

# Title IX Sexual Harassment Grievance Process

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## Purpose

The University's procedures for institutional disciplinary action in cases of sexual misconduct are intended to include a prompt, fair, equitable, and impartial process from the initial investigation to the final result. The purpose of this Title IX Sexual Harassment Grievance Process ("TSHGP") is to provide a grievance process for formal complaints of sexual harassment, as defined below, that are in violation of Title IX. This TSHGP is intended to satisfy the requirements imposed by Title IX and 34 CFR 106.45 with respect to formal complaints of sexual harassment, as defined in 34 CFR 106.

## Definitions

For purposes of this TSHGP, the following terms have the following meanings:

1. "Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of SPU conditioning the provision of an aid, benefit, or service of SPU on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SPU's education program or activity; or
  - c. A VAWA Offense.
2. "VAWA Offense" means "sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).
3. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
4. "Formal Complaint" means a 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. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.
5. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment. "Informal Process Facilitator" means an individual designated to facilitate an informal resolution process.
6. "Area Vice President" means a vice president of the University with supervisory authority for a particular area. For purposes of this policy: (i) a vice provost will be considered an Area Vice President; and (ii) the Provost will be considered an Area Vice President for faculty members and other employees not supervised by any other Area Vice President.
7. "Business Day" means any day other than a Saturday, Sunday, or University holiday. For this purpose, "University holiday" means those holidays scheduled on the University's master calendar when the University's administrative offices are closed for business.
8. "Decision Maker" means:
  - a. If the Respondent is a residential undergraduate student, the Director of Residence Life (or designee);
  - b. If the Respondent is a non-residential undergraduate student, the Dean of Students for Community Life (or designee);
  - c. If the Respondent is a graduate student, the Vice Provost for Academic Affairs (or designee);
  - d. If the Respondent is an employee (other than a student employee), the employee's Area Vice President (or designee); and
  - e. If the Respondent does not fit into any of the preceding categories, an individual designated by the Title IX Coordinator.
9. "Appeal Reviewer" means:
  - a. In an appeal of a determination of responsibility:
    - i. If the Respondent is a residential undergraduate student, the Dean of Students for Community Life (or designee);
    - ii. If the Respondent is a non-residential undergraduate student, the Vice Provost for Student Formation and Community Engagement (or designee);
    - iii. If the Respondent is a graduate student, the Provost (or designee);
    - iv. If the Respondent is an employee (other than a student employee), the President (or designee); and
    - v. If the Respondent does not fit into any of the preceding categories, an individual designated by the Title IX Coordinator.
    - vi. In an appeal of a dismissal of a Formal Complaint or any allegation therein, the direct supervisor of the Title IX Coordinator (or designee). However, if the Title IX Coordinator has delegated to the Deputy Title IX Coordinator the responsibility for making a dismissal decision,
    - vii. then the Appeal Reviewer will be the Title IX Coordinator.

## Scope to the TSHGP

1. A Formal Complaint may only be filed under this TSHGP if it meets all of the following criteria:
  - a. The conduct that is alleged would meet the definition of Sexual Harassment if true;
  - b. The conduct is alleged to have occurred within the United States;
  - c. The conduct is alleged to have occurred in an SPU education program or activity that the Complainant is participating in or attempting to participate in;
  - d. The Respondent is an SPU student or employee at the time the Formal Complaint is made; and
  - e. The individual making the Formal Complaint is the Complainant, the Title IX Coordinator, or the Deputy Title IX Coordinator
2. The Title IX Coordinator or Deputy Title IX Coordinator may file a Formal Complaint (even if not a victim) if he or she believes in good faith that an incident of Sexual Harassment may have occurred, and the TSHGP will be interpreted and applied accordingly. Where the Title IX Coordinator or Deputy Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.
3. If alleged conduct does not meet the criteria for Formal Complaints under this TSHGP, then the Title IX Coordinator will dismiss the complaint from this process. The Title IX Coordinator may refer the complaint to a different procedure if the other procedure may be appropriate for the complaint. Individuals may also file formal complaints pursuant to other grievance procedures directly, if applicable.
4. If an incident involves both alleged Sexual Harassment and other alleged violations of other policies, then the Title IX Coordinator will consult with the administrators of the other policies to determine whether multiple procedures should be initiated and how they should be coordinated.
5. This TSHGP does not apply to formal complaints of incidents that allegedly occurred prior to August 14, 2020, unless a formal complaint alleges that one or more incidents occurred on or after August 14, 2020, that would constitute Sexual Harassment if true and that other incidents prior to August 14, 2020, are related to such allegations.

## Principles and Parameters

1. Employment
2. Neither the existence of this TSHGP, nor the filing a Formal Complaint or being named as a Respondent in a Formal Complaint, is a guarantee of ongoing employment. The University reserves the right to take any permitted employment action it deems appropriate, including but not limited to placing an employee on leave. If an employee is employed "at-will," nothing in this TSHGP prohibits the University from terminating an employee at any time, with or without cause.
3. Presumption Before Determination
  - a. As required by 34 CFR 106.45, this TSHGP presumes that a Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
  - b. No disciplinary sanctions that are not supportive measures will be imposed before a determination is made. Effecting an emergency removal or placing a Respondent on administrative leave is not considered a disciplinary sanction or retaliatory.
4. Bias; Conflicts of Interest
  - a. Any Title IX Coordinator, investigator, Decision Maker, Appeal Reviewer, or Informal Process Facilitator must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
  - b. Conflicts of interest for this purpose are limited to situations where the individual is the Respondent or is directly related (by blood, adoption, or marriage) to the Complainant or Respondent, or where there are other circumstances present that make it likely that the individual cannot be objective in the process (for example, where the individual has an outside business or financial arrangement with one of the parties). Prior adverse decisions made by an individual against one of the parties does not constitute a conflict of interest.
  - c. The Title IX Coordinator should determine if an investigator, Decision Maker, Appeal Reviewer, or Informal Process Facilitator has a conflict of interest, in which case the Title IX Coordinator may identify a different person to fulfill the assigned role. Any investigator, Decision Maker, Appeal Reviewer, or Informal Process Facilitator who believes they may have a conflict of interest should notify the Title IX Coordinator prior to beginning work on a Formal Complaint.
  - d. If the Title IX Coordinator's direct supervisor believes that the Title IX Coordinator has a conflict of interest, then such direct supervisor will designate a different individual to perform the obligations of the Title IX Coordinator for the proceeding.
  - e. The Title IX Coordinator is not permitted to be a Decision Maker or Appeal Reviewer. An individual who serves as an Investigator in any matter may not be the Decision Maker or Appeal Reviewer for such matter.
5. Delegates and Designees
  - a. The Title IX Coordinator may delegate specific tasks under this TSHGP to other University officials if the Title IX Coordinator determines that it is reasonable and consistent with the purposes of this TSHGP. For example, the Title IX Coordinator may designate the Deputy Title IX Coordinator to perform the role of the Title IX Coordinator in this TSHGP for Formal Complaints where the Complainant and Respondent are both students.
  - b. Designees for Decision Makers and Appeal Reviewers are subject to the approval of the Title IX Coordinator.
6. FERPA
  - a. FERPA generally prohibits nonconsensual disclosure of personally identifiable information from a student's education record. However, FERPA permits the University to disclose certain information in connection with sexual misconduct proceedings, and the University may make use of such exceptions.
7. Confidentiality
  - a. The University will attempt to 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 Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by FERPA, as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. However, the University cannot guarantee the anonymity of an individual making a report or a Formal Complaint, or of any person participating in a TSHGP proceeding. The University will take all reasonable steps to investigate and respond consistent with any request for confidentiality, including when implementing any supportive measure.
  - b. If a Complainant requests that the University not take action in response to a report, due to confidentiality or similar concerns, the University will consider whether it can or should grant the request in light of the circumstances and other applicable policies, objectives, and obligations.
  - c. Grievance proceedings are intended to be treated as confidential to the extent reasonably possible. Complainants and Respondents are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence. However, Complainants and Respondents are encouraged to treat the TSHGP as a confidential process.
8. False Statements
  - a. The University may take disciplinary action if an individual knowingly provides false information in connection with a TSHGP proceeding or other grievance proceeding, up to and including dismissal from the University or termination of employment.
  - b. The withdrawal of a Formal Complaint is not proof that the Complainant made a false statement. A finding that a Respondent is not responsible is not, in and of itself, proof that a Complainant made a false statement. Likewise, a finding that a Respondent is responsible is not, in and of itself, proof that a Respondent made a false statement.

- c. The decision whether to investigate and discipline a student pursuant to the Student Accountability Process for making a false statement will be left to the Office of Student Life. The decision whether to investigate and discipline an employee for making a false statement will be left to the employee's Dean (for faculty) or the employee's supervisor (for staff or deans).
9. Timing
- a. While the length of time necessary to address a Formal Complaint will vary depending on the circumstances, in general, the University will attempt to issue a decision within seventy-five Business Days of receiving a Formal Complaint as described in this TSHGP.
  - b. If a particular stage in this TSHGP is required to be completed within a prescribed number of days, then the day that includes the event that starts the time period will not be counted, but the last day of the time period will be counted. Any action required by the end of any time period must be completed by 5 pm on the last day of the period.
  - c. The Title IX Coordinator may permit temporary delays of grievance processes or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent (as applicable) for the delay or extension and the reasons for the action. Good cause may include, but is not limited to, considerations such as 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. Parties to a Formal Complaint proceeding may request an extension for deadlines by submitting a request in writing to the Title IX Coordinator (or designee). A request for an extension from a party that is received after the applicable deadline has passed generally will not be granted.
  - d. Complainants and Respondents will be given periodic status updates throughout the formal complaint process.
10. Standard of Evidence
- a. The Decision Maker (and, if applicable, the Appeal Reviewer) will make a decision using a preponderance of the evidence standard (that is, whether a finding is more likely than not).
  - b. This standard of evidence will apply for all determinations regarding Formal Complaints of Sexual Harassment under this TSHGP, whether against students or employees.
11. Amnesty
- a. Students or employees who are Complainants and report Sexual Harassment to the University will not be disciplined by the University for any violation of the University's drug or alcohol possession or consumption policies in which they have engaged in connection with the allegations of Sexual Harassment, or for any violation of the University's [Student Standards of Conduct](#) or [Employee Lifestyle Expectations](#) prohibiting consensual sexual activity outside of a married relationship. The University may require educational options, rather than disciplinary sanctions, in such cases.
12. University Action
- a. This TSHGP does not limit the University's ability to take action with respect to other conduct not addressed by this TSHGP.
  - b. The University may take any action it deems appropriate that is consistent with other University policies and applicable law to address other types of discrimination and harassment as well as workplace-related conduct that is inappropriate, unprofessional, or otherwise in violation of University policy.
13. Ambiguity
- a. The Title IX Coordinator has the authority to interpret any ambiguity in this TSHGP.
14. Training
- a. The University's proceedings will be conducted by officials who, at a minimum, receive annual training on the issues related to sexual misconduct and on how to conduct an investigation and process that protects the safety of victims and promotes accountability.
  - b. The Title IX Coordinator, each Deputy Title IX Coordinator, each Investigator, each Decision Maker, each Appeal Reviewer, and each Informal Process Facilitator will receive training on the definition of Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process (including hearings, appeals, and informal resolution processes, as applicable), and how to serve impartially (including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias).
  - c. Each Decision Maker will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant.
  - d. Investigators will be selected from University officials who have been trained to perform the responsibilities described in this TSHGP. Each Investigator will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
  - e. Any materials used to train the Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Decision Makers, Appeal Reviewers, or Informal Process Facilitators must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.
15. Advisors, Attorneys, Parents, and Guardians
- a. Each Complainant and Respondent may be accompanied to any TSHGP meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of Advisor for either the Complainant or Respondent in any meeting or TSHGP grievance proceeding, but the University may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. In the event of a live hearing, if a party does not have an Advisor present at the live hearing, the University must provide without fee or charge to that party, an Advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
  - b. During any proceeding where an Advisor is present, the Advisor may only speak to their advisee and may not interrupt or interfere with the process, except when the Advisor is conducting cross-examination as permitted by this TSHGP. If an Advisor does not follow the restrictions in this paragraph, the Advisor may be required to leave the proceeding (in which case the applicable party may select a different Advisor or the University will appoint an Advisor for the purposes of conducting a cross-examination in the absence of the party's chosen representative). The restrictions on Advisors apply equally to both parties.
  - c. The University recognizes that the parties may consult with legal counsel concerning their situations, and this TSHGP does not interfere with the right of an individual to seek legal counsel or representation at such party's own expense. Each Complainant and Respondent can engage an attorney as an Advisor, if they wish, subject to the restrictions on an Advisor's ability to participate in proceedings. Also, written statements (including any appeal) must be submitted by the individual who is a party to the complaint procedure.
  - d. Parents and legal guardians may act on behalf of Complainants and Respondents if they have the legal right to do so (e.g., the party is a minor), including by filing Formal Complaints.
16. Privilege
- a. This TSHGP will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

## Possible Pre-complaint Actions

- 1. Emergency Removal
  - a. The University may remove a Respondent from SPU's education programs or activities (including, without limitation, by means of interim suspension or removal from on-campus housing) on an emergency basis on the following conditions:
    - i. The University undertakes an individualized safety and risk analysis;

- ii. The University determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
    - iii. The University provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
  - b. The decision whether to remove a Respondent from one or more of SPU's education programs or activities on an emergency basis will be made by Title IX Coordinator, who may consult with other University administrators such as the Provost, the Vice Provost for Student Formation and Community Engagement, and the Director of Safety and Security. If a Respondent appeals a decision, the appeal will be decided by the direct supervisor of the Title IX Coordinator (or designee), who will make a decision within two Business Days of receiving a written appeal from the Respondent.
- 2. Administrative Leave
  - a. The University reserves the right to place an employee Respondent on paid or unpaid administrative leave during the pendency of a Formal Complaint proceeding under the TSHGP.
- 3. No Contact Directive
  - a. One or more individuals involved in a proceeding may request that a No Contact Directive be instituted limiting interaction between the parties. In certain situations, a party may request that a No Contact Directive be instituted before a Formal Complaint is filed.
  - b. A Complainant may request a No Contact Directive as a supportive measure without making a Formal Complaint. Where a Complainant desires a No Contact Directive, the Complainant cannot remain anonymous or prevent their identity from being disclosed to the Respondent. To accommodate that request, the Respondent must be informed of the No Contact Directive, the reasons for the No Contact Directive (including the allegations of sexual harassment), and the name of the Complainant. To effect this supportive measure, the Title IX Coordinator will send both parties a Notice of Preliminary Investigation and Mutual No Contact Directive. If a Formal Complaint is filed, the mutual No Contact Directive may stay in place or may be reassessed under the Formal Complaint process.
  - c. Any party that believes the other party intentionally violated conditions set in a No Contact Directive should report their concern to the Title IX Coordinator or Deputy Title IX Coordinator. An investigation into alleged violations of a No Contact Directive is not considered retaliatory. Students and employees may be subject to disciplinary processes for violation of No Contact Directives.

## Formal Complaint Process

### Filing a Formal Complaint

1. A Formal Complaint initiates a Formal Complaint proceeding under the TSHGP. To file a Formal Complaint, the Complainant must submit the Formal Complaint to the Title IX Coordinator in person, by mail, or by email, a written request that allegations of Sexual Harassment be investigated. The Formal Complaint must contain the Complainant's physical or digital signature. The Formal Complaint does not require a full description of the alleged Sexual Harassment, just that sexual harassment occurred and by whom. The Formal Complaint must contain enough detail for the Title IX Coordinator to know where the alleged incidents occurred, the timeframe that they occurred within, and the actions that constitute alleged sexual harassment under this policy.
2. The Title IX Coordinator may also file a Formal Complaint. When a Formal Complaint is filed by the Title IX Coordinator rather than filed by a Complainant, the Title IX Coordinator will send both parties details about the allegations.
3. After the Title IX Coordinator has received a Formal Complaint, the Title IX Coordinator will review the Formal Complaint to determine if the alleged conduct meets the criteria for being eligible for the TSHGP. If the Title IX Coordinator determines that the Formal Complaint does not meet all of the criteria, either upon receipt by the Title IX Coordinator or at any other time in the Formal Complaint proceeding, the Title IX Coordinator will dismiss the Complaint with respect to the conduct for purposes of Sexual Harassment under Title IX or 34 CFR 106. Such a dismissal does not preclude action under another University policy identifying behavioral expectations. Upon a dismissal, the University must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. A Formal Complaint that is dismissed may be filed again at a later time if circumstances have changed such that the reason or reasons for dismissal no longer exist.
4. At the option of the Title IX Coordinator, the University may consolidate Formal Complaints as to allegations of 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 Sexual Harassment arise out of the same facts or circumstances.

### Notifying the Respondent

1. The Title IX Coordinator will send each of the Complainant and the Respondent a Notice of Formal Complaint. Absent extenuating circumstances, the notices will be sent within five Business Days of receiving the Formal Complaint.
2. At a minimum, each Notice of Formal Complaint will include the following information:
  - a. Notice of SPU's TSHGP, including any informal resolution process;
  - b. Notice of the allegations of conduct potentially constituting Sexual Harassment, including the identities of the parties involved in the incident, if known, and the date and location of the alleged incident(s), if known;
  - c. 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;
  - d. A statement that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
  - e. A statement that the parties may inspect and review evidence as described in this TSHGP;
  - f. A description of any provision in the University's behavioral expectation policies that prohibits knowingly making false statements or knowingly submitting false information during the grievance process;
  - g. A description of supportive measures available to the parties; and
  - h. An invitation to speak with the Title IX Coordinator regarding the allegations and the TSHGP.
3. The Respondent may provide a written response to the Title IX Coordinator within five Business Days of receipt of the Notice of Formal Complaint. A Respondent may choose not to provide a written response or participate in the proceeding, but the proceeding may continue even if a Respondent chooses not to provide a response or participate.

### Possible Dismissal of Formal Complaints

1. In addition to the mandatory dismissal mentioned above, the Title IX Coordinator may also dismiss a Formal Complaint or any allegations therein at any time if one or more of the following reasons applies:
  - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;

- b. The Respondent is no longer enrolled or employed by the University; or
  - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
2. Dismissal can occur at any time during the Formal Complaint proceeding prior to the final determination being made. Upon a dismissal, the University must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
  3. A dismissal under this TSHGP does not preclude action under another University policy or procedure. A complaint that is dismissed may be referred to a separate grievance procedure for further investigation or action. In such a case, the Title IX Coordinator has the right to transfer all communications and information gathered to any other grievance administrator who will be handling referred complaint.
  4. Either party may appeal the dismissal of a Formal Complaint by sending a written appeal to the Title IX Coordinator.

## Investigation

1. The Title IX Coordinator will appoint one or more Investigators to assist in investigating the Formal Complaint. An Investigator may be a University employee or a third party engaged by the University.
2. The investigation will be impartial and as thorough as appropriate under the circumstances, as determined by the Title IX Coordinator, based on factors such as the nature and seriousness of the allegations, availability of witnesses and other evidence, schedules, and available resources. Investigations may include, but are not limited to, interviews, research, and review of relevant evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.
3. 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 sufficient time for the party to prepare to participate.
4. The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for the TSHGP Formal Complaint proceeding.
5. If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Formal Complaint, the University will provide notice of the additional allegations to the parties whose identities are known.
6. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. If the Complainant or Respondent believes that someone should be interviewed as part of the investigation, then the Complainant or Respondent should identify in writing to the Title IX Coordinator the name and contact information for the person and a summary of the person's knowledge about facts related to the Formal Complaint. However, the Title IX Coordinator or Investigator(s) may determine it is not necessary to interview all persons identified by the Complainant or Respondent. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. However, the results of any polygraph or similar test will not be considered relevant evidence from either party in the Formal Complaint Process.
7. The University will provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice.
8. The University will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Title IX Coordinator and the Investigator(s) will collaborate to determine the timing and method for making evidence available for review, which may involve making evidence available in-person or through an online medium. In the Title IX Coordinator's discretion, the parties and their Advisors may not be allowed to copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided, and any violation or attempt may result in disciplinary action.
9. The Investigator will create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's Advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Prior to completion of the investigative report, the Title IX Coordinator will send to each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report. The University will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

## Live Hearing and Cross-Examination

1. After the investigative report has been completed, the Title IX Coordinator will schedule a live hearing. The Title IX Coordinator will provide written notice to the Complainant and Respondent of the hearing date, time, location, and procedures. Unless otherwise approved by the Title IX Coordinator, no one may attend the hearing unless the individual is a Complainant, Respondent, witness, advisor, or University administrator or contractor who has a role in conducting the hearing.
2. Live hearings may be conducted with all parties physically present in the same geographic location or, at the Decision Maker's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. In addition, at the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision Maker and parties to simultaneously see and hear the party or the witness answering questions.
3. If an individual who is asked to attend the hearing does not appear at the scheduled hearing, then at the discretion of the Title IX Coordinator, the hearing may be rescheduled, or may continue in the individual's absence (in which case, at the discretion of the Title IX Coordinator, a follow-up hearing may be scheduled). In making a determination, the Title IX Coordinator will consider the importance of the individual's participation, availability of the parties, the reason the individual did not attend, and other relevant factors.
4. The live hearing will be facilitated by the Decision Maker. The Decision Maker may receive assistance from the Title IX Coordinator and the University's legal counsel in conducting the hearing. The Decision Maker may question any party or witness, and must also permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Responses provided to questions during the hearing may be used in determining responsibility.
5. If a party does not have an Advisor present at the live hearing, the University will provide without fee or charge to that party, an Advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
6. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

- a. Such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - b. If 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.
7. The Decision Maker has the authority to remove any Advisor from the hearing who does not follow the University's hearing procedures. If a party's Advisor is removed, the University will provide an Advisor to conduct cross-examination of the other party and witnesses.
  8. The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.
  9. In general, no additional investigation will be performed after a live hearing. However, if a Decision Maker determines that additional investigation should be performed, each party will be provided with an opportunity to review the additional evidence. Each party will have five Business Days to provide a written response regarding the new evidence once the new evidence is made available to the party, and the Investigator will add an addendum to the Investigator's report, which will be shared with both parties. The Decision Maker and Title IX Coordinator will schedule an additional live hearing to address the new evidence.

## Determination

1. The Decision Maker will make a written determination regarding responsibility using a preponderance of the evidence standard following the final live hearing. In making a determination, the Decision Maker will make an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and will not base any credibility determination on a person's status as a Complainant, Respondent, or witness.
2. The Decision Maker will attempt to issue the written determination within ten Business Days of the conclusion of the final live hearing; provided, however, that the timing for issuing the written determination may be delayed upon request by the Decision Maker to the Title IX Coordinator. Any delay in the issuance of the written determination will be communicated to the parties within ten Business Days of the final live hearing.
3. The Decision Maker will provide the written determination to the Complainant and Respondent simultaneously. The written determination will include:
  - a. Identification of the allegations potentially constituting Sexual Harassment;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of the University's behavioral expectations to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
  - f. The University's procedures and permissible bases for the Complainant and Respondent to appeal.
4. Remedies
  - a. The University will provide remedies to a complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent. Remedies must be designed to restore or preserve equal access to the University's education program or activity. Remedies may include Supportive Measures, and may also include disciplinary or punitive sanctions taken against the Respondent.
  - b. If a Decision Maker finds a Respondent responsible, the Decision Maker will determine the remedy or remedies to be provided to the Complainant. If an Appeal Reviewer finds a Respondent responsible, the Appeal Reviewer may modify any remedies prescribed by a Decision Maker and may also provide remedies not prescribed by a Decision Maker.
  - c. The Title IX Coordinator is responsible for effective implementation of any remedies.
5. Sanctions
  - a. Disciplinary sanctions may be imposed on a Respondent who is determined to be responsible. Conduct history may be taken into account in imposing sanctions. Failure to fulfill the terms of sanctions may result in additional and more severe sanctions. Sanctions may be up to dismissal for students or up to termination of employment for employees.
  - b. The types of sanctions that may be implemented include, but are not limited to:
    - i. a written reprimand;
    - ii. disciplinary probation;
    - iii. participation in an educational activity;
    - iv. participating in counseling;
    - v. paying restitution or fines;
    - vi. performing community service;
    - vii. being excluded from areas on campus;
    - viii. being restrained from contact with specific individuals or organizations;
    - ix. suspension (termination of student status for a specified period of time and with specific conditions);
    - x. transferring to a different residential living facility on campus;
    - xi. temporary or permanent loss of opportunity to live on campus;
    - xii. unpaid leave;
    - xiii. dismissal (termination of student status);
    - xiv. reduction in pay;
    - xv. loss or deferral of opportunity for promotion or increase in pay; and/or
    - xvi. termination of employment.
  - c. If the Respondent is a faculty member, and the Decision Maker is considering dismissal of the faculty member for cause, then the process by which the Decision Maker makes a decision regarding the Formal Complaint will include the procedure described in Section 11.6.4 of the Faculty Employment Handbook.

## Appeal Process

1. Each Complainant and Respondent may appeal:
  - a. A determination regarding responsibility; and
  - b. A dismissal of a Formal Complaint or any allegations therein.
2. An appeal may only be made on the following bases:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

- c. The Title IX Coordinator, an Investigator, or the Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and
  - d. Solely with respect to an appeal of a dismissal of a Formal Complaint or any allegations therein, the rationale given for the dismissal of the Formal Complaint is not consistent with the standard for dismissal in this TSHGP.
3. In any appeal:
    - a. The University will notify the other party in writing when a Notice of Intent to Appeal is filed and when a written appeal is filed, and will implement appeal procedures equally for both parties;
    - b. The Appeal Reviewer will not be the Decision Maker that reached the determination regarding responsibility or dismissal, one of the Investigators, or the Title IX Coordinator;
    - c. The Appeal Reviewer will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
    - d. The Appeal Reviewer will have received training as prescribed by University policy for Appeal Reviewers before making a determination;
    - e. The Complainant and Respondent will each have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
    - f. The Appeal Reviewer will issue a written decision describing the result of the appeal and the rationale for the result; and
    - g. The Appeal Reviewer will provide the written decision simultaneously to both the Complainant and Respondent.
  4. To file an appeal, the Complainant or Respondent must submit a written Notice of Intent to Appeal to the Title IX Coordinator. The Notice of Intent to Appeal must be received by the Title IX Coordinator within two calendar days after the date when the party is sent the decision being appealed. The Notice of Intent to Appeal does not need to include any information except that the party intends to file an appeal.
  5. If a party submits a Notice of Intent to Appeal, then the party may submit a written appeal to the Title IX Coordinator. The written appeal must be received by the Title IX Coordinator within five Business Days after the date when the party is sent the decision being appealed. The written appeal must identify the basis or bases for the appeal that is permitted by this TSHGP, must explain why the party the decision was incorrect, and must state what the party believes would be the correct decision.
  6. If a party timely files a Notice of Intent to Appeal, the Title IX Coordinator will notify the other party. If a party timely files a written appeal, the Title IX Coordinator will notify the other party and provide the other party with a copy of the written appeal. The other party will have five Business Days to submit a written response to the Title IX Coordinator.
  7. The Appeal Reviewer will make a decision within ten Business Days of receiving the written appeal (or, if later, within five Business Days of receiving the other party's written response to the appeal).
  8. The Appeal Reviewer may:
    - a. Affirm the decision completely;
    - b. Affirm part but not all of the decision;
    - c. Reverse the decision completely;
    - d. Remand the case for additional investigation and reconsideration by the Decision Maker; or
    - e. Require a new investigation and/or determination with a new Investigator and/or Decision Maker.
  9. The Appeal Reviewer may also add, remove, or modify sanctions and remedies in any decision regarding an appeal of responsibility.
  10. If no timely Notice of Intent to Appeal is received by the Title IX Coordinator, then the determination becomes final the day after the deadline for submitting a timely Notice of Intent to Appeal. If a Notice of Intent to Appeal is timely submitted but no written appeal is timely submitted, the determination becomes final the day after the deadline for submitting a timely written appeal. If a Notice of Intent to Appeal and a written appeal are both timely submitted, then the Appeal Reviewer's decision is final on the date that the Appeal Reviewer provides the parties with the written determination of the result of the appeal. Both the Complainant and the Respondent will be simultaneously informed, in writing, by the Title IX Coordinator of (a) any change to the results that occurs prior to the time that such results become final; and (b) when such results become final.

## Record Keeping

1. The University will maintain for a period of at least seven years records of:
  - a. Each Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this TSHGP, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
  - b. Any appeal and the result therefrom;
  - c. Any informal resolution and the result therefrom; and
  - d. All materials used to train the Title IX Coordinator, any Deputy Title IX Coordinator, Investigators, Decision Makers, Appeal Reviewers, and Informal Process Facilitators.
2. The University will make the training materials used to train the Title IX Coordinator, any Deputy Title IX Coordinator, Investigators, Decision Makers, Appeal Reviewers, and Informal Process Facilitators publicly [available on its website](#).
3. Regardless of whether a Formal Complaint is filed, in each case that the University is required to respond to a report of Sexual Harassment under Title IX and 34 CFR 106.44, the University will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a Complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.
4. The University may also include information in an employee's personnel file or other employment records regarding any allegations of sexual misconduct and any findings of any grievance procedure.
5. The University has no obligation to provide access to records or copies of records to any person, unless the law or a University policy gives a person such right. Requirements in this TSHGP to provide access to evidence to the parties or their advisors will only apply while a Formal Complaint proceeding is in process, unless otherwise required by law.

## Retaliation

1. The University strictly prohibits any retaliation against any person who files a complaint or otherwise participates in an investigation or proceeding under this TSHGP. This includes retaliation against anyone who makes a report or files a Formal Complaint, who expresses an intent to make such a report or complaint, or who testifies as a witness or otherwise provides information as part of an investigation or proceeding (whether formal or informal).

2. Retaliation can be any type of adverse or negative action taken toward a person who filed a complaint or otherwise participated in an investigation or proceeding (however, an adverse action would not be retaliatory if it was taken for some other justifiable reason). Examples of retaliation can include intimidation, coercion, harassment, threats, acts of violence, acts intended to embarrass another person, unjustified negative grades or performance reviews, or taking any other action that is likely to dissuade a person from making a complaint in the future.
3. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or 34 CFR 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing relating to sex discrimination or other sexual misconduct. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or 34 CFR 106, constitutes retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
4. Any person who commits retaliation may be subject to disciplinary action, up to and including dismissal from the University (for students) or termination of employment (for employees).
5. Any person who believes he or she has experienced retaliation in connection with a Formal Complaint proceeding should notify the Title IX Coordinator. Reports of retaliation may also be made to any of the individuals listed on the University's [Notice of Nondiscrimination Policy](#), who should also notify the Title IX Coordinator. The Title IX Coordinator will coordinate with other University officials to determine an appropriate level of investigation into the alleged retaliation and respond as follows:
  - a. Alleged retaliation by a student will either be addressed through the Student Accountability Process or in connection with an existing complaint proceeding, as determined by the Title IX Coordinator and the Dean of Students for Community Life (or designee); and
  - b. Alleged retaliation by an employee will be addressed in connection with an existing complaint proceeding, through a separate proceeding under the Discrimination and Harassment Grievance Procedure, or directly by the accused employee's direct supervisor, as determined by the Title IX Coordinator and the accused employee's Area Vice President.
6. Unless otherwise stated in an applicable grievance procedure, complaints of retaliation will be evaluated using a preponderance of the evidence standard.

## Informal Resolution Process

1. At any time after a Formal Complaint is filed and prior to reaching a determination regarding responsibility, the University may offer to facilitate an informal resolution process that does not involve a full investigation and adjudication. Under Title IX and 34 CFR 106, the University is not permitted to offer an informal resolution process to address Sexual Harassment until a Formal Complaint has been filed. Participation in an informal resolution process is voluntary for the Complainant and Respondent, and the University will not require the two parties to participate in an informal resolution process. Also, the University will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Harassment against a student.
2. If the University offers to facilitate an informal resolution process, the University will:
  - a. Provide the Complainant and Respondent with a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which the University precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
  - b. Obtain the Complainant's and Respondent's voluntary, written consent to the informal resolution process before initiating the informal resolution process.
3. One option for an informal resolution process may be mediation. Mediation can provide a context within which the parties can discuss the alleged offending conduct and its impact and can create an agreement about the nature of their academic, social, and/or working relationship in the future.
4. If the parties agree to engage in an informal resolution process, the University will attempt to complete the informal resolution process within thirty Business Days. An informal resolution process will be considered completed after the parties agree to resolution terms in writing. Once the final terms of an informal resolution have been agreed upon by both parties in writing, neither party can resume a Formal Complaint proceeding for the alleged Sexual Harassment. However, an informal resolution agreement does not prevent either party from bringing a Formal Complaint regarding Sexual Harassment that occurs after the informal resolution process is completed, which may take into account conduct that occurred prior to the completion of the informal resolution process.