

**William Paterson University**  
**Title IX Grievance Process for Sexual Harassment Complaints**

<b>SUBJECT:</b>	University Policy		<b>TITLE:</b>	Title IX Grievance Process for Sexual Harassment Complaints	
<b>CATEGORY: Check One</b>	<b>Board of Trustees</b> <input type="checkbox"/>	<b>University</b> <input checked="" type="checkbox"/>	<b>Functional</b> <input type="checkbox"/>	<b>School/Unit</b> <input type="checkbox"/>	
<b>Responsible Executive:</b>	Vice President of Human Resources and Vice President of Student Development		<b>Responsible Office:</b>	Office of Employment Equity and Diversity	
<b>CODING:</b>	00-01-	<b>ADOPTED:</b>		<b>AMENDED:</b>	
			<b>LAST REVIEWED:</b> 08/14/2020		

**I. PURPOSE**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX’s prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student’s ability to equally access our 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 the meaning of “sexual harassment” (including forms of sex-based violence),
- Addresses how William Paterson University (hereafter “the University”) must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the University must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, William Paterson University (“the University”) will implement the following Title IX Grievance Process for Complaints of Sexual Harassment (“Title IX Grievance Process”) and Title IX Grievance Policy for Sexual Harassment Complaints (“Title IX Grievance Policy,” effective August 14, 2020.

**II. ACCOUNTABILITY**

Under the direction of the President, The Title IX Coordinator and Deputy Title IX Coordinator for Students (Collectively referred to as “Title IX Coordinator(s), housed in the Office of Employment Equity and Diversity (“OEED”), are empowered to implement and ensure institutional compliance with this policy.

OEED will work in conjunction with the Accessibility Resource Center on matters involving students with disabilities and requests for reasonable accommodations of individuals participating in procedures governed by this policy.

Students found responsible for a violation of Prohibited Conduct will be subject to the Student Code of Conduct adjudication process and other applicable university policies and procedures. Employees

found responsible for a violation of Prohibited Conduct will be subject to disciplinary proceedings and other applicable university policies and procedures.

### **III. APPLICABILITY**

The Title IX Grievance Policy address reports of sexual harassment based upon gender, gender identity, and sexual orientation made by students or employees.

This policy and these procedures applies to current students; current employees; recognized student organizations; applicants for admission and/or employment; visitors and guests, when the alleged conduct occurs (A) in the United States, (B) in the University’s program or activity and (C) when the alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

For matters that do not meet the definition of sexual harassment, the University reserves the right to address the misconduct under other applicable University policies and procedures.

### **IV. DEFINITION(S)**

See Section V “Definitions” of the Title IX Grievance Policy for Sexual Harassment Complaints

### **V. POLICY**

See Title IX Grievance Policy for Sexual Harassment Complaints

## **VI. THE TITLE IX GRIEVANCE PROCESS**

### **I. How to File a Complaint**

#### **A. Who to Contact**

1. The Title IX Coordinator is responsible for investigating any Title IX complaint.  
The Title IX Coordinator is:  
Sobia Mahmood, J.D.  
Director of Institutional Equity and Compliance/Title IX Coordinator  
358 Hamburg Turnpike  
Wayne, NJ 07474-091  
TitleIX@wpunj.edu  
973-720-2389

3. Any person may report Sexual Harassment at any time to the Title IX Coordinator or Deputy Title IX Coordinator (“Title IX Coordinators”). Reports may be made in person, or by mail, telephone or email using the contact information listed above.
4. It is a violation of these procedures for anyone to make false accusations of Sexual Harassment or Sexual Assault. Failure to prove a claim of Sexual Harassment or Sexual Assault, however, is not equivalent to making a false accusation. Sanctions may be imposed for intentionally making groundless or malicious accusations of Sexual Harassment or Sexual Assault.

## **B. Initial Assessment**

1. Upon receiving a notice of allegations of sexual harassment, a Title IX Coordinator will:
  - a. Assess the allegation(s);
  - b. Determine whether the alleged conduct would present a potential violation of the Title IX Grievance Policy and whether further action from the Title IX Coordinator(s) is required based on the alleged conduct.
  - c. Notify the Complainant to offer Supportive Measures and
  - d. Invite Complainant to preliminary interview to review allegation(s) and to discuss the Formal Complaint process.
2. A Formal Complaint does not need to be filed with the Office of Employment, Equity and Diversity (“OEED”) to receive Supportive Measures or interim protections.

## **C. Preliminary Interview**

1. Complainant and the Title IX Coordinator (s) will meet to obtain facts of the occurrence that will enable the Title IX Coordinator (s) to assess the nature and circumstances of the allegation (s) and institute appropriate Supportive Measures and interim protections, if applicable.
2. At the conclusion of the preliminary interview, the Title IX Coordinator (s) will determine, in consultation with the Complainant, the appropriate resolution route, which may include:
  - a. No further action,
  - b. Alternative resolution process (only if the Respondent is a student), or
  - c. The initiation of the Formal Complaint and formal grievance process.
3. Alternative resolution may not be offered in matters of sexual assault or in cases where the Respondent is a University employee. The Title IX Coordinator (s) in consultation with the complainant, will determine alternative resolution is appropriate. Though participation in alternative resolution is voluntary for both parties, the Title IX Coordinators retain sole discretion if alternative resolution shall be offered.
4. A Formal Complaint does not need to be filed with the Office of Employment, Equity and Diversity (“OEED”) to receive supportive measure and interim protections.
5. If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator(s) may determine a Formal Complaint is necessary. The University will inform the Complainant of this decision in writing, and the Complainant need not

participate in the process further but will receive all notices issued under the Title IX Grievance Policy and this process.

#### **D. Formal Complaint Process**

1. The Formal Complaint must allege sexual harassment as defined under the Title IX Grievance Policy, meaning that the conduct that is the subject of the complaint must (a) meet the definition of sexual harassment as defined in the Title IX Grievance Policy, (b) have occurred on campus, within a program or activity, or in a building owned or controlled by a student organization that is officially recognized by the University, (c) have occurred in the United States, (d) and, at the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University, including as an employee. A complaint may also be filed by the Title IX Coordinator(s) who has received a report of Sexual Harassment.
2. The timeframe for the Title IX Grievance Process begins with the filing of the Formal Complaint. The Grievance process will be concluded within a reasonably prompt manner, and no longer than 120 business days. The Process may be extended for a 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.
3. The Formal Complaint should specify sufficient details known such as:
  - a. Allegations of sexual harassment under the Title IX policy;
  - b. Date, time and location of the alleged incident;
  - c. Parties involved;
  - d. The name of the individual, if known, who is alleged to have engaged in conduct that would constitute sexual harassment as defined by the Title IX Grievance Policy.
4. The Formal Complaint must be physically or digitally signed and dated by the Complainant or Title IX Coordinator(s).
5. The Formal Complaint may be sent to the Title IX Coordinator(s) in person, by mail, or by email.
6. A Complainant who files a formal complaint may elect, at any time, to address the matter through the University's Informal Resolution Process provided the Respondent is another student. Information about this process is available here at Student Sexual Misconduct and Non-Discrimination Policy and Procedures.

#### **E. Determining Jurisdiction**

1. After a preliminary interview and/or upon receipt of a Formal Complaint, the Title IX Coordinator(s) will determine if the Title IX Grievance Process should apply to the Formal Complaint. The Grievance Process will apply when all of the following elements are met:

- 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 University's program or activity; and
  - d. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.
2. If all of the elements are met, the University will investigate the allegations according to this Grievance Process.

#### **F. Multi-Party Situations**

The University 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.

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

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

#### **H. Mandatory Dismissal**

1. If the conduct alleged does not occur in the University's jurisdiction, the Title IX Coordinator(s) must notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

#### **I. Discretionary Dismissal**

1. The Title IX Coordinator(s) may dismiss a formal complaint brought under the Title IX Grievance Policy, or any specific allegation raised within that Formal Complaint, at any time during the investigation or hearing, if:
  - a. A Complainant notifies the Title IX Coordinator(s) in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
  - b. The Respondent is no longer enrolled in or employed by the University; or,
  - c. If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

#### **J. Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the University 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 via

their University email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

#### **K. Notice of Removal**

Upon dismissal for the purposes of Title IX, the University retains discretion to address allegations under other University Policies and procedures.

#### **L. Notice of Allegations**

1. The Title IX Coordinator (s) will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances.
2. The parties will be notified via their University email accounts if they are a student or employee, and by other reasonable means if they are neither. The University will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.
3. The Title IX Coordinator(s) may determine that grounds for mandatory dismissal of the Formal Complaint exist and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with or in separate correspondence after, the Notice of Allegations.
4. The Notice of Allegations will include the following:
  - a. Notice and hyperlink to the University's Title IX Grievance Policy and Process, including and any informal resolution process, if applicable.
  - b. Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, 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 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 University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

- f. A statement that no employee or student who in good faith files a report, provides information for an investigation, or testifies in any proceeding under this Policy shall be subjected to adverse employment or educational consequences based upon such involvement or be the subject of retaliation. Shall inform the parties of any provision in the University's Student Code of Conduct (or employees policies) other University policy, including but not limited to knowingly making false statements and retaliation

### **M. Ongoing Notice**

1. 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 Allegations and are otherwise covered "sexual harassment" falling within the Title IX Policy, the University will notify the parties whose identities are known of the additional allegations via their University email accounts or other reasonable means.
2. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **N. 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.

### **O. Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Deputy Title IX Coordinator for Students, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator (s), or designee shall have sole judgment to grant further pauses in the Process.

## **II. Investigation/Grievance Process**

### **A. General Rules of Investigations**

1. The Title IX Coordinator(s) and/or an investigator(s) will perform an investigation within a reasonably prompt timeframe after issuing the Notice of Allegations.
2. The University and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their

account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

3. The University cannot access, consider, or disclose medical records without a waiver from the party (or parent/guardian, if applicable) to whom the records belong or of whom the records include information. The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

## **B. Representation During the Grievance Process**

1. **Student Advisors** - Students have the right to be accompanied by an advisor during the investigation and Proceedings. The advisor may be any individual of the student's choice, including, a lawyer, a family member, faculty or other employee. Advisors may attend meetings with the student, assist a student during the investigation, submit evidence for the student, inspect and review evidence, prepare and submit responses to the investigator, respond to charges filed against the student, attend live hearings, and file an appeal. A student who does not have an advisor for the hearing shall be provided an advisor by the Deputy Title IX Coordinator for Students, or designee, to conduct cross-examination for the student at the hearing. The advisor assigned to the student may, but is not required to be, an attorney.
2. **Employee Advisors** - Employees have the right to be accompanied by an advisor of their choice during the investigation and Proceedings. An advisor may be any individual of the employee's choice, including, a lawyer, a family member, and faculty or other employee, or a representative of a union in which the employee is a member. Advisors may attend meetings with the employee during the investigation, submit evidence for the employee, prepare and submit responses to the investigator, respond to charges filed against the employee, attend live hearings, and file an appeal for the employee. An employee who does not have an advisor for the hearing, shall be provided an advisor by the Title IX Coordinator, or their designee, to conduct cross-examination for the employee at the hearing. The advisor assigned to the employee may, but is not required to be, an attorney.

## **C. Inspection and Review of Evidence**

1. Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation. The names and other identifying information of individuals in the report may be redacted if required by the Family Educational Rights and Privacy Act ("FERPA").
2. Respondent, Complainant and their advisors must keep the evidence confidential and not share it with anyone except for the purpose of gathering and presenting relevant evidence to provide to the investigator within the 10-day period. Failure to abide by this confidentiality obligation will subject the Complainant, Respondent and advisor to disciplinary action by the University.

3. Evidence that will be available for inspection and review by the parties will be any evidence that is 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;
  - b. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.
4. All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.
5. The University will send to the parties the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. The University is not under obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.
6. The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator, citing any further information, evidence, or witnesses that they would like considered. The investigators will consider the parties' written responses before determining that fact-finding is complete. If neither party submits a written response, fact-finding is determined to be complete. Any new information that is relevant to the investigation will be revealed to both the Complainant and the Respondent.
7. The University will provide the parties up to ten (10) business days to provide a response, after which the investigator will not accept a late submission.
8. Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.
9. The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process.
10. The parties and their advisors agree not to photograph, scan, or otherwise copy, duplicate or share the evidence.

#### **D. Inclusion of Evidence Not Directly Related to the Allegations**

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, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

#### **E. Investigative Report**

1. The Title IX Coordinator(s) serving as investigators and/or an investigator designated by the Title IX Coordinator(s) will create an Investigative Report. The report will summarize the relevant exculpatory and inculpatory evidence, and findings of credibility will be noted. The report shall be provided to the Complainant, Respondent and their advisors in electronic format or hard copy for review at least ten (10) business days prior to the hearing in an electronic format or a hard copy for each party's review and written response.
2. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. The Respondent, Complainant and their advisors must keep the investigator's report confidential and not share it with anyone. Failure to abide by this confidentiality obligation may subject the Complainant, Respondent and advisor to disciplinary action by the University.
3. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

### **III. Hearings**

#### **A. Pre-Hearing Preparation**

1. The Title IX Coordinator(s) or designee will prepare all parties for participation in the Live Hearing.
2. The Title IX Coordinator(s) or designee will review and coordinate logistics for the hearing including, determining availability of all relevant parties, scheduling room locations, and access to technology.
3. The Title IX Coordinator(s) or designee will ensure any evidence inspected and reviewed by the parties will be available at any hearing, including for purposes of cross-examination.
4. The Title IX Coordinator(s), or designee will serve as silent observer during the live hearing process as a policy, process, and compliance advisor only. The Title IX Coordinator(s) or designee will not weigh-in on decision making, matters of relevance, or questioning phase, but may answer questions related to University policies, procedures, and other state, federal or local laws.
5. Advisors shall prepare questions for cross-examination and email them to the Title IX Coordinators at least five (5) business days prior to the live hearing. The Title IX Coordinators will include them with the evidence and other material provided to the hearing officer/panel

#### **B. General Rules of Hearings**

1. The University will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.
2. The live hearing may be conducted with all parties physically present in the same geographic location, or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video conference

options. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.

3. All proceedings will be recorded through audio recording. That recording will be made available to the parties for inspection and review.
4. Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.
5. The University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.
6. As a general rule, no new evidence or witnesses may be submitted during the live hearing.

### **C. Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are the Complainant; Respondent; Hearing Officer(s); Advisor who will cross-examine witnesses and witness; Advisor who may accompany the parties to a hearing, but may not speak for the parties and; witnesses, but only when they are being examined. All participants in the live hearing shall be subject to the University's Rules of Decorum. See Appendix A.

### **D. Complainant(s) and Respondent(s) (collectively, "Parties")**

1. Parties cannot waive the right to a live hearing. The University may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
  - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the Formal Complaint.
2. The University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
3. If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.

4. The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions.
5. The parties shall be subject to the University's Rules of Decorum. See Appendix A.

**E. The Hearing Body**

1. At the discretion of the University, the hearing body may consist of a Hearing Officer or a Hearing Panel.
2. No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
3. No member of the hearing body will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
4. The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.
5. The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

**F. Advisor to Conduct Cross-Examination**

1. The parties have the right to select an advisor to conduct cross-examination, who may be, but does not have to be, an attorney.
2. This advisor may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
3. In addition to selecting an advisor to conduct cross-examination, the parties also may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party. Employees who are represented by a collective bargaining unit may have a Union representative present at all stages of the Grievance.
4. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
5. The advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
6. The advisor is not prohibited from being a witness in the matter.

7. If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
8. If neither a party nor their advisor appear at the hearing, the University will provide an advisor to appear on behalf of the non-appearing party.
9. Advisors shall be subject to the University's Rules of Decorum, and may be removed upon violation of those Rules. See Appendix A.

#### **G. Witnesses**

1. Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing and be free from retaliation.
2. If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

#### **H. Live Hearing Procedures**

1. Hearing Officer/Panel will open and establish rules and expectations for the hearing;
2. The Parties will each be given the opportunity to provide opening statements;
3. Hearing Panel/Officer will ask questions of the Parties and Witnesses;
4. Parties will be given the opportunity for live cross-examination after Hearing Officer/Panel conducts its initial round of questioning
5. During the Parties' cross-examination, the Hearing Officer/Panel will have the authority to pause cross-examination at any time for the purposes of asking its own follow up questions and at any time necessary in order to enforce the established rules of decorum.
6. Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer/Panel. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Officer/Panel to use statements made by the Party.

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

1. Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses' relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.
2. Before any cross-examination question is answered, the Hearing Officer or Hearing panel will determine if the question is relevant. See Appendix B. Cross-examination questions that are duplicative of those already asked, including by the Hearing Officer or Hearing panel may be deemed irrelevant if they have been asked and answered.

## **J. Review of Recording**

1. The recording of the hearing will be available for review by the parties within 10-14 business days unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

## **K. Determination Regarding Responsibility**

### Standard of Proof – Preponderance of the Evidence

The University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

For Student Respondents found responsible of a Title IX violation, sanctioning will be determined by the Hearing Officer(s). See Appendix C in the Title IX Grievance Policy for the range of sanctions for students.

For Employee Respondents found responsible of a Title IX violation, the matter will be referred to Human Resources for sanctioning. See Appendix D in the Title IX Grievance Policy for the range of sanctions for employees.

### **1. General Considerations for Evaluating Testimony and Evidence**

- a. While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Hearing Officer or Hearing Panel.
- b. Hearing Officer/Panel shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.
- c. Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
- d. Credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.
- e. Hearing Officer/Panel will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
- f. Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

- g. The Final Rule requires that the University allow parties to call “expert witnesses” for direct and cross-examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses. In addition, any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.
- h. The Final Rule requires that the University allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed-examined as required by the Final Rule, the Hearing Officer will be instructed to afford very low weight to any non-factual character testimony of any witness.
- i. The Final Rule requires that the University admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed-examined as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.
- j. Where a party or witness’ conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer/Panel may draw an adverse inference as to that party or witness’ credibility.

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

- a. The written Determination Regarding Responsibility will be issued by the Hearing Officer simultaneously to all parties through their University email account, or other reasonable means as necessary.
- b. The Determination will include:
  - i. Identification of the allegations potentially constituting covered sexual harassment;
  - ii. 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;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding application of the code of conduct, collective bargaining agreement, and/or University policies and whether the Respondent has or has not violated.
  - v. For each allegation:
    - 1. A statement of, and rationale for, a determination regarding responsibility;

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

### 3. **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within ten (10) business days of the completion of the hearing.

### 4. **Finality**

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

## **VI. Appeals**

### A. Student Appeal Procedures

1. Both Complainants and Respondents have the right to appeal (1) a dismissal of a Formal Complaint, or any allegations therein and (2) a determination regarding responsibility.
2. To appeal, a party must submit their written appeal within 5 business days of being notified of the decision, indicating the grounds for the appeal.
3. The limited grounds for appeal are:
  - a. Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
  - 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. A student's failure to attend a hearing or provide information during a hearing does not constitute grounds for appeal on the basis of new information.
  - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias.
4. The implementation of sanctions involving loss of campus housing or class attendance may be delayed only when the responding student files an appeal regarding loss or suspension of these privileges. These privileges may be reinstated pending the conclusion of the appeal process.
5. The original finding and sanction(s) will stand if the appeal is not timely or is not based on the grounds listed above, and such a finding and sanction(s) are final.

6. When a party requests an appeal, the other party (parties) will be notified of the appeal and grounds and given an opportunity to respond with a written statement submitted to the Vice President for Student Development within five (5) business days of the notification. The written response must be received by 11:59pm on the fifth business day.
7. The Vice President for Student Development or designee will review the appeal and any subsequent responses and render a decision, in writing to all parties, within ten (10) business days of the final submittal deadline. There will be no further appeal.
8. Appeals are not intended to be full re-hearings of the complaint. Appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.
9. The submission of appeal stops any sanctions until a decision is reached on the appeal. Supportive Measures and remote learning opportunities/administrative leaves and suspensions with pay for employees remain available during the pendency of the appeal.
10. If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.
11. Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.
12. The decision of the Appeal is the final action of the University.

## **B. Employee Appeal Procedures**

1. Both Complainants and Respondents have the right to appeal (1) a dismissal of a Formal Complaint, or any allegations therein and (2) a determination regarding responsibility.
2. To appeal, a party must submit their written appeal within 5 business days of being notified of the decision, indicating the grounds for the appeal.
3. The limited grounds for appeal are:
  - a. Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
  - 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. Please be advised that a party's failure to attend a hearing or provide information during a hearing does not constitute grounds for appeal on the basis of new information.
  - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias.
4. The implementation of sanctions may be delayed when the employee files an appeal

5. The original finding and sanction(s) will stand if the appeal is not timely or is not based on the grounds listed above, and such a finding and sanction(s) are final.
6. When a party requests an appeal, the other party (parties) will be notified of the appeal and grounds and given an opportunity to respond with a written statement submitted to the Vice President for Human Resources or designee within five (5) business days of the notification. The written response must be received by 11:59pm on the fifth business day.
7. The Vice President for Human Resources, or designee will review the appeal and any subsequent responses and render a decision, in writing to all parties, within ten (10) business days of the final submittal deadline. There will be no further appeal.
8. Appeals are not intended to be full re-hearings of the complaint. Appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.
9. The submission of appeal stays any sanctions for the pendency of an appeal. Supportive Measures and remote learning opportunities/administrative leaves and suspensions with pay for employees remain available during the pendency of the appeal.
10. If a party appeals, the University will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.
11. Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.
12. The decision of the Appeal is the final action of the University.

## **VII. Training**

The Title IX Coordinator, Deputy Title IX Coordinator for Students, investigators, hearing panel members, any person who facilitates informal resolution, and any person who resolves an appeal, shall receive training on the definition of Sexual Harassment and Sexual Assault, the scope of the Title IX Grievance Policy and Procedures. William Paterson University Police officers are trained to investigate and assist victims of sexual assault, dating violence, stalking, and domestic violence.

The Title IX Coordinator, Deputy Title IX Coordinator for Students, investigators shall be trained on how to conduct an investigation; shall also receive training on relevance to create an investigative report that fairly summarizes relevant evidence.

The Title IX Coordinator, Deputy Title IX Coordinator for Students, and hearing panel member shall be training how to conduct a hearing, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

Title IX Coordinator, Deputy Title IX Coordinator for Students, and hearing panel members shall also receive training on the use of any technology to be used at a live hearing and on the relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

The Title IX Coordinator, Deputy Title IX Coordinator for Students and any person who resolves an appeal shall be trained on the appeal process and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias.

The Title IX Coordinator, Deputy Title IX Coordinator for Students, investigators, hearing panel members, any person who facilitates informal resolution, and any person who resolves an appeal will not rely upon sex stereotypes and must promote impartial investigations and adjudications of formal complaints of Sexual Harassment and Sexual Assault. The training to the extent possible will be informed by trauma informed practices.

Title IX Grievance Policy and Process training materials to the extent permitted must be made publicly available on the University's website.

## **APPENDIX A - Decorum Policy for Title IX Grievance Process Hearings**

### **Purpose of the Rules of Decorum**

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party, advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and to build a hearing process that will reassure the parties that the University “is not throwing a party to the proverbial wolves.” Id.

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an advisor who refuses to comply with the rules. Id., at 30320. As the Department explains, the removal process “incentivizes a party to work with an advisor of choice in a manner that complies with a recipient’s rules that govern the conduct of a hearing, and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants.” Id.

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

### **Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the Complainant and Respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, we expect all advisors to follow these Rules of Decorum.
5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Hearing Officer/Panel.
6. The advisor may not use profanity or make personal attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by the Hearing Officer/Panel, the advisor in cross-examination, or in direct testimony.

When the Hearing Officer/Panel determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.

8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

### **Warning and Removal Process**

The Hearing Officer/Panel shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Officer/Panel will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Officer/Panel shall have the discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the University Hearing Board Member(s) removes a party's Advisor, the Party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, maybe anticipated should an advisor be removed. A party cannot serve as its own Advisor in this circumstance.

The University Hearing Board Member(s) shall document any decision to remove an advisor in the written determination regarding responsibility.

### **Removal of Advisor from Live Hearings**

For flagrant, multiple, or continual violations of the decorum process, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this agreement will be gathered by the Title IX Coordinators, Director of Student Conduct, or a designee of either and presented to the Vice President for Student Affairs for cases involving students/Director of Human Resources for cases involving employees/Other Appropriate Staff Member. The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Vice President for Student Development for cases involving students. The Vice President of Human Resources for cases involving employees/Other Appropriate Staff Member.

Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records. There shall be no right to a live hearing, testimony, or cross-examination. The Vice President for Student Development for cases involving students/Vice President of Human Resources for cases involving employees/Other Appropriate Staff Member shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction.

The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days unless extended for a good cause. There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Vice President for Student Development for cases involving students/Vice President of Human Resources for cases involving employees/Other Appropriate Staff Member no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

### **Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

## **APPENDIX B – Guide for Determining Relevance**

### **Guide for Determining Relevance**

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(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

#### **1. What is a Relevant Question?**

##### **a. Plain and Ordinary meaning**

Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. A question not directly related to the allegations will generally be irrelevant. Officials should use common sense in this understanding. Things may be interesting or surprising but not be relevant.

##### **b. Aid Decision Maker**

Relevant decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the decision-maker in making the underlying determination.

The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevant decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as Complainant or Respondent, past status as Complainant or Respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

##### **c. Relevant but Abusive**

If a question is relevant but offered in an abusive or argumentative manner, the decision-maker has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution's decorum policy for hearings.

##### **d. Prejudicial value can outweigh probative value if relevant**

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties or advisors. However, relevant questions need to be considered even if a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value. Only irrelevant questions (detailed below), including about the Complainant's prior sexual history, may be excluded.

#### **2. What is an Irrelevant Question?**

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.
- c. Information protected by legally-recognized privilege are irrelevant
- d. Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. Depending on your state, individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, and nurse), psychologists, clergy, rape crisis counselors, and social workers.
- e. Questions that seek information about any party’s medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent to disclose Medical Records.
- f. Duplicative Questions may be irrelevant - Questions that repeat, in sum or substance, questions already asked by the decision-maker prior to cross-examination, or by a party’s advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.

**3. How should the decision-maker reach a relevance determination?**

- a. If the decision-maker is a single individual, the decision-maker will be solely responsible for determining the relevance of the question before it is asked.
- b. If the decision-maker is a panel, the panel’s Chair will make all determinations of relevance.

**4. What should the relevance determination consist of?**

- a. The Department of Education explains that the Final Rule “does not require a decision-maker to give a lengthy or complicated explanation” in support of a relevance determination. Rather, “it is sufficient, for example, for a decision maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations.”

**When Determining Relevance – Only Brief Explanation Needed**

- b. As such, the decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation.

**5. Examples of Determinations**

- a. Generally probative questions
  - i. The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
  - ii. The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true.
- b. Question about Complainant’s Prior Sexual Behavior or Sexual Predisposition

- i. The question is relevant because although it calls for prior sexual behavior information about the Complainant, it meets one of the two exceptions to the rape shield protections), and it tends to prove that a material fact at issue is more or less likely to be true

Exception one: The question is asked to prove that someone other than the Respondent committed the conduct alleged by the Complainant.

Exception two: The question concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is asked to prove consent

- ii. The question is irrelevant because it calls for prior sexual behavior information about the Complainant without meeting one of the two exceptions to the rape shield protections.

c. Question regarding Privileged Information

- i. The question is irrelevant because it calls for information shielded by a legally-recognized privilege.
- ii. The question is relevant because, although it calls for information shielded by a legally-recognized privilege, that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

d. Questions about Undisclosed Medical Records

- i. The question is irrelevant because it calls for information regarding a party's medical, psychological, or similar record without that party's voluntary, written consent.
- ii. This question is relevant because although it calls for a party's medical, psychological, or similar records, that party has given their voluntary, written consent to including this material, and it tends to prove that a material fact at issue is more or less likely to be true.

## 6. Duplicative Questions

The question is irrelevant because it is duplicative of a question that was asked and answered.

When Necessary, Longer Explanation Provided in Determination-

- a. The relevance determination will be conveyed orally, except as needed to accommodate a disclosed disability of a hearing participant, and all relevance determinations will be preserved in the record of the proceeding.
- b. The parties and/or their advisors may ask the decision-maker to reconsider their relevance decision?
- c. Any party or their advisor request that the decision-maker reconsider their relevance determination?

- d. The decision-maker may deny or grant the request to reconsider. This determination is final, but may be subject to appeal under the Title IX Grievance Process.

## **Appendix C – Alternative Resolution**

Alternative Resolution is a voluntary process within the Title IX Grievance Process for Sexual Harassment Complaints that is grounded in Restorative Justice. The Alternative Resolution permits methods (i.e. facilitated conversations, shutting, circling, and mediation) of resolving incidents when the Complainant does not want a formal investigation. Or, when the Title IX Coordinator(s) may seek to resolve certain cases through an alternative resolution process involving both the Complainant and Respondent.

*For example, a Complainant and Respondent may agree with the Title IX Coordinator that education and training for the Respondent are an appropriate and sufficient response in a particular case, or that a No Contact order between the parties provides remediation for the Complainant;*

*Or, a Respondent who fully participates in the process will not be charged with a violation of University Policy. The alternative resolution process will be designed to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the Complainant while still maintaining the safety of the overall campus community.*

**However, the University will not use mediation to resolve cases involving allegations of sexual assault.**

Alternative resolution can take place during the preliminary assessment, the formal investigation, or after its conclusion. If, based on the information known about the incident, the Title IX Coordinators believes such a resolution is possible, the Title IX Coordinators will contact the Complainant. If the Complainant agrees, the Title IX Coordinator will then contact the Respondent. The Alternative Resolution process allows a Respondent in a cases to accept responsibility for their behavior and/or potential Harm.

If both Complainant and Respondent are satisfied with the proposed resolution and the Title IX Coordinator believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment for all students, the resolution will be implemented, the disciplinary process will be concluded, the matter will be closed, and both parties will be provided with written notice of the resolution. If these efforts are unsuccessful, the investigation and/or disciplinary process will continue. Before starting these discussions, the Title IX Coordinators will notify the Complainant and Respondent in writing that each has the right to end the informal process at any time.

### **Alternative Resolution Requirements for Participation**

The Alternative Resolution process will only be used at the request and agreement of **both** the Reporting Party and Respondent and under the direction of the Deputy Title IX Coordinator for Students, Title IX Coordinator, or designee.

In order for the alternative resolution process to be appropriate **both** parties must have an understanding and agree on the necessary elements of the process. Both the Reporting Party and Respondent will have to agree to established terms should they wish to participate in the alternative resolution process.

For matters of sexual assault, domestic & dating violence, the Alternative Resolution process may only be offered after a formal complaint is filed.

**The University will not offer or facilitate an alternative resolution process to resolve allegations that an employee sexually harassed a student, matters of sexual assault, or sexual violence.**

### **Alternative Resolution Education Outcomes for Students**

- **Restorative practices.** Participation in a discussion by trained facilitators with any persons or departments Harmed and development of a shared agreement of how to correct the Harm. Unlike other sanctions, all participants must voluntarily agree to participate in the restorative process.
- **Facilitate Conversations.** Participation in a mediated discussion with other disputants facilitated by trained mediators with the hope of developing a negotiated agreement serving as resolution to the dispute. Unlike other sanctions, all participants must voluntarily agree to participate in mediation.
- **Other Discretionary sanctions.** Work assignments, essays, presentations, research projects, conduct contracts, service to the University, or other discretionary assignments.

By Direction of the President and Cabinet:

Date

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(Title of Executive or Vice President(s) whose area of responsibility the policy covers.)