Title IX Sexual Harassment Policy

Effective:	August 14, 2020 (original) August 23, 2021 (revised)
Responsible Executive:	Director, AA/EEO
Applicability:	All individuals, including Auburn University faculty, staff, and students
Review By:	August 2024

I. Policy Statement

Consistent with the University's Non-Discrimination Notice and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("TitleIX") (*see* 34 C.F.R. § 106 *et seq.*), Auburn University prohibits Sexual Harassment that occurs within its education programs and activities.

As further defined herein, Sexual Harassment includes Quid Pro Quo Sexual Harassment,Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty members, staff, students, contractors, guests, and other members of the University community who commit Sexual Harassment are subject to the full range of University discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension;fines; permanent separation from the University (i.e., termination or dismissal); physical restrictionfrom University property; cancellation of contracts; and any combination of the same.

The University will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the University's education programs and activities.

II. Scope

(1) This policy applies to Sexual Harassment that occurs within the University's EducationPrograms and Activities[1] in the U.S.[2] and that is committed by an administrator, facultymember, staff, student, contractor, guest, or other member of the University community.

[1] "University Education Programs and Activities" includes locations, events, and circumstances over which the University exercises 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 bythe University.

[2] Study Abroad Programs do not fall under the scope of this Title IX Policy in accordance with the U.S. Departmentof Education's implementing regulations. See the Policy Against Discrimination and Harassment for incidents occurring outside of the U.S.

(2) Sexual misconduct which does not fall within the scope of this policy may be prohibitedby the University's Policy Against Discrimination and Harassment.[3]

III. Definitions

A. "Sexual Harassment" is conduct based on sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault,Domestic Violence, Dating Violence, or Stalking.

B. "Quid Pro Quo Sexual Harassment" is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.

C. "Hostile Environment Sexual Harassment" is unwelcome conduct determined by areasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's education programs and activities.

D. "Sexual Assault" includes the sex offenses of Rape, Sodomy, Sexual Assault withan Object, Fondling, Incest, and Statutory Rape.

1. "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consentbecause of their age or because of their temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.

2. "Sodomy" is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapableof giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

3. "Sexual Assault with an Object" is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.

4. "Fondling" is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim,including instances where the victim is incapable of giving consent becauseof their age or because of their temporary or permanent mental or physical incapacity.

5. "Incest" is sexual intercourse between persons who are related to each otherwithin the degrees wherein marriage is prohibited by Alabama law.

6. "Statutory Rape" is sexual intercourse with a person who is under the statutory age of consent as defined by Alabama law.

[3] Available at https://sites.auburn.edu/admin/universitypolicies/Policies/PolicyAgainstDiscriminationandHarassment.pdf

E. "Domestic Violence" is felony or misdemeanor crimes of violence committed by acurrent or former spouse or intimate partner of the victim, by a person with whomthe victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Alabama, or by any other person against an adult or youth victim who is protectedfrom that person's acts under the domestic or family violence laws of Alabama.

F. "Dating Violence" is violence committed by a person –

1. Who is or has been in a social relationship of a romantic or intimate naturewith the victim; and

2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
   - The length of the relationship;
   - The type of relationship; and
   - The frequency of interaction between the persons involved in the relationship.

G. "Stalking" is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress.

H. "Consent" refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent. Additionalinformation regarding Consent is provided in Section V below.

I. "Incapacitated" refers to the state where a person does not appreciate the nature orfact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep. Additional information regarding Incapacitation is provided in Section V below.

J. "Retaliation" is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by TitleIX and its implementing regulations or because an individual has made a report orcomplaint, testified, assisted, or participated or refused to participate in any mannerin an investigation, proceeding, or hearing under this policy.

K. "Complainant" means an individual who is alleged to be the victim of conduct thatcould constitute Sexual Harassment.

L. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

M. "Formal Complaint" means a document filed by a Complainant or signed by the Title IX

Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. For purposes of this policy only, at the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's Education Programs and Activities. A "document filed by a Complainant" means a document or electronic submission (such as an email) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

N. "Supportive Measures" are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University's Education Programs and Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University's education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

O. "Education Programs and Activities" refers to all the operations of the University,including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life,dining services, performances, and community engagement and outreach programs.The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

IV. Understanding Hostile Environment Sexual Harassment

In determining whether a hostile environment exists, the University will consider the totality of the circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual haspower or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of the circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcomeinclude, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy

- Leering or staring at someone in a sexual way, such as staring at a person's breasts orgroin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or genderstereotypes

V. Understanding Consent

Consent for purposes of this policy is:

- Informed (knowing)
- Voluntary (freely given)
- Active (not passive), meaning that, through the demonstration of clear words or actions, a person has indicated permission to engage in mutually agreed-upon sexualactivity.

Alabama law specifies that individuals under the age of 16 are incapable of givingconsent.

Consent cannot be obtained by Force. Force includes the use of (a) physical violence, (b)threats, (c) intimidation, and/or (d) coercion.

a) Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
b) Threats are words or actions that would compel a reasonable person to engage in unwantedsexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
c) Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit). Previous occurrences of threats or physical violence may also constitute intimidation.
d) Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv)the duration of the pressure.

Consent cannot be gained by taking advantage of or causing the incapacitation of another.

Incapacitation is defined as a state in which someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction)."

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look forthe common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation.

Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady walking or standing, combativeness, emotional volatility, vomiting, incontinence, or unconsciousness. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know who is with you?"

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether Consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexualactivity.

Having sex with someone whom the Respondent knew, or should have known to be, incapacitated (mentally or physically) is a violation of this policy. In evaluating Consent in cases of incapacitation, the University asks the following two questions: (1) Did the Respondent know that the Complainant was incapacitated? and if not, (2) Would a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated? If the answer to either of these questions is "yes," there was no Consent; and the conduct is likely a violation of this policy.

A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

The University offers the following guidance on Consent:

A person who wants to engage in a specific sexual activity is responsible for obtaining Consent for that activity. Lack of protest does not constitute Consent. Lack of resistance does notconstitute Consent. Silence and/or passivity also do not constitute Consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this policy. It is important not to make assumptions about whether a potential partner is consenting. In order to avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguityarises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

Consent to one form of sexual activity does not, by itself, constitute Consent to another form of sexual activity. For example, one should not presume that Consent to oral-genital contactconstitutes Consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity.

Consent may be withdrawn at any time. An individual who seeks to withdraw Consent must communicate, through clear words or actions, a decision to cease the sexual activity. OnceConsent is withdrawn, the sexual activity must cease immediately.

Being impaired by alcohol or other drugs is not a defense to a violation of this policy.
Participating in sexual harassment or other abusive conduct as part of an initiation into a student organization is not a defense to a violation of this policy.

VI. Reporting Sexual Harassment and Mandatory Reporting Obligations

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In-person reports must bemade during normal

business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The name and contact information for the Title IX Coordinator is:

Kelley Taylor, Title IX Coordinator
Director, Affirmative Action/Equal Employment Opportunity317
James E. Foy Hall, Auburn, AL 36849 taylokg@auburn.edu
(334) 844-4794 (office)

The University's Deputy Title IX Coordinators are:

Katherine Weathers, Senior Deputy Title IX Coordinator
Assistant Director, Affirmative Action/Equal Employment Opportunity317
James E. Foy Hall, Auburn, AL 36849
kew0095@auburn.edu (334)
844-4794 (office)

Bryan Rush, Deputy Title IX Coordinator
Associate Vice President for Campus Living
Suite 3237, Melton Student Center, 255 Heisman Drive
Auburn, AL 36849
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(334) 844-5390(office)

Monique Holland, Deputy Title IX CoordinatorSenior
Associate Athletics Director
Auburn Athletics Complex, 392 S. Donahue Drive Auburn, AL 36849
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334-844-4750 (office)

The University also offers access to confidential resources for individuals who are unsureabout whether to report sexual harassment and other abusive conduct or are seeking counseling or other emotional support in addition to (or instead of) making a report to the University, including:

- **Safe Harbor**, Auburn University's campus organization dedicated to ***confidentially*** assisting and advocating for survivors of sexual harassment, sexual assault, interpersonal violence, and stalking. It is staffed with victim advocates familiar with AU procedures as well as campus and community resources. **They can be reached 24 hours a day at 334-844-7233.**

- **Auburn University Student Counseling & Psychological Services (SCPS)**, a department within Student Affairs, is the primary counseling center for Auburn University's undergraduate and graduate student community. SCPS has two locations: The second floor of the Auburn University Medical Clinic and the basement of Haley Center, 0326 Haley Center. SCPS provides confidential (as required by law), brief, time-limited and goal-oriented counseling and psychiatric services to the Auburn University student community. SCPS staff is comprised of licensed mental health professionals including social workers, psychologists, counselors, and consulting psychiatrists. To schedule an SCPS appointment, please call **334-844-5123, Monday- Friday, 8:00 am to 5:00 pm** with emergency on-call services available during and after-hours by calling the same number.

Mandatory Reporters: A Mandatory Reporter is any Employee who is not a Confidential Employee.[4] All Mandatory Reporters are required to immediately report to the University's Title IX Coordinator all relevant details (obtained directly or indirectly) about an incident of Sexual Harassment that involves a University Student or Employee as a Complainant or Respondent, or that occurred on property owned or controlled by the University, including at events hosted by University groups or University-recognized organizations. Relevant details include dates, times, locations, and names of parties and witnesses. Mandatory Reporters includeResident Advisors and all other student-employees when disclosures are made to any of them in their capacities as Employees.

Mandatory Reporters are not required to report information disclosed (1) at Public Awareness Events (e.g., "Take Back the Night", candlelight vigils, protests, "survivor speak- outs", or other public forums in which students may disclose incidents of sexual harassment and other abusive conduct; collectively "Public Awareness Events"); (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol ("IRB Research"); or (3)in academic assignments. The University may provide information about Title IX rights and about available campus and community resources and support at Public Awareness Events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

Where a Mandatory Reporter has a specific concern that sharing information with the Title IX Coordinator may significantly impact the safety or well-being of the Complainant or another individual, the Mandatory Reporter must disclose the report to the Title IX Coordinator, who willwork with the Mandatory Reporter to evaluate the need to share personally identifiable information with the Title IX Coordinator based on the potential risk of harm to the Complainantor another individual.

If a Complainant requests (a) that personally identifiable information not be shared with the Respondent, (b) that no investigation be pursued, and/or (c) that no disciplinary action be taken,the University will balance this request against the University's obligation to campus safety.

To report sexual harassment and other abusive conduct, Mandatory Reporters should promptly complete the online reporting form at aub.ie/report. Completing the online reporting form also fulfills the reporting obligation for Campus Security Authorities under the Clery Act. If an Employee does not have access to the internet, the Employee should call (334) 844-4794. Failure to adhere to this policymay result in disciplinary action, up to and including termination, depending on the circumstances of the policy violation.

VII. Special Advice for Individuals Reporting Sexual Assault, Domestic Violence, Dating Violence, or Stalking

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, DomesticViolence, or Dating Violence, the University recommends

[4] Confidential Employees are those Employees who are permitted to engage in confidential communications under Alabama law. On campus, this includes medical and clinical care providers (and those who provide administrative services related to the provision of medical and clinical care), mental health providers, licensed professional counselors, and ordained clergy. These individuals may have privileged communications. A Confidential Employee will not disclose personally identifiable information about sexual harassment and other abusive conduct to the Title IX Coordinator without the individual's permission (subject to the exceptions set forth in the Confidentiality section of this policy). Safe Harbor Advocates and the University Ombudsperson may make general reports for statistical purposes and pattern tracking but do not divulge personally identifiable information without client consent.

the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet,rinsing one's mouth or changing clothes. If it is necessary, put all clothing that wasworn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding where the assault occurred- preserve for law enforcement.
- Preserve all forms of electronic communication that occurred before, during, or after the assault.
- Contact law enforcement by calling 911 or Auburn Police Division at 334-501- 3100.
- Get medical attention - all medical injuries are not immediately apparent. This is also necessary to collect evidence in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, includingshoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
- Talk with a professional licensed counselor, University chaplain, or resident health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Title IX Grievance Process.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, etc., rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

The University's Police Division can assist individuals in obtaining a Protection from Abuse order ("PFA").

VIII. Preliminary Assessment

Upon receipt of a report made pursuant to Section VI, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of the policyspecified in Section II; and

- Whether the conduct, as reported, constitutes or could constitute SexualHarassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the TitleIX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scopeof the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinatorwill proceed to contact the Complainant as specified in Section IX. As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

IX. Contacting the Complainant

If a report is not closed as a result of the preliminary assessment specified in Section VIII and the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures specified in Section X; to discussand consider the Complainant's wishes with respect to such Supportive Measures; to inform the Complainant of the availability of such Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police andinformation about resources that are available on campus and in the community.

X. Supportive Measures

If a report is not closed as a result of the preliminary assessment specified in Section VIII,the University will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to the Respondent prior tothe Respondent being notified of a Formal Complaint, if the Respondent requests such measures.

The University will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures in question.

XI. Interim Removal

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from the University's education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet[5] with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the

[5] At the Title IX Coordinator's discretion, this meeting may be held virtually.

interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff),and in its discretion, the University may place the Respondent on administrative leave at any timeafter receiving a report of Sexual Harassment, including during the pendency of the investigationand adjudication process specified in Sections XVI and XVIII.

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other propertiesat any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

XII. Formal Complaint

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with the provisions of Sections XVI and XVIII. At the time the Complainant submits a Formal Complaint,the Complainant must be participating in, or attempting to participate in, one or more of the University's education programs or activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in Section VI above. No person may submit a Formal Complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. Factors the Title IX Coordinator may consider include (but are not limitedto): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident;
(c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then theUniversity will commence an investigation as specified in Section XVI and proceed to adjudicatethe matter as specified in Section XVIII. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinatorwill not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

XIII. Consolidation of Formal Complaints

The University may consolidate Formal Complaints as to allegations of Sexual Harassmentagainst more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassmentarise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to thesingular "party," "Complainant," or "Respondent" include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

XIV. Dismissal Prior to Commencement of Investigation

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in Section II.

In the event the Title IX Coordinator determines the Formal Complaint should be dismissedpursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section XX. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XV. Notice of Formal Complaint

Within five (5) business days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;

- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, andthe date and location of the alleged incident (if known);

- A statement that the Respondent is presumed not responsible for the alleged SexualHarassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;

- Notification to the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in Section XXI;

- Notification to the Complainant and Respondent of their right to inspect and reviewevidence as specified in Section XVI.D;

- Notification to the Complainant and Respondent of the University's prohibitions on retaliation and false statements specified in Sections XXXIII and XXXIV; and

- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

XVI. Investigation

A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant tothe alleged misconduct, including inculpatory and exculpatory evidence. The burden of gatheringevidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written Investigation Report, specified in Section XVI.E, that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances,the University strives to complete each investigation within thirty (30) to forty-five (45) business days of the transmittal of the written notice of Formal Complaint.

B. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the partiesto be interviewed, to present witnesses (including fact and expert witnesses), and to present otherinculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in Section XXIII. The investigator willnot restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that theparty believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any suchevidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusableneglect.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator at the investigator's sole discretion,although whatever method is chosen shall be used consistently throughout a particular investigation.

D. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the Investigation Report, the Investigator(s) will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) business days in which to submit to the investigator a written response as to why certain evidence should be included or excluded from the Investigation Report, which the investigator will considerprior to completing the Investigation Report. Additionally, the parties may provide new evidence, but any new evidence will be reviewed by the Investigator(s) for relevancy. If determined to be relevant and timely, the investigation will be reopened to allow the other party to review and comment. The comment period may be extended up to an additional 10 business days.

The parties and their advisors are permitted to review the evidence solely for the purposesof this grievance process and may not duplicate or disseminate the evidence to the public.

E. Investigation Report

After the period for the parties to provide any written response as specified in Section XVI.D has expired, the investigator will complete a written Investigation Report that fairlysummarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the partiesdo not agree. When the Investigation Report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the Investigation Report to each partyand their advisor, in either electronic or hard copy form.

XVII. Adjudication Process Selection

After the investigator has sent the Investigation Report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudicationprocesses specified in Section XVIII. The notice will explain that the hearing process specified inSection XVIII.A is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in Section XVIII.B as a form of informal resolution.[6] The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of Section XVIII), consult with their advisor, and consult with other persons as they deemappropriate (including an attorney) prior to consenting to administrative adjudication.

Each party will have three (3) business days from transmittal of the notice specified in Section XVIIto return the signed written consent form to the Title IX Coordinator. If either party does not timelyreturn the signed written consent, that party will be deemed not to have consented to administrativeadjudication and the Formal Complaint will be adjudicated pursuant to the hearing process provided in Section XVIII.A.

XVIII. Adjudication

A. Hearing Process

The following hearing process will be used to adjudicate all Formal Complaints unless bothparties timely consent to administrative adjudication as specified in Section XVII above.

1. Hearing Officer

After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the Investigation Report and a copy of all evidence transmitted to the parties bythe investigator as specified in Section XVI.D.

2. Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer willpromptly transmit written notice to the parties notifying the parties of the hearing officer's appointment; setting a

[6] A student may not be sanctioned to suspension or expulsion through the administrative adjudication process. In certain situations, the Title IX Coordinator may determine that due to the egregiousness of the violation or a demonstrated pattern of behavior, the administrative adjudication process and other informal resolution options arenot in the University's best interest.

deadline for the parties to submit any written response to the Investigation Report; setting a date for the pre-hearing conference; and setting a date and time for the hearing. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) business days from the date of transmittal of the hearing officer's written notice to the parties as specified in this Section.

A party's written response to the Investigation Report must include:

- To the extent the party disagrees with the Investigation Report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in Section XXIII, or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice to be issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party atthe pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing,a request that the University provide an advisor for purposes of conducting questioning as specified in Section XVIII.A.5.

A party's written response to the Investigation Report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint aresupported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaintconstitute Sexual Harassment.

3. Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. At the hearing officer's discretion or at the request of either party, the hearing may take place virtually with the parties in separate rooms with the parties able to simultaneously see and hear each other.

During the pre-hearing conference, the hearing officer will discuss the hearing procedureswith the parties; address matters raised in the parties' written responses to the Investigation Report,as the hearing officer

deems appropriate; discuss whether any stipulations may be made to expeditethe hearing; discuss the witnesses the parties have requested be served with notices of attendanceand/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolveany other matter that the hearing officer determines, at the hearing officer's discretion, should be resolved before the hearing.

4. Issuance of Notices of Attendance

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date andtime of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, orother supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, orother obligations. All such managers, faculty members, coaches, and other supervisors are requiredto excuse the subject of the obligation, or provide some other accommodation, so that the subjectmay attend the hearing as specified in the notice.

The University will not issue a notice of attendance to any witness who is not an employee or a student.

5. Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. At the hearing officer's discretion or at the request of either party, the hearing may take place virtually with the parties in separate rooms with the parties able tosimultaneously see and hear the party or witnesses answering questions.

While the rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond toquestions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present duringthe investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except

the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary University personnel. With the exception of the investigator andthe parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the Investigation Reportand evidence that was transmitted to them pursuant to Section XVI.D.

While a party has the right to attend and participate in the hearing with an advisor, a partyand/or advisor who materially and repeatedly violates the rules of the hearing in such a way as tobe materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, at the discretion of the hearing officer.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation be re-opened to consider that evidence.

Subject to the minimum requirements specified in this Section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including withrespect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply.

6. Subjection to Questioning

In the event that any party or witness refuses to attend the hearing or attends but refuses to submit to questioning by the parties' advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, may be consideredby the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any partyor witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying Section XVIII.A.6, the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the livehearing and/or refusal to submit to questioning by the parties' advisors.

7. Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that anycredibility determinations made are not based on a person's status as a Complainant, Respondent,or witness. The hearing officer will take care to exclude from consideration any evidence that wasruled inadmissible at the pre-hearing conference, during the hearing, or by operation of Section XVIII.A.6. The hearing officer will resolve disputed facts using a preponderance of the evidence(i.e., "more likely than not") standard and reach a determination regarding whether the facts thatare supported by a preponderance of the evidence constitute one or more violations of the policyas alleged in the Formal Complaint.

8. Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

9. Written Decision

After reaching a determination and consulting with the Title IX Coordinator as required bySection XVIII.A.8, the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used togather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
- Articulated findings of fact, made under a preponderance of the evidence standard,that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regardingresponsibility for each separate potential incident;
- The discipline determined;
- Whether the Complainant will receive any ongoing support measures or otherremedies as determined by the Title IX Coordinator; and
- A description of the University's process and grounds for appeal, as specified inSection XX.

The hearing officer's written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in Section XX.

Although the length of each adjudication by hearing will vary depending on the totality ofthe circumstances, the University strives to issue the hearing officer's written determination withinfourteen (14) business days of the conclusion of the hearing.

B. Administrative Adjudication

In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in Section XVII. At any time prior to the issuance of the administrative officer's determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in Section XVIII.A.

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative officer is provided a copy of the Investigation Report and a copy of all the evidence transmitted to the partiesby the investigator as specified in Section XVI.D.

The administrative officer will promptly send written notice to the parties notifying the parties of the administrative officer's appointment; setting a deadline for the parties to submit anywritten response to the Investigation Report; and setting a date and time for each party to meet withthe administrative officer separately. The administrative officer's meetings with the parties will not be held any earlier than ten (10) business days from the date of transmittal of the written notice specifiedin this paragraph.

A party's written response to the Investigation Report must include:

- To the extent the party disagrees with the Investigation Report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration by the administrative officer based on privilege, relevancy, the prohibition on the use of sexual history specified in Section XXIII, or for any other reason;
- Any argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
- Any argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the parties' written responses, the administrative officer will meet separately with each party. During the meetings, the administrative officer will have the opportunity to ask questions and the parties will have the opportunity to highlight information they would like the administrative officer to take into consideration as they make their decision.

After meeting with each party, the administrative officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent,or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections andarguments raised by the parties in their respective written responses to the Investigation Report. The administrative officer will resolve disputed facts using a preponderance of the evidence (i.e.,"more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will prepare and transmit a written decision in the manner as specified in Section XVIII.A.8 which shall serve as a resolution for purposes of informalresolution.

Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal as specified in Section XX.

Although the length of each administrative adjudication will vary depending on the totalityof the circumstances, the University strives to issue the administrative officer's written determination within twenty-one (21) business days of the transmittal of the initiating written notice specified in this Section.

XIX. Dismissal During Investigation or Adjudication

The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegationstherein (in which case those discrete allegations may be dismissed);

- The Respondent is no longer enrolled or employed by the University, as the case may be; or

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissalto the parties and advise them of their right to appeal as specified in Section XX. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XX. Appeal

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;

- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;

- The Title IX Coordinator, investigator, hearing officer, or administrative officer, asthe case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted. Appeals are not intended to be a full rehearing.In most cases, appeals are limited to a review of the written documentation and pertinentdocumentation regarding the grounds for appeal.

A party must file an appeal within seven (7) business days of the date they receive notice of dismissal, the hearing officer's determination, or the administrative officer's determination. The appeal must be submitted in writing to the Title IX Coordinator. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes theappeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the Title IX Coordinator will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permittedgrounds for appeal. If the Title IX Coordinator determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the Title IX Coordinator will dismiss the appeal andprovide written notice of the same to the parties.

If the Title IX Coordinator confirms that the appeal is timely and invokes at least one permitted

ground for appeal, the Title IX Coordinator will share the appeal with the other party and provide written notice to them that an appeal has been filed and that they may submit a writtenopposition to the appeal within seven (7) business days. The Title IX Coordinator will also appoint a (3) member appellate panel to consider and resolve the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal panel will promptly decide the appeal and transmita written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the pointwhen the appeal panel has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within (21) business days of an appeal being filed.

XXI. Advisor of Choice

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation,adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in Section XVIII.A.5,the advisor will play a passive role and is not permitted to communicate on behalf of a party, insistthat communication flow through the advisor, or communicate with the University about the matterwithout the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section or Section XVIII.A.5, the University may preclude the advisor from further participation, in which case the party may selecta new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in SectionXVIII.A.5, and requests the University to provide an advisor, the University will provide the partyan advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the advisor it provides. The advisor theUniversity provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance exceptwhere the party does not have an advisor present at the hearing specified in Section XVIII.A.5 andrequests that the University provide an advisor.

XXII. Informal Resolution

At any time after the parties are provided written notice of the Formal Complaint as specified in Section XV, and before the completion of any appeal specified in Section XX, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation,facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication as specified in Section XVIII.B is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together[7]. Prior to commencing the informal resolutionprocess agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to beutilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third- party);
- Explains the effect that participating in informal resolution and/or reaching a finalresolution will have on a party's ability to resume the investigation and adjudicationof the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated,maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudicationprocesses that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifestinjustice to either party or to the University. Notwithstanding the foregoing, if the form of informalresolution is Administrative Adjudication as specified in Section XVIII.B, there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in Section XVIII.B, all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before aresolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) business days. If an informal resolution process does not result in a resolution within twenty-one (21) business days, and absent an extension, abeyance, or other contrary rulingby the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. TheTitle IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution. Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against astudent.

XXIII. Treatment Records and Other Privileged Information

[7] Where appropriate the Title IX Coordinator may consult with a University Administrator for input into appropriate terms/outcomes in an informal resolution process.

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, orotherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and whichare made and maintained in connection with the provision of treatment to the party; or

- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;

unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, mayconsider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

XXIV. Sexual History

During the investigation and adjudication processes, questioning regarding a 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, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to theRespondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant whoaffirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

XXV. Presumption of Non-Responsibility

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

XXVI. Resources

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance. A list of University identified resources is located at the following link: http://auburn.edu/administration/aaeeo/title-ix/resources/.

XXVII. Conflicts of Interest, Bias, and Procedural Complaints

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeal panelmembers, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the

issue for purposes of any appeal specified in Section XX or otherwise.

XXVIII. Objections Generally

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate.

XXIX. Constitutional Rights and Academic Freedom

The University will construe and apply this policy consistent with the First Amendment tothe U.S. Constitution and the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment based on expressiveconduct that is protected by the First Amendment and/or the principles of academic freedom specified in the Faculty Handbook.

XXX. Relationship With Criminal Process

This policy sets forth the University's processes for responding to reports and Formal Complaints of Sexual Harassment. The University's processes are separate, distinct, and independent of any criminal processes. While the University may temporarily delay its processesunder this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard tothe status or outcome of any criminal process.

XXXI. Recordings

Wherever this policy specifies that an audio or video recording will be made, the recordingwill be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state,or local laws. Only the University is permitted to make audio or video recordings under this policy.The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

XXXII. Vendors, Contractors and Third Parties

The University does business with various vendors, contractors, and other third parties whoare not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And the University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third party irrespective of any process or outcome under this policy.

XXXIII. Bad Faith Complaints and False Information

It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, theywill be addressed under the Code of Student Conduct in the case of students and other Universitypolicies and standards, as applicable, for other persons.

XXXIV. Retaliation

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in Sections VI and XII. Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. The University retains discretion toconsolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment forinvestigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

XXXV. Confidentiality

The University will keep confidential the identity of any individual who has made a reportor Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identityof any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The University will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the Universitymay reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary, to carry out the University's obligations under Title IX and its implementing regulationsincluding the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the University's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials in thecircumstances specified in this policy.

While the University will maintain confidentiality specified in this Section, the Universitywill not limit the ability of the parties to discuss the allegations at issue in a particular case. Partiesare advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without includingpersonally identifying information.

XXXVI. Outside Appointments, Dual Appointments, and Delegations

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, butnot limited to, the investigator, hearing officer, administrative officer, informal resolution officer,and/or appeal officers.

The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeal officers.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer,administrative officer, informal resolution officer, and appeals officer, may, at the University's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

XXXVII. Training

The University will ensure that University officials acting under this policy, including butnot limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution

facilitators, University provided advisors, and appeals officers receive trainingin compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

XXXVIII. Recordkeeping

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a periodof seven years after which point in time they may be destroyed, or continue to be retained, at the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) andconsistent with any other applicable federal or state law, including FERPA.

XXXIX. Discretion in Application

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearlyunreasonable.

The provisions of this policy and the Hearing Procedures referenced in Section XVIII.A.5are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an activecase provided that doing so is not clearly unreasonable.