

# The *POLICY* AGAINST SEXUAL HARASSMENT AND PROCEDURES FOR SUPPORTING FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES WHO EXPERIENCE IT

Case Western Reserve University

<b><u>I. GENERAL PROVISIONS</u></b>	6
<b>A. Application</b>	6
<b>B. The Title IX Coordinator</b>	6
<b>C. Statement of the Rights of Persons Impacted by Sexual Harassment</b>	7
<b>D. Terms Used in this <i>Policy</i></b>	8
<b>E. Independence and Conflict-of-Interest</b>	10
<b>F. Supportive Measures</b>	11
<b>G. Right to an Advisor</b>	12
1. Who Can Serve as an Advisor and Obtaining a Trained Advisor	12
2. Advisor's Role in Meetings and Interviews	12
3. Pre-Interview Meetings	12
4. Advisor Violations of CWRU <i>Policy</i>	12
5. Sharing Information with the Advisor	13
6. Privacy of Records Shared with Advisor	13
7. Expectations of an Advisor	13
8. Expectations of the Parties with Respect to Advisors	13
<b>H. Emergency Removal</b>	14
<b>I. Jurisdiction of CWRU</b>	15
<b>J. Promptness</b>	16
<b>K. Time and Other Limits on Reporting</b>	16
<b>L. Sexual Harassment</b>	16
<b>M. Online Sexual Harassment</b>	20
<b>N. Consent, Incapacitation and Coercion</b>	20
1. Consent	20
2. Incapacitation	21
3. Coercion	21
<b>O. Retaliation</b>	21
<b>P. Trained Pool</b>	22

1. Pole Member Roles	
2. Investigator, Panel Member Appointment and Advisor	22
3. Pool Member Training	22
<b>Q. Responsible Employee Reporting</b>	23
1. Confidential Resources	24
2. Responsible Employees	24
<b>R. Amnesty for Complainants and Witnesses</b>	25
<b>S. Federal Statistical Reporting and Timely Warning Obligations</b>	25
<b>T. Academic Freedom</b>	25
<b>U. Recordkeeping</b>	25
<b>V. Disability Accommodations</b>	26
<b>W. Revision of this <i>Policy</i> and Procedures</b>	26
 <b><u>II. RESOLUTION PROCESS PROVISION COMMON TO ALL CASES</u></b>	 26
<b>A. Alternative Resolution Options</b>	26
1. Resolution through mediation or negotiation with the Title IX Coordinator or Designee	27
2. Parties privately engage in mediation or negotiation	27
3. Respondent Accepts Responsibility for Alleged Violations	27
4. Resolution by decision maker	27
<b>B. Assignment of Investigators and Bias</b>	28
<b>C. Counterclaims</b>	28
<b>D. Remote Meetings, Interviews and Hearings</b>	28
<b>E. Role and Participation of Witnesses in the Investigation</b>	29
<b>F. Recording of Interviews</b>	29
<b>G. Evidence</b>	29
<b>H. Draft Investigation Report</b>	29
<b>I. Sending a Matter for a Hearing and Determination</b>	29
<b>J. False Allegations and Evidence</b>	30
<b>K. Hearing Panel Composition</b>	30
<b>L. Notice of Hearing</b>	30

<b>M. Pre-Hearing Matters</b>	31
<b>N. Pre-Hearing Meetings</b>	31
<b>O. Joint Hearings</b>	32
<b>P. Hearing Procedures</b>	32
1. The Investigator Presents the Final Investigation Report	32
2. Refusal to Answer Questions	32
3. Resure Concerns that Hearing Procedures not Followed	32
<b>Q. When Parties and Witnesses Choose Not to Participate</b>	33
<b>R. Evidentiary Considerations in the Hearing</b>	34
<b>S. Recording Hearings</b>	34
<b>T. Deliberation, Decision-making, and Standard of Proof</b>	34
<b>U. Outcome Letter</b>	35
 <b><u>III. RESOLUTION PROCESS A</u></b>	 35
<b>A. Notice and Initial Assessment</b>	35
<b>B. Dismissal from Process A</b>	36
<b>C. Process A Options for Alternative Resolution</b>	37
<b>D. Complaint Process: Notice of Investigation and Allegations</b>	37
<b>E. Steps in the Investigation Process</b>	38
<b>F. Referral for Hearing</b>	39
<b>G. Notice of Hearing under Process A- Information about Advisor</b>	39
<b>H. Questions for the Parties and Witnesses in a Process A Hearing</b>	40
 <b><u>IV. RESOLUTION PROCESS B (IN MATTERS WHERE PROCESS A IS NOT APPLICABLE)</u></b>	 40
<b>A. Notice and Initial Assessment</b>	40
<b>B. Dismissal From Process B</b>	41
<b>C. Advisors</b>	41
<b>D. Process B Options for Alternative Resolution</b>	41
<b>E. Notice of an Investigation</b>	41
<b>F. Investigation</b>	42

<b>G. Hearing</b>	43
 <b><u>V. SANCTIONS, POST HEARING MATTERS</u></b>	 43
<b>A. Sanctions</b>	43
1. Guidelines for Issuing Sanctions after a Finding of Responsibility	43
2. Factors Impacting Sanctions	44
3. List of Possible Sanctions	44
<b>B. Withdrawal or Resignation While Charges Pending</b>	45
1. Students	46
2. Employees	46
<b>C. Long-Term Remedies/Other Actions</b>	46
<b>D. Failure to Comply with Sanctions and/or Interim and Long-Term Remedies and/or Responsive Actions</b>	47
<b>E. Appeals</b>	47
1. Grounds for Appeal	47
2. Appeals process	
3. Status of Sanctions During the Appeal	48
4. Appeal Considerations	48

## **I. GENERAL PROVISIONS**

### **A. Application**

This *Policy* prohibits sex- or gender-based discrimination that takes the form of sexual harassment. There are many forms of sexual harassment. This *Policy* strives to prohibit all sexual harassment by categorizing sexually harassing conduct as sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence, which are defined in this *Policy*. In this *Policy*, sexual violence is a serious form of sexual harassment.

This *Policy* contains the procedures which the Office for Equity of Case Western Reserve University (“CWRU”) will use to support students, faculty, staff and others who experience sexual harassment or who are accused of violating this *Policy*, and includes the investigation procedures used to assess whether sexual harassment occurred and steps to stop that conduct and/or prevent its reoccurrence. This *Policy* contains two separate procedures, “Process A” and “Process B.” which apply to different situations in which sexual harassment is reported to have occurred. The Title IX Coordinator helps members of the CWRU community understand which procedures apply to their situation.

Allegations of sex-based discrimination in which the possible misconduct does not constitute sexual harassment, such as gender discrimination in education or employment, or retaliation against a person who asserted rights granted in this *Policy*, may be subject to resolution pursuant to this *Policy*, but are not resolved using Process A or Process B, which apply only to allegations of sexual harassment. Sex-based discrimination includes discrimination based on pregnancy, parental status, gender identity or expression, transgender status and sexual orientation, as well as failure to accommodate pregnancy or parental status.

When the person accused of violating this *Policy* is a member of the CWRU community, the procedures in this *Policy* may be available regardless of whether the person reportedly experiencing the sexual harassment is a member of the CWRU community. The CWRU community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. This *Policy* may apply to incidents, patterns and/or the campus climate, all of which may be addressed and investigated in accordance with this *Policy*.

### **B. The Title IX Coordinator**

Title IX of Education Amendments of 1972 (“Title IX”) prohibits discrimination based on sex, including sexual harassment, in education programs that receive federal funding.

Members of the CWRU community and others should direct questions about the implementation of Title IX to situations impacting the CWRU community, and its educational programs and activities, to the Title IX Coordinator.

The Title IX Coordinator is:

Rachel E. Lutner, J.D.  
Senior Associate Vice President for Equity  
University Title IX Coordinator  
Section 504 Coordinator  
Nursing Research Building, Suite 1180  
2120 Cornell Road  
Cleveland, OH 44106  
216-368-3066 [rachel.lutner@case.edu](mailto:rachel.lutner@case.edu)  
<http://www.case.edu/equity/>

Reports may also be directed to the Office of Civil Rights, United States Department of Education, <http://www.ed.gov/about/offices/list/ocr/index.html>. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with the government authorities:

Office of Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline#: 1-800-421-3481  
Fax: (202) 453-6012  
TDD: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)/ocr

Cleveland Office  
Office of Civil Rights  
U.S. Department of Education  
1350 Euclid Avenue, Suite 325  
Cleveland, OH 44115-1812  
Telephone: (216) 522-4970  
Fax: (216) 522-2573;  
TDD: (800) 877- 8339  
Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

### **C. Statement of the Rights of Persons Impacted by Sexual Harassment**

Students, faculty, staff and others in the CWRU community who are impacted by sexual harassment, because they have either experienced sexual harassment or are accused of engaging in sexual harassment (collectively, "Parties"), are granted equal rights by this *Policy*. Those rights are described below.

All Parties have the right to:

1. Be immediately offered support, including information, resources and connections to counseling, advocacy, housing, transportation and health care, as well as academic support, as appropriate based on the situation.
2. Be immediately offered a CWRU-implemented no contact order or no-trespass order, if appropriate.
3. Be immediately offered available assistance in changing academic, living, and/or working situations designed to enable a Party to feel safe and able to focus on their academic or professional success.
4. Have CWRU maintain that support for as long as necessary, and that the offer of support is repeated in subsequent interactions as the Party's situation changes.
5. Have CWRU offer and maintain that support for as long as necessary without regard to whether a Party has provided information in an investigation and/or chooses to participate in an investigation and, possibly, a hearing.
6. Participate or choose not to participate in any process, meeting or investigation occurring pursuant to this *Policy*.
7. A fair and equitable investigation, in which both Parties are treated fairly, and with respect and sensitivity, at all times.
8. Be informed of an investigation in writing (such as email) of the identity of the Parties involved (if known), the misconduct being alleged, the date and location of the alleged misconduct (if known), the policies and procedures which may be relevant to the decision to investigate or the outcome of the investigation, and possible sanctions.
9. Be timely informed in writing if the conduct being investigated changes, expands or if certain allegations are no longer part of the investigation, or if new or different policies and procedures, or sections of this *Policy*, become relevant to the investigation, its outcome and possible sanctions.

10. Have this *Policy* and its procedures are followed in good faith.
11. Freely choose whether to resolve a matter through an alternative resolution option (if all appropriate persons also agree) or investigation and, possibly, a hearing.
12. Have all allegations of sexual harassment treated seriously by the Office for Equity.
13. Present defenses to allegations of sexual harassment, and have those defenses investigated by the Office for Equity.
14. Be informed of options to notify law enforcement authorities, including on-campus and local police, freely choose whether to report or not report to law enforcement, and be assisted and supported by CWRU in whatever choice is made.
15. Ask questions of the staff in the Office for Equity and to have those questions timely answered.
16. Provide evidence, including one's own account of what occurred, the names of witnesses and documents, to the investigator, and to have all relevant evidence considered in the investigation.
17. The right to receive a draft of the Investigation Report, and then be able to review it, and respond to it, and to have that response become part of the final Investigation Report.
18. Request and receive regular updates on the status of the investigation and/or Resolution Process.
19. Have the investigation conducted and decisions made by persons who are properly trained.
20. Have an Advisor present at all meetings and/or interviews associated with the investigation or resolution.
21. Have CWRU compel the participation of faculty, staff and student witnesses in the investigation and resolution process.
22. Be promptly informed of developments and decisions simultaneously as other Party(ies).
23. A Hearing Panel that is not comprised of individuals who are all male or female, on request by a Party.

#### **D. Terms Used in this *Policy***

1. An *Advisor* is someone chosen by the person who experienced sexual harassment or the person who is accused of violating this *Policy*, or appointed by CWRU, to accompany a person to meetings related to the processes described in this *Policy*, advise that person on that process, and question the other person at a Process "A" hearing, if any.
2. *Alternative Resolution* means alternatives to Process A and Process B, described below, that do not require a hearing in which the person who experienced sexual harassment and the person accused of violating this *Policy* ask questions of one another, through the Hearing Chair or an Advisor.
3. *Complainant* is person who may have experienced sexual harassment or retaliation that violates this *Policy*.
4. *Complaint* is description of allegations that will be investigated pursuant to this *Policy*. A person who reports experiencing sexual harassment will approve or sign a document affirming the accuracy of the allegations prior to a Complaint being issued unless the Title



IX Coordinator issues the Complaint. A Complaint describes the allegations to be investigated by the Office for Equity.

5. *Confidential Resource* means a CWRU employee who is not a Responsible Employee, who must share information with the Office for Equity when a member of the CWRU community may have experienced sexual harassment or retaliation. Confidential Resources do not share information with the Office for Equity.
6. *Days* means business days.
7. *Determination, Finding or Outcome*: A conclusion by the preponderance of the evidence that the alleged conduct occurred or did not occur, and did or did not violate this *Policy*.
8. *Directly Related Evidence* is evidence connected to a possible violation of this *Policy*, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation), and will not be relied upon in the decision-making process.
9. *Education Program or Activity* means locations, events or circumstances where CWRU exercises substantial control over the person accused of violating this *Policy* and the context in which the reported sexual harassment occurs, and includes any building owned or controlled by a student organization that is officially recognized by CWRU.
10. *Hearing Panel* refers to persons who are part of the Trained Pool and selected to hear evidence in a hearing and determine whether this *Policy* was violated and, if so, the appropriate sanctions, if any. The Hearing Chair is the leader of the Hearing Panel and is responsible for the operation of the hearing and preparing the Outcome letter documenting the findings made by the Hearing Panel.
11. *Interim or supportive measures* are steps taken to support a person who may have experienced sexual harassment or who is accused of violating this *Policy*. Supportive measures are designed to enable a person to focus on their academic and professional success, as much as possible, without negative impact arising from the situation involving the sexual harassment or retaliation.
12. *Investigator* means the person or persons designated by the Office for Equity with gathering facts about a reported violation of this *Policy*, assessing relevance, synthesizing the evidence, and compiling this information into an Investigation Report and file of directly related evidence.
13. *Notice* means that an employee, student or third person has informed the Title IX Coordinator, the Office for Equity or other Official with Authority that a member of the CWRU community may be experiencing sexual harassment or retaliation for exercising rights under this *Policy*, or engaging in sexual harassment or retaliation.
14. *Office for Equity* means the CWRU staff in the Office for Equity, and designees, which is the office that is primarily responsible for implementing this *Policy* and its procedures.
15. *Official with Authority (OWA)* means an employee of CWRU who is responsible for eliminating conduct that violates this *Policy* by sharing information with the Title IX Coordinator.
16. *Outcome* is the end result of a process pursuant to this *Policy*, such as a decision by a Hearing Panel or a determination by an Appeal Panel about the result of a Party's appeal.
17. *Parties* include the person who may have experienced sexual harassment and the person alleged to have violated this *Policy*, collectively.
18. *Process* refers to the procedures in this *Policy*.

19. *Process A*, below, addresses conduct that falls within this *Policy* and the scope of Title IX as defined in its regulations (34 §CFR Part 106.45).
20. *Process B* addresses conduct that constitutes sexual harassment but falls outside of Title IX as defined in its regulations.
21. *Remedies and remedial measures* are implemented after there is a determination that a member of the CWRU community experienced sexual harassment and/or violated this *Policy* to address safety concerns, stop the sexual harassment, prevent it from happening again and restore access to CWRU's educational program, if needed.
22. *Respondent* is a person who is reported to have violated this *Policy* by engaging in sexual harassment or retaliation.
23. *Responsible Employee* means an employee of CWRU who is required to share with the Office for Equity information that a member of the CWRU community may be experiencing sexual harassment or retaliation, or engaging in sexual harassment or retaliation.
24. *Resolution Process* means the procedures that result in an Outcome of a matter investigated pursuant to this *Policy*. A Resolution Process may occur pursuant to Process A, Process B or an alternative resolution option.
25. *Sanction* means a consequence imposed by CWRU on a person who is found to have violated this *Policy*.
26. *Sexual Harassment* refers to the conduct prohibited by this *Policy* and includes sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
27. *Title IX Coordinator* is at least one official designated by CWRU to ensure compliance with Title IX and implement this *Policy*. References to the Title IX Coordinator may encompass someone who is designated by the Title IX Coordinator to perform a specific task.
28. *Trained Pool* includes members of the CWRU community who have been trained on this *Policy* and how to serve as a hearing or appeal panel member or chair, or as an Advisor
29. *Written notice, in writing or communication* means by email or other appropriate method of communication. This *Policy* assumes that communications reach their intended recipient. All persons contacted in writing pursuant to this *Policy* are required to regularly check their CWRU email.

## **E. Independence and Conflict-of-Interest**

The Title IX Coordinator implements Title IX and the processes described in this *Policy*. The Title IX Coordinator acts with independence and authority, and is free of bias and conflicts of interest.

The employees in the Office of Equity, the members of the Trained Pool or designees of the Title IX Coordinator are trained to ensure they are not biased for or against any person in a specific case, or generally for or against persons who report experiencing sexual harassment or those accused of violating this *Policy*. Parties may, at any time during the Process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator or Trained Pool member or other person will be assigned to eliminate the impact of the bias or conflict, if any.

Any person seeking to raise any concern involving bias or conflict of interest by the Title IX Coordinator should contact the Office of General Counsel. Any person seeking to raise concerns of bias or a potential conflict of interest by anyone else involved in implementing this *Policy* or the procedures described in it should contact the Title IX Coordinator.

## **F. Supportive Measures**

Once notified of alleged sexual harassment or retaliation, CWRU offers and implements appropriate and reasonable supportive measures for both people who may have experienced sexual harassment and those accused of violating this *Policy*<sup>1</sup>.

Supportive measures are non-disciplinary, non-punitive individualized services and supports offered as appropriate, as reasonably available, and without fee or charge to restore or preserve access CWRU's education program or activity, including measures designed to protect the safety of a member or members of the CWRU community and/or deter harassment, discrimination, and/or retaliation. Supportive measures are implemented without a finding or outcome of an investigation.

The Title IX Coordinator promptly makes supportive measures available to both Parties upon learning that a member of the CWRU community may have experienced sexual harassment or is accused of engaging in sexual harassment. At the time that supportive measures are offered, CWRU will inform the person who may have experienced sexual harassment, in writing, of the option to request an investigation, either immediately or in the future, of the sexual harassment, if they have not done so already. The Title IX Coordinator works with the Parties to ensure that effective, appropriate supportive measures are implemented to address the Parties' needs.

As much as is reasonably possible, CWRU maintains the privacy of the supportive measures and implements them so that they have as minimal an academic or occupational impact on the Parties as possible, and do not unreasonably burden either Party, .

These actions may include, but are not limited to:

1. Referral to counseling, medical, and/or other healthcare services
2. Referral to the Employee Assistance Program Impact Solutions
3. Referral to community-based service providers
4. Visa and immigration assistance
5. Student financial aid counseling
6. Education to the community or community subgroup(s)
7. Altering campus housing assignment(s)
8. Altering work arrangements for employees or student-employees
9. Safety planning
10. Providing campus safety escorts
11. Providing transportation accommodations
12. No Contact Directives (prohibiting contact and communications between two or more persons)
13. Academic support, extensions of deadlines, or other course/program-related adjustments
14. Persona Non Grata (PNG) (prohibiting a person from being in a particular building or residence hall, or on a particular campus or in a specific location)
15. Timely Warnings
16. Class schedule modifications, withdrawals, or leaves of absence

---

<sup>1</sup> Allegations of retaliation for exercising rights granted by this *Policy* are handled generally under this *Policy* but not under Process A or Process B.

17. Increased security and monitoring of certain areas of the campus

18. Any other actions deemed appropriate by the Title IX Coordinator

No Contact Orders, PNGs, and other supportive measures which, while requested by one person, may impact another person, may be implemented without advance notice to the non-requesting person. Violations of No Contact Orders and PNGs will be investigated as retaliation pursuant to this *Policy*.

## **G. Right to an Advisor**

The Parties may each have an Advisor of their choice present with them for all meetings and proceedings conducted pursuant to this *Policy*. Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.

The Title IX Coordinator may permit Parties to have more than one Advisor. The decision to grant this request is at the discretion of the Title IX Coordinator.

### **1. Who Can Serve as an Advisor and Obtaining a Trained Advisor**

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, and accompany them, throughout the Resolution Process. The Parties may choose Advisors from inside or outside CWRU.

On request of a Party, the Title IX Coordinator will assign a trained Advisor to support the Party.

CWRU cannot guarantee all Advisors are equally able to effectively advise the Parties. As a result, if one Party selects an Advisor who is an attorney, but the other Party does not select or cannot afford an attorney, CWRU will not provide an attorney as an Advisor to the other Party.

### **2. Advisor's Role in Meetings and Interviews**

Each Party may be accompanied by an Advisor in all meetings and interviews conducted pursuant to this *Policy* and which the Party is entitled to be present. Advisors should help Parties prepare for each meeting, ask questions, provide information, articulate the Party's position and need for support, advise ethically, and act with integrity and in good faith.

### **4. Pre-Interview Meetings**

Advisors may request to meet with the Title IX Coordinator or Investigator conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting may enable an Advisor to clarify and understand their role pursuant to this *Policy* and best support the Party with whom the Advisor is working.

### **5. Advisor Violations of CWRU 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).

Advisors may not make a presentation or represent a Party during any meeting or proceeding and may not speak on behalf of the Party to the Investigator(s) or other Decision-maker(s) except when asking questions during a Process A hearing.

The person who reportedly experienced sexual harassment and the person accused of engaging in that conduct are each expected to ask and respond to questions on their own, including during an investigation, hearing or alternative resolution phase of the Resolution Process. Although an Advisor may not speak on behalf of a Party, the Advisor may consult with the Party with whom they are working, either privately, 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 oversteps their role as defined by this *Policy* will be warned only once. If the Advisor continues to disrupt or otherwise fail to respect the limits of the Advisor role, the meeting will end, or other appropriate measures will be implemented to address the disruption or misconduct. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### 6. Sharing Information with the Advisor

The Parties may request that the CWRU share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals.

CWRU will provide the Parties with a consent form to authorize CWRU to share information with a Party's Advisor. The Parties must either complete and submit this form to the Office of Equity or provide similar documentation demonstrating consent to a release of information to the Advisor before the university will share records with an Advisor.

#### 7. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy and confidentiality of the records and information shared with them. Advisors may not share such records and information with others, disclose them publicly or use them for purposes not explicitly authorized by this *Policy*. CWRU may seek to restrict the role of any Advisor who fails to abide by the university's privacy expectations.

#### 8. Expectations of an Advisor

CWRU expects an Advisor to adjust their schedule to attend meetings pursuant to the procedures in this *Policy*, but may change scheduled meetings to accommodate an Advisor's schedule, if doing so does not cause an unreasonable delay.

Advisors may attend meetings pursuant to this *Policy* by telephone, video conferencing or other available technologies.

#### 9. Expectations of the Parties with Respect to Advisors

A Party may elect to change Advisors during the Resolution Process and neither is 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).

The Parties must timely notify the Title IX Coordinator if they change Advisors. It is assumed that if a Party changes Advisors, consent to share information with the previous Advisor is terminated, and a Party must execute a release of information as to the new Advisor. 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.

## **H. Emergency Removal**

CWRU can remove a student who is accused of sexual harassment entirely or partially from an education program 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 Behavioral Intervention Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, or, if the person accused of violating this *Policy* is a student organization, two (2) representatives from the student organization, 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 explain why the action/removal should not be implemented or should be modified. A person accused of violating this *Policy* may be accompanied by an Advisor at this meeting with the Title IX Coordinator. The person accused of violating this *Policy* will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The purpose of this meeting is not to determine if the person accused of violating this *Policy* engaged in sexual harassment or retaliation, but is intended to determine only whether the emergency removal is appropriate. When this meeting is not requested within 48 hours, objections to the emergency removal will be deemed waived. A person who reports experiencing sexual harassment by the student who is being removed on an emergency basis pursuant to this *Policy* section, accompanied by an Advisor, if desired, may participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to sexual harassment. There is no appeal process for emergency removal decisions.

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

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

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on a person who is being removed pursuant to this *Policy* section.

This section also applies to employees, who may also be removed on an emergency basis pursuant to this *Policy* section. When the person for whom emergency removal may be issued is an employee, CWRU policies relating to employees are also applicable.

## **I. Jurisdiction of CWRU**

This *Policy* applies to the education program and activities of CWRU, to conduct that takes place on campus or on property owned or controlled by CWRU, at CWRU-sponsored events, or in buildings owned or controlled by CWRU's recognized student organizations.

The person accused of violating this *Policy* must be a member of CWRU's community for the alternative resolution, investigation and hearing procedures described in this *Policy* to apply.

Regardless of where the conduct occurred, CWRU will assess whether conduct reported to violate this *Policy* occurred in the context of CWRU's employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

This *Policy* also applies to the effects of off-campus misconduct that effectively deprives someone of access to CWRU's educational programs or employment. CWRU may also extend jurisdiction to off-campus and/or online conduct when the Title IX Coordinator determines that the conduct affects a substantial university interest.

A "substantial university interest", which may warrant applying this *Policy* to off-campus or online conduct, includes any or all of the following:

1. The conduct reported to violate this *Policy* 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.
2. The person whose conduct is reported to violate this *Policy* poses an immediate threat to the physical health or safety of any student or other member of the CWRU community.
3. The conduct reported to violate this *Policy*, or the person engaging in that conduct, significantly impinges upon the rights, property or academic or professional success of the person who may have experienced the sexual harassment or other conduct that violates this *Policy*, or others, or significantly breaches the peace and/or causes social disorder.
4. Any situation that is detrimental to the educational interests or mission of the university.

If the person who is accused of violating this *Policy* is unknown or is not a member of the CWRU community, the Title IX Coordinator will assist the person experiencing the reported sexual harassment in identifying appropriate campus, local and other resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement.

If the person who is accused of violating this *Policy* is not a member of the university community, the Office for Equity will provide supportive measures, remedies and resources to the person experiencing the reported sexual harassment or other misconduct.

This *Policy* applies to vendors serving CWRU through third-party contracts.

When the person accused of violating this *Policy* is enrolled in or employed by another institution, the Title IX Coordinator can help the person experiencing the sexual harassment connect with the appropriate individual at that other institution.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee who experiences sexual harassment in an externship, study abroad program, or other environment external to CWRU where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to that person.

## **J. Promptness**

All investigations will be conducted as swiftly as possible, while also balancing the Parties' rights to preparation time, the presence of an Advisor, schedules and other considerations. Complaints may take **60-75** business days to resolve. The Parties will be informed of circumstances that create delay.

CWRU may briefly delay an investigation when the conduct that is the subject of the investigation also results in criminal charges that are being investigated by law enforcement. This Resolution Process is not typically altered or precluded on the grounds that civil or criminal charges involving the underlying allegations are pending, or have been dismissed or reduced.

## **K. Time and Other Limits on Reporting**

There is no time limitation on providing notice that sexual harassment has or may have occurred or is occurring or filing Complaints pursuant to this *Policy*. A Complaint making allegations about a person who is no longer enrolled at or employed by CWRU may, pursuant to this *Policy*, be impossible to effectively investigate, or beyond the jurisdiction of this *Policy*.

Any person sharing an experience of sexual harassment is eligible for appropriate support, even when the person accused of violating this *Policy* is no longer enrolled at or employed by CWRU.

## **L. Sexual Harassment**

Case Western Reserve University has adopted the following definitions of sexual harassment 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 or expression of those involved.

All definitions encompass actual and/or attempted offenses.

Sexual Harassment, is a broad term that includes conduct more specifically defined sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or gender or that is sexual that satisfies one or more of the following:

1. Quid Pro Quo:
  - a) an employee of CWRU
  - b) conditions the provision of an aid, benefit, or service of CWRU
  - 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 the CWRU's education program or activity.<sup>2</sup>

3. Sexual assault, defined as:

a) Sex Offenses, Forcible:

- i) Any sexual act<sup>3</sup> directed against another person,
- ii) without the consent of the Complainant,
- iii) including instances in which the Complainant is incapable of giving consent.

b) Sex Offenses, Non-forcible:

- i) Incest:

---

<sup>2</sup>Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below 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>Sexual acts include:

- 1) Forcible Rape:
  - a) Penetration,
  - b) no matter how slight,
  - c) of the vagina or anus with any body part or object, or
  - d) oral penetration by a sex organ of another person,
  - e) without the consent of the Complainant.
- 2) Forcible Sodomy:
  - a) Oral or anal sexual intercourse with another person,
  - b) Forcibly,
  - c) and/or against that person's will (non-consensually), or
  - d) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- 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 person,
  - d) forcibly,
  - e) and/or against that person's will (non-consensually),
  - f) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- 5) Forcible Fondling:
  - a) The touching of the private body parts of another person (buttocks, groin, breasts),
  - b) for the purpose of sexual gratification,
  - c) Forcibly,
  - d) and/or against that person's will (non-consensually),
  - e) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- (1) Non-forcible sexual intercourse,
- (2) between persons who are related to each other,
- (3) within the degrees wherein marriage is prohibited by Ohio State law.

ii) Statutory Rape

- (1) Non-forcible sexual intercourse,
- (2) with a person who is under the statutory age of consent of 16 years of age.

4. Dating Violence, defined as:

- a) Violence,
- b) on the basis of sex,
- c) committed by a person,
- d) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i) 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—
    - (1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - (2) Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence<sup>4</sup>, defined as:

- a) Violence,
- b) on the basis of sex,
- c) committed by a current or former spouse or intimate partner of the Complainant,
- d) by a person with whom the Complainant shares a child in common, or
- e) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of State of Ohio, or
- g) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Ohio.

6. Stalking, defined as:

---

<sup>4</sup>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.

- a) engaging in a course of conduct<sup>5</sup>,
- b) on the basis of sex,
- c) directed at a specific person, that
  - 1. would cause a reasonable person<sup>6</sup> to fear for the person's safety, or
  - 2. the safety of others; or
  - 3. Suffer substantial emotional distress<sup>6</sup>.

7. Sexual Exploitation, defined as:

- a) Taking non-consensual or abusive sexual advantage of another,
- b) for their own benefit, or
- c) for the benefit of anyone other than the person being exploited, and
- d) that conduct does not otherwise constitute sexual harassment under this *Policy*.

7.5 Examples of Sexual Exploitation include, but are not limited to:

- a) 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)
- b) Invasion of sexual privacy.
- c) 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 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.
- d) Prostituting another person.
- e) 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.
- f) 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 nonconsensual sexual activity.
- g) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections.

---

<sup>5</sup> 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.

<sup>6</sup> Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. <sup>6</sup> Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

- h) 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.
- i) Knowingly soliciting a minor for sexual activity.
- j) Engaging in sex trafficking.
- k) Creation, possession, or dissemination of child pornography.
- l) Extortion, sextortion and/or blackmail relating to the threatened disclosure of pictures or videos of sexual activity, or information or other action related to sex or sexual activity.

## **M. Online Sexual Harassment**

This *Policy* includes online sexual harassment when the alleged misconduct occurs in or has an effect on persons in the CWRU community and CWRU's education program and activities, or is facilitated by CWRU networks, technology, or equipment.

Conduct which may constitute online sexual harassment in violation of this *Policy* includes sextortion, revenge pornography, photographs and videos of private body parts or sexual activity taken or shared without consent, disparaging a person because the person took action pursuant to this *Policy* (including supporting another person, making a complaint or providing evidence to refute allegations in a complaint), unwelcome sexual or sex-based messaging, threatening to engage in any of the conduct mentioned in this paragraph or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm a member of the CWRU community.

## **N. Consent, Incapacitation and Coercion**

### **1. Consent**

Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of every person to continually and on an ongoing basis determine that the other has consented prior to engaging in sexual activity.

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

Consent requires a clear expression by words or actions that a person has consented to specific sexual conduct with another person. Reasonable reciprocation can be implied. For example, if one person kisses another, that person may kiss the first person back, if desired, without the need to explicitly obtain consent to being kissed back. Consent may be withdrawn at any time after consent is given by clearly communicating that withdrawal in a manner which a reasonable person would understand as a withdrawal of consent. Sexual activity should cease promptly following the withdrawal of consent.

Consent to some sexual contact (such as kissing or fondling) is not consent for other sexual activity (such as intercourse). The existence of a current or previous sexual relationship does not constitute consent for sexual activity.

When a person reports that another violated this *Policy* by engaging in sexual activity without consent, no *Policy* violation is established unless and until a decisionmaker finds by a preponderance of the evidence that the sexual activity occurred without consent. 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 relationship between the Parties and the context in which the alleged incident occurred.

Consent is absent if a person's ability to resist or give consent is incapacitated because of mental illness, physical condition, the influence of drugs or alcohol, and/or the existence is a significant age or perceived power or authority differential between the people involved in the sexual interaction.

## 2. Incapacitation

Incapacitation occurs when a person cannot make rational, reasonable decisions to consent to sexual activity. A person is incapacitated when they are not able to understand the "who, what, when, where, why or how" of the sexual interaction. Whether a person is incapacitated is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the relationship between the Parties and the context in which the alleged incident occurred. Incapacity may result from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs, alcohol and other substances.

It is a defense to an alleged *Policy* violation that the person accused neither knew nor had reason to know that the person reporting the sexual harassment was physically or mentally incapacitated and unable to consent. It is not an excuse that the person accused of misconduct was intoxicated and, therefore, did not realize that the person reporting the sexual harassment was incapacitated and unable to consent. The question of whether the Respondent should have known of the incapacity of the Complainant is an objective question about what a reasonable person, exercising sober, good judgment, would have known in the same or similar circumstances.

## 3. Coercion

Coercion is unreasonable pressure for sexual activity. Badgering a person to engage in sexual activity can, in some circumstances, become coercive. Once someone makes clear that they do not want sex, 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.

Power relationships, where a person has authority or power over another, may become coercive. Because of the asymmetry of these relationships, "consent" may be difficult to assess, may be deemed not possible, and may be construed as coercive. Such relationships have the potential to result in claims of sexual harassment. For more information, see Consensual Relationship *Policy* at <http://www.case.edu/equity>.

## **O. Retaliation**

No member of the CWRU community may take or attempt to create adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual, or to punish that individual or cause that individual to hesitate in the future to exercise a right granted by this *Policy*, because the individual has made a report or complaint, provided information, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this *Policy*. Such conduct constitutes "protected activity."

Protected activity under this *Policy* includes reporting an incident that may implicate this *Policy*, participating in Process described in this *Policy*, supporting a person who has reportedly

experienced sexual harassment or who is accused of engaging in that conduct, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes or may constitute a violation of this *Policy*.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated pursuant to this *Policy*, but such investigations may not proceed pursuant to Process A or Process B, which apply only to sexual harassment. CWRU will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination or sexual harassment, which are initiated for the purpose of interfering with any right or privilege secured by Title IX, constitute retaliation. The mere fact that code of conduct, professionalism or other processes are initiated based on conduct or circumstances underlying a report or complaint of sex discrimination or sexual harassment is not sufficient to constitute retaliation.

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 an investigation or Process held pursuant to this *Policy* 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.

## **P. Trained Pool**

The procedures contained in this *Policy* require a Pool of trained volunteer faculty and staff to carry out different roles in this process. The list of Pool members, their training, the roles in which Pool members may serve is found at <https://case.edu/equity/sexual-harassment-title-ix/file-report/grievance-process-pool>. Students may also serve as Advisors.

### **1. Pool Member Roles**

Members of the Pool are trained to performing a variety of roles:

- a) To provide appropriate intake of and initial guidance to the Parties
- b) To act as an Advisor to the Parties
- c) To perform or assist with initial assessment
- d) To investigate complaints
- e) To serve as a hearing facilitator (process administrator, no decision-making role)
- f) To serve as a Decision-maker regarding the complaint
- g) To serve as an Appeal Decision-maker

### **2. Investigator, Panel Member Appointment and Advisor**

The Title IX Coordinator appoints the investigators, Panel members and Advisors.

### **3. Pool Member Training**

The Pool members receive annual training. This training includes, but is not limited to:

- a) The provisions of this *Policy*
- b) How to conduct investigations and hearings
- c) Implicit bias
- d) Disparate treatment and impact
- e) Reporting, confidentiality, and privacy requirements
- f) Applicable laws, regulations, and federal regulatory guidance
- g) How to implement appropriate and situation-specific remedies
- h) How to investigate in a thorough, reliable, and impartial manner
- i) How to uphold fairness, equity, and due process
- j) How to weigh evidence
- k) How to conduct questioning
- l) How to assess credibility
- m) Impartiality and objectivity
- n) How to render findings and generate clear, concise, evidence-based rationales
- o) The definitions of all offenses
- p) How to apply definitions used by CWRU with respect to consent (or the absence or negation of consent) consistently, impartially and in accordance with this *Policy*
- q) How to conduct an investigation and grievance process including hearings, appeals, and informal Resolution Processes
- r) How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- s) Technology used at live and remote hearings
- t) Issues of relevance of questions and evidence
- u) Issues of relevance as related to drafting an Investigation Report that fairly summarizes relevant evidence
- v) How to determine appropriate sanctions based on the findings in a particular matter

#### **Q. Responsible Employee Reporting**

All Case Western Reserve University employees (faculty, staff, administrators, resident assistants, teaching assistants, graduate assistants and orientation leaders) are required to promptly share information with the Office for Equity when they learn that a member of the CWRU community may be experiencing gender discrimination, sexual harassment or retaliation, or inflicting gender discrimination or sexual harassment or retaliation on another person.

Confidential Resources are not required to share information with the Office for Equity when they learn that a member of the CWRU community may be experiencing gender discrimination or sexual harassment or retaliation, or is accused of engaging in gender discrimination or sexual harassment or retaliation of another person. Confidential Resources may offer options and resources without any obligation to share information with the Office for Equity. When speaking to a campus resource, students, employees and others may ask the resource to identify if the resource is a Responsible Employee or a Confidential Resource

If a person who has experienced discrimination or harassment wants CWRU to take action, or wants to be contacted about available options and support, that person should share information about their experience with a Responsible Employee. The Responsible Employee will share information about a person's experience with discrimination or harassment with the Office for Equity, which will contact that person to offer support, information and resources.

The following sections describe options at CWRU for a person (including members of the CWRU community, third persons, visitors to campus and parents/guardians) seeking to share information about their own or another member's current or prior experience with sexual harassment.

### 1. Confidential Resources

If a person experiencing sexual harassment or being accused of it does not want information shared with the Office for Equity, CWRU provides the following confidential resources:

- 1) Licensed professional in University Health & Counseling Services
- 2) Student Advocate for Gender Based Violence Prevention, Education, and Advocacy
- 3) Interreligious Council on-campus members of the clergy/chaplains working within the scope of their license or ordination
- 4) Off-campus (non-employees):
  - i. Licensed professional counselors and other medical providers
  - ii. Local Cleveland Rape Crisis Center
  - iii. Domestic Violence Center
  - iv. Local or state assistance agencies
  - v. Clergy/Chaplains
  - vi. Attorneys

Employees (including both faculty and staff) may access as a Confidential Resource the Employee Assistance and Work Life Program (IMPACT Solutions). Employees can find information About IMPACT Solutions on the CWRU Human Resources webpages.

### 2. Responsible Employees

All employees of CWRU (including resident assistants, teaching assistants, and orientation leaders), with the exception of those designated as Confidential Resources, are Responsible Employees who must promptly share with the Office for Equity and/or the Title IX Coordinator when they learn that a member of the CWRU community is impacted by sexual harassment. This enables the Office for Equity to reach out to that person to offer support and resources.

Responsible Employees must promptly share when they learn that a member of the CWRU community is being impacted by sexual harassment, either because that person has experienced it or is accused of it, whether the Responsible Employee learns this firsthand, second hand or as a rumor, when they know the name of the person who may have experienced the sexual harassment or the person who is accused of it.

Generally, Responsible Employees are not required to share with the Title IX Coordinator disclosures about persons impacted by sexual harassment that are made in in climate surveys, classroom fiction writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs.

The Office for Equity is available to offer supportive measures in response to such disclosures.



The failure of a Responsible Employee to share information about sexual harassment or gender discrimination is a violation of CWRU *Policy* and performance expectations.

#### **R. Amnesty for Complainants and Witnesses**

CWRU encourages students, faculty and staff to report sexual harassment, gender discrimination and retaliation. To encourage members of the CWRU community to share information, CWRU will not pursue charges for minor violations of CWRU policies and rules, such as underage drinking or use of illicit drugs, which are revealed in connection with a reported violation or investigation of conduct prohibited by this *Policy*. This paragraph applies to persons reporting that they experienced sexual harassment and witnesses to those events. This paragraph does not apply to serious allegations of misconduct, such as physical abuse of another or illicit drug distribution, that violate CWRU policies and rules. This paragraph also does not apply to persons accused of violating this *Policy* unless doing so furthers the goal of this paragraph, which is to encourage the reporting of serious misconduct.

#### **S. Federal Statistical Reporting and Timely Warning Obligations**

Pursuant to the *Clery Act*, CWRU must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

In compliance with the Clery Act (Campus Crime Statistics Act), Designated Reporting Representatives and/or Campus Security Authorities report to CWRU Police incidents of sexual misconduct that constitute a crime (see Section K “Sexual Harassment”). Such reporting is done in a deidentified manner that never includes the names of the Parties or any identifying information.

#### **T. Academic Freedom**

Implementation of the Processes described in this *Policy* respects the principles and traditions of academic freedom consistent with the CWRU policies regarding academic freedom and free expression. Persons with questions about whether course material or the manner in which it is presented falls within the definition of sexual harassment should contact the Title IX Coordinator.

#### **U. Recordkeeping**

CWRU 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 a person found to have engaged in sexual harassment that violates this *Policy*;
3. Any remedies, provided to person who experienced sexual harassment, designed to restore or preserve equal access to the university’s educational program or activity;
4. Any appeal and its outcome;
5. Any Alternative Resolution and its outcome;
6. All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an Alternative Resolution Process. CWRU will make these training materials publicly available on CWRU’s website.

7. Any actions, including any supportive measures, taken in response to a report, notice or complaint of sexual harassment, including:
  - a) Supportive measures designed to restore or preserve equal access to the CWRU's education program or activity, or employment; and
  - b) Reasons for declining to support a Party.

CWRU will also maintain any and all records in accordance with state and federal laws, and will not disclose any personally identifiable information released to the public without consent provided, except to the extent permitted by law. CWRU will notify a Party in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

## **V. Accommodations**

CWRU provides reasonable accommodations based on disability, pregnancy and religion in implementing the Resolution Processes described in this *Policy*. Persons needing accommodations should advise the Office for Equity.

## **W. Revision of this *Policy* and Procedures**

This *Policy* may be updated and revised at any time pursuant to the CWRU Policy for the Management of Administrative Policies ("Policy MAP") and at the discretion of the Title IX Coordinator. This *Policy* will be reviewed and, if appropriate, updated annually by the Title IX Coordinator pursuant to the CWRU Policy MAP. CWRU reserves the right to make changes as necessary, and once those changes are posted online, they are in effect.

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

## **II. RESOLUTION PROCESS PROVISIONS COMMON TO ALL CASES**

### **A. Alternative Resolution Options**

The Parties may voluntarily engage in efforts to informally resolve a Complaint or conflict before or after an investigation or hearing. These efforts are referred to as Alternative Resolution.

Alternative Resolution includes three different approaches:

1. Negotiation or mediation between the Parties, with or without the participation of the Office for Equity, to reach an agreement about the outcome of the Complaint or its allegations;
2. When the person reported to have violated this *Policy* accepts responsibility for violating this *Policy* and an appropriate sanction; or
3. When the Parties and the Title IX Coordinator agree to resolve the matter by providing the Parties with supportive measures (only) as the remedy for the situation.

Either Party may initiate Alternative Resolution by contacting the Title IX Coordinator.

The Parties must indicate in writing that their participation in Alternative Resolution efforts is their voluntary choice.

Alternative Resolution is not an option when at least one Party is a student and another is a CWRU employee (Faculty, Staff, Teaching Assistant, and Research Assistant).

When the Parties cannot agree on all terms of an Alternative Resolution, the investigation and hearing process will continue and/or resume.

The outcome of a Complaint resolved through Alternative Resolution is not appealable.

1. Resolution through mediation or negotiation with the Title IX Coordinator or Designee

The Title IX Coordinator will explore resolution through mediation or negotiation at the request of the Parties. All Parties must consent to the use of Alternate Resolution.

The Title IX Coordinator is not required to assist the Parties with achieving resolution through mediation or negotiation. The Title IX Coordinator may consider the following factors when assessing next steps following a Party's request for assistance with achieving an outcome through Alternative Resolution:

- 1) Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- 2) The Parties' motivation to participate;
- 3) Civility of the Parties to one another;
- 4) Results of a violence risk assessment or ongoing risk analysis;
- 5) Disciplinary history;
- 6) Whether Emergency Removal is required;
- 7) Complexity of the allegations;
- 8) Emotional investment of the Parties;
- 9) Rationality of the Parties;
- 10) Goals of the Parties;

The Title IX Coordinator maintains records of any Alternative Resolution outcome. The failure of a Party to comply with the terms of an Alternative Resolution agreement may result in further Process pursuant to this *Policy*.

2. Parties privately engage in mediation or negotiation

Parties who are not subject to No Contact Directives may explore resolution through mediation or negotiation without the assistance of the Title IX Coordinator. Parties must consent to the use of Alternate Resolution in writing, with a copy provided to the Office for Equity.

3. Respondent Accepts Responsibility for Alleged Violations

The person accused of violating this *Policy* may accept responsibility for all or some of the *Policy* violations alleged in the Complaint, and may also accept certain sanctions for that conduct. If the person who experienced the reported sexual harassment agrees to the sanctions, then the Title IX Coordinator will issue an Outcome letter to the Parties and the matter will be complete.

The person accused of violating this *Policy* may accept responsibility for all or some of the *Policy* violations alleged in the Complaint. At that point, the Title IX Coordinator will determine whether further Resolution Process pursuant to Process A or Process B is appropriate, may dismiss certain allegations from Process A or Process B, or may

determine that a hearing before a Panel is no longer appropriate as to some or all of the remaining allegations. The Title IX Coordinator may also determine whether sanctions, if any, may be decided by a Panel, a single member of the Trained Pool, or the Title IX Coordinator. The Title IX Coordinator may consider the input of the person reporting the experience of sexual harassment and/or the Respondent in making this determination.

#### 4. Resolution by Decision-Maker

The Parties may agree to forgo a Panel Hearing and instead, seek resolution by a single member of the Trained Pool according to a process determined by the Parties.

### **B. Assignment of Investigators and Bias**

When the Title IX Coordinator notifies the Parties that an investigation will be conducted, the Title IX Coordinator will assign one or more Investigator(s) who is/are impartial and free of conflicts of interest or disqualifying bias.

The Parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of interest of the Investigator, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied.

If the bias or conflict relates to the Title IX Coordinator, the Party with those concerns should raise them with the Office of General Counsel.

### **C. Counterclaims**

Parties may file counter- and related claims, and accuse the other Party of engaging in conduct that violates this or other CWRU policies or expectations for community standards of behavior. The Title IX Coordinator, however, will assess all responsive allegations to ensure they are made in good faith. Allegations made with retaliatory intent will not be investigated and may constitute a violation of this *Policy*.

Counterclaims reported in good faith will be processed consecutively or simultaneously with the claim that initiated the Resolution Process, but counterclaims alleging conduct other than sexual harassment will not be processed pursuant to Process A or Process B.

### **D. Remote Meetings, Interviews and Hearings**

Parties and witnesses may be interviewed in person or remotely by phone, video conferencing, or similar technologies at the discretion of the Investigator(s) or Decision-maker and consistent with the interests of timeliness or efficiency, or for other good reasons.

Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal.

Where remote technologies are used, CWRU makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any Party or subject them to unfairness.

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

Witnesses (as distinguished from the Parties) who are employees of the university are required to cooperate with and participate in the investigation and Resolution Process. Failure to do so may constitute a violation of performance expectations or CWRU *Policy*, as well as this *Policy*.

Students who are neither the person who may have experienced sexual harassment, nor the person who is accused of violating this *Policy*, may refuse to participate in an investigation or hearing, or decline to provide information about reported sexual harassment when asked to do so. Failure to do so may constitute a violation of a CWRU directive, which is a violation of the Student Code of Conduct, or a violation of this *Policy*.

Parties and witnesses may be interviewed in person or remotely.

## **F. Recording of Interviews**

No unauthorized audio or video recording is permitted during investigation meetings. If Investigator(s) audio and/or video record interviews, all persons in the meeting where the recording is occurring will be informed in advance of the audio and/or video recording.

## **G. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history and evidence indicating a pattern of misconduct. Irrelevant or immaterial evidence, that lacking in credibility or that is improperly prejudicial will be excluded or disregarded.

Neither the Title IX Coordinator nor the Investigator(s) will meet with witnesses who lack personal knowledge of the factual event from which the allegations provide and, instead, have information about the character or qualities of one or more Parties.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

## **H. Draft Investigation Report**

Following completion of the investigation, the Investigator will prepare a draft Investigation Report which will be distributed to both Parties. The draft Investigation Report will summarize all relevant interviews and evidence. The Parties will have opportunity to respond in writing to the draft Investigation Report, and have those responses incorporated into the final Investigation Report. The draft Investigation Report may be shared with the Title IX Coordinator or legal counsel for review and feedback, before the final Investigation Report is issued.

## **I. Sending a Matter for a Hearing and Determination**

Within five (5) days of distribution to the Parties of the final Investigation Report, the Title IX Coordinator will determine if the matter requires a hearing.

The Title IX Coordinator may determine that the matter does not require a hearing if the alleged conduct, if found to have occurred as described by the Complainant in the final Investigation Report, does not describe conduct that violates this *Policy*, or if there is insufficient evidence that the Respondent violated the *Policy* to send the matter to a hearing, or for other good reason, in the discretion of the Title IX Coordinator. The Title IX Coordinator will advise the Parties in writing of a decision not to send a matter to a hearing. A decision not to send a matter to a hearing is appealable by the Parties pursuant to the appeal procedures in Part V of this *Policy*.

## **J. False Allegations and Evidence**

This *Policy* prohibits intentional false and/or malicious accusations. Allegations or facts possibly evidencing such conduct may be investigated pursuant to this *Policy* as sexual harassment or as retaliation. False allegations do not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination that a violation of this *Policy* occurred.

This *Policy* also prohibits witnesses and Parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator. Such conduct may be investigated as a violation of this or another CWRU *Policy*.

## **K. Hearing Panel Composition**

The Title IX Coordinator will designate three persons from the Trained Pool to serve as members of the Hearing Panel, one of whom will be designated as the Panel Chair. The Title IX Coordinator may elect to have an alternate Panel member attend the hearing and deliberations in the event that a substitute is needed.

No Panel member will have previously participated in the investigation in any capacity, including serving as an Advisor to either Party.

The Parties will be given a list of the names of the Panel members at least five (5) business days in advance of the hearing. Parties must submit objections to a Panel member in writing, detailing the rationale for the objection, to the Title IX Coordinator no later than one day prior to the hearing. Panel members will only be removed if the Title IX Coordinator concludes that bias or conflict of interest precludes an impartial hearing.

The Title IX Coordinator will give the Panel members the names of the Parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. A Panel member who may have a conflict of interest or bias must notify the Title IX Coordinator as soon as possible.

The Title IX Coordinator may not serve on the Panel but may serve as an administrative facilitator of the hearing, and may attend the hearing and observe.

## **L. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will inform the Parties of the date and time of the hearing. The notice of the hearing will contain:

1. A description of the alleged violation(s), the provisions of the *Policy* reportedly violated, a description of the applicable procedures, and a statement identifying the potential sanctions and other actions that could be included in the Hearing Panel's decision.
2. The time, date, and location of the hearing, and whether it is in person or remote.
3. A reminder that attendance is mandatory for witnesses and takes priority over all other campus activities.
4. Identification of the technology that will be used to facilitate the hearing, whether the hearing will be recorded, and a description of the Parties' right to access to the recording after the hearing.

5. A list of everyone who will attend the hearing, along with an invitation to object to any Panel member on the basis of bias or conflict of interest. All objections on this basis must be raised with the Title IX Coordinator at least two (5) business days prior to the hearing.
6. A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may continue in their absence. For compelling reasons, the Title IX Coordinator may reschedule the hearing if a Party or witness cannot attend on the scheduled date.
7. A copy of all the materials provided to the Panel about the matter, unless previously provided to the Parties.
8. An invitation to each Party to submit to the Chair an impact statement pre-hearing that the Panel will review during any sanction determination.
9. 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, and that this request must occur at least seven (7) business days prior to the hearing.
10. A listing of other rules for the hearing.

Hearings for possible *Policy* violations that occur near or after the end of an academic term and that cannot be resolved prior to the end of term may be held after the end of the term or during the summer.

If the person accused of violating this *Policy* is a graduating student, a hold may be placed on that person's graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this *Policy* may not be considered in good standing to graduate.

### **M. Pre-Hearing Matters**

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all Parties and the Chair assent to the witness' 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 or continue the hearing without consideration of the new evidence, particularly if there is no clear justification for failure of a Party to have shared the evidence with the Investigators during the investigation.

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 may be shared with the Chair at the pre-hearing meeting or at the hearing.

### **N. Pre-Hearing Meetings**

The Panel Chair may convene a pre-hearing meeting or meetings with the Parties and/or their Advisors, at which they may submit the questions they wish to ask at the hearing, so that the Panel Chair can determine their relevance in advance of the hearing and recommend alternative phrasing. The Panel Chair will document the rationale for the exclusion or inclusion of questions at this pre-hearing meeting. Advisors may request reconsideration at the hearing of matters raised at a pre-hearing meeting.

The Panel Chair, with agreement of the Parties, may determine that certain witnesses do not need to be present at the hearing if their statements are or can be summarized by the Investigator(s) in the Investigation Report or during the hearing.

At the pre-hearing meetings, if held, the Panel Chair will consider arguments that evidence identified in the final Investigation Report as relevant is, in fact, not relevant, or that evidence identified as directly related but not relevant is, in fact, relevant. The Panel Chair may advise the Parties of the Panel Chair's determination to accept or reject these arguments to assist the Parties' preparation for the hearing. The Panel Chair may consult with the Office of General Counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

Pre-hearing meeting(s) are not recorded.

## **O. Joint Hearings**

In hearings involving more than one person who is accused of violating this *Policy* and/or more than one person who reports experiencing sexual harassment, the Panel may consider allegations involving all Parties in a single hearing. If a hearing involves more than one person who is accused of violating this *Policy*, the Panel will make separate determinations of responsibility for each person with respect to each alleged *Policy* violation.

## **P. Hearing Procedures**

The purpose of the hearing is to enable the Hearing Panel to determine whether the person accused of engaging in sexual harassment violated this *Policy*.

The Chair of the Panel conducts the hearing and determines the order of events. The Chair of the Panel or the Title IX Coordinator will answer questions about procedure and introduce the participants.

All Parties have the right to participate in the hearing, if desired.

Anyone asked questions during the hearing must respond to questions on their own behalf.

Witnesses will participate in the portion of the hearing in which they are asked to respond to specific questions from the Panel and the Parties, and then the witnesses will be excused.

Administrative elements of the hearing process, including logistics relating to Parties and witnesses, documents, hearing space or technology, and other matters are managed by the Hearing Facilitator selected by the Title IX Coordinator.

The hearing may include some or all of the steps below.

### **1. The Investigator Presents the Final Investigation Report**

The Investigator(s) will present a summary of the final Investigation Report, including items that are contested and those that are not, and will answer questions posed by the Panel and the Parties (through their Advisors in Process A, or through the Panel Chair in Process B). The Investigator(s) will be present during the entire hearing, but not deliberations.

Neither the Parties nor the Panel may ask the Investigator(s) to opine on issues of credibility, recommended findings or determinations. The Investigators, Advisors and Parties will refrain from discussing or responding to questions about these assessments. If such information is discussed, the Panel will disregard it.

### **2. Refusal to Answer Questions**

Consistent with the regulations that implement Title IX, and pertinent legal cases, the Panel Chair and/or the Title IX Coordinator will determine the impact of a refusal by a Party or witness to answer a question, or to be unavailable to answer a question, posed to them by an Advisor or the Panel Chair, on the use by the Panel of information that Party or witness might have provided.



The Panel may not draw any inference solely from a Party's or witness's absence from the hearing or refusal to answer a question or questions, but must consider all of the circumstances relating to the matter.

3. Raising Concerns that Hearing Procedures Not Followed

If either Party believes that the process described in this *Policy* is not being followed during the hearing, that person must immediately advise the Panel, Chair or other Decision-Maker. The Title IX Coordinator may, at his/her sole discretion, terminate proceedings and set them for a rehearing upon: (a) receipt of new evidence not available prior to or at time of the hearing that has potential to impact outcome; or (b) notice of procedural irregularity that has potential to impact the hearing's outcome.

**Q. When Parties and Witnesses Choose Not to Participate**

The Office for Equity will support persons who report experiencing sexual harassment and those accused of engaging in sexually harassment when those individuals choose not to participate in an investigation, hearing or other Resolution Process pursuant to this *Policy*.

The Office for Equity will respect the decision of a person who experienced sexual harassment to remain anonymous or refrain from participating in an investigation or other Resolution Process, as much as possible. The Office for Equity will give significant weight to the preference of a person who experienced sexual harassment that no investigation is conducted by the Office for Equity. In some cases, when deemed necessary to protect the campus, generally, or a specific person or persons in the CWRU community, the Office for Equity will conduct an investigation without the participation or against the expressed preferences of the person who is reported to have experienced the sexual harassment.

The Title IX Coordinator may initiate a Complaint and investigation when deemed necessary to protect the safety of the CWRU community, generally, or a specific person or persons in the CWRU community, or because doing so is in the best interest of the CWRU community. The Title IX Coordinator must also consider the effect that non-participation by the person who experienced the sexual harassment may have on the availability of evidence and CWRU's ability to effectively and fairly investigate or conduct a Resolution Process pursuant to this *Policy*.

In addition, as the investigation and/or Resolution Process proceeds, the person who experienced the sexual harassment, and who has indicated a desire not to participate, may have as much or as little involvement in the process as they wish, and that person may elect to become more or less involved as the process proceeds.

The Office for Equity will respect the decision of a person who is accused of engaging in sexual harassment or retaliation, or other conduct that violates this *Policy*. The decision of a person who is accused of violating this *Policy* not to participate in an investigation will not cause the Resolution Process to stop. Instead, the Resolution Process will continue without the information that the person accused of violating this *Policy* might have provided.

A person who may have experienced sexual harassment, or a person who is accused of engaging in it, may not appeal the outcome of a Resolution Process on the basis of new evidence, when the reason the evidence was not previously part of the process is that Party's nonparticipation.

Faculty, staff and students who are deemed to be witnesses to events that are the subject of a Resolution Process pursuant to this *Policy* are required to participate. Failure to comply with a request to meet with an Investigator or attend a proceeding constitutes a failure to comply with a CWRU directive, and may cause the witness to be subject to discipline for that noncompliance. Failure to comply with a request to serve as a witness may also constitute retaliation, as defined in this *Policy*.

## **R. Evidentiary Considerations in the Hearing**

The Panel considers evidence that is relevant and credible. The Panel does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of either the person experiencing the reported sexual harassment or the person accused of violating this *Policy*; or 3) questions and evidence about either of those person's sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove that someone other than the person accused of the sexual harassment committed the reported *Policy* violation, or are offered to prove that the sexual activity was consensual.

## **S. Recording Hearings**

Hearings (but not deliberations) are recorded by CWRU for purposes of review in the event of an appeal. No other recordings of the hearing are permitted, including by the Parties.

The Panel, the Parties, their Advisors and appropriate administrators of CWRU will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person may keep, copy or disclose the recording without permission of the Title IX Coordinator.

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

The Panel will deliberate privately to determine if the person accused of violating this *Policy* is responsible or not responsible doing so. A simple majority vote of the three-member Hearing Panel is required for the Panel to conclude that the person accused of sexual harassment violated this *Policy*.

The Panel will apply the preponderance of the evidence standard of proof, meaning that no violation of this *Policy* may be found unless more than 50% of the evidence supports the conclusion that the person accused of sexual harassment more likely than not violated this *Policy*. The Panel Chair may invite the hearing facilitator, General Counsel or Title IX Coordinator to attend the Panel's deliberations to answer questions about the process.

If the Complaint presents more than one allegation of misconduct, the Panel will reach a decision, separately, as to whether each allegation of a *Policy* violation is established by a preponderance of the evidence.

Both the person experiencing the reported sexual harassment and the person accused of that conduct may each submit a written impact statement prior to the hearing for the consideration by the Panel, if the Panel determines that the person accused of engaging in sexual harassment violated the *Policy*. If the Panel concludes that the person accused of sexual harassment violated this *Policy*, the Panel will consider the Parties' impact statements, if available.

The Panel Chair will document its findings for the Title IX Coordinator a written statement detailing the Panel's determination of whether this *Policy* was violated, rationale, the evidence relied on by the Panel to reach this determination, the evidence not relied upon, credibility assessments and sanctions.

The determination will be rendered within five (5) business days of the conclusion of the hearing.

This statement must be submitted to the Title IX Coordinator within two (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.

## **U. Outcome Letter**

The Title IX Coordinator and the Panel Chair will prepare a letter to the Parties describing the Outcome of the hearing. This letter will be reviewed by the Office of General Counsel.

Within five (5) business days of receiving the Panel's statement documenting the deliberations and the hearing Outcome, the Title IX Coordinator will simultaneously share the Outcome letter, including the final determination, rationale and any applicable sanction(s) with the Parties and their Advisors.

The Outcome letter will identify the specific provision of this *Policy* that was violated, and describe the procedural steps taken by CWRU in this matter, including the initial information that sexual harassment may have occurred, support offered and/or provided to the Parties, through informing the Parties about the investigation, including describing the investigation, interviews with Parties and witnesses, events leading up to the hearing and other events contributing to the outcome.

The Outcome letter will specify the finding of the Hearing Panel as to each alleged *Policy* violation; the facts that support the determination; conclusions regarding the application of the relevant *Policy* section(s) to the facts; a statement of, and rationale for, the determination as to each allegation (that there was or was not a *Policy* violation); sanctions issued; and remedies and supportive measures provided to the Parties to maintain or restore access to CWRU's educational or employment opportunities or activity.

The Outcome letter will state when the hearing Outcome is final, if no appeal is filed, and the relevant procedures and bases for an appeal.

Either Party may appeal the Notice of Outcome. The Notice of Outcome will explain the permissible bases for appeal and how a Party starts the appeal process. More information about the appeal procedures is in Part V of this *Policy*.

## **III. RESOLUTION PROCESS A**

Process A and its procedures below apply only to Notice and/or Complaints involving students, staff, administrators or faculty members that allege sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) that fall within the scope of Title IX as defined in its regulations (34 §CFR Part 106.45).

Process B can apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) in situations in which the alleged conduct falls outside of the scope of Title IX as defined in its regulations (34 §CFR Part 106.45).

Process A may be used to address other misconduct arising from the investigation of or occurring in conjunction with reported sexual harassment (e.g., vandalism, physical abuse of another) or such misconduct may be addressed through appropriate procedures elaborated in other CWRU policies identifying expectations for students, faculty and staff.

### **A. Notice and Initial Assessment**

Upon receipt of a Complaint or Notice to the Title IX Coordinator of an alleged violation of this *Policy*, the Title IX Coordinator promptly assesses appropriate next steps, which may include one or more of the following:

1. Offering support to the person who reportedly experienced the sexual harassment, including information about an investigation pursuant to this *Policy*, if desired by that person.

2. Determining if the person reportedly experiencing the sexual harassment wants to file a Complaint against the person who reportedly engaged in the sexual harassment. If that person wants file a Complaint, the Title IX Coordinator will endeavor to make sure the Complaint accurately reflects the Complainant's allegations.
3. Filing a Complaint.
4. After a Complaint is filed, assisting the Parties with engaging in Alternative Resolution to resolve the matter.
5. Assigning the matter to an Investigator for Investigation.
6. Once the person who reportedly engaged in the sexual harassment is advised of the Complaint, the Title IX Coordinator will offer support, information and resources.
5. Assessing whether Emergency Removal or other actions are necessary to ensure the safety of the CWRU community or specific persons in that community.
6. Separately advising the person who reported experiencing the sexual harassment and the person accused of it of the right to an Advisor, and offering to provide an Advisor to each Party.
7. Assisting the Parties with understanding their options:
  - a) The Office for Equity will support the person who experienced the sexual harassment and will not initiate any Resolution Process.
  - b) The Title IX Coordinator will, after filing a Complaint, explore the possibility of an Alternative Resolution with the Parties.
  - c) The Title IX Coordinator will determine if Process A applies and issue a Complaint, either as the Complaint of the person who experienced the sexual harassment, or as one issued by the Title IX Coordinator.
    - i If Process A does not apply, or applies only as to certain allegations, the Title IX Coordinator will dismiss from Process A that/those aspects of the Complaint, or instead file the Complaint pursuant to Process B, or refer the matter to another applicable CWRU process or policy.
    - ii If a Complaint is issued pursuant to Process A, the Title IX Coordinator will direct the investigation to address:
      - 1 an incident, and/or
      - 2 a pattern of alleged misconduct, and/or
      - 3 a culture/climate issue, based on the nature of the complaint.

## **B. Dismissal from Process A**

The Title IX Coordinator must dismiss from this Process A any Complaint or any allegations in it if, at any time during the investigation or hearing, it is determined that:

1. The alleged conduct does not constitute sexual harassment as defined in this *Policy*, even if proved; and/or
2. The alleged conduct did not occur in an educational program or activity controlled by the CWRU (including buildings or property controlled by recognized student organizations), and/or CWRU does not have control of the person accused of the misconduct; and/or
3. The conduct did not occur against a person in the United States; and/or

4. At the time of filing the Complaint, the person reporting the experience of sexual harassment is not participating in or attempting to participate in the education program or activity of CWRU.

Dismissing a Complaint from Process A does not limit the Title IX Coordinator from refiling the Complaint pursuant to an alternative appropriate, available process, such as Process B.

CWRU may dismiss from this Process A any Complaint or allegations in it if, at any time during the investigation or hearing:

1. The person reporting the experience of sexual harassment notifies the Title IX Coordinator in writing that the Complaint should, in whole or in part, be withdrawn, or
2. The person accused of violating this *Policy* is no longer enrolled in or employed by CWRU;
3. The alleged conduct does not describe conduct that falls within the scope of Title IX as defined in its regulations (34 §CFR Part 106.45);
4. Specific circumstances prevent CWRU from gathering evidence sufficient to reach a determination as to the whether a violation of this *Policy* occurred.

The Title IX Coordinator will promptly advise the Parties of any dismissal.

This dismissal decision is appealable by any Party under the procedures in the appeal section of this *Policy*.

### **C. Process A Options for Alternative Resolution**

At any time after the Office for Equity has advised the person who may have experienced sexual harassment and the person who reportedly engaged in the sexual harassment that an investigation is ongoing, the Parties may voluntarily engage in efforts to resolve the Complaint through means other than an investigation and/or a hearing, including Alternative Resolution, as discussed in Part II of this *Policy*.

### **D. Complaint Process: Notice of Investigation and Allegations**

The Office for Equity will advise any person who is accused of violating this *Policy* that an investigation will be conducted before the investigation begins. Title IX Coordinator will provide written Notice of the Investigation and Allegations ( "NOIA") to the person accused of violating this *Policy*, and the person who reportedly experienced the sexual harassment, that an investigation will be conducted. The person who experienced the reported sexual harassment will be advised in advance that the Title IX Coordinator will issue the NOIA.

Persons who receive an NOIA may respond to it by requesting the assistance of an Advisor or asking questions of the Investigator or the Title IX Coordinator.

The NOIA will include:

1. A meaningful summary of the allegations
2. The identity of the person(s) accused of violating this *Policy* and the person(s) who reportedly experienced the sexual harassment
3. The precise violations of this *Policy* to be investigated
4. The date and location of the alleged incident(s) (if known)
5. A description of the applicable procedures
6. A statement of the potential sanctions/responsive actions that could result

7. Information that the persons receiving the NOIA are permitted to obtain an Advisor, information about how to obtain an Advisor, and that a Party may be required to obtain an advisor at a future hearing
8. A statement that CWRU presumes the person accused of violating this *Policy* is considered “not responsible” for doing so unless the evidence supports that determination by a preponderance of the evidence
9. A statement that determinations of responsibility are made at the conclusion of the process
10. That the Parties will be given an opportunity to share information with the Investigator, including providing evidence to be considered in the Investigation, and the names of witnesses that should be contacted by the Investigator
11. That the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the investigation before the final Investigation Report is issued
12. That all forms of retaliation are prohibited
13. A statement that this *Policy* prohibits knowingly making false statements or submitting false information during the investigation
14. That any person needing accommodations based on disability or other reasons may request them, and reasonable accommodations will be provided
15. A link to this *Policy* or other instructions about how to obtain it
16. The name(s) of the Investigator(s), and a description of the process for asserting that any Investigator has a known conflict of interest

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available.

## **E. Steps in the Investigation Process**

Persons reportedly experiencing sexual harassment and those accused of violating this *Policy* may use the investigation process to identify witnesses and questions that the investigator should ask them, provide evidence and fully review and respond to the evidence learned in the investigation.

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

1. Determine the identity of person reportedly experiencing sexual harassment and that/those accused of violating this *Policy*.
2. Provide supportive measures to the person reportedly experiencing sexual harassment and the person accused of violating this *Policy*.
3. Identify the conduct that constitutes the sexual harassment that reportedly violated this *Policy*, witnesses to that conduct and relevant evidence.
4. Learn the response of the person accused of engaging in sexual harassment to that accusation, witnesses and relevant evidence.
5. Identify the provisions of this *Policy* implicated by the alleged misconduct.
6. Allow each Party to identify witnesses and questions they wish the Investigator(s) to ask of the other Party and witnesses, and have the Investigator(s) document in the report which questions were asked, with a rationale for any changes or omissions.

7. Provide each person interviewed with an opportunity to review the Investigator's notes of the meeting with that person and propose edits to the notes needed, in that person's perspective, to ensure that the notes accurately reflect the conversation between that person and the Investigator.
8. Interview all available, relevant witnesses and conduct follow-up interviews, as necessary.
9. Allow each Party the opportunity to provide documents and other evidence, and questions they wish to ask the other Party and witnesses about the documents, and then document this in the Investigation Report
10. Complete the investigation promptly and without unreasonable deviation from the intended timeline.
11. Provide regular status updates to the Parties throughout the investigation.
12. Write a comprehensive draft Investigation Report fully summarizing the investigation, all witness interviews, all relevant evidence and including appendices with relevant physical or documentary evidence.
13. Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if requested 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 CWRU does not intend to rely in reaching a determination.
14. Give the Parties ten (10) business days to review and comment on the draft Investigation Report, but a Party may elect to waive the full ten days and respond more quickly or not at all.
15. Respond in writing to the Parties' submitted responses and/or to share the responses with the other Party and invite additional responses.
16. Incorporate relevant elements of the Parties' written responses into the final Investigation Report, document all rationales for any changes made after the review and comment period and finalize the report.
17. Share the final report and directly related evidence with the Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing.

## **F. Referral for Hearing**

After the final Investigation Report is shared with the Parties, the Title IX Coordinator will refer allegations for which there is sufficient evidence of a *Policy* violation to a hearing, unless the Investigation Report indicates a lack of jurisdiction under this Process A, and, after assessment, Process B.

The Title IX Coordinator will select a Hearing Panel from the Trained Pool, and determine if the hearing will occur in person or remotely. Hearings conducted remotely will use technology that enables the Panel and Parties to see and hear a Party or witness who is answering questions.

The hearing will occur at least ten (10) business days after the final Investigation Report is transmitted to the Parties. The only exception is if the Hearing Panel and the Parties agree to an expedited timeline.

### **G. Notice of Hearing under Process A – Information about the role of Advisors**

The information provided to the Parties in advance of a Process A hearing will also advise them that they must be accompanied by an Advisor, who will question witnesses or the other Party, in lieu of the Panel Chair or a Party doing so. If on or before the hearing, the Title IX Coordinator learns that a Party does not have an Advisor to fulfil this role, the Title IX Coordinator will appoint an Advisor for the Party who does not have one.

### **H. Questions for the Parties and Witnesses in a Process A Hearing**

The Parties and witnesses may provide relevant information, in turn, in the order determined by the Panel Chair. The Parties and witnesses will first answer questions from the Panel and then from the Parties through their Advisors.

All questions asked by an Advisor are subject to a relevance determination by the Panel Chair before the Party or witness to whom the question was directed, answers it. After the Advisor asks each question, the Panel Chair will consider it and determine whether the question will be permitted, disallowed or must be rephrased. The Panel Chair may discuss whether a question is relevant with the Advisors. The Panel Chair will explain any decision to exclude a question as not relevant or why it must be reframed for relevance.

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

If bias is not in issue at the hearing, the Panel Chair will not permit irrelevant questions that probe for bias.

## **IV. RESOLUTION PROCESS B, IN MATTERS (WHERE PROCESS A IS NOT APPLICABLE)**

These Process “B” procedures apply to allegations of sexual harassment involving students, staff, faculty members or third parties to which, as determined by the Title IX Coordinator, Process A does not apply. If process A is applicable, the matter must proceed pursuant to Process A, and not this Process B.

This Process B may be used to address misconduct discovered through the investigation of or occurring in conjunction with the reported sexual harassment, including vandalism, physical abuse of another, lack of professionalism or retaliation. Allegations of misconduct unrelated to allegations of sexual harassment addressed pursuant to this Process B will be referred to the procedures elaborated in applicable student, faculty and staff policies, procedures and handbooks.

### **A. Notice and Initial Assessment**

Upon receipt of a Complaint or Notice to the Title IX Coordinator of an alleged violation of this *Policy*, the Office of Equity promptly assesses appropriate next steps, which may include one or more of the following:



1. Offering support to the person who reportedly experienced the sexual harassment, including information about an investigation pursuant to this *Policy*, if desired by that person.
2. Determining if the person reportedly experiencing the sexual harassment wants to file a complaint against the person who reportedly engaged in the sexual harassment. If that person wants file a complaint, the Title IX Coordinator will endeavor to make the Complaint accurately reflect the Complainant's allegations.
3. Determining that the Title IX Coordinator will file a complaint against the person who reportedly engaged in the sexual harassment to protect the campus or specific person on the campus, or to further another important CWRU interest.
4. Assisting the Parties with obtaining an Alternative Resolution of the matter.
5. Assigning the matter to an Investigator for Investigation.
6. Initiating the Emergency Removal process, if appropriate.

The outcome of and next steps after the initial assessment are determined by the Title IX Coordinator.

## **B. Dismissal from Process B**

If at any point during Process B, the Title IX Coordinator determines that the allegations, if true, do not support the conclusion that the *Policy* has been violated, the Title IX Coordinator will advise the Parties of this conclusion and end this process.

If at any point during Process B, the Title IX Coordinator determines that the allegations, if true, fall within the scope of Title IX as defined in its regulations (34 §CFR Part 106.45), the Title IX Coordinator will advise the Parties of this conclusion, close the matter under Process B and reopen the matter under Process A of this *Policy*.

The Complainant may request that the Title IX Coordinator review the termination of Process B and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is granted only in extraordinary circumstances.

## **C. Advisors**

The Office for Equity encourages persons who report experiencing sexual harassment, and those who are accused of violating this *Policy* to obtain an Advisor to support them in this Process B. At the request of a Party, the Office for Equity will find an Advisor from the Trained Pool to support a Party.

## **D. Process B Options for Alternative Resolution**

At any time after the Office for Equity has learned that a person may have experienced sexual harassment, or that a person is accused of a violation of this *Policy*, the Parties may voluntarily engage in Alternative Resolution efforts to resolve the matter.

## **E. Notice of an Investigation**

The Office for Equity may initiate a thorough, reliable and impartial investigation under Process B as to alleged sexual harassment covered by this *Policy* and falling outside the scope of Process A. Once the decision is made to commence an investigation, the Title IX Coordinator will assign

one or more Investigators to conduct the investigation, and notify the Parties that the investigation will be conducted.

The Title IX Coordinator will notify the person who may have experienced sexual harassment and the person accused of violating this *Policy* that an investigation will be conducted. Notice of an investigation will be provided in writing at least 48 hours in advance of a request that a Party attend an interview or meeting relating to this Process B. The notice of the investigation will advise the Parties of their right to an Advisor and that the Office for Equity is available to connect a Party to an Advisor.

Notice of the investigation will include a meaningful summary of the allegations, identification of the sections of this *Policy* applicable to those allegations, that the Parties each have a right to be accompanied by an Advisor at all meetings pursuant to this Process B, a statement of the potential sanctions/responsive actions that could result from this Resolution Process, that the Parties will have an opportunity to identify the names of witnesses and provide evidence that is directly related to the allegations, and the name(s) of the Investigator(s). If the conduct being investigated changes, such as expands or decreases in scope, the notice will be updated for both Parties.

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

## **F. Investigation**

The Investigation may include some or all of the following steps (not necessarily in this order):

1. A determination of the identity and contact information of the person who may have experienced sexual harassment and the person who is accused of engaging in that misconduct.
2. Outreach by the Title IX Coordinator to the person who may have experienced sexual harassment and the person who is accused of violating this *Policy*, offering supportive measures.
3. Identification of all provisions of the *Sexual Harassment Policy* potentially implicated by the alleged misconduct.
5. Opportunities for the Parties to identify witnesses, suggest questions which the Investigator should ask them, provide evidence and fully review and respond to all evidence gathered in the investigation.
6. Interviews and follow up interviews with the person who may have experienced sexual harassment, the person accused of that conduct, and all relevant witnesses with the goal of determining whether this *Policy* was violated.
7. An opportunity for the Parties and witnesses to review and comment on the Investigator's notes of the interviews with that Party or witness.
8. Status updates from the Investigator(s) to the Parties throughout the investigation and on request.
9. Provision to the Parties of a draft Investigation Report, to which they have opportunity to respond in writing and have those responses incorporated into the final Investigation Report.
10. Preparation of a comprehensive final Investigation Report that fully summarizes the investigation and all evidence.

11. That the final Investigation Report will be shared with the Parties and the Title IX Coordinator.

## **G. Hearing**

Within five (5) days of receipt of the final Investigation Report, the Title IX Coordinator will determine if the matter requires a hearing. If the record is incomplete, the Title IX Coordinator may direct a re-opening of the investigation, or may direct or conduct further investigation, including meeting with the Parties or any witnesses.

If a hearing is required, the Title IX Coordinator will provide a Notice of Hearing. Hearings will be held at minimum 10 days after the date of the Notice of Hearing.

The Hearing Chair, after consulting Parties and Title IX Coordinator, may determine that certain witnesses do not need to attend the hearing because their statements can be adequately summarized by the Investigator(s) or through discussion of the Investigation Report or because they do not possess relevant information.

The following persons may attend the hearing: the Parties, their advisers, Investigators, general counsel, the Title IX Coordinator and the hearing representative(s). The Title IX Coordinator has discretion to invite other necessary persons to attend the hearing. The Parties' Advisors may not address the Panel, other Parties or witnesses during the hearing and their role is solely to advise the Party with whom the Advisor is working.

The Parties may question witnesses and the other Party or Parties through the Panel Chair by submitting questions to the Panel Chair in writing, including through email, text or chat. The Panel Chair will determine if the suggested questions are relevant. If the question is not allowed, the Panel Chair will note that on the record.

## **V. SANCTIONS, POST-HEARING MATERS AND APPEAL PROCESS APPLICABLE TO PROCESS A AND PROCESS B**

### **A. Sanctions**

#### **1. Guidelines for Issuing Sanctions after a Finding of Responsibility**

Any person found responsible for violating this *Policy* by engaging in forcible sexual assault may receive a sanction ranging from suspension to expulsion (student) or suspension to termination (employee) based on the factors discussed in this *Policy* section.

Any person found responsible for violating this *Policy* by engaging in sexual exploitation or sexual harassment may receive a sanction ranging from warning to expulsion (student) or warning to termination (employee) based on the factors discussed in this *Policy* section.

Any person found responsible for dating violence, domestic violence or stalking may receive a sanction ranging from disciplinary probation to expulsion (student) or probation, suspension or termination (employee) based on the factors discussed in this *Policy* section.

The Hearing Panel or other Decision Maker reserves the right to increase or decrease the severity of any sanction based on mitigating or aggravating behavior and circumstances. A Hearing Panel or other Decision Maker that deviates from the range of sanctions for a

particular *Policy* violation, as discussed here, will explain the compelling circumstances that warranted that deviation.

## 2. Factors Impacting Sanctions

A Hearing Panel or other Decision Maker may consider the following when determining sanction(s) and remedial actions following a hearing or in another Resolution Process pursuant to Process A or Process:

- a) The nature, severity of, and circumstances of the conduct found to violate this *Policy*
- b) The disciplinary history, if any, of the person found to have violated this *Policy*
- c) Whether the person found to have violated this *Policy* has been the subject of other allegations of possible violations of this *Policy* or allegations involving similar conduct
- d) The need for sanctions or remedial action to bring an end to the sexual harassment and/or gender discrimination and/or retaliation
- e) The need for sanctions or remedial action to prevent the future recurrence of the discrimination, harassment, and/or retaliation
- f) The need to remedy the effects of the discrimination, harassment, and/or retaliation on the person who experienced the sexual harassment and the CWRU community
- g) The impact of the circumstances on each of the Parties as described by each Party, if they desire to do so, in a voluntary, written "impact statement" given to the Hearing Panel or Decision Maker once a finding of responsibility is made, but before sanctions are determined.
- h) Other information deemed relevant by the Hearing Panel or other Decision Maker

## 3. List of Possible Sanctions

The sanctions described in this *Policy* section do not preclude and may be in addition to other actions taken or sanctions imposed by other offices at CWRU and/or authorities external to CWRU.

The following sanctions may be imposed upon any member of the community found to have violated this *Policy*. Typical sanctions that may be imposed upon students, employees, or organizations, include but are not limited to those listed below.

### a) Student or Student Organization Sanctions

- Disciplinary Warning
- Disciplinary Probation
- Separation from the University
- Expulsion from the University
- Required Education and Training
- Organizational Sanctions
- Community Service
- Restitution
- Rehabilitation

- Restriction (temporary or permanent loss of use of CWRU facilities or services or access to extracurricular activities or other opportunities)
- Withholding Diploma
- Revocation of Degree
- Creative or alternative sanctions

b) Employee Sanctions:

- Warning: Written or Verbal
- Performance Improvement Plan
- Demotion
- Required Counseling
- Probation
- Loss of oversight or Supervisory Responsibility
- Required Education and Training
- Loss of Annual Pay Increase
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, CWRU may assign any other sanctions as deemed appropriate.

4. Implementing Sanctions

Sanctions will be implemented as soon as feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

## **B. Withdrawal or Resignation While Charges Pending**

1. Students

When a student declines to participate in the Resolution Process, the Process proceeds without their participation.

A student who withdraws or leaves CWRU while a Resolution Process pursuant to this *Policy* is pending may not return to CWRU. This applies to all campuses and programs of CWRU. The Office for Equity will notify Admissions and the Registrar that the student is ineligible for readmission.

If a student who is accused of violating this *Policy* permanently withdraws from CWRU, the Resolution Process ends, as CWRU no longer has disciplinary jurisdiction over the withdrawn student. However, CWRU will continue to address and remedy the conditions that may have contributed to the alleged violation(s) and the effects of the alleged harassment, discrimination and/or retaliation, as well as supporting a person who may

have experienced sexual harassment. The withdrawing student may also be barred from CWRU property, campus and/or events.

If a student who is accused of violating this *Policy* withdraws or takes a leave of absence for a specified period of time (e.g., one semester or term), the Resolution Process may continue and that student is not permitted to reenroll unless and until this Resolution Process is complete and all sanctions, if any, have been satisfied.

## 2. Employees

If an employee who is accused of violating this *Policy* resigns prior to the completion of a Resolution Process pursuant to this *Policy*, the Resolution Process ends, as CWRU no longer has disciplinary jurisdiction over the resigned employee. However, CWRU will continue to address and remedy the conditions that may have contributed to the alleged violation(s) and the effects of the alleged harassment, discrimination and/or retaliation, as well as supporting a person who may have experienced sexual harassment. An employee who resigns from CWRU employment while the Resolution Process is pending is not eligible for rehire by any CWRU department, office, program or campus. Records maintained by Human Resources will reflect that status. CWRU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **C. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, 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 harassment, discrimination, and/or retaliation, remedy the effects of that conduct, prevent its reoccurrence, and foster the academic and professional success of the Parties.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program Impact Solutions
- 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 continue to support the Parties to ensure they have access to CWRU's educational programs and activities.

#### **D. Failure to Comply with Sanctions and/or Interim and Long-Term Remedies and/or Responsive Actions**

Respondents are expected to comply with sanctions, responsive actions and/or corrective actions within the timeframe specified for doing so.

Failure to comply with sanction(s) and/or corrective action(s) by the date specified may result in additional sanction(s) and/or corrective action(s), including suspension, expulsion, and/or termination, and may be noted on a student's official transcript.

#### **E. Appeals**

Any Party may request an appeal ("Request for Appeal") in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

The Title IX Coordinator will designate a three-member Appeal Panel, chosen from the Trained Pool. Appeal Panelists will have had no prior involvement in the Resolution Process with the Parties, including any earlier dismissal appeal. The Title IX Coordinator will designate a voting Chair of the Appeal Panel.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal. This assessment is not a review of the merits of the appeal, but solely a determination as to whether the Request for Appeal is timely filed and based on one of the permitted grounds for appeal.

##### 1. Grounds for Appeal

Appeals must be based on one or more of the following reasons:

- a) Procedural irregularity that affected the outcome;
- b) New evidence that was not reasonably available during the investigation and Resolution Process that resulted in a determination regarding responsibility for violating this *Policy*, and that, if known during that time, could affect the outcome of the matter; and
- c) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against persons who experience sexual harassment or persons accused of engaging in sexual harassment, generally, or the specific Complainant or Respondent in the particular matter, that affected the outcome of the matter.

The Appeal Chair will deny the Request for Appeal if it is not based on one or more of the above three grounds for appeal. The Title IX Coordinator will then notify the Parties and their Advisors that the appeal is denied because it is not based on one of the above grounds for appeal.

##### 2. Appeal process

If the Request for Appeal is based on one or more of the grounds listed above, the Title IX Coordinator will notify the other Parties and their Advisors, the Appeal Panelists, and,

when appropriate based on the reasons articulated for the appeal, the Investigators and/or the Hearing Panel Chair or Panel members, or other appropriate parties.

The Title IX Coordinator will send the Request for Appeal to the other Parties and their Advisors, and, when appropriate, the Investigators and/or hearing Panel, and instruct them to respond, within five (5) business days, to the appeal. Once received by the Title IX Coordinator, all responses to the Request for Appeal will be shared with all Parties for review and comment.

The non-appealing Party (if any) may choose to Request an Appeal at this time. If so, the non-appealing Party's appeal will be reviewed pursuant to the process described above and shared with the Party who initially requested an appeal, and others, which will be circulated for review and comment.

Once the response and comment period ends, neither Party may submit new Requests for Appeal. The Title IX Coordinator will collect information and documentation required to assess the appeal, the Requests for Appeal and the responses, and share this with the Appeal Panel. The Chair of the Appeal Panel will meet to assess the appeal, and render a decision in within five (5) business days, unless this period is extended for good reason by the Title IX Coordinator, who will notify the Parties.

A Notice of Appeal Outcome will be sent to the Parties simultaneously and will include the decision on each ground for the appeal that was circulated for review and comment, and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, specific instructions for remand or reconsideration, sanctions impacted by the appeal, and the rationale supporting the essential findings.

The Title IX Coordinator will share the Notice of Appeal Outcome in writing with all persons previously advised of the Request for Appeal.

### 3. Status of Sanctions During the Appeal

Any sanctions in the Notice of Outcome are held and not implemented during the appeal process. Supportive measures may continue during the appeal process, or, if previously ended, reinstated.

If the Notice of Outcome issued sanctions to be implemented immediately post-hearing, but which must be held and not implemented due to an appeal, the Title IX Coordinator may institute Emergency Removal within 48 hours of the Request for Appeal.

CWRU may place holds on official transcripts, diplomas, graduation, residence selection and course registration pending the outcome of an appeal, when the Notice of Outcome issued a sanction that included separation.

### 4. Appeal Considerations

- a) Decisions on appeal are to be deferential to the rationale in the Notice of Outcome. The findings and sanctions may be reversed or revised on appeal only when there is clear error and a compelling justification to do so.
- b) Appeals are not intended to provide for a re-hearing and full reconsideration of the matters considered at the hearing. In most cases, appeals are based entirely on a review of the written documentation available to the Hearing Panel, the record of the hearing, and documentation regarding the grounds for appeal.



- c) The Appeal Chair or Panel may consult with the Title IX Coordinator on questions of procedure or rationale for clarification. Documentation of all such consultation will be maintained.
- d) Appeals granted based on the basis of new evidence may be remanded to the Investigator(s) and Hearing Panel for consideration of the new evidence.
- e) Once an appeal is decided, the outcome is final. There are no further appeals provided for in this Process. This is true even if the Appeal Outcome alters in whole or in part the Notice of Outcome, including revising a sanction. The only exception is when the Appeal Outcome requires a new hearing. In that case, the Notice of Outcome of the new hearing will be appealable pursuant to this Process. If the Appeal Outcome sends the matter to the Hearing Panel for additional consideration, the subsequent decision of the Hearing Panel is not appealable.
- f) In rare cases where a procedural error cannot be cured (as in cases of bias), the Appeal Panel may order a new hearing with a new Panel.
- g) In cases in which the appeal results in reinstatement to CWRU or resumption of privileges, all reasonable attempts will be made to restore the Respondent to that person's prior status, recognizing that some opportunities lost may be irreparable in the short term.

**Title:** *The Policy Against Sexual Harassment Policy and Procedures for Supporting Faculty, Students, Employees, and Third Parties Who Experience it*

**Effective date:** August 23, 2022

**Responsible Official:** Senior Associate Vice President for Equity

**Responsible University Office:** Office of Equity

**Revision History:** 2014, 2016, 2021, 2022

**Related legislation and University policies:** Title IX of the Education Amendments of 1972

**Review Period:** 5 Years

**Date of Last Review:** 2022

**Relates to:** All Faculty, Students, Employees and Third Parties

ATIXA 2020 ONE *POLICY*, TWO PROCEDURES MODEL  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED  
THROUGH A LIMITED LICENSE TO CASE WESTERN RESERVE UNIVERSITY.  
ALL OTHER RIGHTS RESERVED. ©2020. ATIXA