



# Office of Institutional Compliance & Title IX Coordinator

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# **Title IX Sexual Harassment Grievance Procedure Policy**

## **Op1.02-11 Title IX Sexual Harassment Grievance Procedure Policy**

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## 1. Purpose and Scope of this Policy

As set forth in [G1.31 Reporting Allegations of Discrimination on the Basis of a Protected Class](https://www.missouristate.edu/Policy/Chapter1/G1-31-reporting-allegations-of-discrimination.htm) (<https://www.missouristate.edu/Policy/Chapter1/G1-31-reporting-allegations-of-discrimination.htm>), Missouri State University (University) prohibits all forms of discrimination in its education programs and activities. The University has adopted this Policy to provide for the prompt and equitable resolution of University student and employee complaints alleging Sexual Harassment under Title IX of the Education Amendments of 1972 (Title IX). Complaints alleging discrimination or harassment on the basis of sex that do not satisfy both the definition of Sexual Harassment under Title IX and the jurisdictional requirements of Title IX (including allegations of sexual harassment under Title VII) may be assessed consistent with [Op1.02-2 Discrimination Complaint and Investigation Procedures](https://www.missouristate.edu/Policy/Chapter1/Op1-02-2-discrimination-complaint-and-investigation-procedures.htm) (<https://www.missouristate.edu/Policy/Chapter1/Op1-02-2-discrimination-complaint-and-investigation-procedures.htm>).

## 2. Institutional Notice of Sexual Harassment

The University, as an institution, will be deemed to have actual knowledge of an allegation of Sexual Harassment if notice of such allegation is provided to i) the University's Title IX Coordinator, ii) an official of the University who has authority to institute corrective measures on behalf of the University, as defined in Section 3.26.

### 3. Definitions

As used in this Policy the following terms have the following meaning:

**Advisor:**

means any person chosen by a Complainant or Respondent to accompany the Complainant or Respondent during the Grievance Process described in Section 6. The Advisor may be but is not required to be an attorney. As described in Section 6.2.4 if the Complainant or Respondent does not select an Advisor, the University will provide an advisor, who may or may not be a University employee, for the limited purpose of conducting Cross-Examination.

**Complainant:**

Complainant means an individual, or the parent of a minor child or legal guardian of an individual under legal guardianship, who is alleged to be the victim of conduct that could constitute **Sexual Harassment**. The Complainant or Respondent may be referred to as a Party, or collectively as the Parties. Where a Grievance Process involves more than one Complainant, references in this Policy to the singular "Party" or "Complainant" include the plural, as applicable.

**Clery Act:**

means the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f).

**Cross Examination:**

means the presentation, during a Live Hearing, of relevant questions and follow-up questions posed by the Advisor of a Party to the other Party or to a Witness, as set forth in Section 8.

**Consent:**

means the agreement or permission expressed through affirmative, voluntary words or actions that are mutually understandable to all parties involved, to engage in a specific act at a specific time. Consent if given for a specific sexual act at a specific time can be withdrawn at any time. Consent cannot be coerced or compelled by duress, threat, force or deception. Consent cannot be given by someone who, for any reason, cannot understand the facts, nature, extent or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent, asleep, unconscious, mentally or physically impaired through the effects of drugs or alcohol, or mentally impaired due to an intellectual or other disability. Consent cannot be assumed based on silence, the absence of "no" or "stop," the existence of a prior or current relationship, or prior sexual activity.

**Dating Violence:**

means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. **Dating Violence** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Day:**

means any weekday in which University offices are open, regardless as to whether classes are in session.

**Decision Maker:**

means an individual who has been engaged to facilitate the Live Hearing and prepare the Written Determination as set forth in Section 9, or facilitate the Appeal of Written Determination or Dismissal and prepare the Written Decision, as set forth in Section 10. The Decision Maker will be free from conflict of interest or bias against the Complainant or Respondent subject to the Live Hearing. The Decision Maker may or may not be a University employee (except for the Title IX Coordinator and/or Title IX Investigator, who are excluded from serving in this

capacity). All Decision Makers will be trained as outlined in Section 12 of this Policy. The training required of Decision Maker(s) is available on the University's Title IX website located at [www.missouristate.edu/titleix](http://www.missouristate.edu/titleix).

**Direct Examination:**

means the presentation of relevant questions and follow-up questions posed by the Decision Maker to a Party or a Witness, and as set forth in Section 9.

**Disciplinary Sanctions:**

means those consequences imposed upon a Respondent upon a finding of responsible at the conclusion of the Grievance Process. Disciplinary Sanctions will vary depending on the status of the Respondent, as set forth in Section 7.5.

**Domestic Violence:**

means felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri, or by any other person against an adult or youth victim who is protected from that person's acts under the laws of Missouri. **Domestic Violence** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Electronic Database:**

means the medium in which the University's Title IX Investigator will upload evidence relating to an Investigation of Sexual Harassment. Limited access to the database will be provided to the Complainant and Respondent, and a Complainant and Respondent's advisor, if any.

**Fondling:**

means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. **Fondling** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Forcible Sexual Offense:**

means any sexual act directed against another person, without the consent of such person, including instances such person is incapable of giving consent. **Forcible Sexual Offenses (Rape, Sodomy, Sexual Assault with an Object, and Fondling)** are included in the definition of **Sexual Harassment** for purposes of this Policy.

**Formal Complaint:**

means a signed document filed by a Complainant, or signed by the Title IX Coordinator, alleging **Sexual Harassment** against a Respondent and requesting that the University investigate the allegation of **Sexual Harassment**, and is consistent with the requirements of Section 5.1.

**Grievance Procedure :**

means this Title IX Sexual Harassment Grievance Procedure Policy.

**Grievance Process:**

means the process in which a Formal Complaint of Sexual Harassment is investigated, heard, and appealed and as more fully set forth in Sections 7, 8, 9, and 10 of this Policy.

**Hostile Environment Harassment:**

for purposes of Title IX and as used in this Policy, means unwelcome conduct, based on sex, determined by a reasonable person, to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity of the University. **Hostile Environment Harassment** is included in the

definition of **Sexual Harassment** for purposes of this Policy. (Hostile environment harassment, as defined by Title VII, is defined by and subject to [Op1.02-2 Discrimination Complaint and Investigation Procedures.](#))

**Incest:**

means a form of sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, as set forth in Mo. Rev. Stat. 568.020.1(1)-(4). Incest is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Informal Resolution Process:** means the process described in Section 6.8 wherein certain Formal Complaints may be voluntarily resolved by the Parties prior to the completion of the Grievance Process.

**Nonforcible Sexual Offense:**

means sexual intercourse that may be consensual, but is considered unlawful in the State of Missouri.

**Nonforcible Sexual Offenses (Incest and Statutory Rape)** are included in the definition of **Sexual Harassment** for purposes of this Policy.

**Notice:**

means the act of informing an individual of an occurrence that may have an effect on the outcome of a process set forth in this Policy. For purposes of this Policy, notice will be considered satisfied if the University sends the necessary information to an individual's University email address or an alternate email address provided by the individual during the Grievance Process. Notice will be deemed received on the date in which the University sends the information to the individual's email address.

**Official with Authority to Institute Corrective Measures on Behalf of the University (OWA):**

means any of the following University employees/faculty: President, Provost, Chancellor, Vice Presidents, Directors, Associate / Assistant Directors, Chief Information Officer, Chief of Staff, Assistant to the President for Inclusive Engagement, General Counsel & Chief Compliance Officer, Deputy Provost, Associate Provosts, Vice



Chancellors, Associate Vice Chancellors, Department Chairs, Department Heads, and Program Directors / Coordinators.

**Preponderance of the Evidence:**

means a standard of evidence that is satisfied by evidence demonstrating that a fact or allegation is more likely than not to be true or to have occurred. Preponderance of the Evidence is the applicable standard of evidence adopted by the University for findings of responsibility for allegations of Sexual Harassment as set forth in this Policy.

**Quid Pro Quo Harassment:**

means a University employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. **Quid Pro Quo Harassment** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Rape:**

means sexual intercourse without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

**Rape** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Remedy(ies):**

mean University action(s) designed to restore or preserve equal access to the University's education program or activity and are available to a Complainant following a finding of responsibility on the part of the Respondent at the conclusion of the Grievance Process. Remedies may include Supportive Measures, as set forth in this Policy; however, unlike Supportive Measures, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. Remedies utilized by the University are set forth in Section 7.6.

**Retaliation:**

means the intimidation, threatening, coercion, or discrimination of an individual for the purpose of interfering with any right or privilege secured by Title IX, Title IX Regulations, and/or this Policy, or because an individual has made a report or complaint, testified, assisted, or participated, or refused to participate in any manner in the Grievance Process.

**Respondent:**

means an individual, or the parent of a minor child or legal guardian of an individual under legal guardianship, who has been reported to be the perpetrator of conduct that could constitute **Sexual Harassment**. The Respondent or Complainant may be referred to as a Party, or together as the Parties. Where a Grievance Process involves more than one Respondent references in this Policy to the singular “party” or “Respondent” include the plural, as applicable.

**Sex Discrimination:**

means a form of discrimination wherein a person has been treated inequitably based on sex, marital status, family status, pregnancy, sexual orientation, gender identity, or gender expression. **Sexual Harassment** as defined by this Policy is considered **Sex Discrimination**. As set forth in Section 1, however, this Policy only addresses Sexual Harassment as defined by Title IX. All other allegations of Sex Discrimination (including Sexual Harassment as defined by Title VII) will be processed in a manner consistent with Op1.02-2 Discrimination Complaint and Investigation Procedures.

**Sexual Assault:**

means any sexual act classified as a **Forcible Sexual Offense** or **Nonforcible Sexual Offense** under this Policy. **Sexual Assault** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Sexual Assault with an Object:**

means the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of

giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object** is considered **Sexual Harassment** for purposes of this Policy.

**Sexual Harassment:**

for purposes of the Title IX Regulations, means conduct on the basis of sex that meets the definition of **Quid Pro Quo Harassment, Hostile Environment Harassment, Sexual Assault, Dating Violence, Domestic Violence,** and/or **Stalking. Sexual Harassment** is considered a form of **Sex Discrimination**.

**Sodomy:**

means oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. **Sodomy** is considered **Sexual Harassment** for purposes of this Policy.

**Stalking:**

means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. **Stalking** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Statutory Rape:**

means sexual intercourse with a person who is less than fourteen years old; or less than seventeen years of age if the other person is twenty-one years of age or older. **Statutory Rape** is included in the definition of **Sexual Harassment** for purposes of this Policy.

**Student Administrator:**

means the Vice Chancellor of Student Services of Missouri State University-West Plains(or designee), with respect to all University Student Respondents.

**Supportive Measure(s):**

mean non-disciplinary services offered at no cost by the University as available and appropriate to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. **Supportive Measures** utilized by the University are set forth in Section 5.3.

**Title VII:**

means Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, as amended by the Pregnancy Discrimination Act of 1978, Pub. L. 95-555, Civil Rights Act of 1991, Pub. L. 102-166 and the Lily Ledbetter Fair Pay Act of 2009, Pub. L. 111-2; 42 U.S.C. 2000e.

**Title IX:**

means Title IX of the Education Amendments of 1972, Pub. L. 92-318, as amended by section 3 of Pub. L. 93-568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1686.

**Title IX Coordinator:**

means the University employee(s) designated and authorized to coordinate the University's efforts to comply with its responsibilities under Title IX and the Title IX Regulations. The Title IX Coordinator(s) are responsible for processing all allegations of Sex Discrimination and sexual harassment, including allegations of conduct on the basis of sex that do not meet the definition of Sexual Harassment under Title IX, but which may nonetheless be in violation of Title VII and/or University Policies. The Title IX Coordinator(s) are designated in Section 4 of this Policy. The Title IX Coordinator must be free from conflict of interest or bias against Complainants and Respondents generally and the Complainant and Respondent specifically. The Title IX Coordinator will be trained as outlined in Section 12 of this Policy. Training required of the Title IX Coordinator is available on the University's Title IX website located at [www.missouristate.edu/titleix](http://www.missouristate.edu/titleix).

**Title IX Investigator:**

means the University employee(s), irrespective of job title, who are assigned by the Title IX Coordinator to conduct the investigation of a Formal Complaint as identified in Section 8. The Title IX Investigator must be free from conflict of interest or bias against Complainant and Respondents generally and the Complainant and the Respondent specifically. All Title IX Investigators will be trained as outlined in Section 11 of this Policy. Training required of a Title IX Investigators is available on the University's Title IX website located at [www.missouristate.edu/titleix](http://www.missouristate.edu/titleix).

**Title IX Regulations:**

mean Final Regulations under Title IX, published in the Federal Register, and available at 34 C.F.R. Part 106.

**University Code of Student Rights and Responsibilities (Student Code):**

means the document, adopted by the Board of Governors of Missouri State University wherein the University sets forth rights and responsibilities of students at the University. The Code includes prohibited conduct and a process for handling alleged violations. The Code is available at <https://wp.missouristate.edu/studentlife/code.htm>

**University Education Program or Activity:**

means University locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including any building owned or controlled by a student organization that is officially [recognized by the University](#).

**University Faculty Handbook (Faculty Handbook):**

means the primary document of shared governance at the University, adopted by the Board of Governors of Missouri State University, detailing policies and procedures, which outlines the rights and responsibilities of the faculty. The Faculty Handbook includes prohibited conduct and a process for handling alleged violations of the Faculty Handbook. The Faculty Handbook is available at <https://wp.missouristate.edu/FacultySenate/Files/Updated-Faculty-Handbook-effective-August-2022.pdf>

**University Employee Handbook for Administrative, Professional, and Support Staff Employees (Employee Handbook):**

means the document, adopted by the Board of Governors of Missouri State University, wherein the University provides the employment policies and procedures applicable to University administrative, professional, and support staff employees. The Employee Handbook includes prohibited conduct and a process for handling alleged disciplinary violations under the Employee Handbook. The Employee Handbook is available at [www.missouristate.edu/Policy/Chapter7/G7\\_02\\_9\\_EmployeeConduct.htm](http://www.missouristate.edu/Policy/Chapter7/G7_02_9_EmployeeConduct.htm).

**University Policy(ies):**

means this Policy, the Student Code, Faculty Handbook, Employee Handbook, and any other policy of the University adopted by approval of the President of the University or the Board of Governors of the University. University Policies are available for review at <https://wp.missouristate.edu/policies/>.

## **4. Designation of Title IX Coordinator / Title IX Liaison**

The following University employee has been designated to serve as the Title IX Coordinator for the University and Title IX Liaison for the West Plains campus. As described in this Policy, allegations and complaints of Sex Discrimination, including Sexual Harassment and Formal Complaints of Sexual Harassment should be filed with the Title IX Coordinator. Additional information regarding how to report allegations of Sex Discrimination and filing Formal Complaints of Sexual Harassment can be found on the Title IX website: [www.missouristate.edu/titleix](http://www.missouristate.edu/titleix) (<https://www.missouristate.edu/titleix/>).

Melissa Berry

Designated Title IX Coordinator

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## 5. University Response to Allegations of Sex Discrimination and Sexual Harassment

Pursuant to its Title IX obligations, the University, through the Title IX Coordinator, will promptly respond to any allegation of **Sexual Harassment** received in an education program or activity in the United States. The Title IX Coordinator's response to allegations will treat Complainants and Respondents equitably by offering **Supportive Measures** and following the **Grievance Process** as outlined in Section 7.

### 5.1. Reporting Allegations of Sex Discrimination and Sexual Harassment.

Allegations of Sex Discrimination, including Sexual Harassment, may be made by any person (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute Sex Discrimination or Sexual Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed in Section 4. All University employees (including employees who have not been designated as OWAs as defined by Section 3.26) are required to submit allegations of Sex Discrimination, including Sexual Harassment, within three (3) Days of learning of same, pursuant to this Policy. Failure to submit such an allegation may result in disciplinary action pursuant to the Employee Handbook, Faculty Handbook, or other University Policy.

## **5.2. Initial Response of Title IX Coordinator.**

Upon receipt of an allegation of Sexual Harassment the Title IX Coordinator will, confidentially contact the Complainant and explain to the Complainant the requirements and process for filing a Formal Complaint, the jurisdiction requirements under the Title IX Regulations, the Informal Resolution Process (unless the Complainant alleges Sexual Harassment by a University employee), and possible Supportive Measures. The Title IX Coordinator may consider the necessity of either Emergency Removal or Administrative Leave, as more fully set forth below in Sections 5.4 and 5.5.

## **5.3. Supportive Measures.**

Following receipt of an allegation of Sexual Harassment, and at any time during the Grievance Process, the Title IX Coordinator may implement Supportive Measures designed to restore or preserve equal access to the University's education program or activity including measures designed to protect the safety of the Complainant and Respondent or deter Sexual Harassment.

Supportive measures may include the following:



- 5.3.1. Referral to University or Local Counseling Services;
- 5.3.2. Referral to local law enforcement;
- 5.3.3. Provide any information to victims of Clery Act crimes available through University Safety;
- 5.3.4. Extensions of deadlines or other course-related adjustments;
- 5.3.5. Modifications of work or class schedules;
- 5.3.6. Coordination with the University's Safe Walk program;
- 5.3.7. Restrictions on contact between the Complainant and Respondent (mutual or unilateral);
- 5.3.8. Changes in work or housing locations;
- 5.3.9. Leaves of absence;
- 5.3.10. Coordination with the University administration for increased security and monitoring; and/or
- 5.3.11. Other measures determined by the Title IX Coordinator to be appropriate and which are not unreasonably burdensome to the Respondent.

The Title IX Coordinator is responsible for coordinating the implementation of any Supportive Measure put in place pursuant to this Policy.

## **5.4. Emergency Removal**

Prior to the filing of a Formal Complaint, or at any time prior to the conclusion of the Grievance Process, the University may remove a student Respondent from a University educational program or activity on an emergency basis pursuant to the following process:

- 5.4.1. The Title IX Coordinator will, based on a review of the allegations of Sexual Harassment, make a threshold determination whether the allegations of Sexual Harassment pose an immediate threat to the physical health or safety of any student or other individuals.

5.4.2. If the Title IX Coordinator believes the allegations of Sexual Harassment do pose an immediate threat to the physical health or safety of any student or other individual, the Title IX Coordinator will provide the details of the allegation of Sexual Harassment to the appropriate Student Administrator and Director of Business and Support Services for possible Clery Act mandated response.

5.4.3. The Student Administrator will then engage in an individualized safety and risk analysis in which the Student Administrator must determine that, based on the allegations of Sexual Harassment, there is an immediate threat to the physical health or safety of any student or other individual. The Respondent will be notified of the determination of the Student Administrator and will be provided an opportunity to challenge the decision as provided for in Section 8 of the Student Code. Challenges to the decision of the Student Administrator will not involve the Title IX Coordinator or the Grievance Process. The Student Administrator will inform the Title IX Coordinator as to the final determination regarding Emergency Removal.

## **5.5. Administrative Leave**

Prior to the filing of a Formal Complaint, or at any time prior to the conclusion of the Grievance Process, the University may place a non-student Respondent (faculty/staff) on paid administrative leave. Such administrative leave will continue through the conclusion of the Grievance Process.

## **5.6. Confidentiality of Allegations / Limitations to Confidentiality**

Subject to this Section 5.6, the Title IX Coordinator will keep confidential the identity of any individual who has made a report or complaint of Sex Discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any individual who has been reported to be the perpetrator of Sex

Discrimination, any Respondent, and any witnesses. The Title IX Coordinator may permit disclosure of the above information as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the Grievance Process.

5.6.1. The Title IX Coordinator will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the Title IX Coordinator to provide the Supportive Measures.

5.6.2. As discussed below in Section 6, the Title IX Coordinator must include the identity of any known Complainant in its Initial Notice of Formal Complaints. As a result, anonymity cannot be provided to Complainants who wish to proceed with a Formal Complaint.

## **5.7. Documentation by Title IX Coordinator**

For every response to an allegation of Sexual Harassment described in this Section 5, the Title IX Coordinator will prepare a document that sets forth the measures taken to restore and/or preserve equal access to the University's education program or activity and how such action was, in the conclusion of the Title IX Coordinator, not deliberately indifferent to the allegation of Sexual Harassment. Such report will be retained pursuant to University Policy for documents created pursuant to this Policy.

## **6. University Response to a Formal Complaint of Sexual Harassment**

Consistent with Title IX Regulations, the University will not investigate any allegations of Sexual Harassment under this Policy without first receiving a Formal Complaint as described in this Section. Notwithstanding the

foregoing, in the absence of a Formal Complaint, the University may, in its sole discretion, address an allegation of Sexual Harassment pursuant to [Op1.02-2 Discrimination Complaint and Investigation Procedures \(/OIC/discrimination-complaint-procedures.htm\)](/OIC/discrimination-complaint-procedures.htm) and/or other University Policies.

## **6.1. Filing of a Formal Complaint**

Any Complainant may file a written Formal Complaint of Sexual Harassment with the Title IX Coordinator. Formal Complaints may be filed with the Title IX Coordinator in person, by mail, or by electronic mail by using the contact information set forth in Section 4. The Formal Complaint must be signed by the Complainant to indicate that the individual Complainant is the individual filing the Formal Complaint. As more fully discussed in Section 6.7, the Title IX Coordinator may sign a Formal Complaint.

## **6.2. Notice of a Formal Complaint**

Following the receipt of a Formal Complaint, the Title IX Coordinator will provide a Notice of Formal Complaint of Sexual Harassment (Notice of Formal Complaint), as outlined in this Section 6.2, to the Complainant and to the Respondent identified in the Formal Complaint. The Notice of Formal Complaint will include the following information:

6.2.1. Notice of the University Grievance Process as identified in this Policy.

6.2.2. Notice of the allegations of Sexual Harassment from the Formal Complaint, including, if known to the Title IX Coordinator, the following details regarding the allegations of Sexual Harassment: the identities of the parties involved in the alleged incident, the conduct allegedly constituting Sexual Harassment under this Policy, the date and location of the alleged incident.

6.2.3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.

6.2.4. A statement informing the Parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, during the investigation of the Formal Complaint.

6.2.5. A statement informing the Parties that they, and their Advisors, will have the right to inspect and review evidence obtained during the investigation of the Formal Complaint.

6.2.6. A statement informing the Complainant and Respondent of any provision in the University's applicable policies that prohibits knowingly making false statements in bad faith or knowingly submitting false information (collectively, False Statement(s)) during the Grievance Process.

6.2.7. As applicable, a statement regarding the requirements of the Informal Resolution Process, as set forth in Section 6.8, including i) the voluntary nature of a Party's participation in the Informal Resolution Process, ii) the circumstances under which the Informal Resolution Process precludes the Parties from resuming a Formal Complaint arising from the same allegations, iii) the Parties' right to withdraw from the Informal Resolution Process, and iv) the records that will be maintained and disclosed following the conclusion of the Informal Resolution Process.

## **6.3. Obligation to Supplement Notice of Formal Complaint**

If, during the course of the investigation of a Formal Complaint, the Title IX Investigator decides to investigate allegations about the Complainant or Respondent that were not included in the Notice of Formal Complaint provided pursuant to Section 6.2, the Title IX Coordinator or Investigator will provide the Parties with an updated Notice of Formal Complaint providing notice of the additional allegations under investigation.

## **6.4. Consolidation of Formal Complaints**

The University may, but is not required to, consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondent(s) only where the allegations of Sexual Harassment arise out of the same facts or circumstances.

## **6.5. Dismissal of Formal Complaints**

Pursuant to Title IX Regulations, the University is required to dismiss certain Formal Complaints, as outlined below in Section 6.5.1., and may dismiss Formal Complaints as outlined in Section 6.5.2.

6.5.1. The University is required by Title IX Regulations to dismiss a Formal Complaint if:

- i. The conduct alleged in a Formal Complaint, even if proven true, would not constitute Sexual Harassment as defined in this Policy,
- ii. The conduct alleged in a Formal Complaint did not occur in the University's education program or activity as defined in this Policy, or
- iii. The conduct alleged in a Formal Complaint did not occur within the United States.

6.5.2. The University may dismiss a Formal Complaint, if at any time during the Grievance Process any of the following circumstances occur:

- i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint in whole, or any allegations included in the Formal Complaint,
- ii. The Respondent is no longer enrolled or employed by the University, or

iii. Specific circumstances prevent the University from gathering enough evidence to reach a determination as to the allegations in a Formal Complaint.

6.5.3. The University will dismiss a Formal Complaint following the execution of an Informal Resolution Agreement (Agreement) as described in Section 6.8 and the Informal Resolution Process. As more fully set forth in Section 6.8, following such dismissal, the Complainant may not resume the Grievance Process for any allegation(s) which is subject to the Agreement.

## **6.6. Notice of Dismissal of Formal Complaint and Appeal**

The Title IX Coordinator will provide both the Complainant and Respondent written notice of the dismissal of a Formal Complaint pursuant to Section 6.5. Such Notice of Dismissal will set forth the grounds upon which the decision was made and provide the Parties with information regarding the Appeal of the decision to dismiss. All Formal Complaints that are dismissed under Section 6.5, are subject to Appeal under Section 10, and to potential additional University process as discussed in Section 6.6.1, below.

6.6.1. In the event that a Formal Complaint is dismissed under Sections 6.5.1 or 6.5.2, the Title IX Coordinator will evaluate the alleged conduct to determine whether the conduct, if proven true, would constitute sexual harassment under Title VII or is otherwise in violation of University Policies. If such conduct, if proven true, would constitute a violation of Title VII or other University Policies, the Title IX Coordinator will ensure that an investigation into the alleged conduct is completed and the findings are evaluated consistent with [Op1.02-2 Discrimination Complaint and Investigation Procedures \(/OIC/discrimination-complaint-procedures.htm\)](#).

## **6.7. Formal Complaints Signed by Title IX Coordinator**

Complainants are not required to file Formal Complaints under this Policy. Complainants may receive the Supportive Measures discussed in Section 5 whether or not they chose to file a Formal Complaint. However, in certain circumstances, the Title IX Coordinator may decide that a Formal Complaint is warranted despite the wishes of the Complainant. Factors to be considered by the Title IX Coordinator in deciding whether to sign a Formal Complaint include, but are not limited to, situations involving patterns, threats, minors, weapons, intimidation, violence, and/or when the allegations received involve serious or repeated instances of faculty or employee misconduct. Any Formal Complaint signed by the Title IX Coordinator will proceed via the Grievance Process as set forth Section 7, except that the Title IX Coordinator will not be considered a Complainant for purposes of the Grievance Process.

## **6.8. Informal Resolution Process**

Following the submission of a Formal Complaint (except for Formal Complaints filed under Section 6.7 or where a Complainant alleges Sexual Harassment by a University employee), the Title IX Coordinator will notify the Parties of the possibility of resolving a Formal Complaint prior to the resolution of the Grievance Process through the Informal Resolution Process outlined in this Section. The Informal Resolution Process must be voluntary and agreed to by both the Complainant and Respondent, and cannot be utilized if the Respondent is an employee of the University. Either party may indicate their intention to withdraw from the Informal Resolution Process at any time prior to the execution of the final Informal Resolution Agreement as set forth in Section 6.8.3.

**6.8.1. Agreement to participate in Informal Resolution Process.** Either party may indicate in writing at any time, prior to the conclusion of the Grievance Process, their desire to participate in the Informal Resolution Process. Any communication regarding the Informal Resolution Process must be directed in writing to the Title IX Coordinator. Following written notice of a Party's interest in the Informal Resolution Process, the Title IX Coordinator will notify the other Party of the interested Party's desire to pursue Informal Resolution. Should the other Party acknowledge in writing that they are also interested in pursuing Informal Resolution under this



Section, the Title IX Coordinator will suspend the investigation of the allegations found in the Formal Complaint and prepare a draft Informal Resolution Agreement.

i. The Complainant and Respondent may, but are not required to, suggest Supportive Measures, Remedies (as set forth in Section 5.3 and 7.6), and/or other desired outcomes, that should be included in the Draft Informal Resolution Agreement.

ii. The Title IX Coordinator will draft the Informal Resolution Agreement, in consideration of any suggestions provided by the Parties, and present the draft to the Complainant and Respondent for consideration.

iii. Upon receipt of the draft Informal Resolution Agreement a party must notify the Title IX Coordinator in writing that: i) the Party approves the Informal Resolution Agreement without edit; ii) the Party requests revision to the resolution outcomes selected by the Title IX Coordinator, or iii) the Party no longer wants to participate in the Informal Resolution Process.

6.8.2. Revised Informal Resolution Agreement. If a Party requests a revision to the Title IX Coordinator's Draft Informal Resolution Agreement, the Title IX Coordinator will:

i. Inform each Party as to the response provided by the other Party

ii. Generate a Revised Informal Resolution Agreement based on the feedback received by the Parties, to the extent that the Title IX Coordinator reasonably believes the Parties can come to an agreement as to a Final Informal Resolution Agreement.

iii. Provide the Revised Informal Resolution Agreement to the Parties for review and response as set forth in Section 6.8.1(iii).

6.8.3. Failure to Agree on Revised or Draft Informal Resolution Agreement. If the Parties do not agree to accept the Revised Informal Resolution Agreement, then the Informal Resolution Process will cease and, to the extent permitted by the Policy's jurisdictional requirements, the Grievance Process will resume. Either Party may reengage the Informal Resolution Process to the extent that they communicate, in writing their willingness to accept a prior Draft Informal Resolution or Revised Informal Resolution Agreement previously accepted by the other Party.

6.8.4. Finalized Informal Resolution Agreement. Once both Parties acknowledge in writing their agreement to a Draft Informal Resolution Agreement or a Revised Informal Resolution Agreement, the Title IX Coordinator will finalize the Informal Resolution Agreement. The Title IX Coordinator will present the Final Informal Resolution Agreement to both Parties for signature. Once each Party has signed the Informal Resolution Agreement the Title IX Coordinator will:

- i. Consistent with the Section 6.8.4, notify those offices necessary for the implementation of any resolution outcome identified in the Final Informal Agreement.
- ii. Dismiss the Formal Complaint under Section 6.5.3.

6.8.4. The Title IX Office will retain Final Informal Resolution Agreements pursuant to the limitations in Section 5.6. Information obtained by the Title IX Coordinator solely in connection with the negotiation of the Informal Resolution Agreement will not be included in the Grievance Process should the Informal Resolution Process conclude without an Informal Resolution Agreement.

## **7. University Sexual Harassment Grievance Process**

The University's Grievance Process, as set forth in this Section 7, is intended to provide fair and equitable treatment to Complainants and Respondents. Accordingly, no determination of responsibility will be finalized, nor

will any Disciplinary Sanctions be imposed, against a Respondent until the conclusion of the Grievance Process. During the Grievance Process, the University will bear the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.

## **7.1. Time Frames for Completion of the Grievance Process**

The Title IX Coordinator and Title IX Investigator will endeavor in good faith to ensure that the Grievance Process as set forth in this Policy is completed promptly and pursuant to the timing requirements set forth in this Policy. Absent necessary delays in the Grievance Process, as discussed in Section 7.2, the Grievance Process should conclude within a period of 90 Days.

## **7.2. Temporary Delay / Limited Extension of Time Frames - Process**

For Good Cause, as defined in this Section 7.2, the Title IX Coordinator may upon their own initiative, or at the request of a Complainant or Respondent, grant either i) the temporary delay of the Grievance Process or ii) a limited extension of the time frames set forth in this Policy and Section 7.1. For the purpose of this Section 7.2, good cause may include, but is not limited to:

7.2.1. the absence of a Complainant or Respondent, Advisor, or witness;

7.2.2. concurrent law enforcement activity relating to the allegations of Sexual Harassment;

7.2.3. the need for accommodations of disabilities through the Grievance Process;

7.2.4. the need for language assistance through the Grievance Process;

7.2.5. failure of an Advisor to adhere to this Policy or the Advisor Statement of Expectations, as identified in Section 7.3., or

7.2.6. circumstances outside of a Party's control that might temporarily prevent them from full participation in the Grievance Process.

Any limited extension that has been provided by the Title IX Coordinator pursuant to this Section 7.2 will be communicated in writing to the Complainant and Respondent, and such communication shall include an explanation as to the anticipated duration of the delay or extension and the reasons therefor.

## **7.3. Complainant and Respondent Right to an Advisor**

The Complainant and Respondent may have an Advisor of their choice during the Grievance Process. Advisors will be required to adhere to the expectations of confidentiality as described in this Policy. The Complainant and Respondent and any chosen Advisor will be required to complete an Advisor Statement of Expectations prior to the Advisor's participation in the Grievance Process.

7.3.1. Advisor Provided by the University. If either the Complainant or Respondent do not have an Advisor identified prior to the Live Hearing, the Title IX Coordinator will provide the Party with an Advisor subject to this Section 7.3.1. Any Advisor provided pursuant to this Section 7.3.1 will be provided free of charge and without fee to the Party receiving the Advisor. The Advisor provided will be expected to adhere to the Advisor Statement of Expectations. Advisors provided pursuant to Section 7.3.1 are expected to assist the Party in communicating questions from the Party for purposes of Cross-Examination. Should either a Complainant or Respondent believe that the Advisor provided by the University is refusing to conduct Cross-Examination on their behalf, they should notify the Decision Maker immediately, so that the Advisor may be counseled as to the Advisor Statement of Expectations, or so a replacement Advisor may be provided by the Title IX Coordinator.

7.3.2. Restrictions on Advisors in the Grievance Process. Except for an Advisor's role in Cross Examination, as described in Section 9.5, Advisors will not otherwise be active participants in the Grievance Process. Therefore, Complainants and Respondents are expected to answer questions posed in Investigative Interviews and Live Hearings, and to make any introduction of evidence directly and not through an Advisor. Failure of an Advisor to adhere to this Policy and comply with the Advisor Statement of Expectations may result in a delay or extension of the Grievance Process as described in Section 7.2, or the replacement of an Advisor, as described in this Section 7.3.3. This restriction on active participation applies to both Complainants and Respondents.

7.3.3. Replacement of an Advisor. If a Party's Advisor refuses to comply with the Advisor Statement of Expectations during Cross-Examination at the Live Hearing, after receiving reasonable notice of such expectations from the Decision Maker, the Advisor may be removed, and the Title IX Coordinator will provide a replacement Advisor to the Party pursuant to Section 7.3.1.

## **7.4. Standard of Evidence / Presumption of Not Responsible**

The University has adopted the Preponderance of Evidence as the standard of evidence to be used by the Decision Maker in determining responsibility in the Grievance Process. The Title IX Regulations require that the University include a presumption that the Respondent is not responsible for any conduct alleged in a Formal Complaint until a determination regarding responsibility is made at the conclusion of the Grievance Process.

## **7.5. Potential Disciplinary Sanctions following a Determination of Responsible**

At the conclusion of the Grievance Process and following a determination of responsibility, a Respondent could be subject to the following Disciplinary Sanctions, depending on whether the Respondent is a student, faculty, or

staff.

7.5.1. Student Respondents who are found responsible at the conclusion of the Grievance Process are subject to the Disciplinary Sanctions, as determined by the Decision Maker, and as defined by the Student Code:

- i. Loss of Privileges
- ii. Level Two Probation
- iii. Denial of Privilege to Re-Enroll
- iv. University Housing Probation
- v. University Housing Suspension
- vi. University Housing Expulsion
- vii. Suspension
- viii. Dismissal
- ix. Revocation of Degree
- x. Withholding of Degree

7.5.2. Faculty Respondents who are found responsible at the conclusion of the Grievance Process are subject to Disciplinary Sanctions, as determined by the Decision Maker, and as defined by of Faculty Handbook:

- i. Dismissal

- ii. Revocation of Tenure

- iii. Demotion of Rank

- iv. Reassignment of Duties

7.5.3. Employee Respondents who are found responsible at the conclusion of the Grievance Process are subject to the following Disciplinary Sanctions, as determined by the Decision Maker, and as defined by the Employee Handbook:

- i. Written reprimand

- ii. Reassignment of duties (which may include a demotion)

- iv. Suspension without pay

- iii. Dismissal

## **7.6. Potential Remedies following a Determination of Responsible**

At the conclusion of either the Informal Resolution Process or the Grievance Process (and a determination of responsibility), a Complainant could receive any of the following Remedies:

- i. Unilateral restrictions on contact between the Respondent and Complainant;

- ii. Change in work or housing locations;

- iii. Change in work or class schedules; and/or
- iv. Any Supportive Measure identified in this Policy.

## **7.7. Retaliation**

The University will not retaliate against any individual for participation in the Grievance Procedures outlined in this Policy, nor will the University tolerate retaliation by other members of the University community (i.e., faculty, staff, or students). Individuals who engage in retaliation are subject to disciplinary action under University Policies, including the Student Code, the Employee Handbook, and/or the Faculty Handbook. Retaliation does not, however, include the good faith routing of a complaint initiated under this Policy through another University Policy, as contemplated by Section 6 or Section 11.

## **8. Investigation of Allegations of Sexual Harassment in a Formal Complaint**

Subject to Section 6.5, the University will investigate all allegations of Sexual Harassment (as defined in this Policy) included in a Formal Complaint. The University's process for investigating Formal Complaints of Sexual Harassment is set forth below in this Section 8. The Title IX Coordinator will retain or assign each Formal Complaint to a Title IX Investigator who will endeavor to obtain all relevant evidence – including both inculpatory and exculpatory evidence – relating to the allegations of Sexual Harassment set forth in the Formal Complaint.

### **8.1. Ability to Collect Evidence / Burden on Collecting Evidence**



Subject to any conflicting Supportive Measures put in place by the Title IX Coordinator, the Title IX Investigator will not prohibit either the Complainant or the Respondent from discussing the allegations or gathering and presenting relevant evidence relating to the Formal Complaint.

## **8.2. Evidence Collected by the University During the Title IX Investigation**

Either the Complainant or Respondent may, but are not required to, provide evidence relevant to the allegations of Sexual Harassment included in the Formal Complaint. The Title IX Investigator will not access, consider, require, allow, rely upon, disclose or otherwise use a Party's records, or other evidence that constitute:

8.2.1. Records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting, or assisting, in the professional's or paraprofessional's capacity and which are made and maintained in connection with the provision of treatment of the party; or

8.2.2. Information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

For such records or information contemplated by Sections 8.2.1 or 8.2.2 to be available to the Title IX Investigator, the party subject to the records must first provide their voluntary, written authorization. If the party is a minor or otherwise lacks legal capacity to provide such authorization, then an authorization signed by a parent or legal guardian shall be sufficient.

## **8.3. Title IX Investigative Interviews**

The Title IX Investigator will provide an equal opportunity for the Complainant and Respondent to present witnesses, including fact witnesses and expert witnesses, during the investigation of a Formal Complaint. Prior to any meeting with the Title IX Investigator, the Title IX Investigator will provide to any individual whose participation is sought a Notice of Title IX Investigative Interview, which Notice shall include the date, time, location, participants, and purpose of the investigative interview. Such Notice of Title IX Investigative Interview will be sent prior to the date indicated in the Notice of Title IX Investigative Interview with sufficient time to allow for participation. A Complainant and Respondent may be accompanied by an Advisor to their own Investigative Interviews; however, neither the Complainant nor the Respondent will be permitted to participate or attend any witness interviews.

## **8.4. Opportunity to Review and Respond to Electronic Database**

Prior to the Completion of the Title IX Initial Investigative Report identified in Section 8.5, the Title IX Investigator will provide an equal opportunity to the Complainant and Respondent to inspect and review any evidence obtained during the investigation through a password protected Electronic Database. The Title IX Investigator will send a link to the Electronic Database to both the Complainant and the Respondent (including their Advisors, if any) so that each Party may inspect and review the evidence obtained by the Title IX Investigator during the Investigation related to the allegations raised in the Formal Complaint.

8.4.1. The Complainant and Respondent shall each have the opportunity, but not the obligation, to review and provide a written response to the evidence collected in the Electronic Database. If either the Complainant or the Respondent wishes to provide a response to the evidence collected in the Electronic Database, they must do so in writing and within 10 Days of receiving access to the Electronic Database.

8.4.2. The Title IX Investigator will review the written response to the evidence collected in the Electronic Database (if any) and provide such written response to the other Party. The Title IX Investigator will consider each Party's response to the Electronic Database prior to the completion of the Initial Investigative Report.

## **8.5. Title IX Initial Investigative Report**

The Title IX Investigator is responsible for creating a summary of relevant evidence in a Title IX Initial Investigative Report. Following the Parties access to the Electronic Database and the Title IX Investigator's review of the Parties' written submissions, the Title IX Investigator will provide a copy of the Initial Investigative Report to the Complainant and the Respondent (including their Advisors, if any). The Parties will be given at least 10 Days to review and submit a written response to the Initial Investigative Report.

8.5.1 The Complainant and Respondent shall each have the opportunity, but not the obligation, to review and provide a written response to the Initial Investigative Report. If either the Complainant or the Respondent wishes to provide a response to the Investigative Report, they must do so in writing and within 10 Days of receiving the Initial Investigative Report.

8.5.2. The Title IX Investigator will review the written responses received, and provide the Party's written response to the other Party. The Title IX Investigator must supplement the Electronic Database to include the Complainant's or Respondent's written response, as described in Section 8.5.1. The Title IX Investigator may conduct additional Investigative Interviews or supplement the Initial Investigative Report based on the written response received from either Complainant or Respondent.

## **8.6. Title IX Final Investigative Report**

If no written response to the Initial Investigative Response is received by the Title IX Investigator prior to the expiration of the 10-Day period identified in Section 8.4, the Initial Investigative Report will become final. If either Party submitted a written response to the Initial Investigative Report, the Investigative Report will become final after the Title IX Investigator has had an opportunity to review the Initial Investigative Report as set forth in this Section. Once the Initial Investigative Report has been finalized, both the Complainant and the Respondent will receive a copy of the Title IX Final Investigative Report. The Title IX Investigator will provide a copy of the Final Investigative Report to the Title IX Coordinator for continuation of the Grievance Process as outlined in this Policy.

## **9. Live Hearing of Formal Complaints of Title IX Sexual Harassment**

Following the completion of the Title IX Final Investigative Report, the Title IX Coordinator will review the Title IX Final Investigative Report along with the corresponding Formal Complaint for possible dismissal pursuant to Section 6.5. If a Formal Complaint is not dismissed, the Title IX Coordinator will schedule a Live Hearing, as described in this Section 9, no sooner than five (5) Days following the issuance of the Title IX Final Investigative Report.

### **9.1. Role of Title IX Coordinator in Live Hearing**

The Title IX Coordinator will have no substantive role in the Live Hearing except for coordination of the Live Hearing including, but not limited to:

9.1.1. The selection and coordination of the Decision Maker(s) assigned to facilitate the Live Hearing;

9.1.2. The facilitation of the Live Hearing being conducted virtually, pursuant to Section 9.8; and

9.1.3. Ensuring that an audio recording of the Live Hearing is created and available, as set forth in Section 9.11.

## **9.2. Evidence Available at the Live Hearing**

At the Live Hearing, the Complainant and Respondent (including their Advisors), as well as any Decision Maker, will have an equal opportunity to inspect and review all evidence available in the Evidence Database, as set forth in Section 8.

## **9.3. Presentation of Evidence at the Live Hearing**

Subject to the limitations identified in Section 9.4, at the Live Hearing, the Decision Maker will facilitate the presentation of evidence through the presentation of relevant questions, via Direct Examination and Cross Examination, to the Complainant, Respondent, and any witnesses, including questions on credibility. The Decision Maker, as a neutral fact finder, may pose direct questions to any participant in the Live Hearing (Complainant, Respondent, and/or Witnesses). The Advisor for the Complainant and Respondent may engage in Cross Examination, as set forth in this Policy. The Decision Maker will not require, allow, rely upon, or otherwise use Direct or Cross Examination questions that seek disclosure of information prohibited under Section 8.2, unless the appropriate authorization has been provided. Any determinations of credibility made by the Decision Maker will not be based solely on an individual's status as a Complainant, Respondent, or Witness.

## **9.4. Determining Relevance During the Live Hearing**

In making its decision regarding relevance, the Decision Maker will determine whether the question posed is probative to the question of responsibility as set forth in the Formal Complaint. The Decision-Maker must focus on evidence pertinent to proving whether facts material to the allegation(s) of Sexual Harassment are more or less

likely to be true. The University has pre-determined that questions and evidence about the Complainant's sexual predisposition and/or prior sexual behavior are "irrelevant," and will not be permitted, unless the Decision Maker determines that:

9.4.1. Such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or

9.4.2. The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **9.5. Cross Examination During Live Hearing**

The Decision Maker will only allow the Complainant or Respondent's Advisor to ask the other Party and any witnesses relevant questions and follow-up questions. Such questioning must be allowed directly, orally, and in real-time, subject to the right of a virtual Live Hearing pursuant to Section 9.8.

9.5.1 Following each question posed by an Advisor, the Decision Maker will instruct the individual receiving the question to wait prior to responding, so that the Decision Maker may decide as to the relevance of the question asked. Only questions that are relevant to the allegations of Sexual Harassment will be considered. If the Decision Maker believes that a question posed to an individual is not relevant, the Decision Maker will notify the Advisor asking the question of that determination and provide a brief explanation as to why the question was determined irrelevant and was excluded.

## **9.6. Effect of Failing to Submit to Examination**

The Decision Maker may not draw any inference about the determination of responsibility based solely on a Party's refusal to answer any questions posed during the Live Hearing. The Decision Maker may rely on any relevant statements of a witness or Party, even if that party or witness refuses to respond to Direct Examination by the Decision Maker or Cross Examination by a Party's Advisor.

## **9.7. Reserved.**

## **9.8. Virtual Live Hearing**

At the determination of the Title IX Coordinator, or at the request of either the Complainant or the Respondent, the Title IX Coordinator will provide for the Live Hearing to occur with the Complainant and Respondent located in separate rooms with technology sufficient to enable the Decision Maker(s), Complainant, Respondent, and witnesses to simultaneously see and hear the answering of questions and presentation of evidence.

## **9.9 Determination Regarding Responsibility**

Following the Live Hearing, the Decision Maker will conduct an objective evaluation of all relevant evidence presented during the Grievance Process. The Decision Maker will issue a written determination regarding responsibility for the allegation set forth in the Formal Complaint in light of the Preponderance of the Evidence. The Written Determination of the Decision Maker will be provided to the Title IX Coordinator. The Title IX Coordinator will review the Written Determination to ensure it includes all information required by this Section. The Title IX Coordinator will then provide the Written Determination simultaneously to the Complainant and the Respondent. The Written Determination must include the following information:

9.9.1. The allegations potentially constituting Sexual Harassment as defined under this Policy;

9.9.2. A description of the procedural steps taken from the receipt of the Formal Complaint through the issuance of the Written Determination, including any notifications to the Complainant and Respondent, interviews with the Complainant and Respondent and witnesses, site visits, methods used to gather other evidence, and hearings held;

9.9.3. Findings of fact supporting the determination;

9.9.4. Conclusions regarding the application of the Student Code, Faculty Handbook, Employee Handbook, as applicable, to the facts raised in the Live Hearing;

9.9.5 A statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any Disciplinary Sanctions imposed on the Respondent, and whether Remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant;

9.9.6. The University's procedures and permissible bases for Appeal, as set forth in Section 10; and

9.9.7. The date on which an Appeal will no longer be accepted pursuant to Section 10.

## **9.10. Final Determination Regarding Responsibility**

The Written Determination, including any Disciplinary Sanctions, will not be final until the conclusion of any Appeal filed pursuant to Section 10, or if no appeal is filed, the date set forth in the Written Notification.

## **9.11. Availability of Live Hearing Audio**

Within three (3) Days of the Live Hearing, an audio recording of the Live Hearing will be made available to the Parties via the Evidence Database. The Complainant and Respondent shall have access to the audio recording of



the Live Hearing until the expiration of the appeal period, as outlined in Section 10.

## **10. Appeals**

Both the Complainant and Respondent may submit an appeal from a Written Determination of responsibility following either (i) a Live Hearing, or (ii) the University's dismissal of a Formal Complaint, or any allegation contained within a Formal Complaint. In either case, the University will process the Appeal pursuant to this Section.

### **10.1 Filing of an Appeal**

Within five (5) Days of the submission of the Written Determination or Dismissal, either the Complainant or the Respondent may file a written appeal of the Written Determination or Dismissal. Any Appeal must be limited to one (1) of the three (3) bases for appeals identified in Section 10.2. Any Party submitting an appeal will have an opportunity to provide a statement in support of, or challenging, the Written Determination or Dismissal. Following the submission of an Appeal, the Title IX Coordinator will provide to the non-Appealing party notice that an appeal has been filed, along with a copy of the written appeal and directions on how to respond to the appeal.

### **10.2. Bases for Appeal**

The University will consider Appeals of a Written Determination or Dismissal on the following three (3) grounds:

10.2.1. A procedural irregularity that affected the outcome of the matter;

10.2.2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made and that could affect the outcome of the matter; and

10.2.3. The Title IX Coordinator, Title IX Investigator, or Decision Maker(s) had a conflict of interest or bias against Complainants or Respondents generally, or the Complainant or Respondent specifically, that affected the outcome of the matter;

## **10.3 Responding to Appeals**

The non-appealing Party will have five (5) Days following receipt of the Notice of Appeal to respond to the written appeal by providing a written statement either supporting or challenging the Written Determination or Dismissal (as applicable), and responding to the bases of appeal.

## **10.4. Written Decisions of Appeals**

At the conclusion of the time period identified in Section 10.3, a new Decision Maker, assigned for the purpose of the Appeal, will review all documents received in connection with the written appeal and provide a written decision on appeal (Written Decision). The Written Decision will include a rationale for the result as to each basis of appeal identified by the appealing party. On Appeal, the Decision Maker may choose to either:

10.4.1. affirm the Written Determination or Dismissal;

10.4.2. reverse the Written Determination's finding of responsibility or no responsibility;

10.4.3. reverse the Dismissal of a Formal Complaint, or an allegation included in a Formal Complaint; or

10.4.4. deny the appeal because it does not fall within the bases for Appeal as identified in Section 10.2.

The Decision Maker on appeal will provide the Written Decision to the Title IX Coordinator, who shall provide a copy of the Written Decision simultaneously to the Parties.

## **10.5. Final Disciplinary Sanctions and Remedies**

Should the Decision Maker affirm the Written Determination as to responsibility, or deny an appeal challenging responsibility, the determination regarding responsibility will become final, and the Title IX Coordinator shall notify University offices and officials as necessary to ensure the implementation of any Disciplinary Sanction and/or Remedies included in the Written Determination.

## **10.6. Effect of Reversal on Appeal**

Any Dismissal of a Formal Complaint, or any allegation included in a Formal Complaint, that is reversed on Appeal by the Decision Maker will proceed through the Grievance Process outlined in this Policy.

# **11. Additional University Process**

In certain circumstances, the allegations raised in the Grievance Procedures, or the actions of an individual during the Grievance Process may merit additional University process through the Student Code, Faculty Handbook, or Employee Handbook. Circumstances that may merit additional process include:

## **11.1. Other Discrimination or Harassment on the Basis of Sex**

As contemplated by Sections 1, 3.32, 5.2, and 6, allegations of discrimination or harassment that do not meet the definition and/or jurisdictional requirements of “Sexual Harassment” provided by the Title IX Regulations and this Policy will be processed in a manner consistent with [Op1.02-2 Discrimination Complaint and Investigation Procedures](#) ([/OIC/discrimination-complaint-procedures.htm](#)).

## **11.2. Materially False Statements**

The Title IX Coordinator shall, at the conclusion of the Grievance Process and at the recommendation of the Decision Maker, request that an appropriate University official address any claim that an individual involved in the Grievance Process made a False Statement in the course of the Grievance Process. Such submission will be done only in good faith and will not be done solely because a finding of responsibility was counter to the statement made by a Party.

11.2.1. Allegations that a student made a materially False Statement in the course of the Grievance Process will be forwarded to the Office of Vice Chancellor of Student Services for consideration under the Student Code.

11.2.2. Allegations that a faculty member made a materially False Statement in the course of the Grievance Process will be forwarded to the Office of Academic Affairs for consideration under the Faculty Handbook.

11.2.3. Allegations that a staff member made a materially False Statement in the course of the Grievance Process will be forwarded to the Office of Human Resources for consideration under the Employee Handbook, subject to any Collective Bargaining Agreement.

## **11.3. Claims of Retaliation**

Nothing in this Policy prevents any individual from making a claim of Retaliation as defined in this Policy and in other University policies.

11.3.1. Allegations that a student has retaliated against an individual pursuant to this policy should be directed to the Office of the Vice Chancellor of Student Services for consideration under the Student Code.

11.3.2. Allegations that a faculty member has retaliated against an individual pursuant to this policy should be directed to the Office of Academic Affairs for consideration under the Faculty Handbook.

11.3.3. Allegations that a staff member has retaliated against an individual pursuant to this policy should be directed to the Office of Human Resources for consideration under the Employee Handbook.

## **12. Required Training**

The University will ensure that all individuals serving as Title IX Coordinator, Title IX Investigator, and any Decision Makers receive training on the topics identified in Section 12.1. All training required by this Policy, including any position-specific training identified in Section 12.2, will be made available on the University's Title IX website.

### **12.1. General Training**

The University Title IX Coordinator, Title IX Investigator, and Decision Makers will all be required to engage in training covering the following topics:

12.1.1 The definition of Sexual Harassment under §106.30 of the Title IX Regulations and as used in this Policy;

12.1.2 The scope of the University's education program or activity;

12.1.3. How to conduct an investigation and the Grievance Process; and

12.1.4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

### **12.2. Position Specific Training**

In addition to the training set forth in Section 12.1, the following positions will be required to engage in training covering the following position-specific topics:

12.2.1 Decision Makers. All Decision Makers must be trained on topics including:

- i. how to serve impartially;
- ii. issues of relevance as described in Section 9; and
- iii. any technology to be used at a Live Hearing.

12.2.2. Title IX Investigators. Any individual who serves as a Title IX Investigator must be trained on topics including:

- i. issues of relevance; and
- ii. technology to be used to populate the Electronic Database discussed in Section 8.2.

## **13. Publication of Policy**

On an annual basis, the Title IX Coordinator will coordinate with necessary University Officials to ensure that applicants for University admission and employment, current students, and current employees are provided with access to this Policy and the current Title IX Coordinator contact information identified in Section 4. This Policy is available online in the University's Policy Library and will be included by reference in the Student Code, , Employee Handbook, Faculty Handbook, and other documents distributed to University students.

## **14. Preservation of other Rights**

Nothing in this Policy is intended to modify any rights under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (ADA), as applicable. Anticipated barriers due to a disability related to this Policy should be addressed to the following University offices:

14.1 Students with a disability who anticipate barriers related to this Policy should request an accommodation through the Disability Support Officer, Lybyer Enhanced Technology Center, Room 210 or by calling 417-255-8062.

14.2. Faculty and Staff with a disability who anticipate barriers related to this Policy should request an accommodation through the University's Deputy Compliance Officer, Carrington Hall, Suite 205 or by calling 417-836-6755.

Line of Authority

Responsible administrator and office: Office of the President


Contact person in that office: Coordinator of Title IX

Effective date


Presidential approval: April 11, 2022



## Missouri State University-West Plains

 [128 Garfield Ave.](#)  
[West Plains, MO 65775](#)

 [WPAmissions@MissouriState.edu](mailto:WPAmissions@MissouriState.edu)

 [417-255-7255](tel:417-255-7255)

## Additional learning opportunities

[Missouri State University](#)

[Mountain Grove-Shannon Hall](#)

[Missouri State Outreach](#)

[Education Abroad](#)



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<https://wp.missouristate.edu/OIC/title-ix-policy.htm>