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I. Purpose

These formal resolution procedures address allegations of sexual harassment as required by the United States Department of Education's Title IX Regulations. The University's Title IX Sexual Harassment Policy is incorporated by reference into these resolution procedures.

Formal complaints of sexual misconduct seeking redress under the Department's regulations must: (a) meet the Department's definition of sexual harassment, and (b) relate to a VSU educational program or activity conducted in the United States. Conduct that is not subject to this policy may be prohibited by one or more of the following: the University's *Discrimination, Harassment, and Retaliation Prevention Policy 1101*; *Department of Human Resources Management Policy 1.60*; *Standards of Conduct for Classified Employees and Policy 2.30*; *Prohibiting Workplace Harassment*; *the University's Student Code of Conduct*; *the University's Faculty Handbook*; and *other policies approved by the University's Board of Visitors, the Governor, or agencies of the Commonwealth of Virginia*.

Complainants and Respondents are referred to as the parties, and they will receive equal treatment. Respondents are presumed innocent and not responsible for alleged sexual harassment unless a determination of responsibility is rendered at the conclusion of the grievance process as provided in these procedures.

II. Authority, Responsibility, and Duties

These Title IX Complaint Resolution Procedures apply to University students, faculty, and staff. These procedures also apply to individuals participating or seeking to participate in the University's educational and employment programs, such as applicants for admission or employment. Questions regarding these procedures or Title IX of the Education Amendments of 1972, should be addressed to the University's Title IX Coordinator:

Deborah D. Howard
Office of EEO & Title IX Compliance
Room 313 - Virginia Hall
(804) 524-5371 or titleix@vsu.edu

III. The Title IX Coordinator

The Title IX Coordinator coordinates the University's compliance with U.S. Department of Education's Title IX sex discrimination laws. The Title IX Coordinator does not serve as an advocate for either the complainant or the respondent. "The University's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment ***may constitute discrimination on the basis of sex under Title IX.***" The Title IX Coordinator will explain the resolution procedures to the parties and witnesses. As appropriate, the Title IX Coordinator or any member of the Title IX Team will provide both parties with information

about medical and counseling services, support services, making a criminal report, information about advocacy services, and guidance on other University and community resources.

The Title IX Coordinator will coordinate supportive measures for the parties. “Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.” The Title IX Coordinator will explain to all parties the process of a prompt, adequate, reliable, and impartial investigation, including the opportunity for the parties to identify witnesses and provide other evidence. The Title IX Coordinator will explain to the parties the right to have a personal advisor present and to review and respond to the allegations and evidence. The Title IX Coordinator will also explain to the parties and witnesses that retaliation for reporting sexual harassment or sexual misconduct, or participating in an investigation, is strictly prohibited and that any retaliation should be reported immediately.

The Title IX Coordinator will ensure the posting and dissemination of the University’s Title IX Policy and Complaint Resolution Procedures to students and employees upon their adoption and revision.

IV. How to Initiate the Formal Complaint Process

The University encourages anyone in the campus community who experiences or becomes aware of an incident of sexual harassment, or retaliation to immediately report the incident to the Title IX Coordinator.

- A. A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment as defined by the Title IX Regulations and University policy against a Respondent and requesting the University to initiate an investigation.
- B. A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email. The Formal Complaint must contain the Complainant’s physical or digital signature, or some other indication that the Complainant is the person filing it. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in a University educational program or activity.

- C. The Title IX Coordinator will respect the Complainant's wishes regarding a desire that the University not investigate a complaint unless the Title IX Coordinator determines that the failure to investigate could be harmful to the University community, or threaten the safety or security of any student or member of the University's faculty or staff.
- D. Formal Complaints against employees will also be referred to the Office of EEO & Title IX Compliance and simultaneously evaluated under applicable employee conduct policies and procedures.
- E. Complaints and reports of sexual assault, dating violence, domestic violence, and stalking should be made immediately to the Virginia State University Department of Police and Public Safety, the Title IX Coordinator, or local law enforcement. A Complainant who wishes to pursue criminal action in addition to, or instead of, making a report or filing a Formal Complaint under these procedures should contact law enforcement directly.
- 911 (for emergencies)
 - VSU Campus Police (804) 524-5411 for campus emergencies; (804) 524-5360 (for non-emergencies)
 - Chesterfield County Police (804) 748-1269 (for non-emergencies)
 - City of Petersburg Police (804) 732-4225 (for non-emergencies)
 - City of Colonial Heights Police (804) 520-9300 (for non-emergencies)
- F. University employees receiving reports or complaints of sexual harassment, or other sexual misconduct should immediately notify the Title IX Coordinator and should not undertake any independent efforts to determine whether or not the report or complaint has merit before reporting it to the Title IX Coordinator.
- G. As will be the case with all reports, however made, the reporting individual will be contacted promptly for an interview with the Title IX Coordinator or the VSU Campus Police.
- H. Withdrawal of a Formal Complaint
A Complainant may withdraw a Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal concludes the Formal Complaint Resolution Process unless the Title IX Coordinator deems it necessary to continue the process to fulfill the University's duties under the laws of the Commonwealth of Virginia and Title IX in instances where the Title IX Coordinator has actual knowledge of acts of sexual violence, or other conduct that threatens individuals or the University community.

V. Informal Resolution

Prior to a determination of responsibility, the parties may choose to resolve a complaint through an informal resolution process, such as mediation that does not involve a full investigation and adjudication. The University may not offer an informal resolution process unless a formal complaint is filed. Both parties must voluntarily agree to participate in an informal resolution process, and if they do, the formal complaint resolution process stops. Either party may withdraw from the informal process and resume the formal complaint resolution process at any time before an informal resolution is reached. The University will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a formal complaint resolution process. The University will not offer or facilitate an informal resolution process to resolve allegations that a faculty or staff member sexually harassed a student.

Prior to facilitating an informal resolution process, the University will obtain the parties' voluntary, written consent to the informal resolution process and provide written notice to the parties disclosing the following:

- A. The allegations;
- B. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
- C. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the formal resolution process; and
- D. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

If the parties agree to an informal resolution, the Formal Complaint is deemed withdrawn and the formal complaint resolution process will be terminated. Agreements reached during the informal resolution will be final three business days following the date of the agreed resolution. The informal resolution is considered binding, and its breach could give rise to a new Formal Complaint, which may restart the process.

VI. Promptness

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. Complaints may take up to 60 business days to resolve. There may be extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

Any time the general timeframes for resolution will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

VII. Mandatory Dismissal of a Complaint

A. The University Title IX Coordinator is *required* to dismiss formal complaints of Title IX sexual harassment if:

1. the conduct did not occur against a person in the United States;¹
2. the Complainant was not participating in or attempting to participate in the education program or activity of the University when the complaint was filed;²
3. the conduct did not occur in a University educational program or activity;³ or
4. the conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Department of Education's regulations even if proved.⁴

B. The University Title IX Coordinator has the discretion to dismiss formal complaints of Title IX sexual harassment if:

1. at any time during the investigation or hearing, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. the Respondent is no longer enrolled or employed by the University; or
3. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

C. Notification: If a decision is made to dismiss the complaint, the parties will be promptly notified in writing of the dismissal and the reasons. The University's Title IX Coordinator may pursue the complaint under other University anti-discrimination or harassment policy options that may apply as more information is learned following the initial assessment. The parties will be notified accordingly.

¹ 34 C.F.R. § 106.45(b)(3)(i).

² 34 C.F.R. § 106.30(a).

³ 34 C.F.R. § 106.45(b)(3)(i) (Defined to include locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.).

⁴ 34 C.F.R. § 106.45(b)(3)(i).

VIII. Initial Intake and Assessment

- A. Upon receipt of a report of sexual harassment, the Title IX Coordinator will:
1. promptly contact the Complainant to discuss the availability of supportive measures and explain the process involved in filing a Formal Complaint;
 2. consider the Complainant's wishes with respect to supportive measures;
 3. offer supportive measures, as needed, to the Complainant, the Respondent, and other members of the campus community who may have been affected by the alleged conduct;
 4. conduct an initial assessment to gain a basic understanding of the nature and circumstances of the allegation, and any risks to the campus community; and
 5. conduct a limited, threshold investigation to determine if the alleged conduct meets the jurisdictional requirements for redress under the Title IX Sexual Harassment Policy and these procedures.
- B. When the alleged misconduct does not meet the definitional and jurisdictional requirements for redress under the University's Title IX Sexual Harassment Policy and these procedures, formal complaints may be referred to appropriate University officials and departments for review and investigation to determine if the alleged conduct may violate other University or Commonwealth of Virginia standards of conduct or disciplinary policies for students, faculty, staff, visitors, contractors or volunteers.

IX. Threat Assessment

Following the initial assessment, the Title IX Coordinator will promptly forward to the Title IX Review Committee all information then known about the reported incident. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

The Title IX Coordinator will evaluate every report of Title IX sexual harassment. The Title IX Review Committee will convene, as appropriate (in person, by telephone, or by videoconference), within 72 hours after receiving information from the Title IX Coordinator, and will convene again, as necessary, to review new information as it becomes available. The Title IX Review Committee may include any and all members of the University's Threat Assessment Team and shall include, at a minimum: (1) the Title IX Coordinator, (2) a representative of the University Police Department, and (3) a representative from the Division of Student Success and Engagement. In addition, the Committee may include a representative from the Office of Human Resources or the Office of the Provost, depending

on the circumstances of the reported incident and the status of the Complainant and the Respondent.

The Title IX Review Committee will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The Committee will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of risk factors such as, but not limited to, the presence of physical violence, history of prior arrests or conduct in violation of policy and the number of respondents involved in the incident.

The Title IX Review Committee operates pursuant to Va. Code § 23.1-806 (the “Virginia Reporting Statute”) and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records, criminal history record information, as provided in Va. Code § 19.2-389 and § 19.2-389.1; health records, as provided in Va. Code § 32.1-127.1:03; University disciplinary, academic and/or personnel records; and any other information or evidence known to the University or to law enforcement. The Title IX Review Committee may seek additional information about the reported incident through any other legally permissible means.

X. Notice of Allegations

- A. Upon receipt of a Formal Complaint, the University will provide to the parties a written notice that includes:
 1. Information about the University’s Formal Complaint Resolution Process; and
 2. Notice of the allegations of sexual harassment as defined by the University’s Sexual Harassment Policy which shall include (a) the identities of the parties involved in the incident, if known; (b) the conduct allegedly constituting sexual harassment; and (c) the date and location of the alleged incident, if known.
- B. The written notice must include 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. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice must warn the parties that they are prohibited from knowingly making false statements or knowingly submitting false information during the investigation and resolution process.

- C. The notice must be given as soon as practicable and allow the parties sufficient time to prepare responses before any initial investigation interview.
- D. If, at any point during the course of the investigation, the University decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

XI. Investigation Procedures

- A. The Title IX Coordinator will appoint an Investigator to investigate the allegations of the complaint. The investigation may include interviews with the Complainant, the Respondent, and any witnesses; examination and reviews of law enforcement investigation documents if available; reviews of relevant student or employment files; and reviews of other relevant documents, photographs, statements and affidavits of the parties and witnesses, social media posts, and any other evidence.
- B. Although the University's Investigator has the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator. While relevant evidence presented at a hearing by the parties will be considered, the adjudicator(s) may grant lesser weight to information or evidence introduced at the hearing that was available to the party but that was not previously presented for investigation by the Investigator. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true, i.e., both "inculpatory" or corroborating evidence and "exculpatory" or contradicting evidence. The Investigator will evaluate and consider for inclusion in the investigative report all relevant evidence.
- C. The Investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant. Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review by the parties in an electronic format or a hard copy, and the parties shall have ten (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.
- D. After the investigation, the Investigator will draft an investigation report. The Investigator will not make any recommendation as to whether a violation has occurred or whether any sanctions should be imposed against either party.
- E. The burden of gathering evidence rests with the University and not on the parties.

- F. The University will provide the parties an equal opportunity to inspect and review any evidence the University obtained as part of the investigation, whether obtained from a party or other source that is directly related to the allegations raised in the Formal Complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence prior to conclusion of the investigation. Parties may elect to submit certain records of medical examinations, treatment, or mental health services. The University will not access, consider, disclose, or otherwise use such records, unless the party voluntarily consents in writing to their use in the Formal Complaint Resolution Process.

XII. Investigative Report

- A. Prior to completion of the investigative report, the University will send to each party, and the party's advisor, if any, a preliminary investigative report and the evidence. Such evidence will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. The University retains discretion to elect to send such materials in an electronic format or a hard copy.
- B. The parties will have ten (10) days to submit a written response to the preliminary investigative report. Any such comments are limited to no more than ten (10) double-spaced pages and must be submitted by hand delivery to the Title IX Office, Virginia Hall, Room 313, or by email attachment to the Investigator by no later than 5:00 p.m. on the tenth (10th) calendar day following the date the parties receive the evidence. Requests for extensions must be submitted to the Investigator prior to the expiration of the ten (10) day period. The investigator will consider any such response prior to completion of the final investigative report.
- C. Upon receipt of the parties' responses to the preliminary investigation report, the Investigator will prepare a final investigation report, which will summarize all relevant information gathered. The final investigative report will not make any recommendation as to whether a policy violation has occurred or potential sanctions. The Investigator will deliver the final investigation report and all attached materials to the Title IX Coordinator.
- D. The Title IX Coordinator will simultaneously transmit the final investigation report and all attached materials, including all information submitted by the parties in response to the preliminary report and all information and materials gathered as additional investigative steps, which are not otherwise privileged, to both parties in an electronic format or hard copy. The Title IX Coordinator will also include in this transmission information about the hearing process and may begin the process of scheduling a hearing for the adjudicator to make an independent determination of responsibility.

- E. The Title IX Coordinator will provide any statement(s) with the final investigation report to the adjudicator at least ten (10) days prior to the hearing.

XIII. Advisors

- A. The University will provide the parties with the opportunity to have an advisor present during the investigative process, including meetings and interviews, and during the hearing. The advisor may be, but is not required to be, an attorney. The University will not limit the choice or presence of an advisor for either the Complainant or Respondent in any meeting or resolution proceeding; however, the University will restrict the extent to which the advisor may participate in the proceedings.
- B. Advisors are not permitted to participate directly in any proceeding, with the exception of hearings and certain related meetings, as specified in the Hearing Procedure. Otherwise, Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the Investigator, Adjudicators, other parties, or witnesses.
- C. For all non-hearing investigative interviews or meetings to which the University invites a party, the University will provide at least five (5) days' notice to that party.

XIV. Hearing Procedures

The formal complaint will be resolved at a live hearing before an adjudicator, selected by the Title IX Coordinator. The adjudicator cannot be the Title IX Coordinator or the investigator. Adjudicators shall be (1) trained by the University on the Department of Education's definition of sexual harassment, as provided in the regulations of the Department's Office of Civil Rights; (2) educated about the scope of the University's programs and activities; and (3) trained on the ways in which to impartially serve as decision-makers without prejudice, bias, or conflict of interest. The Title IX Coordinator will identify the adjudicator to the parties five (5) days in advance of the hearing. Either party may challenge a named adjudicator if it is believed that the adjudicator has a conflict of interest or is biased. The challenge must be delivered in writing to the Title IX Coordinator at least three (3) business days in advance of the hearing, specifying the reasons for such belief. The Title IX Coordinator has sole discretion to keep or replace the challenged adjudicator, and if replaced, will postpone the hearing to allow for a replacement adjudicator.

- 1) Five (5) days in advance of the hearing, the parties will file written notification identifying their attendees (including advisors), and their witnesses. This notification shall include the anticipated witness sequencing at the hearing. The Title IX Coordinator will supply the disclosure to the other party.

- 2) The University may, require the Complainant and Respondent to participate in a pre-hearing conference with their advisors.
- 3) At the live hearing, the adjudicator will decide whether or not the respondent is responsible for violating the *Title IX Sexual Harassment Policy* by having engaged in some or all of the reported conduct and will recommend appropriate sanction(s), if any.
- 4) The hearing may be conducted with 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, with technology enabling participants simultaneously see and hear one another.
- 5) 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.
- 6) At the live hearing, the adjudicator must permit each party's advisor to ask the other party and witnesses any relevant questions and follow-up questions, including those challenging credibility.
- 7) Before a Complainant, Respondent, or witness answers a cross-examination, the adjudicator must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 8) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- 9) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless 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 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.
- 10) The University expects that all participants, including parties and advisors, will participate respectfully and non-abusively during a hearing. The advisor may not interrupt or interfere with the proceedings. If an advisor's conduct causes, in the

adjudicator's discretion, interference, delay or interruption of the proceedings, the adjudicator may remove that advisor from such proceedings, if deemed necessary.

XV. Hearing Determinations

The adjudicator will issue a written determination, typically within 15 days following the hearing. Based on a preponderance of the evidence, the adjudicator will decide if the Respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate. The written determination will be provided to the parties simultaneously.

The written determination will include:

- 1) Identification of the allegations potentially constituting sexual harassment as defined by the Title IX regulations and University Title IX policy;
- 2) 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 evidence, and hearings held;
- 3) Findings of fact supporting the determination;
- 4) Conclusions regarding the application of the University's Title IX Sexual Harassment Policy to the facts;
- 5) A statement of, and rationale for, the result as to each allegation, including:
 - i. A determination regarding responsibility;
 - ii. Any disciplinary sanctions the adjudicator imposes on the respondent; and
 - iii. Whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant.
- 6) Procedures and permissible bases for the parties to appeal the determination.

Supportive Measures also may be provided to the Complainant that are designed to restore or preserve equal access to the University's education program or activity, even if they are not listed in the written determination. The Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures.

All findings and determinations of responsibility under these procedures will be made using a preponderance of the evidence standard. This standard requires determining whether it is more likely than not that a fact exists or that a violation of the *Title IX Sexual Harassment Policy* occurred. The preponderance of the evidence standard is not the standard used for criminal culpability in most jurisdictions. A determination of responsibility under the *Title IX Sexual Harassment Policy* does not equate with a finding of a violation of criminal laws.

XVI. Range of Sanctions and Remedies

A. Sanctions can include, but are not limited to, the following:

Students

- 1) No Contact Order
- 2) Formal Counseling
- 3) Disciplinary Probation
- 4) Deferred Disciplinary Probation
- 5) Educational Conference
- 6) Suspension
- 7) Expulsion

Employees

- 1) Formal Counseling
- 2) Disciplinary Probation
- 3) No Contact Order
- 4) Demotion
- 5) Revocation of tenure
- 6) Suspension
- 7) Termination of employment

Additional components of sanctions may include, but are not limited to restrictions, which may include limiting or barring access to certain facilities or activities and removal or reassignment from University housing.

B. Remedies can include, but are not limited to, the following:

- 1) Access to on-campus counseling services and assistance in setting up an initial appointment with those services;
- 2) No-Contact Directives;
- 3) Rescheduling of academic exams and assignments;
- 4) Providing alternative course completion options;
- 5) Changing class schedules, including the ability to transfer course sections or withdraw from a course;
- 6) Changing work schedules, job assignments, or job locations for University employment;
- 7) Changing residence hall room assignments;
- 8) Providing an escort for transit between University classes and activities;
- 9) Providing academic support services, such as tutoring; and
- 10) Leaves of absence.

The determination regarding responsibility becomes final either: (1) if an appeal is filed on the date that the University provides the parties with the written determination of the result of the appeal, or (2) if an appeal is not filed, the date on which an appeal would no longer be considered timely.

XVII. Appeals

The appeal is an objective, independent review designed primarily to detect any significant errors in the investigation or determination. The appeal is limited to the bases described in this section. The appeal is not an opportunity for a party to reexamine each aspect of the decision maker's decision or seek a new review process, starting from the beginning. Instead, the bases for appeal focus on specific aspects of the written determination, such as procedural irregularities, that could have affected the outcome of the matter. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint in whole or in part, on the following bases:

- 1) A procedural irregularity (meaning a failure to follow the process outlined in this resolution process) that affected the outcome;
 - 2) New evidence that was not reasonably available to the appealing party at the time of the hearing or dismissal that could affect the outcome;
 - 3) The Title IX Coordinator, Investigator, or adjudicator 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. The notice of appeal must describe with specificity the basis upon which such conflict of interest or bias is alleged and how it allegedly affected the outcome;
 - 4) The determination cannot reasonably be supported by the evidence; and
 - 5) The severity of the sanction.
- A. Appeals must be submitted in writing to the Title IX Coordinator within ten (10) days of the date that the written adjudication determination is provided to the parties. The written appeal must state the ground(s) for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such information.

- B. Upon receipt of an appeal, the University will:
- 1) Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
 - 2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - 3) Ensure that the decision-maker for the appeal does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and that the decision-maker for the appeal has received the appropriate and necessary training; and
 - 4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- C. The University will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within ten (10) days that may seek to affirm the initial decision and/or respond to the appeal statement.
- D. The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt timeframe, typically within ten (10) days following receipt of all appellate materials. The appeal will determine whether the adjudicator made an error on the grounds alleged in the appeal statement. The appeal decision will be given simultaneously to both parties.
- E. The Appellate Officer will take action on the appeal based on the relevant ground for appeal according to the following:
- 1) In cases where there has been a material procedural error sufficient to affect the determination posed, the Appellate Officer will remand the case to the Title IX Office with instructions, as appropriate.
 - 2) In cases where the Appellate Officer deems there is new evidence that was not reasonably available to the appealing party at the time of the hearing or dismissal that could affect the outcome of the matter, the Appellate Officer will remand the case to the Title IX Office with instructions, as appropriate.
 - 3) In cases where the Appellate Officer deems the Title IX Coordinator or Investigator had a conflict of interest or bias for or against the Complainant or the Respondent generally or the individual Complainant or Respondent that affected the outcome of the matter, the Appellate Officer will refer the case to the University President or designee to assure the University provides a resolution process without conflict of interest or bias.

- 4) In cases where the Appellate Officer deems the determination, including sanctions, cannot reasonably be supported by the evidence, the Appellate Officer will reverse the determination.

The Title IX Coordinator will maintain and publish a list of Appeals Officers and their designees. Where the Appeals Officers delegate their responsibility, they must inform the Title IX Coordinator of their designees on an annual basis prior to the start of the academic year to ensure adequate time to provide training.

- Where the Respondent is a Student, the Appeals Officers are the Vice President and Associate Vice President for Student Affairs or their designee.
- Where the Respondent is an Employee that reports directly to the University President, the Appeals Officer is the President or the President's designee.
- Where the Respondent is an Employee (non-faculty) that reports directly or indirectly to an Executive Vice President, Vice President, College Dean or Chief of Staff, the Appeals Officers are the Executive Vice President, Vice President, College Dean or Chief of Staff, or their designee.
- Where the Respondent is a member of the Academic Faculty, the Appeals Officers are the Executive Vice President/Provost and/or College Dean, or their designee.

XVIII. Retaliation

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 this Formal Complaint Resolution Process, 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. 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 this resolution procedure, constitutes retaliation. Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow the resolution procedures established under the University's Title IX Sexual Harassment Policy.

XIX. Documentation and Record-keeping

The Title IX Coordinator shall maintain, in a confidential manner, records of complaints, supportive measures provided, investigations, hearings (including recordings), appeals, informal resolutions, as well as training materials and other associated documents for seven (7) years. The Title IX Coordinator will prepare a monthly summary of pending complaints that will be presented to the Vice President for Administration and also will be retained for at least seven (7) years. Such summary will contain sufficient information to permit the Title IX Coordinator, Vice President for Administration and the President to assess the University's compliance with the requirements of Title IX.

These procedures will be reviewed, at a minimum, annually and/or revised as needed by University Legal Counsel.

APPROVED BY:  _____
PRESIDENT

DATE: 10/22/2020