

# Grievance Procedures for Addressing Formal Complaints of Sexual Harassment Under the May 19, 2020 Title IX Regulations

## I. INTRODUCTION

### A. The Purpose of the Title IX Grievance Procedure for Addressing Formal Complaints of Sexual Harassment

Title IX of the Educational Amendments of 1972 (Title IX) prohibits any person in the United States from being discriminated against on the basis of sex in access to and participation in any educational program or activity receiving Federal financial assistance. The U.S. Department of Education, which enforces Title IX, interprets its prohibition against sex discrimination to include sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines "sexual harassment" (including forms of sex-based violence); and
- States the process by which the University must respond to reports of misconduct falling within that definition of sexual harassment.

See 85 Fed. Reg. 30026 (May 19, 2020) (Final Rule). The full text of the Final Rule and its Preamble are available here: <http://bit.ly/TitleIXReg>. Based on the Final Rule, Cleveland State University implements this Title IX Grievance Procedure effective August 14, 2020.

### B. The Impact of the Title IX Grievance Procedure on Other Campus Policies

The Final Rule identifies the geographic scope of Title IX and the types of sexual harassment that fall under this Title IX Grievance Procedure for Addressing Formal Complaints of Sexual Harassment ("Title IX Grievance Procedure"). This Title IX Grievance Procedure applies to reports of sexual harassment, including sexual misconduct, which fall within Title IX and are prohibited by the University.

The Office for Institutional Equity retains the authority to investigate misconduct constituting discrimination, harassment, sexual violence and retaliation pursuant to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation* and related *Procedures for Investigating Complaints of Discrimination, Harassment, Sexual Violence and Retaliation* (Procedures) as to discrimination, harassment, sexual violence and retaliation falling outside the jurisdiction of this Title IX Grievance Procedure, or which are identified by the Title IX Policy or the Title IX Grievance Procedure as subject to investigation and adjudication pursuant to those Procedures.

This Title IX Grievance Procedure is not transferable to any other policy of the University for any violation of any code of conduct, employment policies, the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*, or any civil rights violation. The application of this Title IX Grievance Procedure does not set precedent for other policies or processes in the University.

## II. THE TITLE IX GRIVANCE PROCEDURE FOR ADDRESSING FORMAL COMPLAINTS OF SEXUAL HARASSMENT

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### A. General Rules of Application

#### 1. **Effective Date**

This Title IX Grievance Procedure is effective on August 14, 2020, and applies to Formal Complaints of sexual harassment brought on or after August 14, 2020.

#### 2. **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified, this Procedure, or its withdrawn or modified elements, will be deemed revoked as of the publication date of the opinion or order and for all reports received after that date, as well as any elements of the Procedure that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Procedure be revoked in this manner, conduct previously covered under the Title IX Grievance Procedure will be investigated and adjudicated under the [\*Policy Against Discrimination, Harassment, Sexual Violence and Retaliation\*](#).

### **3. Equitable Application**

All requirements and protections are equitably provided to individuals regardless of sex or status as a Complainant or Respondent. Individuals who wish to file a complaint about the University's Title IX Policy or Title IX Grievance Procedure may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

### **4. Disability Accommodations**

Parties and witnesses may request reasonable accommodations for disclosed disabilities at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. Parties and witnesses must request disability accommodations to receive them in this Procedure, even when Parties or witnesses receive accommodations in other institutional programs and activities.

## **B. Definitions**

The definitions in this section are applicable to this Title IX Grievance Procedure and not to any other procedure of the University.

### **1. Covered Sexual Harassment**

The University prohibits Covered Sexual Harassment against any student, employee or visitor to campus. For the purposes of this Title IX Grievance Procedure, "Covered Sexual Harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

- a. A University employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- b. Unwelcome conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to a University education program or activity;
- c. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim, including instances in which the victim is incapable of giving consent;
- d. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
- e. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any 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 Ohio's domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Ohio.

- f. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Conduct that does not meet one or more of these criteria may still be prohibited under the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*.

## **2. "Consent" or "Affirmative Consent"**

"Consent" or "Affirmative Consent" means:

- a. Informed (knowing), voluntary (freely given) and active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexual activity.
- b. Consent to one form of sexual activity does not, by itself, constitute consent to another form of sexual activity.
- c. Silence, without more, is not consent.
- d. Consent may be withdrawn at any time by communicating, through clear words or actions, a decision to cease the sexual activity. Once affirmative consent is withdrawn, the sexual activity must cease immediately.
- e. Consent is absent where: (i) Force is applied to obtain consent. Force includes physical violence, abuse of power, threats, intimidation, and/or coercion. (ii) An individual knows or should know, based on the circumstances, that the individual seemingly giving consent is substantially impaired (e.g., by alcohol or drug use, unconsciousness or other reason). An individual who is substantially impaired cannot make a rational, reasonable assessment whether to give consent because she/he lacks the capacity to understand the "who, what, when, where, why, or how" of the sexual interaction. (iii) Coercion occurs when an individual is pressured, psychologically or emotionally manipulated, tricked, threatened, or forced in a nonphysical way, to engage in unwanted sexual activity. Coercion occurs when an individual is caused to believe that sex is owed to another person because of that person's position of authority or based on the parties' relationship. Coercion can involve persistent attempts to have sexual contact after an individual has already refused to engage in sexual activity.

### **3. Education Program or Activity**

The University's "education program or activity" means:

- a. Any on-campus premises;
- b. Any off-campus premises over which the University has substantial control. This includes buildings or property owned or controlled by a recognized student organization; or
- c. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs and activities over which the University has substantial control.

### **4. Formal Complaint**

"Formal Complaint" means a document – including an electronic submission - filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging Covered Sexual Harassment against a Respondent which occurred or is occurring within the University's education program or activity and requesting initiation of procedures consistent with this Title IX Grievance Procedure.

### **5. Complainant**

Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment. A Complainant may also be referred to as a Party.

### **6. Relevant Evidence and Relevant Questions**

- a. Relevant evidence and relevant questions refer to evidence and questions that tends to make an allegation of Covered Sexual Harassment more or less likely to be true.
- b. Relevant evidence and relevant questions do not include the following types of evidence and questions, which are deemed irrelevant at all stages of the Title IX Grievance Procedure:
  - i. Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless: the questions are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or the questions concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

- i. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- ii. Any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent.

## **7. Respondent**

Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Covered Sexual Harassment. A Respondent may also be referred to as a Party.

## **8. Retaliation**

- a. Retaliation is any overt or covert act of reprisal, interference, restraint, penalty, discrimination, intimidation or harassment, against any person or group for exercising any rights secured by Title IX or pursuant to the Title IX Policy.
- b. Prohibited retaliation includes retaliatory harassment and retaliation through a third person or persons.
- c. Retaliation which violates the Title IX Policy includes charges filed against an individual for code of conduct violations that: (1) do not involve sex discrimination or sexual harassment, but (2) arise from the same facts or circumstances as a Formal Complaint of Covered Sexual Harassment. For this reason, and to encourage the reporting of possible violations the Title IX Policy and the participation in proceedings pursuant to the Title IX Grievance Procedure, the University will not pursue sanctions against students for code of conduct violations, such as underage possession or consumption of alcohol, drugs or narcotics, when the violation does not place the health and safety of another person at risk, when information about the violation is learned by the Title IX Coordinator as a result of a report and/or during the course of an investigation of a Formal Complaint.

## **9. Privacy and Confidentiality**

- a. Reports of Covered Sexual Harassment are treated with the greatest degree of confidentiality possible. The University shares information about a Formal Complaint, supportive measures or investigations only with those individuals who need to know that information to fulfill the obligation to investigate, support a Party or as required by law. All individuals involved in an investigation are expected to treat all related information as confidentially as possible.
- b. Notwithstanding the obligation of confidentiality, the University is subject to the Ohio Public Records Act and may be required to release records related to a complaint or investigation pursuant to a public records request.
- c. Notwithstanding the obligation of confidentiality, the Complainant and the Respondent may share information relating to a report or investigation with their respective advisor(s), support person(s) and others providing support or

assistance in this process to the extent necessary to enable these individuals to provide effective advice and/or support.

- d. The University may also be required to permit a student to inspect and review records related to a complaint or investigation to the extent that they constitute education records as defined in the Family Education Rights and Privacy Act.
- e. The University will comply with requests or subpoenas for records related to a Formal Complaint or investigation as required by law.

## **10. Written Communications**

The communication of notices and/or written communications will, generally, be addressed to the Parties' University email addresses. Parties are responsible for regularly checking their email accounts.

## **11. Advisor of Choice and Participation of Advisor of Choice**

- a. Parties are required to participate in this Procedure directly and not through an advocate or representative. Parties participating as Complainant or Respondent in this Procedure may be accompanied by an Advisor of Choice. The Advisor of Choice is present to support a Party, is not an advocate and cannot speak for a Party, except where explicitly stated in this Title IX Grievance Procedure and consistent with the Final Rule.
- b. The University permits the Parties to have equal access to Advisors of Choice. Limitations on participation by Advisors of Choice apply equally to both Parties.
- c. The Parties have the right to select one Advisor of Choice, including an attorney.
- d. A Party's Advisor of Choice may accompany the Party to any meeting or proceeding held pursuant to this Title IX Grievance Procedure.
- e. The University will attempt to schedule proceedings pursuant to this Procedure on dates where all Parties' Advisor of Choice is available, provided that Advisors of Choice demonstrate good faith in the effort to find dates and times that meet all schedules. The University cannot agree to extensive or unreasonable delays solely to accommodate the schedule of an Advisor of Choice. The determination of whether a delay is reasonable shall be made by the Title IX Coordinator or designee, but the Title IX Coordinator or designee is not required to delay a proceeding under this Procedure by more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the Party the opportunity to be accompanied by a different Advisor of Choice.
- f. A person is not disqualified from serving as a Party's Advisor of Choice merely because the person is also a witness to some or all of the matters set out in the Formal Complaint.

## **12. Notice of Meetings and Interviews**

The University will provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a Party, with sufficient time for the Party to prepare to participate.

## **13. Delays**

Each Party may request in writing to the Title IX Coordinator a one-time delay at any point in the Title IX Grievance Procedure of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requesting Party provides reasonable notice and the delay does not overly inconvenience other persons involved in the proceeding. The Title IX Coordinator may grant further extensions of time and/or pauses in the Procedure on reasonable grounds.

## **14. Bias**

The Parties may raise concerns about bias and conflict of interest of the Title IX Coordinator, Investigator or Decision-Maker during this process, including at the commencement of the Live Hearing. Issues of bias must be raised as soon as a Party learns of facts which are alleged to demonstrate the existence of bias or conflict of interest. Concerns about the Title IX Coordinator's or the Investigator's bias or conflict of interest must be raised in writing with the Title IX Coordinator as soon as a Party becomes aware of facts that create the concern. Concerns about the Decision-Maker's bias or conflict of interest must be raised on the record with the Decision-Maker at the Live Hearing, or if the concern about bias or conflict of interest does not arise until after the Live Hearing is concluded, in writing to the Title IX Coordinator as soon as a Party learns of facts which are alleged to demonstrate the existence of the bias or conflict of interest. The Title IX Coordinator and/or the Decision-Maker will consider the allegation of bias or conflict of interest, but is not required to stop the proceedings pursuant to this Title IX Grievance Procedure, including the Live Hearing, because a Party has made an allegation of bias or conflict of interest.

## **15. Training**

Any person serving as a Title IX Coordinator, Investigator, Advisor of Choice, Decision-Maker, Informal Resolution Facilitator, Decision Maker on a matter of Emergency Removal or appeal of an Emergency Removal, or Decision-Maker on Appeal will first receive training on all topics required by the Final Rule. The Title IX Coordinator will post the training as required by the Final Rule on the Title IX webpages.

### **C. Where to Report Covered Sexual Harassment**

Any person may report sex discrimination, including sexual harassment (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 for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator and Deputy Title IX Coordinator:

**Name:** Rachel Lutner  
**Title:** Director, Office for Institutional Equity  
**Office Address:** Administration Center, Room 236, located at 2300 Euclid Avenue  
**Email Address:** oie@csuohio.edu  
**Telephone Number:** 216-687-2223 or, for after-hours urgent matters, 937-756-1499

**Name:** LaJuan Flores  
**Title:** Associate Director, Office for Institutional Equity  
**Office Address:** Administration Center, Room 236, located at 2300 Euclid Avenue  
**Email Address:** oie@csuohio.edu  
**Telephone Number:** 216-687-2223 or, for after-hours urgent matters, 937-369-9445

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

#### **D. Non-Investigatory Measures Available Under the Title IX Grievance Policy**

##### **1. Supportive Measures for Complainants**

Complainants who report allegations that could constitute Covered Sexual Harassment under this Title IX Grievance Procedure have the right to supportive measures from the University, regardless of whether they file a Formal Complaint or participate in this Title IX Grievance Procedure. Supportive measures are non-disciplinary and non-punitive.

As appropriate, supportive measures may include, but are not limited to:

- a. Counseling
- b. Academic support, including extensions of deadlines or other course-related adjustments
- c. Modifications of work or class schedules
- d. Campus escort services
- e. Safety planning
- f. No contact directives
- g. Changes in work or residential locations
- h. Excused absences
- i. Leaves of absence
- j. Late or retroactive course withdrawals, or grades of "I" or "Incomplete", without negative impact to academic standing
- k. Increased security and monitoring of certain areas of the campus

## **2. Supportive Measures for Respondents and others**

Respondents and others, including witnesses or roommates, who are impacted by allegations that could constitute Covered Sexual Harassment under this Title IX Grievance Procedure have the right to receive the supportive measures listed above, if appropriate, regardless of whether they participate in an investigation.

## **3. Emergency Removal of Student or Employee**

- a. The University may remove a Respondent from the University's program or activity on an emergency basis when the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual exists related to the allegations of Covered Sexual Harassment. Such removal may include academic or other suspension, and/or removal from the University's premises, if the Respondent is a student, or the placement on a leave of absence, if the Respondent is an employee.
- b. Emergency Removal of a Student Respondent
  - i. The Title IX Coordinator or designee will advise the student and other appropriate persons in writing of the emergency removal, its terms and the justification for it.
  - ii. The Respondent may respond in writing to the Title IX Coordinator within three working days of the date of the communication advising of the emergency removal. Within three (3) working days of receipt of any responses, the Title IX Coordinator will meet with the Chief Student Affairs Officer or designee to review the response and jointly recommend to the Provost or designee that the emergency removal is affirmed or revoked.
  - iii. Within three (3) working days of receipt of the recommendation, the Provost or designee will make the final decision to affirm or revoke the emergency removal. If the suspension is revoked, other interim measures may be imposed. The Title IX Coordinator or designee will inform all relevant parties of the determination of the review of the emergency removal.
- c. Administrative leave. The University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Procedure, consistent with applicable policy or collective bargaining agreement.
- d. The decision-maker on the issue of the need for emergency removal or interim administrative leave or the appeal of such removal or leave, shall not be otherwise involved in subsequent proceedings of the matter pursuant to this Title IX Grievance Procedure.

## **E. Pre-Hearing Procedures**

### **1. Filing a Formal Complaint**

- a. The timeframe for the Title IX Grievance Procedure begins with the filing of a Formal Complaint. The Title IX Grievance Procedure will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of the Formal Complaint, provided that the Title IX Grievance Procedure may be extended for good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- b. To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed document describing the facts alleged.
- c. Complainants may file a Formal Complaint if they are currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee. Complainants who do not meet these criteria may proceed pursuant to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*.
- d. If a Complainant does not file a Formal Complaint, the Title IX Coordinator may a Formal Complaint against the Respondent. The Title IX Coordinator will inform the Complainant of this decision in writing. The Complainant will not be required to further participate in the Title IX Grievance Procedure, and will receive all notices issued pursuant to this Procedure, unless the Complainant requests no further notice.

**2. Law Enforcement Option.** Nothing in the Title IX Grievance Procedure prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus Title IX Grievance Procedure.

**3. Informal Resolution Option.** A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the Title IX Informal Resolution Procedure, which is discussed in Part K of this Title IX Grievance Procedure.

**4. Consolidation.** The Title IX Coordinator may consolidate Formal Complaints alleging Covered Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Covered Sexual Harassment arise out of the same facts or circumstances.

### **5. Determining Jurisdiction**

The Title IX Coordinator will determine if this Title IX Grievance Procedure applies to a Formal Complaint. The Title IX Grievance Procedure will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

- a. The conduct is alleged to have occurred on or after August 14, 2020;
- b. The conduct is alleged to have occurred in the United States;
- c. The conduct is alleged to have occurred in an education program or activity of the University; and
- d. The alleged conduct, if true, would constitute Covered Sexual Harassment as defined above.

If all of the elements are met, the University will investigate the allegations according to this Title IX Grievance Procedure.

## **6. Allegations Potentially Falling Under Two Policies**

If the reported conduct, if true, includes conduct that would constitute Covered Sexual Harassment and conduct that would not constitute Covered Sexual Harassment, the Title IX Grievance Procedure will be applied to investigation and adjudication of the allegations that constitute Covered Sexual Harassment. The Title IX Coordinator may elect to address allegations of conduct that do not constitute Covered Sexual Harassment pursuant to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*.

## **7. Dismissal of some or all of the Formal Complaint**

- a. **Mandatory Dismissal.** If, based on the Formal Complaint or the subsequent investigation, any one of the jurisdictional elements in (5), above, is not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of this Title IX Grievance Procedure. If applicable, the Title IX Coordinator will advise the Parties that the reported misconduct may be addressed pursuant to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*.
- b. **Discretionary Dismissal.** The Title IX Coordinator may dismiss a Formal Complaint brought under this Title IX Grievance Procedure, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:
  - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
  - ii. The Respondent is no longer enrolled at or employed by the University; or,
  - iii. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

- c. **Notice of Dismissal.** The Title IX Coordinator will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the Parties.
- d. **Appeal.** Any Party may appeal a dismissal determination using the Procedure set forth in “Appeals,” below.
- e. **Notice of Referral to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation*.** Upon dismissal of a Formal Complaint, or part of a Formal Complaint, pursuant to this Title IX Grievance Procedure, the Title IX Coordinator, or designee, may utilize *the Policy Against Discrimination, Harassment, Sexual Violence and Retaliation* to determine if a policy violation has occurred. The Title IX Coordinator or designee will promptly send written notice of the referral of the matter to the *Policy Against Discrimination, Harassment, Sexual Violence and Retaliation* to the Parties.

## 8. Notice of Allegations

- a. Following the filing of a Formal Complaint, the Title IX Coordinator will promptly provide a Notice of Allegations to Parties named in the Formal Complaint. The Notice of Allegations will be sent to the Parties’ institutional email accounts if they are students or employees, and by other reasonable means if they are neither.
- b. The Investigator will provide the Parties with sufficient time to review the Notice of Allegations and prepare a response to it before any initial interview pursuant to the investigation.
- c. If the Title IX Coordinator determines that the Formal Complaint must be dismissed in whole or in part on the mandatory grounds identified above, the Title IX Coordinator will issue a Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.
- d. The Notice of Allegations will include the following:
  - i. Notice of and a link to this Title IX Grievance Procedure.
  - ii. Notice of the allegations potentially constituting Covered Sexual Harassment, and the details known at the time the Notice is issued, such as the identities of the Parties involved in the incident, if known, the conduct allegedly constituting Covered Sexual Harassment; and the date and location of the alleged incident.
  - iii. A statement that the Respondent is presumed not responsible for the alleged conduct and that a Determination of Responsibility is made at the conclusion of the Title IX Grievance Procedure.
  - iv. A statement that the Parties may be accompanied by an Advisor of their choice, who may be, but is not required to be, an attorney, at any meeting to which the Party is invited or required to attend pursuant to the Title IX Grievance Procedure.
  - v. A statement that before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the

evidence upon which the Decision-Maker does not intend to rely in reaching a Determination of Responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi); and

- vi. A statement that a Party who makes a false statement or allegation during the investigation may be subject to an investigation pursuant to the *Policy Against Discrimination, Harassment, Sexual Violence or Retaliation* to determine if a violation of that Policy has occurred. A false allegation occurs when an individual knowingly, or with reckless disregard for the truth, makes a false report of discrimination, harassment, sexual violence or retaliation, or gives false information during an investigation or proceeding relating to such an allegation. A person acts with reckless disregard for the truth when the person makes the report or provides the information, but makes no effort to determine whether it is true, or is indifferent to whether it is true.

## **9. Ongoing Notice of Allegations**

If, in the course of an investigation, the Title IX Coordinator identifies possible misconduct by the Complainant or Respondent not included in the initial Notice of Allegations and which, if true, would constitute Covered Sexual Harassment, the Title IX Coordinator will notify the Parties that the additional allegations to be investigated.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

## **F. Investigation**

### **1. General Rules for Investigations**

- a. An Investigator designated by the Title IX Coordinator will promptly investigate the conduct alleged in a Formal Complaint following the issuance of the Notice of Allegations.
- b. The University, and not the Parties, has the burden of proof and the burden of gathering evidence to establish that a violation of the Title IX Policy has occurred.
- c. Either or both Parties may elect not participate in an investigation or Live Hearing, and such election may not be construed as indicating responsibility for a violation of the Title IX Policy.
- d. The University cannot access, consider, or disclose medical records without a waiver from the person to whom the records belong.

### **2. Inspection and Review of Relevant Evidence**

- a. Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review relevant evidence obtained in the investigation.

The purpose of this inspection and review is to provide the Parties with an equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

- i. The Investigator will advise the Parties that they must submit any evidence they would like considered in the Investigation prior to the Inspection and Review of Evidence described in this subparagraph.
  - ii. Evidence available for inspection and review by the parties consists of all evidence directly related to the allegations raised in the Formal Complaint. It will include any:
    - a) Evidence that is relevant, even if that evidence does not end up being relied upon by the University in making a determination regarding responsibility; and
    - b) Evidence that may tend to prove or disprove the allegations in the Formal Complaint.
  - iii. The Investigator will make the evidence available to the Parties and each Party's Advisor, if requested, for inspection and review through a reasonable format determined in the discretion of the Title IX Coordinator or designee.
- b. The Parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the Investigator. The investigator will consider the Parties' written responses before completing the Investigation Report. The Investigator will provide copies of the Parties' written responses to Inspection and Review of Evidence to the other Party or Parties and their Advisors.
  - c. Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed to the Party or Parties. Evidence obtained in the investigation that is kept from disclosure will be documented in a "privilege log" that the Parties and their advisors, if any, may request to review.

#### **4. Investigative Report**

- a. The Investigator, will draft an Investigative Report that fairly summarizes the relevant evidence.
- b. The Investigation Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.
- c. The Investigation Report will include only relevant evidence.
- d. The Investigation Report will include both evidence that tends to prove a violation of the Title IX Policy and evidence that tends to disprove the allegation that a violation occurred.
- e. The Investigator may redact irrelevant information from the Investigation Report when that information is contained in documents or evidence that is/are otherwise relevant.

## **G. Live Hearing**

### **1. General Rules**

- a. The University will not issue a disciplinary sanction arising from a Formal Complaint without holding a Live Hearing, unless the matter is otherwise resolved through an informal resolution, which includes the sanction(s).
- b. The Live Hearing may be conducted with the Parties and witnesses physically present in the same geographic location. Alternatively, at the discretion of the Title IX Coordinator, or by request of any Party, the Parties, witnesses and other participants may appear at the Live Hearing virtually through an appropriate remote video conference that permits participants simultaneously to see and hear each other.
- c. Live Hearings will be audio recorded, and the recording will be made available to the Parties within a reasonable time following the completion of the Live Hearing.
- d. The Hearing Officer may delay or adjourn a hearing based on technological problems outside of either Party's control. The Title IX Coordinator will notify the Parties of the next Live Hearing Date, and will endeavor to accommodate all participants' schedules to promptly complete the Live Hearing.
- e. The Hearing Officer may determine that completion of the Live Hearing requires multiple sessions, or that the remainder of a Live Hearing will occur at a later date. The Title IX Coordinator will notify the Parties of the next Live Hearing Date, and will endeavor to accommodate all participants' schedules to promptly complete the Live Hearing.
- f. A Party or witness may decline to attend and/or participate in the Live Hearing.
- g. No Party may waive the right to a Live Hearing.
- h. Prior to the commencement of any cross examination, the Decision-Maker will provide the Parties with an opportunity to raise any concerns about bias or conflict of interest of the Title IX Coordinator, Investigator or Decision-Maker. A Party who fails to state a concern about bias or conflict of interest will be deemed to have waived that concern, including on appeal.

### **2. Participants in the Live Hearing and Impact of a Party's Non-Participation**

- a. Only the following individuals are permitted to attend and participate in the Live Hearing:
  - i. The Decision-Maker; the Complainant; the Respondent; one Advisor of Choice for each Party; and witnesses, as determined by the Investigator in the Investigation Report.
  - ii. The Title IX Coordinator and/or the Investigator may attend the Live Hearing to advise the Decision-Maker on questions about the evidence or of relevance and other matters.



- iii. The Decision-Maker may invite other appropriate administrators to observe the Live Hearing for training purposes or other good reasons to be shared with the participants in the Live Hearing.
- b. The Decision-Maker may proceed with the Live Hearing in the absence of a Party, and may reach a determination of responsibility in the Party's absence. No inference regarding responsibility for a policy violation may be drawn from a Party's lack of participation or refusal to answer questions during the Live Hearing.
- c. The Decision-Maker will not rely on any statements of a Party who declines to participate in the Live Hearing, including cross examination. Nonetheless, the Decision-Maker may reach a determination regarding responsibility based on other available evidence.

### **3. The Decision-Maker**

- a. The Chief Student Affairs Officer or designee shall serve as the Decision-Maker and Hearing Officer for Live Hearings held pursuant to this Title IX Grievance Procedure.
- b. The Decision-Maker will not have served as the Title IX Coordinator, Investigator or Advisor to any Party identified in the Formal Complaint, or played a role in the emergency removal of a Party involved in the matter.
- c. The Decision-Maker is responsible for taking necessary action to maintain a Live Hearing environment that is respectful to all participants.

### **4. The Role of the Advisor of Choice in the Hearing**

- a. During the Live Hearing, a Party's cross examination of another Party must be conducted by the first Party's Advisor of Choice, and not the Party.
- b. A Party who attends a Live Hearing without an Advisor will be assigned an Advisor by the Decision-Maker to conduct any cross examination of the other Party.
- c. If a Party does not attend the Live Hearing, the absent Party's Advisor of Choice may appear and conduct cross-examination on the Party's behalf.
- d. If neither a Party nor their Advisor appears at the hearing, the Decision-Maker or the Title IX Coordinator will assign an Advisor to appear on behalf of the absent Party to conduct cross examination of the other Party or witnesses.

### **5. Witnesses**

- a. Witnesses cannot be compelled to participate in the Live Hearing.
- b. If a witness does not submit to cross-examination at the Live Hearing, the Decision-Maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility.

### **6. Order of Hearing**

The Live Hearing will proceed in this order:

- a. The Decision-Maker will begin the Live Hearing by establishing rules and expectations for hearing participants.
- b. The Parties will each be given the opportunity to make an opening statement.
- c. The Decision-Maker will question the Parties and Witnesses about the evidence set out in the Investigation Report.
- d. In an order determined the Decision-Maker, the Parties, through their Advisors, may cross-examine any other Party or Witness. During any cross-examination, the Decision-Maker may interject with follow up questions.

#### **7. Live Cross-Examination Procedure**

- a. Each Party's Advisor will conduct live cross-examination of the other Party or Parties and witnesses. The Advisor may ask relevant questions and follow-up questions, including those challenging credibility.
- b. Before the Party or witness being questioned responds to any cross-examination question, the Decision-Maker will determine if the question is relevant. Cross-examination questions that are duplicative of questions previously asked and answered at the Live Hearing, may be deemed irrelevant.
- c. A Party or the Party's Advisor may choose not to cross-examine a Party or Witness. The Decision-Maker is responsible for making sure the record of the Live Hearing evidences this waiver. A Party's waiver of cross-examination does not prevent the Decision-Maker from using statements made by the Party or Witness in the determination of responsibility.

#### **8. Witnesses Who Lack First Hand Knowledge of the Events Alleged in the Formal Complaint**

- a. Except where prohibited by the Title IX Final Rule, a Party may offer at the Live Hearing the testimony of a witness who does not possess first-hand knowledge of the facts. The Decision Maker will give information that a witness heard or learned from another person, indirectly, lower weight than information provided by a witness with first-hand, direct knowledge of the matter.
- b. Parties are permitted to present "expert witnesses" for direct and cross examination at the Live Hearing. Notwithstanding that expert witnesses may be presented at the Live Hearing, the Decision-Maker will give information provided by experts less weight relative to the statements of witnesses with direct knowledge about the events alleged in the Formal Complaint.
- c. Parties may present character witnesses at the Live Hearing. Notwithstanding that character witnesses may provide information at the Live Hearing, the Decision-Maker will give information provided by character witnesses very low weight

relative to the to the statements of witnesses with direct knowledge about the events alleged in the Formal Complaint.

- d. Parties may provide information about the results of polygraph tests (“lie detector tests”) and other procedures uncommon in academic and non-academic conduct processes. The Decision-Maker will give low weight to such information relative to the statements of witnesses with direct knowledge about the events alleged in the Formal Complaint.

## **9. Evidence of Retaliation**

Parties may provide information at the Live Hearing that another Party or witness has engaged in or threatened retaliation related to the Formal Complaint. The Decision-Maker may draw from this information an adverse inference as to the credibility of the Party or witness who engaged in such conduct.

## **H. Determination of Responsibility**

### **1. Standard of Proof**

The Decision-Maker will conclude that a Party is responsible for violating the Title IX Policy if a preponderance of the evidence establishes the violation alleged in the Formal Complaint. To meet the preponderance of the evidence standard, the evidence presented must establish for a reasonable person that it is more likely than not that a violation of the Title IX Policy occurred and the Respondent engaged in Covered Sexual Harassment towards the Complainant.

### **2. Components of the Determination of Responsibility**

The Decision-Maker will issue the written Determination of Responsibility simultaneously to all Parties, the Title IX Coordinator, the Investigator and other appropriate persons by mail to their institution email account, or other reasonable means. The Determination of Responsibility will include:

- a. Identification of the allegations in the Formal Complaint which potentially constitute covered sexual harassment;
- b. A description of the procedural steps taken by the University from the receipt of the Formal Complaint through the Determination of Responsibility, including notifications to the Parties, interviews with Parties and witnesses, methods used to gather other evidence, information about the Live Hearing that was held and other steps taken in the investigation of the Formal Complaint;
- c. The findings of fact supporting the Determination of Responsibility;
- d. The conclusions regarding which section of this Title IX Grievance Procedure, if any, the Respondent has or has not violated.
- e. For each allegation:
  - i. A statement of, and rationale for, a determination regarding responsibility;

- ii. A statement of, and rationale for, any disciplinary sanctions which will be imposed on the Respondent; and
  - iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- f. The procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

### **3. Timeline for Issuing the Determination of Responsibility**

The Decision-Maker will issue the Determination of Responsibility within ten (10) business days of the Live Hearing, unless the Parties are advised of that this time period has been extended.

### **4. Finality**

The Determination of Responsibility is final either on the date that the Parties learn of the outcome of any appeal of the Determination of Responsibility, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals," below, or the date on which the opportunity to appeal expires, if no appeal is filed.

### **5. Implementation of Remedies**

The Title IX Coordinator is responsible for the implementation of any remedies identified in the Determination of Responsibility.

- a. When a Determination of Responsibility identifies responsibility for a policy violation, remedies will be identified to correct the violation, eliminate its effects, and prevent reoccurrence.
- b. Corrective action for employee-Respondents will be implemented in accordance with established University rules, procedures and collective bargaining agreements, if applicable.
  - i. The Title IX Coordinator will be informed of all corrective action taken and provided with copies of the relevant documents.
  - ii. To the extent that employee-Respondents appeal under these procedures, a student-Complainant may participate in that process.
- c. Remedies will include consideration of the following factors:
  - i. Prior disciplinary history of Respondent, including other complaints of sexual violence;
  - ii. Whether Respondent intentionally incapacitated or attempted to intentionally incapacitate the Complainant through drugs or alcohol;
  - iii. Whether the Complainant was incapacitated due to drugs or alcohol;
  - iv. Whether violence, physical force, threats of physical force used, or a weapon used or displayed;
  - v. Other mitigating or aggravating factors of significance to a particular matter.
- d. Any or all of following may be imposed as the remedy or as part of a remedy when there is a finding of responsibility.

- i. Expulsion: the permanent separation of the Respondent from the University without the option for readmission in the future;
  - ii. Suspension: separation of the Respondent from the University for a period of one, two, three, four, five, six, seven or eight semesters, and documentation of the suspension on the respondent's academic transcript;
  - iii. Disciplinary probation: formal written warning that the Respondent's conduct violated the Policies and that continued enrollment of the respondent is based on the Respondent's compliance with the Policies on a going forward basis;
  - iv. Reprimand: a written statement placed in the disciplinary file of the Respondent and maintained in Student Affairs or documentation of a verbal reprimand issued to the respondent;
  - v. Restitution: A requirement that the Respondent reimburse the Complainant for damages;
  - vi. Restriction: temporary or permanent loss of:
    - 1. Use of any or all University facilities or services;
    - 2. The ability to participate in University extra-curricular activities, athletics or student organizations; and
    - 3. The ability to serve in a student leadership or advisory role.
  - vii. Community Service: requiring the Respondent to render a designated amount of specified service to the University or community;
  - viii. Education: requiring the Respondent to attend a specified training or education program, whether on-line or otherwise; and
  - ix. Counseling: requiring the Respondent to meet with professional staff in the University's Counseling Center and comply with all recommendations of the Counseling Center's professional staff;
  - x. Continuation of No Contact Directives: requiring the Respondent to comply with a new or ongoing No Contact Directive;
  - xi. Creative or alternative sanctions: enrolling in and completing anger management or batterer intervention courses, performing volunteer work, writing essays, completing a 12-step or other addiction program, enrolling in and completing a sex offender rehabilitation program, issuing a sincere apology, and any other remedy appropriate for the circumstances.
  - xii. Other remedies may include: providing an escort; ensuring that the Complainant and Respondent do not attend the same class, work together or participate in the same extracurricular activities; relocation to a different residence hall or work area; providing counseling services or additional academic support services; arranging for the Complainant to re-take a course or withdraw from a class without penalty; job reassignment; targeted training for a group of students, faculty, or staff; and training, education initiatives or other remedies tailored to the circumstances.
- e. The Title IX Coordinator will work with the appropriate administrator(s) to monitor corrective action to ensure compliance. The Title IX Coordinator is responsible for ensuring that the necessary action steps are completed.
  - f. Remedial action may be imposed on any individual who had a duty to report potential discrimination, harassment or sexual violence and who failed to act in a manner consistent with the Policies and these Procedures.

## **I. Appeals**

1. Each Party may appeal (1) the dismissal of a Formal Complaint or part of a Formal Complaint; and/or (2) a Determination of Responsibility.
2. An appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of the date of the notice of a full or complete dismissal of a Formal Complaint or the Determination of Responsibility. The Title IX Coordinator will forward the appeal to the Provost or designee who will review the appeal and who will not have served as the Title IX Coordinator, Investigator or Decision-Maker in the matter.
3. An appeal must identify the bases for appeal. Permissible bases for appeal are:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time of the dismissal of some or all of the Formal Complaint or the Determination of Responsibility, and which could affect the outcome; and
  - c. The Title IX Coordinator, Investigator or Decision-Maker had a conflict of interest or bias for or against a Party, or for or against complainants or respondents in general, that affected the outcome of the matter.
4. The Title IX Coordinator will promptly notify all Parties if any Party files an appeal. The Party or Parties who did not appeal will have five (5) business days to submit a statement in support of or challenging the dismissal of all or part of a Formal Complaint or the Determination of Responsibility.
5. The timely submission of an appeal means that sanctions identified in the Determination of Responsibility will not be implemented unless or until the Determination of Responsibility is affirmed in whole or in part. Interim and supportive measures may continue during pendency of an appeal.
6. The Provost or designee will provide the outcome of an appeal within ten (10) business days by email to all Parties' institutional email address, as well as the Title IX Coordinator and the Decision-Maker.

## **J. Retaliation is Prohibited**

The Title IX Policy prohibits retaliation against any person for: reporting or complaining of sex discrimination, sexual harassment or sexual violence prohibited by the Title IX Policy; supporting a person who complains about such conduct; assisting, providing information or participating in a proceeding under this Title IX Grievance Procedure; and, refusing to assist, provide information or participate in a proceeding under this Title IX Grievance Procedure.

## **K. Informal Resolution Process for Title IX Matters**

1. At any time after being notified of a Formal Complaint, and before receipt of the Determination of Responsibility, any Party may contact the Title IX Coordinator to

- invite discussion of a voluntary informal resolution of the matter, or the Title IX Coordinator or designee may invite the Parties to voluntarily participate in this Informal Resolution Process.
2. Informal resolution is a voluntary alternative to the investigation and Live Hearing described in the Title IX Grievance Procedure.
  3. If a Party or the Title IX Coordinator or designee invites the Parties to participate in an informal resolution process, the Title IX Coordinator or designee will provide the Parties with a Notice of Informal Resolution which contains:
    - a. The allegations of Covered Sexual Harassment in the Formal Complaint;
    - b. The requirements of the Informal Resolution Process, including that once the Parties agree in writing by signature or other indication of the intent to resolve a Formal Complaint through an informal resolution agreement, the Party or Parties will be precluded from seeking resolution of the Formal Complaint through the Investigation and Live Hearing described in the Title IX Grievance Procedure;
    - c. That at any time prior to signing an informal resolution agreement, any Party has the right to withdraw from the Informal Resolution Process and resume the investigation and Live Hearing process with respect to the Formal Complaint;
    - d. That the Parties may be accompanied by an Advisor of Choice at meetings relating to the Informal Resolution Process;
    - e. Any consequences that will or may result to a Party as a result of their participation in the Informal Resolution Process;
    - f. That the Title IX Coordinator or designee will maintain the following records: the Formal Complaint; related correspondence; the Parties' voluntary written consent to participate in the Informal Resolution Process; and documentation regarding any informal resolution reached to resolve the Formal Complaint; and
    - g. That the University may be required by the Ohio Public Records Act or otherwise by law, to share the records of the Parties' participation in the Informal Resolution Process.
  - h. To initiate or participate in an Informal Resolution Process, the Parties must provide the Title IX Coordinator with written acknowledgment that their participation is entirely voluntary.
  - i. The Informal Resolution Process is not available to resolve a Formal Complaint which alleges that a University employee subjected a student to Covered Sexual Harassment.
  - j. Informal resolution may involve mediation, shuttle diplomacy or restorative justice, or any other method to which the Parties voluntarily consent.
  - k. An informal resolution may include no contact provisions, sanctions for a Respondent, restorative measures, restitution, as well as other remedies agreed to by the Parties and approved by the Title IX Coordinator.

August 10, 2020