



# Marymount University

## Sexual and Interpersonal Misconduct

### Policy and Resources

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Applies to all forms of sexual harassment, sexual assault, intimate partner violence, stalking, sexual exploitation, complicity and retaliation.

**2022 - 2023**



**MARYMOUNT**  
UNIVERSITY

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## Purpose and Statement of Intent

Marymount University is a Catholic institution of higher education, founded by the Religious of the Sacred Heart of Mary (RSHM), and committed to excellence in teaching, learning, scholarship and service. As such, the University acknowledges specific core values that guide and govern the actions of its community. The University encourages all members of our community to participate in the process of creating a safe, welcoming and respectful campus environment.

This Policy prohibits a broad continuum of behaviors, all of which constitute a form of sexual or gender-based harassment. Sometimes, discrimination involves exclusion from activities or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence.

The University community has a responsibility to maintain an environment free from Prohibited Conduct. The University is committed to taking all appropriate steps to eliminate Prohibited Conduct, prevent its recurrence and address its effects. The University is committed to fostering a climate free from sex and gender-based harassment, sexual assault, stalking, intimate partner violence and/or retaliation through clear and effective policies, coordinated education and prevention programs and prompt and equitable procedures for resolution that are accessible to all.

The University will not tolerate retaliation or attempts of retaliation against an individual who makes a report of Prohibited Conduct or participates in an investigation. Retaliation, whether actual or threatened, destroys the sense of community and trust that is central to a quality environment. The University Policy prohibits any form of reprisal or retaliation and community members engaging in reprisals or retaliation will be subject to disciplinary action, whether such acts are implicit or explicit, or committed directly or indirectly.

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The University will make every reasonable effort to stop retaliation immediately, to conduct a complete and thorough investigation of alleged acts of retaliation in a timely manner, to provide remedies to victims of retaliation and to sanction the perpetrators of retaliation as appropriate.

## Policy

Marymount University is committed to establishing and maintaining a safe and nondiscriminatory educational environment in which all individuals are treated with respect and dignity. The University does not discriminate on the basis of sex in its educational, extracurricular, athletic or other programs, or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972 ("Title IX"), a federal law that provides that:

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.

In addition, sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964 ("Title VII"), Virginia state law and other applicable statutes. The University does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local or federal law.

### Marymount University Sexual Discrimination and Relationship Misconduct Policy

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. Sexual harassment, sexual assault, dating violence, domestic violence, stalking and retaliation may all be forms of sex discrimination. Marymount University ("the University") will not tolerate any sexual harassment, sexual assault, dating violence, domestic violence, stalking or retaliation ("Prohibited Conduct"). The University's Title IX Coordinator oversees the resolution of all misconduct covered by this Sexual Discrimination and Relationship Misconduct Policy ("Policy"). To make a report or discuss any aspect of the Policy, please contact the Title IX Coordinator at:

Marymount University Title IX Office  
Dr. Laura Finkelstein | (703) 908-7561 | [TITLEIX@marymount.edu](mailto:TITLEIX@marymount.edu)

### Scope of Policy

This policy applies to all students; student organizations; employees, including staff, faculty, and administrators; and all other persons that participate in the University's educational programs and activities, including third-party visitors on campus. This Policy prohibits this conduct regardless of whether the Complainant and Respondent are members of the same or opposite sex or gender. The University has jurisdiction to take disciplinary action against a Respondent who is a current student or employee of the University. Each member of the University community is responsible for conducting themselves in accordance with this Policy and other University policies and procedures. All members of the University community have a responsibility to adhere to University policies and local, state and federal law.

The University must investigate any alleged violation of this Policy that:



## MU SEXUAL AND INTERPERSONAL MISCONDUCT POLICY

1. Falls under the definition sexual harassment as defined by this Policy; and
2. Occurs within the context of an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations); and
3. Occurs against a person in the United States

This Policy may also apply to Prohibited Conduct online, including via email, blogs, web page entries on social or digital media sites such as Facebook, Twitter, Instagram, Snapchat, Tik Tok and other similar online postings that are in the public sphere and are not private. These postings can subject a University community member to allegations of conduct violations. The University does not regularly search for this kind of information but may take action if and when such information is brought to the attention of University officials.

Regardless of where the conduct occurred, Marymount University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Marymount University.

If the Respondent is unknown or is not a member of the Marymount community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Marymount's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

The Title IX Coordinator may refer a report of conduct that does not constitute Prohibited Conduct under this policy, in the discretion of the Title IX Coordinator, but may violate the University's Student Community Conduct Code, to the Office of Student Conduct and Conflict Resolution. The decision of the Title IX Coordinator is a final decision for which there is no right of appeal.

# MU SEXUAL AND INTERPERSONAL MISCONDUCT POLICY

This Policy is applicable to all forms of “Prohibited Conduct” as defined by this Policy. This Policy also prohibits gender-based harassment that does not involve conduct of a sexual nature, including hazing, stalking and failure to provide equal opportunity in admissions, employment or athletics. This Policy is applicable to Prohibited Conduct against University community members of any gender, gender identity, gender expression or sexual orientation by any member of the University community, including students, faculty, staff, administrators, Board members, consultants, vendors and others engaged in business with the University.

The University, as an educational community, will promptly and equitably respond to reports of Prohibited Conduct in order to eliminate the Prohibited Conduct, prevent its recurrence and address its effects on any individual or the community.

## Title IX Team

The Title IX Coordinator is charged with monitoring the University’s compliance with Title IX; ensuring appropriate education and training; coordinating the University’s investigation, response and resolution of all reports under this Policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence and remedy its effects. The Title IX Coordinator is available to meet with any student, employee or third party to discuss this Policy or the accompanying procedures. The University has also designated Deputy Title IX Coordinators who may assist the Title IX Coordinator in the discharge of these responsibilities. The Title IX Coordinator and Deputy Title IX Coordinators receive appropriate training to discharge their responsibilities.

The Title IX Office may be reached during regular business hours:

Marymount University Title IX Office  
Laura Finkelstein, Ph.D.  
Title IX Coordinator  
AVP, Student Health and Well-being  
(703) 908-7561  
2807 N. Glebe Road  
[TITLEIX@marymount.edu](mailto:TITLEIX@marymount.edu)

Marymount University has determined that the following administrators are Officials with Authority (“OWA”) to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Coordinator, these Officials with Authority listed below may also accept notice or complaints on behalf of the University. Marymount University has also classified most employees (with the exception of confidential roles) as Mandated Reporters, who are required to disclose any knowledge they have that a member of the community is experiencing sexual harassment, discrimination, sexual assault, relationship violence, stalking and/or retaliation. Mandated Reporters must notify someone on the Title IX Team about knowledge of Prohibited Conduct.

Aprile Preller  
Community Health Director  
(703)284-6849

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Paula Polson  
Human Resources  
(703)908-7672

Kaylee Chappell  
Student Conduct and Conflict Resolution  
(703)908-7559

To raise any concern involving bias, conflict of interest, misconduct or discrimination by the Title IX Coordinator, contact Dr. William Bisset, Vice President of Enrollment Management and Student Affairs by email at [wbisset@marymount.edu](mailto:wbisset@marymount.edu). Concerns of bias, conflict of interest, misconduct or discrimination by any other Title IX Team member should be raised with the Title IX Coordinator.

Inquiries may be made externally to:

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

For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)

## Notice/Complaints of Policy Violations and Initial Response

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- a. File a complaint with, or give verbal notice to, the Title IX Coordinator or a Deputy Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or Deputy Title IX Coordinators.
- b. Report online, using the reporting form posted at [Marymount.edu/titleix](http://Marymount.edu/titleix). Anonymous reports are accepted but can give rise to a need to investigate. The University offers and tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report.

At the time a report of Prohibited Conduct is made, a Complainant does not have to decide whether or not to request any particular course of action. Nor does a Complainant need to know how to label what happened. Choosing to make a report of Prohibited Conduct, and deciding how to proceed after making the report, can be a process that unfolds over time. The University provides support that can assist each individual in making these important decisions, and to the extent legally possible, will respect an individual's autonomy in deciding how to proceed balancing the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the University community.



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## Autonomy of Deciding to File a Formal Complaint

A reporting individual or Complainant is not obligated to proceed with a Formal Complaint, Complaint Resolution Procedure, or other formal response, and the University will respect a Complainant's request to dismiss a complaint, unless there is a compelling threat to health and/or safety. Examples of compelling threats are: when a specific threat to harm self or others has been voiced, serial predation, violence, or weapons. In such cases, the Title IX Coordinator will file the formal complaint.

A Formal Complaint means a document filed and signed by the Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct by a Respondent and requesting that the University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator or a Deputy Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal).

## Sufficient Response

Upon receipt of a complaint (formal or informal), the Title IX Coordinator or Deputy Coordinator must quickly provide a sufficient response which includes, at minimum, (1) discussion of the availability of supportive measures, (2) consideration of the complainant's wishes with respect to supportive measures, (3) informing the complainant of the availability of supportive measures with or without the filing of a formal complaint, and (3) explanation to the complainant the process for filing a formal complaint.

## Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the University's ability to investigate, respond, and provide remedies may be more limited or impossible. A decision to act on notice/complaints significantly impacted by the passage of time (including, but not limited to, acts that have been impacted by the rescission or revision of policy) will be made at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as the Title IX Coordinator deems appropriate.

## Amnesty for Personal Use of Alcohol or Drugs

The University seeks to remove any barriers to reporting Prohibited Conduct. The University will generally offer any student, whether the Complainant, a witness or third party, who reports Prohibited Conduct, limited immunity from being charged for Policy violations related to the personal ingestion of alcohol or drugs, provided that any such violations did not, and do not, place the health and safety of any person at risk. The University may choose, however, to pursue educational or therapeutic remedies for those individuals.

## **Prohibited Conduct - Title IX**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Virginia regard Sexual Harassment as an unlawful discriminatory practice. Under the Virginia Reporting Statute, the University is required to report information about allegations of certain Prohibited Conduct to the law enforcement agencies and the

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prosecuting authorities who would be responsible, respectively, for investigating and prosecuting such allegations.

The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

### Sexual Harassment

Sexual Harassment, as an umbrella category of Prohibited Conduct, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as: Conduct on the basis of sex, or that is sexual, that satisfies one or more of the following:

1. *Quid Pro Quo*:
  - a. an employee of the University,
  - b. conditions<sup>1</sup> the provision of an aid, benefit, or service of the University,
  - c. on an individual's participation in unwelcome sexual conduct.
2. *Sexual Harassment*:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to Marymount's education program or activity.<sup>2</sup>

### Sexual Assault

Sexual assault includes sexual violence, which is defined by Virginia law as "physical sexual acts perpetrated against a person's will or against a person incapable of giving consent" and is defined more specifically as:

1. *Sexual Offenses, Forcible*:
  - a. Any sexual act directed against another individual,
  - b. without the consent of that individual,
  - c. including instances in which the individual is incapable of giving consent.<sup>3</sup>
2. *Forcible Rape*:
  - a. Penetration,
  - b. no matter how slight,
  - c. of the vagina or anus of an individual with any body part or object, or
  - d. oral penetration by a sex organ of another individual,
  - e. without the consent of the individual or against the individual's will, or

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<sup>1</sup> Implicitly or explicitly.

<sup>2</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>3</sup>

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- f. not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- 3. *Forcible Sodomy:*
  - a. Oral or anal sexual intercourse with another individual,
  - b. forcibly
  - c. without the consent of the individual or against the individual's will, or
  - d. not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age<sup>4</sup> or because of temporary or permanent mental or physical incapacity.
- 4. *Sexual Assault with an Object:*
  - a. The use of an object or instrument to penetrate,
  - b. however slightly,
  - c. the genital or anal opening of the body of another individual,
  - d. forcibly,
  - e. without the consent of the individual or against the individual's will, or
  - f. not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- 5. *Forcible Fondling:*
  - a. The touching of the private body parts of another individual (buttocks, groin, breasts),
  - b. for the purpose of sexual gratification,
  - c. forcibly,
  - d. without the consent of the individual or against the individual's will,
  - e. or not forcibly or against the individual's will in instances in which the individual is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

### Dating and Domestic Violence

- 6. *Dating Violence:*
  - a. violence,
  - b. committed by a person,
  - c. who is in or has been in a social relationship of a romantic or intimate nature with an individual. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
    - i. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - ii. Dating violence does not include acts covered under the definition of domestic violence.
- 7. *Domestic Violence*
  - a. violence,
  - b. committed by a current or former spouse or intimate partner of an individual,

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<sup>43-4</sup> Per state law. The age of consent in Virginia is 18.

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- c. by a person with whom the individual shares a child in common, or
- d. by a person who is cohabitating with, or has cohabitated with, the individual as a spouse or intimate partner, or
- e. by a person similarly situated to a spouse of the individual under the domestic or family violence laws of Virginia, or
- f. by any other person against an adult or youth individual who is protected from that person's acts under the domestic or family violence laws of Virginia.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

### Stalking

#### 1. *Stalking*:

- a. Engaging in a course of conduct,
- b. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## Prohibited Conduct - Outside of Title IX

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

*Sexual Exploitation*. Defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such

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as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.

- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that 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.
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Knowingly soliciting a minor for sexual activity.
- Engaging in sex trafficking.
- Creation, possession, or dissemination of child pornography.

*Threatening or causing physical harm*, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

*Discrimination*, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;

*Intimidation*, defined as implied threats or acts that cause fear of harm in another;

*Hazing*, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Marymount community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.

*Bullying and Cyberbullying*, defined as repeated and/or severe behavior that is intended or likely to intentionally hurt, control, or diminish another person, physically and/or mentally.

Violation of any other University policies may constitute a sex-based discrimination, when a violation is motivated by actual or perceived sex, sexual orientation, gender identity/expression, pregnancy or parenting status and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities. Marymount University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

### Retaliation

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



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

Marymount University and any member of the University community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

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

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

### Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

*Force.* Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

*Coercion.* Coercion is unwanted pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion may be emotional, intellectual, psychological or moral.

*Consent.* In accordance with Catholic teaching, the University does not condone engaging in sexual activity outside the confines of marriage. However, the University understands that students will make their own decisions with regard to sexual activity. Individuals who choose to engage in sexual activity of any type must first obtain consent. Consent is the informed, voluntary and willing participation or cooperation in action, behavior or attitude that is commonly understood to be consistent with the exercise of free will.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

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Affirmative consent requires participants who:

1. are fully conscious, equally free and legally competent to act;
2. have clearly communicated their willingness, cooperation or permission to participate in the specific sexual activity engaged in; and
3. are positive and clear about their desires and are able to cease ongoing consensual activity at any time.

A person who wants to engage in a specific sexual activity is responsible for obtaining effective consent for that activity. A lack of resistance, or silence and/or passivity, does not constitute consent. A refusal to consent, or withdrawal of consent, does not have to be verbal; it can be expressed with clear gestures, body language or attitude. A prior sexual history between participants by itself does not constitute consent to future sexual activity.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back. Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

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

*Incapacitation.* Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual contact. Engaging in sexual activity with an individual that Respondent reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is a violation of this Policy.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective,

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reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

In general, the University considers sexual contact while under the influence of alcohol or drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

The perspective of a reasonable person will be the objective basis for determining whether a Respondent should have been aware of the extent and amount of the ingestion of alcohol or drugs by the Complainant, or of the extent to which the use of alcohol or drugs impacted a Complainant's ability to give consent. For example, an individual who is in a blackout state may appear to act normally and be giving consent, but may not actually have conscious awareness, the ability to consent or later recall of the events in question. In determining whether consent has been given, the University will consider both the extent to which a Complainant affirmatively gives words or actions indicating a willingness to engage in sexual activity and whether the Respondent was aware – or reasonably should have known – of the Complainant's level of alcohol consumption and/or level of impairment. Being intoxicated or impaired by alcohol or drugs is never an excuse for Prohibited Conduct and does not diminish one's responsibility to obtain informed and affirmative consent.

### Consensual Relationships in the Workplace

The University is committed to a climate free from sexual and other forms of unlawful harassment in that it is both unwise and inappropriate for University managerial personnel to have romantic relationships with any subordinate University employee. Such relationships have the potential for adverse consequences, including the filing of sexual harassment complaints. Given the imbalance of power in a relationship where one person awards grades, serves as a coach or makes promotion or salary decisions, the consensual nature of the relationship is inherently suspect. It is incumbent upon those with authority not to abuse or appear to abuse the power with which they have been entrusted. Should a charge of sexual harassment be brought by a person in a subordinate position, "consent to the relationship" shall not be deemed a sufficient defense or justification for conduct which otherwise would be deemed sexual harassment under the Policy of the University.

A romantic relationship in the workplace may raise perceptions of bias and favoritism; deterioration of the relationship may give rise to perceptions of harassment or retaliation. Prudence and the best interests of the participants in the relationship and others working with them dictate that if a romantic relationship develops between a University manager and a subordinate University employee, the managerial relationship cannot be permitted to continue.

### Faculty and Staff Dating Students

The University prohibits consensual relationships of a dating, intimate and/or sexual nature between faculty or staff and any student with whom the faculty or staff member is in a direct/power relationship. Furthermore, the University strongly discourages these consensual relationships even when no power

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relationship exists. This Policy is rooted in the recognition that faculty– or staff–student relationships may be inherently unequal and contain an element of superiority or power.

Consensual relationships between faculty or staff and students may give rise to the perception by others that there is favoritism or bias in educational decisions affecting students. These perceptions undermine the spirit of trust and mutual respect that is important to the University environment. Reporting of possible violations of the Policy may be made to the Title IX Office, Campus Safety or Human Resources. In the event of such a relationship, it is the responsibility of the person in a position of authority to notify their own supervisor so that a resolution consistent with this Policy may be reached. Failure to comply with this requirement is a violation of this Policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the University.

Any individual may file a complaint alleging Prohibited Conduct, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report concerns about prohibited relationships by persons in authority is prohibited and constitutes a violation of this Policy.

For purposes of this Policy, the term “faculty” incorporates the definitions set forth in the Marymount University Faculty Handbook, and includes the following persons: Full-time faculty members; Part-time faculty members; Tenured faculty members; Non-tenured faculty members; Continuing Instructors; Postdoctoral Teaching Fellows; Visiting Faculty Members; Lecturers; Adjuncts; Artists-In-Residence; Externally Funded Faculty Members; Emeriti; Faculty Appointments in Library and Learning Sciences; Program Directors and Coordinators; Department Chairs; Associate Deans; Deans; and Academic Administrators.

## Mandatory Reporting

### Responsibilities of Mandated Reporters

Most employees of Marymount University (including certain student employees), with the exception of those who are designated as Confidential Resources (outlined below), are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors covered by this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party, except in an instance of an anonymous report.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the University.

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

Though this may seem obvious, when a Mandated Reporter is engaged in Prohibited Conduct under this policy, they still have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

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

### Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

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

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

### Federal Timely Warning

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

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

### Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;



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2. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
3. VAWA-based crimes,<sup>5</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but anonymized statistical information must be shared with campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the University's Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, [campus law enforcement/public safety/security], local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

### Mandatory Reporting of Suspected Child Abuse

Under Virginia law, any person employed by a private institution of higher education who, in their professional or official capacity has reason to suspect that a child is an abused or neglected child, is required to report the matter immediately to child protective services. The University also requires that the information be immediately shared with the Title IX Coordinator and the Director of Campus Safety and Security so the University can ensure timely compliance with Virginia law and enhance the protection of children. The University will promptly report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to the Virginia Department of Human Services toll-free child abuse and neglect hotline, at 1-800-522-7096.

It is the University's intent to act quickly regarding all suspected child abuse. For the purposes of this reporting obligation, the word "child" means any individual under the age of 18, and the suspected abuse may involve physical, sexual or other forms of abuse or neglect, regardless of the identity of the suspected perpetrator. The duty to report is triggered by reasonable suspicion or belief. There is no requirement that you have actual evidence of abuse to report, nor is it the responsibility of any employee, student or volunteer to investigate suspected child abuse. This is the role of child protective services and law enforcement authorities, who are best positioned to do so.

### Sexual Abuse of Minors

*Minor:* For the purpose of this policy, a minor is any person under the age of 18.

Any allegation of sexual abuse of a minor that is brought to the attention of any University employee or authorized volunteer must be reported to the Title IX Office and law enforcement authorities. This includes any allegation of sexual abuse of a minor that 1) occurs on a Marymount University campus; or 2) is committed by a University employee or authorized volunteer.

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<sup>5</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

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The University will cooperate fully with the victim and law enforcement authorities in the investigation of such matters and take any action deemed appropriate and necessary.

### False Reporting

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

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

## Confidential Resources

A confidential resource is an individual who is legally and/or ethically bound to keep information confidential that is shared with them in the course of providing counseling or support. Confidential communications cannot be disclosed to anyone without the reporter's consent, except under extreme circumstances including the physical or sexual abuse of a minor or in cases of immediate threat or danger to a person(s) or the larger University community. Confidential resources also may be required to report limited information, excluding any personally identifiable information, about certain reports of alleged sexual misconduct in compliance with federal and state reporting requirements.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator who will take action when an incident is reported to them.

On-Campus Confidential Resources	
<b>Student Counseling Services</b> Berg Hall, BERG 1014 703-526-6861	Provides 24/7 confidential psychological individual and group counseling, crisis intervention, and consultation
<b>Student Health Services</b> Berg Hall, BERG 1014 703-284-1610	Provides medical treatment and consultation
<b>Marymount University Campus Ministry</b> University Chaplin 703-284-1607	Provides religious counseling and support

### Off-Campus Confidential Resources

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<b>Doorways for Women and Children</b> 24-hour Sexual Violence Hotline 703-237-0881	♦ Hours: 24/7 ♦ <a href="http://www.doorways.va.org">www.doorways.va.org</a> ♦ Provides advocacy, counseling, shelter and accompaniment to hospital for forensic exams
<b>Fairfax County Domestic and Sexual Violence Hotline</b> 703-360-7273	♦ Hours: 24/7 ♦ Provides telephone counseling information on domestic and sexual violence issues
<b>Virginia State Domestic &amp; Sexual Violence Hotline</b> 800-838-8238	♦ Hours: 24/7 ♦ Provides telephone counseling information on domestic and sexual violence issues
<b>National Domestic Violence Hotline (NDV)</b> 800-799-7233 (SAFE)	♦ Provides telephone counseling information on domestic and sexual violence issues
<b>Marymount University Employee Assistance Program for Faculty and Staff</b> 888-267-8126	♦ Hours: 24/7 ♦ Provides connection to a professional counselor or lifeworks on-line assistance: <a href="http://www.lifeworks.com">www.lifeworks.com</a>

### Supportive Measures

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter sexual harassment and/or retaliation. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

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

The University will implement measures in a way that does not unreasonably burden the other party. These actions may include, but are not limited to:

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

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- Altering work arrangements for employees or student-employees
- Safety planning, including providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, or Be-On-the-Lookout (BOLO) orders/notice
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

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

### Emergency Medical Support Services

The University has a strong interest in supporting victims and survivors of Prohibited Conduct and encourages all individuals or third party witnesses to report any incident of Prohibited Conduct to the University, and, if it involves potential criminal conduct, to law enforcement. The University encourages individuals to seek assistance from a medical provider and/or law enforcement as soon as possible following an incident which poses a threat to safety or physical well-being. This is the best option to provide physical safety, emotional support and medical care to the Complainant. It is also the best option to ensure preservation of evidence, which may only exist for a short period of time, and to begin a timely investigative and remedial response.

The University Office of Campus Safety and Security will escort any University community member to a safe place, provide access to transportation to the hospital, assist in coordination with law enforcement, and provide information about the University's resources and complaint processes.

A forensic sexual assault examination should be obtained promptly from a hospital or sexual response center. The sexual assault examination has two goals: first, to diagnose and treat the full extent of any injury or physical effect (sexually transmitted infection or possibility of pregnancy) and, second, to properly collect and preserve evidence. The exam may include testing and prophylactic treatment for HIV/AIDS, STIs and pregnancy, a vaginal/anal examination, collecting fingernail scrapings and/or clippings, examining for injuries and a blood draw. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action.

The decision to seek medical attention and gather any evidence will preserve the full range of options to seek resolution through the University's complaint processes or criminal action. Individuals who believe they may have been drugged should consider seeking drug testing immediately to collect and preserve evidence, as most drugs exit an individual's system quickly.

An individual can also contact a Student Health Services nurse or nurse practitioner (during open hours). Student Health Services can provide follow-up medical services and a forum to discuss any health care concerns related to the incident in a confidential medical setting. Student Health Services however, is not equipped to conduct forensic sexual assault examinations.

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<b>Medical Treatment</b>	
<b>Inova Fairfax Hospital</b> 3300 Gallows Road Falls Church, Virginia 22042 703-698-1110	Provides medical treatment and Sexual Assault Nurse Examiner (Closest SANE hospital)
<b>Inova Alexandria Hospital</b> 4320 Seminary Road Alexandria, Virginia 22304 703-504-3000	Provides medical treatment and Sexual Assault Forensic Exams
<b>Marymount University Student Health Center</b> Berg Hall, BERG 1014 703-284-1610	Provides medical treatment and support

### Reporting to Law Enforcement

The University encourages Complainants to pursue criminal action for incidents of Prohibited Conduct that may also be crimes under state criminal statutes. The University will assist a Complainant, at the Complainant's request, in contacting local law enforcement and will cooperate with law enforcement agencies if a Complainant pursues the criminal process.

The University's Policy, definitions and burden of proof may differ from Virginia criminal law. A Complainant may seek resolution through the University's complaint process, may pursue criminal action, may choose one but not the other or may choose both. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether Prohibited Conduct has occurred under this Policy. Proceedings under this Policy may be carried out prior to, simultaneously with or following civil or criminal proceedings off campus.

<b>Arlington County Police Department</b>	703-558-2222
<b>Fairfax County Police Department</b>	703-691-2131
<b>Virginia State Police</b>	703-803-0026

Where Prohibited Conduct is reported to law enforcement, it may be possible to obtain a court-ordered Emergency or Preliminary Protective Order. These Protective Orders may be issued if a magistrate or judge believes that there is an immediate threat to health or safety. The court may agree to issue a "Permanent" Protective Order, if appropriate, which may remain in place for up to two years under Virginia law and, in some cases, may be extended for a longer period of time. "Protective Orders" are not the same as a No Contact Order that is issued as a supportive measure by the Title IX Coordinator. Protective Orders may be issued by a court of law; their violation may result in criminal charges.

Assistance is available from the University Office of Campus Safety and Security and local law enforcement 24 hours a day, year round, by calling the Office of Campus Safety and/or the Arlington County Police Department. Any individual can request that a member of the Office of Campus Safety and/or Arlington Police Department respond and take a report.



## Emergency Removals

The University can act to remove a Respondent entirely or partially from its education programs or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Team, using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 3 business days of Respondent's receipt of notice, objections to the emergency removal will be deemed waived.

A Respondent requesting such a meeting may also bring an Advisor of their choosing. A Complainant and their Advisor may be permitted to attend this meeting if the Title IX Coordinator determines it is equitable to do so. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

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

## Notification on Student's Transcript

Virginia Code § 23-9.2:18 requires institutions of higher education to adopt procedures to notate the transcripts of students who withdraw while under investigation or are suspended or dismissed for acts of sexual violence. For the purposes of this law, the Commonwealth defines "sexual violence" as physical sexual acts perpetrated against a person's will or against a person incapable of giving consent. The law also requires that institutions of higher education establish procedures for the removal of the notation for those students who have subsequently been found not responsible or who have

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satisfied the conditions of their suspension. The full text of the law is available from the Commonwealth at: <http://law.lis.virginia.gov/vacode/title23/chapter1/section23-9.2:18/>

The Title IX Coordinator will notify the student that the suspension, dismissal or withdrawal will be documented on their academic transcript. The student's academic transcript suspension notation will be removed if they have completed the terms of a suspension and the University has determined the individual to be in good standing, in accordance with University conduct standards.

If a student separates from the University amidst involvement as a Respondent in a Title IX case, the Title IX Coordinator will alert the Registrar, who will place a notation on the Respondent's transcript. The case can then be resolved under Process A, Process B, or closed, depending on Respondent's interest in participation and the Complainant and Title IX Coordinator's judgment of an appropriate resolution. The Title IX Coordinator has ultimate say on how the case proceeds. If the case is dismissed or continues and the Respondent is found not responsible, the notation will be removed from their transcript.

### Transcript Notation Wording

- a. WITHDRAWAL NOTATION. "Withdrew while under investigation for a violation of the Sexual Harassment and Interpersonal Misconduct Policy"
- b. SUSPENSION NOTATION. "Suspended for a violation of the Sexual Harassment and Interpersonal Misconduct Policy"
- c. EXPULSION NOTATION. "Dismissed for a violation of the Sexual Harassment and Interpersonal Misconduct Policy"

## Promptness

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints can take 90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid undue delays within its control. Any time the general timeframes for resolution outlined in the University's procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## Privacy

Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Title IX office, Division of Student Affairs, and the Campus Safety and Security office. Information will be shared as necessary with Investigators, Advisors, Hearing Panel

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members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

### Resolution process for alleged violations of the policy on Sexual Discrimination (Process "A")

#### Overview

The University will act on any formal or informal notice/complaint of Prohibited Conduct under this Policy that is received by the Title IX Coordinator<sup>6</sup> or any other Official with Authority by applying these procedures, known as "Process A." If a dismissal occurs under Process A, the complaint may qualify under "Process B." Process B can apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

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

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members. The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in Student Community Code of Conduct or Employee Handbook.

#### Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of alleged Prohibited Conduct under the Policy, the Title IX Coordinator or Deputy will initiate a prompt initial assessment with the Complainant or reporter to determine the next steps the University needs to take. If the complaint clearly does not fall under the jurisdiction of Title IX, the Title IX Coordinator will assess which policies may apply and refer it to the appropriate office (e.g. Human resources) or process (e.g. Process B).

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

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## Initial Assessment and Definition of Process

Following receipt of notice or a complaint of alleged Prohibited Conduct under this Policy falling under Title IX jurisdiction, the Title IX Coordinator<sup>7</sup> or Deputy will engage in an initial assessment, typically within one to five business days. The steps in an initial assessment include:

The Title IX Coordinator or Deputy will meet with the Complainant to offer supportive measures and determine whether the Complainant prefers (a) no action, (2) Informal Resolution (formal complaint required), or (3) a formal investigation and grievance process (formal complaint required):

1. If *no action* is requested, The Title IX Coordinator or Deputy will also assess and act on any threat to health or safety, whether by initiating a Violence Risk Assessment (for immediate threat) or a formal complaint (regardless of Complainant's wishes).
1. If the Complainant prefers an *informal resolution or no action*, the Title IX Coordinator or Deputy will assess whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution. The Title IX Coordinator will work with the Complainant to identify their wishes, assess the request, and implement accordingly. No formal grievance process will be initiated, although the Complainant can elect to initiate one later, if desired.
2. If a *formal grievance process* is desired, the Title IX Coordinator or Deputy will assess its sufficiency, determine if the misconduct alleged falls within the scope of Title IX, and work with the Complainant to make sure it is correctly completed. The Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address an incident, and/or a pattern of alleged misconduct, and/or a culture/climate concern, based on the nature of the complaint.

## Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the University's Threat Assessment Team as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass order is needed.

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<sup>7</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable or unable to fulfill their duties.

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Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other University CARE team members.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

### Request for No Action/No Formal Complaint

A Complainant who does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a formal Complaint Resolution Process fairly and effectively.

When the Title IX Coordinator executes the written complaint of Prohibited Conduct, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds with a Complaint Resolution Process, a party may note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the



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Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests privacy/no formal action and the circumstances allow the University to honor that request, the University will still offer supportive measures and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the allegations investigated and properly resolved through these procedures.

### Informal Resolution

Informal Resolution (after a formal complaint) involves parties reaching a mutually agreed-upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism. Informal Resolution can occur in three scenarios:

- When the Title IX Coordinator determines that the matter can be resolved informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. If a party initiates or participates in a formal resolution process in the future, the information obtained during the informal resolution process (for example, if a respondent were to accept responsibility) may not be used in any formal resolution process.

Prior to implementing Informal Resolution, the Title IX Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University. The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

The Title IX Coordinator or Deputy may consider the following factors to assess whether Informal Resolution is appropriate, or which form of resolution may be most successful for the parties:

- The parties' amenability to Informal Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill and availability of an Informal Resolution facilitator for this type of allegation;

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- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Informal Resolution (time, staff, etc.)
- Note: informal resolution is not permitted to resolve allegations that an employee sexually harassed a student.

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

If Informal Resolution is deemed applicable, the Title IX Coordinator will determine whether all parties and the Title IX Coordinator are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator will implement the accepted finding that the Respondent violated University policy and will implement agreed-upon sanctions and/or remedies, in coordination with other appropriate University administrator(s), as necessary.

This result is not subject to appeal once all parties have indicated their written assent to all agreed-upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused. When this occurs, the acceptance of responsibility may not be used against the respondent in the continuing Formal Grievance Process.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the University community.

### Formal Grievance Process: overview

The Formal Grievance Process includes an investigation, hearing, decision, and as applicable rendering of sanctions. The Formal Grievance process under “Process A” is outlined below in detail (p. 29), and has 10 core overarching requirements:

- Equitable treatment
- Objective evaluation
- Training of key participants
- Presumption of innocence
- Prompt timeframes
- Sanctions and remedies
- Standard of evidence
- Appeal processes and standards
- Supportive measures
- Legal privilege

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### Counterclaims

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

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

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

### Long-Term Remedies/Other Actions

Following the conclusion of the resolution process as set forth in this policy, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

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

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties, even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access. The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

### Dismissal of Complaint (Mandatory and Discretionary)<sup>8</sup>

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

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<sup>8</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

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1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Prohibited Conduct section above, even if proved; and/or
2. The conduct alleged did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
3. The conduct alleged did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, the complainant is not participating in or attempting to participate in an education program or activity of the University.<sup>9</sup>

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

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

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### Disabilities Accommodations in the Resolution Process

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process. Anyone needing such accommodations or support should contact the Director of Disability Services who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the University's resolution process.

## Formal Grievance Process under "Process A"

### Notice of the Investigations and Allegations

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

The NOIA may include:

- A meaningful summary of all the allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,

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<sup>9</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

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- A statement that the University presumes the Respondent is not responsible for the alleged misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be provided by the Title IX Coordinator as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in-person or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### Advisors

The parties may each have an Advisor<sup>10</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>11</sup>

### *Advisor parameters*

1. An Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose an Advisor from inside or outside of the University community.
2. Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).
3. The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.
4. If the parties choose an Advisor from outside the pool of those identified by the University, the

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<sup>10</sup> This could include an attorney, advocate, or support person.

<sup>11</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

5. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
6. The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.

### *Advisors in Hearings/University-Appointed Advisor*

Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

### *Pre-Interview Meetings with Advisors*

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

### *Advisor Violations of University Policy*

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. [Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>12</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination].

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

Any Advisor who does not comply with the requirements of this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### *Sharing Information with the Advisor*

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with

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<sup>12</sup> Subject to the state law provisions or University policy above.



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their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

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

### *Additional Expectations of an Advisor*

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

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

### *Expectations of the Parties with Respect to Advisors*

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

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

### *Assistance in Securing an Advisor*

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

### Resolution Timeline

The University will make a good faith effort to complete the resolution process within a ninety (90) business day time period, including appeal, which may be extended as deemed necessary by the Title IX

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Coordinator, who will provide notice and a brief explanation for any extensions or delays to the parties, as appropriate, as well as an estimate of how much additional time may be needed to complete the process.

### Appointment of Investigators

The Title IX Coordinator will appoint Pool members to conduct the investigation (typically using a team of two Investigators), usually within five (5) business days of determining that an investigation should proceed.

### Ensuring Impartiality

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

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest to the Title IX Coordinator, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, the Title IX Coordinator will assign another Pool member and the impact of the bias or conflict, if any, will be remedied.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

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

### Investigation

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties will be provided with a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

### *Timeline*

Many investigations may be completed expeditiously, normally within thirty (30) business days, although some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, and other factors. The University will make a good faith effort to complete investigations as promptly as circumstances reasonably permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law

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enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

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

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

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

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

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

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

### *Process*

The Investigator(s) typically may take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Arrange interviews with both parties, providing written notice of the date, time, and location of the meeting, as well as the expected participants and purpose. Make a good faith effort to notify the parties of any meeting or interview involving the other party, in advance when possible

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- Interview available, relevant witnesses and conduct follow-up interviews as necessary. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions. Disclose when interviews are recorded
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report]Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. An appendix including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) will share the final investigation report with the Title IX Coordinator for review and feedback
- The Investigator will incorporate any relevant feedback from the Title IX Coordinator, and the final investigation report will then be shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and their respective Advisors (if so desired by the parties) will be provided with a secured electronic or hard copy of any directly related evidence that was not included in the final investigation report

### *Role and Participation of Witnesses in the Investigation*

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of University policy and may result in the imposition of discipline against the uncooperative employee. Student witnesses and witnesses from outside the University community are encouraged to cooperate with University investigations and to share what they know about a complaint.

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

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

### *Evidentiary Considerations in the Investigation*

The investigation will not include: 1) incidents not directly related to the alleged Prohibited Conduct, unless they evidence a pattern or practice; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless (a) such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### Hearing

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

The hearing will be scheduled for a date that is not less than ten (10) business days from the conclusion of the investigation, i.e., the date when the final investigation report is transmitted to the parties and the Decision-maker, unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator or Deputy will select an appropriate Decision-maker or Decision-makers from the Pool, at the discretion of the Title IX Coordinator or Deputy. Allegations involving student-employees in the context of their employment will be directed to an appropriate Decision-maker depending on the context and nature of the alleged misconduct.

### *Decision-maker Composition*

The Title IX Coordinator will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also serve as Chair of the hearing. With a panel, one of the three members will be appointed as Chair, at the discretion of the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator or Deputy may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason, at any point during the hearing process.

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

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The Title IX Coordinator or Deputy may not serve as a Decision-maker or Chair in the matter but may provide administrative facilitation of the hearing, if their previous role(s) in the matter do not create a conflict of interest. The hearing will convene at a time determined by the Chair or designee.

### *Evidentiary Considerations in the Hearing*

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the alleged Prohibited Conduct, unless they evidence a pattern or practice; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless (a) such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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

After post-hearing deliberation, the Decision-maker(s) will render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

### *Notice of Hearing*

Not less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice of hearing may contain:

- A list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request to utilize this option must be raised with the Title IX Coordinator at least five (5) business days prior to the start of the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording of the hearing for the parties after the hearing has been completed.
- A statement that if a party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present for any questions they may desire to ask. There are no exceptions.

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- A copy of all the materials provided to the Decision-maker(s) about the matter, unless a copy has been provided already.<sup>13</sup>
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for alleged Prohibited Conduct that occurs near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and is unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 90 business day goal for resolution.

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

### *Alternative Hearing Participation Options*

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

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should advise the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### *Pre-Hearing Preparation and Meetings*

The Chair after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) (or have proffered a written statement or answered written questions), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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<sup>13</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



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The Title IX Coordinator or Deputy will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

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

The Chair may rule on these relevancy and evidentiary arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings. The pre-hearing meeting(s) will not be recorded.

### *Hearing Procedures*

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

Participants at the hearing will include the Chair, any additional Decision-makers, if a panel is used, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any approved witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

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The Chair will respond to questions of hearing procedure raised by the parties or their Advisors. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow approved witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

### *Joint Hearings*

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

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

### Hearing Process

#### *Introductions and Explanation of Procedure*

The Chair is responsible for explaining the hearing procedures and introducing the participants, according to the hearing script. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will then rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator or Deputy will review and decide the challenge.

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

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) are permitted to ask the Investigator(s) for their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of, or questions about, these assessments. If such information is introduced, the Chair will direct that it be disregarded.

### *Testimony and Questioning*

Once the Investigator(s) have presented their report and have been questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors ("cross-examination").

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All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question for relevancy (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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

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

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

### *Recording Hearings*

Hearing proceedings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the hearing recording without permission of the Title IX Coordinator.

### *Deliberation, Decision-making, and Standard of Proof*

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) alleged. If a Decision-maker panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Chair will then prepare a written deliberation statement of the Decision-maker(s) and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any recommended sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

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### *Notice of Outcome*

Using the deliberation statement, the Title IX Coordinator or Deputy will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator or Deputy will then share the Notice of Outcome within 5 business days of receiving the Decision-maker(s)' deliberation statement. The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) alleged to have been violated, including the relevant policy section, and may contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the deliberative determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the determination on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law.

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### Sanctions

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

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

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

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### *Failure to Comply with Sanctions and/or Remedies and/or Responsive Actions*

All Respondents are required to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript. An assigned sanction involving a suspension from the University will only be lifted when compliance with the Notice of Outcome is achieved to the satisfaction of the Title IX Coordinator.

### Withdrawal or Resignation with Charges Pending

#### *Students*

If a student has an allegation pending for violation of the Policy, the University may place a hold on the student's ability to graduate and/or to receive an official transcript/diploma and may be noted on the student's official transcript.

Should a student decide to not participate in the resolution process set forth in this policy, the process may proceed absent their participation to a final resolution. Should a student Respondent permanently withdraw from the University, the resolution process may end, as the University may no longer have disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. A student who withdraws or leaves the University while the process set forth in this policy is pending may not return to the University while the case is unresolved. Such exclusion applies to all campuses of the University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

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

#### *Employees*

Should an employee Respondent resign with unresolved alleged policy violations pending, the resolution process will end, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

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### Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

### Appeals

Any party may file a request for appeal ("Request for Appeal"), which must be submitted in writing to the Title IX Coordinator within 3 business days of the delivery of the Notice of Outcome. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the determination of responsibility, but is limited solely to a determination as to whether the request satisfies one or more of the grounds for appeal and has been timely filed. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

### *Grounds for Appeal*

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or was biased for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 3 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 3 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds

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and the subsequent responses will be shared with the Appeal Panel/Chair and the Chair/Panel will render a decision in no more than 3 business days, barring exigent circumstances.

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

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### *Sanctions Status During the Appeal*

Any sanctions imposed in the Notice of Outcome are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately upon issuance of the Notice of Outcome, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the sanctions in the Notice of Outcome include separation.

### *Appeal Considerations*

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



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privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### Recordkeeping

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

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

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

## Resolution process for reports of misconduct that are outside the scope of a Title IX Violation (Process "B")

### Overview

This portion of the Policy outlines the resolution process for Prohibited Conduct that, as alleged, may violate the University's student conduct policies but does not violate Title IX of the Education Amendments of 1972 or fall within the jurisdiction of the University's Title IX Office. Process B complaints and decisions are not Title IX complaints and decisions. However, if a Complainant so chooses, a complaint that could fall under the jurisdiction of the Title IX Office may still be resolved through Process B proceedings with the Office of Student Conduct.

The Title IX Coordinator has the sole discretion and authority to determine whether a complaint of Prohibited Conduct falls within the jurisdiction of Title IX and Resolution Process "A" set forth above. If a complaint does not fall within Title IX jurisdiction, the Title IX Coordinator will dismiss the complaint and may choose to refer the complaint to the Office of Student Conduct. The Title IX Coordinator's decision to dismiss and/or refer a complaint is final and may not be appealed. However, a Complainant alleging Prohibited Conduct determined by the Title IX Coordinator to not fall within the jurisdiction of Title IX may take their complaint to the Office of Student Conduct on their own accord even if the Title IX Coordinator does not make this referral. Once a complaint has been taken over by the Office of Student Conduct, the Complainant will have the option of pursuing an informal resolution or a Formal Resolution Proceeding.

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## Informal Resolution

### *Process*

The informal resolution process for a complaint of Prohibited Conduct under the jurisdiction of the Office of Student Conduct is identical to that offered through the Title IX Office. Keep in mind, however, that while these informal procedures are the same as those offered for Prohibited Conduct that, as alleged, may violate Title IX, these procedures are not Title IX Procedures and will not be referred to as a Title IX complaint, procedure, violation, or resolution.

The Informal Resolution process may proceed in one of three ways:

- The Office of Student Conduct can resolve the matter informally by providing supportive measures (only) to remedy the situation;
- The parties can agree to resolve the matter through an alternate resolution mechanism, including mediation, restorative practices, etc.; or
- The Respondent can accept responsibility for violating policy, and desire to accept a sanction and end the resolution process.

No information that is exchanged during an informal resolution process through the Office of Student Conduct may be used in future formal resolution process of a Title IX complaint of Prohibited Conduct. For example, an acceptance of responsibility by a Respondent in an informal resolution process cannot then be used as any kind of evidence in a future formal Title IX complaint of Prohibited Conduct proceeding against the Respondent.

### *Resolution*

The sanctions offered through the informal resolution processes will vary depending on how the process looks. As stated, there may be no sanctions if the matter is resolved solely through the use of supportive measures provided to the Complainant. If an alternate resolution mechanism is used or the Respondent accepts responsibility, there is a wide variety of sanctions/actions that could be imposed as a result. These sanctions/actions range from a formal apology, to imposed volunteer service, to required intervention measures and are at the discretion of the Office of Student Conduct with the direction and collaboration of the parties. The final outcome, including decision and sanctions/actions, of an informal resolution process is not appealable by either party.

## Formal Process B Resolution

The University recognizes that a resolution that requires personal interaction between parties may disincentivize claims. For that reason, the University has structured the Formal Process B Resolution to be offered in a way that claims can come to a meaningful conclusion, without interaction between the parties.

### *Initial Investigation*

After receiving the complaint from the Title IX Coordinator or directly from the Complainant, the Office of Student Conduct will designate a Case Manager for the complaint who will be in charge of conducting the investigation. The Case Manager will reach out to the Complainant to get a full report on the incident and verify a desire to continue with the formal resolution process. After speaking with the Complainant, the Case Manager will then reach out to all individuals involved (parties and witnesses) to get statements from them. Both parties will have a full and equal opportunity to present the facts. All witnesses must have observed the incident or have information relevant to it in order to give a

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statement. Witnesses are not permitted to participate solely to speak about an individual's character or to speak solely from a perspective of personal opinion. Witnesses are expected to cooperate with the Case Manager. A witness who fails to appear for a scheduled interview, knowingly provides false information, and/or otherwise refuses to cooperate, may become the subject of separate disciplinary action by the Office of Student Conduct. The Case Manager is a neutral factfinder who will approach every investigation with a presumption that the Respondent is not responsible; a presumption that can only be overcome by sufficient evidence to the contrary.

### *Review of the Investigation Report*

Once statements from the parties and witnesses have been received, the Case Manager will compile a report of the investigation that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties. The Case Manager has the discretion to redact information found to be irrelevant, more prejudicial than probative, or immaterial to a determination of responsibility. This initial investigation report will not include any investigative findings.

Before being finalized, the Complainant and Respondent will both have the opportunity to review their own statement and, as permitted by FERPA, a summary of other information collected during the investigations, including statements of the other party(ies) and witnesses. At this time, either party may submit any additional comment or evidence to the Case Manager within three (3) business days of receipt of the draft investigation report.

### *Findings Finalized*

After any additional comments or evidence are submitted, or after the three day period has passed without comment or evidence, the Case Manager will make a written finding as to whether there is sufficient evidence to suggest that a Student Conduct Code violation may have occurred by a preponderance of the evidence and include the written finding in the final investigation report.

A preponderance of the evidence means that a party has shown that its version of the facts is more likely to be true than not. The preponderance of the evidence standard is satisfied if there is a greater than fifty (50) percent chance that the proposition is true.

### *Decision Rendered*

The final investigation report, including the official finding of responsibility or nonresponsibility, will be simultaneously submitted to the Complainant and Respondent.

### *Adjudication*

If the Case Manager finds responsibility, by a preponderance of evidence, for a violation of the Code of Student Conduct, the matter will be referred to an individual, previously uninvolved in the investigation or decision making, designated as the Adjudicator.

The Adjudicator's role is to administer sanctions/actions against the Respondent. The Adjudicator will have access to all relevant information that was available to the Case Manager and will have the opportunity to speak with the parties and witnesses as deemed necessary to render a decision. The Adjudicator will typically render their decision within 7 (seven) business days of being appointed to the adjudication. All parties will be appropriately notified, if that timeline needs to be extended.

### *Appeal*

Within three (3) business days of receipt of the Adjudicator's final decision, the Complainant and Respondent each will have the opportunity to appeal. The Title IX Coordinator will designate an

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individual previously uninvolved in the investigation or decision-making to serve as the Appellate Officer. A party wishing to appeal the Adjudicator's final decision will submit the appeal in writing to the Appellate Officer, designating all the aspects of the Adjudicator's final decision they wish to appeal. The appeal is not an opportunity to submit new statements or evidence and is restricted to an on-paper review of the Adjudicator's final decision. Once the Appellate Officer has reviewed all of the information submitted by the parties on appeal within the relevant timeframe, and the Adjudicator's decision and rationale, paying close attention to the appellee's specified areas in the request for appeal, the Appellate Officer will deliver, in writing, a decision to both parties. The Appellate Officer's decision will encompass both responsibility and sanctions/actions imposed. The Appellate Officer will typically submit their decision within seven (7) business days of receiving the request for appeal. All parties will be reasonably notified, if that timeline needs to be extended. The decision of the Appellate Officer is final and is not subject to further appeal by either party, even if the original decision is reversed on appeal.

### Revision of this Policy and Procedures

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

During the investigation and resolution processes, the Title IX Coordinator reserves the right to make minor modifications to procedures that do not materially jeopardize the fairness owed to all party, e.g. to accommodate summer schedules. The Title IX Coordinator may also revise procedures materially with notice (on the University's website, with the appropriate effective date identified) upon determining that changes to the law or regulations or changes in interpretation of the law or regulations, require such policy or procedural revisions.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally. This policy becomes effective August 14, 2020.

### Glossary

- **Advisor** means a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. Marymount reserves the right to contract Advisors.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Complaint (formal)** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).

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- **Day** means a business day Marymount University is in normal operation.
- **Education program or activity** means locations, events, or circumstances where Marymount University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Marymount University.
- **Final Determination:** A conclusion by preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.
- **Finding** means conclusion by preponderance of evidence that the conduct did or did not occur as alleged.
- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- **Grievance Process Pool** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within the University’s Formal Grievance process. Marymount reserves the right to contract Hearing Decision-makers.
- **Investigator** means the person or persons charged by a member of the Marymount Title IX team with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence. Marymount reserves the right to contract investigators.
- **Mandated Reporter** means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.<sup>14</sup>
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of Marymount University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Grievance Process detailed below and defined above.
- **Process B** means any process designated by the University to apply only when Process A does not, as determined by the Title IX Coordinator.
- **University** means a postsecondary education program that is a University of federal funding. In this policy, University is used to reference Marymount University.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

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<sup>14</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

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- **Resolution** means the result of an informal or Formal Grievance Process.
- **Sanction** means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- **Title IX Coordinator** is at least one official designated by Marymount University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool. Marymount reserves the right to contract members of the Title IX team.

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES  
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