Harassment occurred. Evidence that is not Admissible and questions seeking such evidence cannot be accessed, disclosed, considered or otherwise used even if it is Relevant.
- **Remedies:** Measures provided by the University, as appropriate, to a Complainant or any other person the University identifies following a Determination of Responsibility that their equal access to the University's Education Program or Activity was limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent.
- **Report:** The submission of information to the Title IX Coordinator or an Employee regarding a potential violation of this Policy because it reports conduct that may reasonably constitute Prohibited Conduct.
- **Respondent:** A person who is alleged to have engaged in Prohibited Conduct as defined in this Policy.
- **Retaliation:** Intimidation, threats, coercion or discrimination against any person by the University, a student, or an employee or other person the University has authorized to provide aid, benefit, or service under its Education Program or Activity, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing, including in an Informal Resolution Process, Grievance Processes as described in Sections XVIII and XIX of this Policy, and in any other actions taken by the University in response to a report or Complaint of Prohibited Conduct. **NOTE:** Requiring an employee or other person the University has authorized to provide aid, benefit, or service under its Education Program or Activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing is not retaliation.
- **Sanctions or Disciplinary Sanctions:** Disciplinary or punitive measures imposed on a Respondent by the University following a Determination of Responsibility on the part of Respondent.

- **Sex Characteristics:** physiological sex-based characteristics. Sex discrimination based on a person’s physiological sex characteristics may include discrimination based on a person’s anatomy, hormones, and chromosomes associated with male or female bodies, as well as intersex traits.
- **Sex Discrimination:** discrimination on the basis of sex, Sex Stereotypes, Sex Characteristics, Pregnancy or Related Conditions, sexual orientation, and/or Gender Identity, as well as failure to provide reasonable accommodations as required by law or policy. Sex Discrimination also includes Sex-based Harassment, defined below.
- **Sex-based Harassment:** Quid Pro Quo Sexual Harassment; Hostile Environment Sexual Harassment; Sexual Assault; Dating Violence; Domestic Violence; Stalking) as defined in Section IV and additional Sex- and Gender-based Misconduct prohibited by the University as defined in Section V.
- **Sex Stereotypes:** fixed or generalized expectations regarding a person’s aptitudes, behavior, self-presentation or other attributes based on sex.
- **Standard of Evidence:** The Standard of Evidence reflects the degree of confidence that a Decision-maker has in the correctness of the factual conclusions reach. The University applies the preponderance of evidence (more likely than not) Standard of Evidence to matters falling under the Policy.
- **Student:** a person who has gained admission to the University.
- **Student with a disability:** a student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(9)(B), (20)(B), or a child with a disability as defined in the Individuals with Disabilities Education Act, 20 U.S.C. 1401(3). If a Complainant or Respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the University has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.
- **Supportive Measures:** Non-disciplinary and non-punitive individualized measures that are offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, and without fee or charge to the complainant or respondent to:
  - Restore or preserve that party’s access to the University’s Education Program or Activity, including measures that are designed to protect the safety of the Parties or the educational environment; or

- Provide support during the Grievance Processes described in Sections XVIII and XIX of this Policy, or during an Informal Resolution process as described in Section XV.
- **Title IX Coordinator:** The person or persons designated by the University as a Title IX Coordinator, including any persons designated as an “acting,” “deputy” or “interim” Title IX Coordinator. In the event that special circumstances require the Title IX Coordinator to delegate responsibilities, the term also includes the Title IX Coordinator’s delegate. The Title IX Coordinator will receive training on all topics of required training for employees, Investigators, Facilitators, Decision-makers, and those who have the authority to modify or terminate Supportive Measures, as well as the University’s obligations with respect to Pregnancy and Related Conditions, Supportive Measures, and the University’s recordkeeping obligations. The Title IX Coordinator may deliver training to those serving in any role within the University’s Grievance Processes.
- **Witness:** A person who has seen, heard or otherwise has knowledge or information Relevant to an alleged violation of this Policy, but not including the Investigator. The Investigator and Decision-maker meet with Witnesses at their request and at the suggestion of the Parties.
- **Written Determination:** A letter delivered simultaneously to the Parties that describes the Decision-maker’s decision regarding responsibility, which must be supported by evidence.

# **APPENDIX A**

## **TITLE IX COORDINATOR & DEPUTY TITLE IX COORDINATOR RESPONSIBILITIES**

The Title IX Coordinator coordinates the University's efforts to comply with Title IX, including overseeing this Policy and the publication and dissemination of information required by Title IX. The Title IX Coordinator's responsibilities include:

- receiving and responding to Reports of conduct that may constitute a violation of this Policy, including treating the Parties equitably and appropriately notifying Parties of the applicable Grievance Process based on status of the Parties and the allegations;
- initiating a Grievance Process as requested in a Complaint;
- in the absence of a Complaint, withdrawal of any or all of the allegations in a Complaint or in the absence or termination of an Informal Resolution process, determining whether to initiate a Grievance Process using the factors provided in the Title IX regulations;
- when initiating a Grievance Process as described in the bulletpoint above, notifying the Complainant prior to doing so and appropriately addressing reasonable concerns about the safety of the Complainant or others;
- offering and coordinating the effective implementation of Supportive Measures: for a Complainant regardless of initiation of a Grievance Process; for Respondents when a Grievance Process or Informal Resolution is initiated; and upon notification of a student's pregnancy;
- designating Investigators, Facilitators, and Decision-makers for the Grievance Process;
- ensuring that the technology needed to conduct and record hearings is available;
- implementing effectively any Remedies or discipline imposed by a Decision-maker upon a finding of a violation of this Policy;
- complying with the record-keeping requirements of this Policy;
- monitoring for and addressing barriers to reporting, and in general, this Policy's effectiveness; and

- regardless whether a Complaint is initiated, taking other appropriate prompt and effective steps, to ensure that Sex Discrimination does not continue or recur within the University's Education Program or Activity.

In general, the Deputy Title IX Coordinators support the Title IX Coordinator in fulfilling their role and responsibilities and may serve as the Title IX Coordinator's designee to carry out any response, action, initiative, project or other responsibility outlined in this Policy. The Deputy Title IX Coordinators are school- and department-based resources available to discuss a Report or Complaint, provide information about Supportive Measures and the Grievance Process, and to make direct connections to the Title IX Office.

## **APPENDIX B**

### **INQUIRIES RELATED TO THIS POLICY AND TITLE IX**

Inquiries about the application of Title IX and its regulations may be directed to:

#### **The University's Title IX Office:**

- *Email:* [titleix@rochester.edu](mailto:titleix@rochester.edu)
- *Online reporting form:* <https://www.rochester.edu/sexual-misconduct-report-form/><sup>20</sup>

#### **The University's Title IX Coordinator:**

- *Email:* [julia.green@rochester.edu](mailto:julia.green@rochester.edu)
- *Phone:* (585) 275-1654
- *Office:* Wallis Hall 147A (within the University's Office of Equity and Inclusion suite)
- *Online reporting form:* <https://www.rochester.edu/sexual-misconduct-report-form/>

#### **U.S. Department of Education's Office for Civil Rights (OCR)**

- *New York office:* (646) 428-3800
- *National headquarters:* (800) 421-3481 or TDD: (877) 521-2172
- *Website:* [www.ed.gov/ocr/](http://www.ed.gov/ocr/)
- *Email:* [OCR@ed.gov](mailto:OCR@ed.gov)
- *Facsimile:* (202) 453-6012

#### **U.S. Department of Health and Human Services Office for Civil Rights**

- *New York office and national headquarters:* (800) 368-1019 or TDD: (800) 537-7697
- *Website:* <https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf>
- *Email:* [OCRMail@hhs.gov](mailto:OCRMail@hhs.gov)
- *Facsimile:* (202) 619-3818

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<sup>20</sup> Additional reporting options, including Confidential resources, are explained in Section VIII of this Policy.



## **ADDITIONAL CONTACTS FOR EMPLOYEES**

### **New York State Division of Human Rights**

- *Phone:* (585) 238-8250
- *Website:* <https://dhr.ny.gov/>
- *Email:* [Info.Rochester@dhr.ny.gov](mailto:Info.Rochester@dhr.ny.gov)
- *Facsimile:* (585) 445-6003

### **U.S. Equal Employment Opportunity Commission**

- *Phone:* (800) 669-4000
- *TTY:* (800) 669-6820
- *ASL Video Phone:* (844) 234-5122
- *Website:* <https://www.eeoc.gov/>
- *Email:* [info@eeoc.gov](mailto:info@eeoc.gov)

## **APPENDIX C**

### **STUDENT BILL OF RIGHTS**

Under New York State law, all students have the right to:

1. Make a report to local law enforcement and/or State Police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful healthcare and counseling services where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused, and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who can assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

<b>Policy Administration</b>	
<b>Policy Owner</b>	Associate Vice President for Civil Rights Compliance & Title IX Coordinator
<b>Policy Organization</b>	Office of Equity and Inclusion
<b>Related Contacts</b>	Associate Vice President for Civil Rights Compliance & Title IX Coordinator

<b>Policy History</b>	
<b>Effective Date</b>	08/01/2024
<b>Date Issued</b>	09/05/2024
<b>Revised Date(s)</b>	09/05/2024