

# Sexual Misconduct Policy and Procedures

Policy, Procedures, and Information on the University's community expectations to ensure a campus free from Sexual Misconduct, the steps for recourse for those individuals who have been subject to Sexual Misconduct, and the procedures for determining whether a violation of University Policy has occurred. This Policy applies to and prohibits the following forms discrimination on the basis of sex, collectively referred to as "Sexual Misconduct": Title IX Sexual Harassment, Non-Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Exploitation.

Contact: Title IX Coordinator  
Dr. Cassy Bailey, Dean of Students  
785.594.8431 – direct work line  
cbailey@bakerU.edu  
Long Student Center, room 200

Questions, complaints, or concerns about Title IX may be addressed to the Title IX Coordinator or to the Office of Civil Rights, U.S. Department of Education, 8930 Ward Parkway, Suite 2037, Kansas City, MO 64114-3302, 816.268.0550, [OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov),

## I. INTRODUCTION

All forms of Sexual Misconduct are violations of Baker University's Sexual Misconduct Policy (the "Policy"). All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This

Policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated. When individuals are found to have violated this Policy, appropriate sanctions will be imposed. This Policy applies to Sexual Misconduct committed against any person, regardless of the gender or gender identity of any of the parties.

This Policy applies to the following forms of sex discrimination, which are referred to collectively as "Sexual Misconduct": Title IX Sexual Harassment, Non-Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Exploitation. Allegations of sex discrimination that do not involve Sexual Misconduct will be handled in accordance with the Student Handbook and the Employment Policies Handbook Non Discrimination and Anti-Harassment Policies as well as Equal Employment Opportunity Policy.

## **II. NOTICE OF NON-DISCRIMINATION**

In accordance with applicable federal and state laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination in Employment Act, and the Americans with Disabilities Act and ADA Amendments, the University does not unlawfully discriminate because of an individual's race, color, national origin, ancestry, sex, religion, age, disability, marital status, genetic information, veteran status, pregnancy status, sexual orientation, gender identity or expression, or other status protected by law, while making every reasonable effort to comply with the discipline of the United Methodist Church, in its education programs and activities, in employment policies and practices, and all other areas of the University.

Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The University is required by Title IX and its regulations not to engage in sex discrimination in its education program or activity, including admissions and employment. Sex Discrimination is conduct based upon an individual's sex that excludes an individual from participation in, denies the individual the benefits of, or treats the individual differently in an education program or activity. Sexual harassment is a form of sex discrimination.

The University will not tolerate Sexual Misconduct in any form. The University will promptly and equitably respond to all reports of Sexual Misconduct in order to take steps to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community.

Questions or concerns about Title IX, sex discrimination, sexual harassment, or other forms of Sexual Misconduct involving students may be directed to the University's Title IX Coordinator:

Dr. Cassy Bailey, Dean of Students, Title IX Coordinator  
785.594.8431 – direct work line  
cbailey@bakerU.edu  
Long Student Center, room 200  
Baldwin City, Kansas 66006

Questions or concerns about Title IX, sex discrimination, sexual harassment, or other forms of Sexual Misconduct involving employees may be directed to the University's Title IX Deputy Coordinator:

Chief Human Resources Officer, Title IX Deputy Coordinator  
785.594.8362 – direct work line  
Constant Hall, Lower Level  
Baldwin City, Kansas 66006

Questions or concerns may also be directed to the U.S. Department of Education's Office for Civil Rights:

Office of Civil Rights  
U.S. Department of Education  
8930 Ward Parkway, Suite 2037  
Kansas City, MO 64114-3302  
816.268.0550  
[OCR.KansasCity@ed.gov](mailto:OCR.KansasCity@ed.gov)

## **III. SCOPE OF POLICY**

This Policy applies to all University community members, including students, employees, faculty, administrators, staff, applicants for admission or employment, and third parties, such as trustees, volunteers, vendors, independent contractors, visitors, and any individuals or entities regularly or temporarily employed, studying, living, visiting, conducting business, interacting with a member or members of our community, or having any official capacity with the University or on University property. All University community members are required to follow University policies and local, state, and federal law.

This Policy applies to Sexual Misconduct committed by or against a University community member that occurs on campus or University property or in the context of off-campus activities sponsored or sanctioned by the University or which otherwise relate to the University or its business. Such activities include, but are not limited to, professional meetings, classes, practicums, seminars, study abroad trips/programs, study tours, distance education, and all other activities involving or related to the University. This Policy also applies to Sexual Misconduct committed by or against a University community member that occurs off campus and outside the context of a University-sponsored event or program, but that the University determines may (1) have continuing adverse effects on campus, University property, or in a University program or activity, (2) substantially and unreasonably interfere with a community member's employment, education, or environment on campus, University property, or in a University program or activity, or (3) create a hostile environment for a community member on campus, University property, or in a University program or activity.

This Policy applies to Sexual Misconduct within the scope of Title IX, as well as Sexual Misconduct committed by or against a University community member that does not fall within the scope of Title IX.

This Policy applies to Sexual Misconduct committed against any covered person, regardless of the gender or gender identity of any of the parties.

#### **IV. RESPONSIBILITIES OF THE TITLE IX COORDINATOR, TITLE IX DEPUTY COORDINATOR, AND TITLE IX TEAM**

The Title IX Coordinator is the designated representative of the University with primary responsibility for coordinating University Title IX compliance efforts, including the University's efforts to end any Sexual Misconduct, prevent its recurrence, and address its effects. The Title IX Coordinator or Deputy Coordinator oversees and monitors the University's overall compliance with Title IX-related policies and developments; the implementation and oversight of complaint resolution processes, including review, investigation, and adjudication of reports of Sexual Misconduct; the provision of educational materials and training for the campus community; and monitoring all other aspects of the University's Title IX compliance. These responsibilities include, but are not limited to:

- Ensuring University policies and procedures and relevant state and federal laws are followed;
- Informing any individual impacted by an allegation of Sexual Misconduct, including a complainant, a respondent, or another individual, about the procedural options and processes used by the University, and about resources available at the University and in the community;
- Training and assisting any University employees regarding how to respond appropriately to a report of sex discrimination or Sexual Misconduct;
- Monitoring full compliance with all procedural requirements and time frames outlined in this Policy;
- Evaluating allegations of bias or conflict of interest relating to these procedures;
- Determining whether grounds for appeal under this Policy have been properly stated;
- Ensuring that appropriate training, prevention and education efforts, and periodic reviews of the University's climate and culture take place;
- Coordinating the University's efforts to identify and address any patterns or systemic problems revealed by reports and complaints;
- Assisting in answering questions related to this Policy;
- Recordkeeping of all incidents of Sexual Misconduct reported to the Title IX Coordinator or Deputy Coordinator.

The University's Title IX Team includes appointed staff and faculty designees. Generally, the Title IX Coordinator shall have the responsibility for all Title IX matters involving students; whereas, the Deputy Coordinator shall have the responsibility for all Title IX matters involving employees and not involving students. When this Policy refers to actions of the Title IX Coordinator or Deputy Coordinator, these actions may be fulfilled by the Title IX Coordinator, Deputy Coordinator, or the Title IX Coordinator's or Deputy Coordinator's designee. The parties will be informed of who will serve as the Title IX Coordinator or Deputy Coordinator in a particular complaint resolution process. Members of the Title IX team may also be called upon to investigate or adjudicate formal complaints of Sexual Misconduct, decide appeals, and/or facilitate informal resolutions to formal complaints.

## V. DEFINITIONS

**Complainant:** An individual who is alleged to be the victim of conduct that could violate this Policy.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute a violation of this Policy.

**Report:** An account of Sexual Misconduct that has allegedly occurred and has been provided to the University by the complainant, a third party, or an anonymous source.

**Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging a violation of this Policy and requesting that the University investigate the allegation of the Policy violation. A formal complaint begins the complaint resolution process as set forth in section XI (B) Formal Complaint and Notice of Allegations below.

**Sexual Misconduct:** As used in this Policy, sexual misconduct means the following forms of sex discrimination and other misconduct: Title IX Sexual Harassment, Non-Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking,<sup>1</sup> and Sexual Exploitation, as each of those terms is defined below.

**Title IX Coordinator/Deputy Coordinator:** The designated staff member of the University with primary responsibility for coordinating Title IX compliance efforts, and who generally oversees the complaint resolution process, documents the findings and decisions, and maintains official records. For more information regarding the Title IX Coordinator's and Deputy Coordinator's role, see section IV. Responsibilities of Title IX Coordinator, Title IX Deputy Coordinator, and Title IX Team above.

## VI. PROHIBITED CONDUCT

The University prohibits the following forms of Sexual Misconduct: Title IX Sexual Harassment, Non-Title IX Sexual Harassment, Sexual Exploitation, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, as each term is defined below. Aiding others in acts of Sexual Misconduct also violates this Policy.

### A. Title IX Sexual Harassment

As used in this Policy, Title IX Sexual Harassment includes conduct on the basis of sex that satisfies one or more of the following definitions, when the conduct occurs (1) in the University's education program or activity and (2) against a person in the United States.

- Title IX Quid Pro Harassment:** Title IX Quid Pro Quo Harassment occurs when an employee of the University, including a student-employee, conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. Such unwelcome sexual conduct includes, but is not limited to, sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal, nonverbal, or physical conduct or communication of a sexual nature.
- Title IX Hostile Environment Harassment:** Title IX Hostile Environment Harassment is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

For the purposes of the definition of Title IX Hostile Environment Harassment, reasonable person means a reasonable person in the shoes of the complainant, considering the ages, abilities, and relative positions of authority of the individuals involved in an incident.

Multiple instances of the following conduct, or other unwelcome conduct on the basis of sex, may constitute Title IX Hostile Environment:

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<sup>1</sup> Some instances of Dating Violence, Domestic Violence, and Stalking may not be sexual in nature. For purposes of this Policy, the term "sexual misconduct" encompasses all instances of Dating Violence, Domestic Violence, and Stalking (as those terms are defined in this Policy), regardless of whether there is a sexual component to the behavior.

- Making sexual propositions or pressuring for sexual favors;
- Touching of a sexual nature, such as patting, pinching or brushing against another's body;
- Displaying or distributing sexually explicit drawings, pictures or written materials, including but not limited to email or internet materials;
- Visual conduct such as leering or making gestures;
- Non-verbal, verbal or physical harassment directed at an individual or a group of individuals solely on the basis of gender;
- Sexual jokes or innuendo;
- Verbal abuse of a sexual nature or obscene language;
- Unwanted kissing;
- Gossip about sexual relations; and
- Cyber or electronic harassment of a sexual nature.

The circumstances that may be considered when determining whether conduct was so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity include, but are not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the victim's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether the conduct was merely a discourteous, rude, or insensitive statement;
- Whether the speech or conduct deserves the protection of academic freedom.

- 3. Sexual Assault, Domestic Violence, Dating Violence, and Stalking** as those terms are defined below when such conduct occurs (1) in the University's education program or activity and (2) against a person in the United States.

For the purposes of the Title IX Sexual Harassment definition, conduct is **unwelcome** when the individual did not request or invite it and regarded the conduct as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that the conduct was welcomed. On the other hand, if an individual actively participates in conduct and gives no indication that they object, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, if a person willingly participates in conduct on one occasion, that does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

At a minimum, the University's **education program or activity** includes all of the operations of the University, including (1) locations on campus or otherwise owned or controlled by the University, (2) locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the alleged Sexual Misconduct occurred, and (3) any building owned or controlled by a student organization that is officially recognized by the University. Whether alleged conduct occurred in the University's education program or activity is a fact specific analysis.

#### **B. Non-Title IX Sexual Harassment**

While Title IX requires that the alleged conduct meet a certain threshold before it is considered Title IX Sexual Harassment, the University also prohibits unwelcome conduct of a sexual nature or based on sex (1) that may not rise to the level of Title IX Sexual Harassment (as defined above), (2) that did not occur in the University's education program or activity, but may nevertheless cause or threaten to cause an unacceptable disruption at the University or interfere with an individual's right to a non-discriminatory educational or work environment, or (3) that did not occur against a person in the United States.

As used in this Policy, Non-Title IX Sexual Harassment is unwelcome conduct of a sexual nature or based on sex, including sexual advances, requests for sexual favors, offensive comments or other conduct based on sex, sexually motivated physical contact, or other verbal, nonverbal, or physical conduct or communication of a sexual nature, when:

- submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's educational experience or employment, or the individual's submission or rejection of such conduct is used as

the basis of an educational program or activity decision or employment decision affecting such individual ("quid pro quo" harassment); or

- such conduct has the purpose or effect of substantially and unreasonably interfering with an individual's employment or education, or of creating an intimidating, hostile, or offensive employment or educational environment ("hostile environment" harassment).

Examples of non-Title IX Hostile Environment Harassment may include the same type of conduct listed above for Title IX Hostile Environment Harassment, when such conduct (1) does not rise to the level of being so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; (2) does not occur in the University's education program or activity; or (3) does not occur against a person in the United States.

For the purposes of the Non-Title IX Sexual Harassment definition, conduct is unwelcome when the individual did not request or invite it and regarded the conduct as undesirable or offensive. The fact that an individual may have accepted the conduct does not mean that he or she welcomed it. On the other hand, if an individual actively participates in conduct and gives no indication that he or she objects, then the evidence generally will not support a conclusion that the conduct was unwelcome. That a person welcomes some conduct does not necessarily mean that person welcomes other conduct. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion. Whether conduct was unwelcome may be determined based on the context and circumstances of the encounter or incident.

Non-Title IX Sexual Harassment does not include conduct covered under the definition of Title IX Sexual Harassment.

As is discussed further below, formal complaints involving allegations of Non-Title IX Sexual Harassment, will generally be resolved using the procedures outlined in the Student Handbook Policy and Procedures or the Employee Policies Handbook as applicable.

### **C. Sexual Assault**

Sexual Assault is any actual or attempted sexual contact, including contact with an object and penetration, with another person without that person's consent. As used in this Policy, sexual contact includes intentional contact by the accused with the victim's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; touching another with any of these body parts, whether clothed or unclothed; coerced touching by the victim of another's genital area, groin, inner thigh, buttocks, or breasts, whether clothed or unclothed; or forcing another to touch oneself or him/herself with or on any of these body parts. Sexual Assault includes but is not limited to an offense that meets any of the following definitions: [Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, oral penetration by a sex organ of another person, or oral contact with the sex organ of another person, without the consent of the victim.

- **Fondling:** the touching of the intimate parts (including the genital area, groin, inner thigh, buttocks, or breast) of another person for the purpose of sexual gratification, without the consent of the victim.
- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory rape:** sexual intercourse with a person who is under the statutory age of consent; in Kansas the age of consent is 16.

For the criminal law definition of sexual assault in Kansas, which may or may not match the above definitions, see Appendix A.

### **Consent**

Consent means words or overt actions by a person clearly communicating that a particular sexual contact or sexual activity is welcome. Words or overt actions clearly communicate consent when a reasonable person in the circumstances would believe those words or actions indicate a willingness to participate in a mutually agreed-upon sexual contact or sexual activity. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and obtaining consent. It is the responsibility of the person initiating the specific sexual activity or sexual contact to obtain consent for that contact or activity.

- Consent to one form of sexual activity does not, by itself, constitute consent to any other forms of sexual activity.
- A person can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue. When consent is withdrawn, the sexual activity for which consent was initially provided must stop.
- Consent is active, not passive. Silence, the absence of resistance, or the absence of saying “no” is not consent.
- There is no requirement that parties resist the sexual advance or request, but resistance is a clear demonstration of non-consent.
- Whether an individual actively and willingly participated in conduct may be a factor in determining whether there was consent.
- Previous relationships or previous consent do not, by themselves, constitute consent to future sexual acts. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may be factors in determining whether there was consent.
- An existing sexual, romantic, or marital relationship does not, by itself, constitute consent.
- Prior sexual activity with other individuals does not imply consent.
- Consent cannot be procured through a knowing misrepresentation that the sexual activity was a medically or therapeutically necessary procedure or a legally required procedure within the scope of the respondent’s authority.
- Consent cannot be procured, expressly or implicitly, by use of force, intimidation, threats, or coercion, as that term is defined below.
- Consent must be “knowing” to be valid. An individual known to be—or who should be known to be—incapacitated, as defined by this Policy, cannot consent to sexual activity initiated by another individual.
- Use of alcohol or other drugs will never function to excuse behavior that violates this Policy.

#### INCAPACITATION AS A FACTOR IN CONSENT

**Incapacitation** is the physical and/or mental inability to understand the fact, nature, or extent of the sexual situation. Incapacitation may result from mental or physical disability, sleep, unconsciousness, involuntary physical restraint, or from the influence of drugs or alcohol. With respect to incapacitation due to the ingestion of alcohol or other drugs, incapacitation requires more than being under the influence of alcohol or other drugs; a person is not incapacitated just because they have been drinking or using other drugs. Where alcohol and other drugs are involved, incapacitation is determined based on the facts and circumstances of the particular situation, looking at whether the individual was able to understand the fact, nature, or extent of the sexual situation; whether the individual was able to communicate decisions regarding consent, non-consent, or the withdrawal of consent; and whether such condition was known or reasonably should have been known to the respondent or a reasonable, sober person in the respondent’s position. Use of drugs or alcohol by the respondent is not a defense against allegations of sexual misconduct. It is not an excuse that the respondent was intoxicated, and therefore, did not realize the incapacity of the other person.

Distribution of or administering any drugs to incapacitate another individual, for the purpose of engaging in sexual activity with that individual, is prohibited and is a violation of this Policy.

#### COERCION AS A FACTOR IN CONSENT

**Coercion** is conduct or intimidation that would compel an individual to do something against their will by (1) the use of physical force, (2) threats of severely damaging consequences or (3) pressure that would cause a reasonable person to fear severely damaging consequences. Coercion is more than an effort to persuade or attract another person to engage in sexual activity. Coercive behavior differs from seductive behavior based on the degree and type of pressure someone uses to obtain consent from another.

#### D. Domestic Violence

Domestic Violence is defined as a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is a current or former cohabitant of the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or any other person against an adult or youth victim who is protected from that person's acts under applicable domestic or family violence laws of Kansas.

Examples of conduct that may constitute Domestic Violence include, but are not limited to: sexual or physical abuse, such as physical harm, bodily injury, criminal assault, or sexual assault, or the threat of such abuse, or any other act or threat of any act intended or reasonably perceived to be intended to cause physical pain or injury to another.

For the criminal law definition of domestic violence in Kansas, see Appendix A.

### **E. Dating Violence**

Dating Violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Examples of conduct that may constitute Dating Violence include, but are not limited to: sexual or physical abuse, such as physical harm, bodily injury, criminal assault, or sexual assault, or the threat of such abuse, or any other act or threat of any act intended or reasonably perceived to be intended to cause physical pain or injury to another.

Dating Violence does not include acts covered under the definition of Domestic Violence.

Kansas law does not specifically define “dating violence.” For more information, see Appendix A.

### **F. Stalking**

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

- Course of conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through others, by any action, method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or professional treatment or counseling.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Stalking behavior includes, but is not limited to:

- Repeated, unwanted, and intrusive communications by phone, mail, email, texting, and/or other electronic communications, including social media;
- Repeatedly leaving or sending the victim unwanted items, presents, or flowers;
- Following or lying in wait for the victim at places such as home, school, work, or recreational facilities;
- Making direct or indirect threats to harm the victim, or the victim's children, relatives, friends, or pets;
- Damaging or threatening to damage the victim's property;
- Repeatedly posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth, that would cause a person to feel threatened or intimidated.

For the criminal law definition of stalking in Kansas, see Appendix A.

### **G. Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for the advantage or benefit of anyone other than the person being exploited. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism without consent (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed);
- Taking pictures or audio- or video-recording another in a sexual act, without consent of the person being photographed or recorded;
- Intentional and repeated invasion of sexual privacy (e.g., walking into the other person's room or private space);
- Prostituting another person;
- Non-consensual distribution of a photographs/images, video recording, audio recording, or live-streaming of a sexual activity;

- Distribution of or administering any drugs to incapacitate another individual, for the purpose of engaging in sexual activity with that individual;
- Allowing third parties to observe sexual activities or view another's intimate body parts, in a place where that person would have a reasonable expectation of privacy, without consent;
- Knowingly transmitting a sexually transmitted disease or sexually transmitted infection to another person;
- Intentional removal or attempted removal of clothing that exposes an individual's bra, underwear, or intimate body part, or that is otherwise sexual in nature, without consent;
- Exposing one's intimate body parts to the victim in non-consensual circumstances;
- Inducing the victim or another to expose his/her intimate body parts to the victim, in non-consensual circumstances;
- Ejaculating on the victim or another person in the presence of the victim without consent;
- Distributing or displaying pornography to the victim without that individual's consent.

Conduct that meets the definition of Sexual Exploitation, depending on the context and circumstances, may also meet the definition of Title IX Sexual Harassment. Where conduct would meet the definition of both Sexual Exploitation and Title IX Sexual Harassment, it will be treated as an allegation of Title IX Sexual Harassment.

As is discussed further below, formal complaints involving allegations of Sexual Exploitation will generally be resolved using the procedures outlined in the Student Handbook Policy and Procedures or the Employee Policies Handbook as applicable.

#### **H. Retaliation and Interference with Process**

Retaliation and Interference with Process is any act of intimidation, threat, coercion, or discrimination or any other adverse action or threat thereof against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulations, or this Policy or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Encouraging or assisting others to engage in retaliation or to interfere with the process are also considered Retaliation/Interference with Process and violate this Policy. While the University does not prohibit the parties from discussing the allegations in a formal complaint, acts that could constitute Retaliation and Interference with Process may include, but are not limited to acts or comments that are intended to discourage a person from engaging in activity protected under this Policy or that would discourage a reasonable person from engaging in activity protected under this Policy; acts or comments that are intended to influence whether someone participates in the complaint resolution process, including the live hearing; acts or comments intended to embarrass the individual; adverse changes in employment status or opportunities; adverse academic action; and adverse changes to academic, educational, and extra-curricular opportunities. Retaliation and Interference with Process may be in person, through social media, email, text, and other forms of communication, representatives, or any other person. Retaliation and Interference with Process may be present against a person even when the person's allegations of Sexual Misconduct are unsubstantiated.

The University is committed to protecting the rights of the complainant, the respondent, and anyone else involved in the complaint process. Any conduct constituting Retaliation or Interference with Process is a violation of this Policy, which is subject to disciplinary action up to and including termination of employment or expulsion. Concerned individuals should report acts of retaliation to the Title IX Coordinator (for students) or Title IX Deputy Coordinator (for employees). For more information, see section XIII. Complaints of Related Misconduct below.

## **VII. CONFIDENTIALITY**

The University encourages individuals who believe they have experienced Sexual Misconduct to talk to someone about what happened. Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality when allegations are reported to them, depending on their roles at the University. In making a decision about whom to contact for support and information, it is important to understand that most University employees are not confidential resources, and are therefore obligated to report any information they receive about Sexual Misconduct to the Title IX Coordinator/Deputy Coordinator. Individuals who have experienced Sexual Misconduct are encouraged to consider the information in the following sections in choosing whom to contact for information and support, and are encouraged to ask about a person's ability to maintain confidentiality before offering any information about alleged incidents.

## **A. Confidential Communications and Resources**

The University recognizes that some individuals may wish to keep their concerns confidential. Confidential communications are those communications which cannot be disclosed to another person, without the reporter's consent, except under very limited circumstances such as allegations involving the physical or sexual abuse of a child (under the age of 18) or vulnerable adult or an imminent threat to the life of any person. If one desires that details of an incident of Sexual Misconduct be kept confidential, they should speak with a medical professional, a professional counselor, or minister or other pastoral counselor. These resources include:

- On-campus mental health counselors when serving as a counselor \*  
Counseling Center  
785.594.8409

For Baldwin City campus students, University counselors are available to help free of charge, and can be seen on an emergency basis.

- University Minister Kevin Hopkins when serving as a minister \*  
Osborne Chapel lower level  
785.594.4553

\* On occasion, employees of the counseling office or the campus minister teach for the University. If the report becomes known to them in their confidential role (counselor or minister), it will remain confidential. However, if the report becomes known to them in their faculty role, they will be a mandatory reporter to the Title IX Coordinator / Deputy Coordinator. If you are seeking assistance from them as a confidential resource, you should contact them through the contact information listed above and should make clear prior to disclosing any information that you are seeking assistance as a confidential resource.

In addition, complainants may speak on- and off-campus with members of the clergy and chaplains, and off-campus counselors and medical providers who can maintain confidentiality. Some resources include:

- Sexual Assault and Abuse Care Center Advocate, Counseling Center  
785.843.8985
- Lawrence Memorial Hospital  
785.505.5000

A person who speaks to a confidential resource should understand that, if the person does not report the concern to a non-confidential person at the University, such as one of the University officials designated in section IX(A) Reports to the University below, the University will be unable to provide certain supportive/interim measures that would require involvement from the University (such as issuing a no contact directive between affected parties), conduct an investigation into the particular incident, or pursue disciplinary action. Individuals who first speak with a confidential resource may later decide to file a formal complaint with the University or report the incident to local law enforcement.

## **B. Non-Confidential Communications**

Non-confidential communications are those communications with any University employee who is not a confidential resource as identified above. Only confidential resources can offer confidentiality within the above limitations. All other University employees who become aware of incidents or allegations of Sexual Misconduct have a responsibility to report the matter to the Title IX Coordinator or Deputy Coordinator. University employees who are not confidential resources will strive to remind an individual of their reporting obligations before the individual has disclosed a situation that requires reporting to the Title IX Coordinator or Deputy Coordinator.

Although most University employees cannot promise confidentiality, the University is committed to protecting the privacy of individuals involved in a report of Sexual Misconduct. Allegations of policy violations will be considered private and will only be shared with other University employees on a need to know basis, as permitted by law. The University will keep confidential the identity of any individual who has made a report or filed a formal complaint alleging a violation of this Policy, as well as any complainant, respondent, and witness, except as permitted by law or to carry out the complaint resolution process pursuant to this Policy. The allegations will not be shared with law enforcement without the consent of the individual who has alleged the Sexual Misconduct, unless the allegations relate

to physical abuse, sexual abuse, or neglect of a child under the age of 18 (see section IX(A)(3) Mandatory Reporting of Child Abuse below for more information) or unless compelled to do so pursuant to a subpoena or court order.

The University will strive to protect the privacy of all individuals involved in a report of Sexual Misconduct to the extent possible consistent with the University's legal obligations. However, the University may be required to share information with individuals or organizations outside the University under reporting or other obligations under federal and state law, such as reporting of Clery Act crime statistics and mandatory reporting of child abuse and neglect. In addition, if there is a criminal investigation or civil lawsuit related to the alleged misconduct, the University may be subject to a subpoena or court order requiring the University to disclose information to members of law enforcement and/or the parties to a lawsuit. In such cases, personally identifying information will not be reported to the extent allowed by law and, if reported, affected students will be notified consistent with the University's responsibilities under the Family Educational Rights and Privacy Act, as allowed by law.

### **C. Requests for Confidentiality or No Action**

When the University receives a report of Sexual Misconduct, it has a legal obligation to respond in a timely and appropriate manner. Making a report to the University does not require an individual to begin or participate in a complaint resolution process or to report to local law enforcement. However, based on the information gathered, the University may determine that it has a responsibility to move forward with a complaint resolution process (even without the participation of the complainant).

In a situation in which the complainant requests that their name or other identifiable information not be shared with the respondent, or that no action be taken against the respondent, the University will evaluate the request considering the following factors:

- the seriousness of the alleged misconduct;
- the respective ages and roles of the complainant and respondent;
- whether there have been other complaints or reports of sexual misconduct against the respondent;
- whether respondent has a history of arrests or records from a prior school indicating a history of Sexual Misconduct;
- whether the alleged Sexual Misconduct was committed by multiple individuals;
- whether a weapon was involved;
- whether the University possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g., security footage, eyewitness, physical evidence);
- whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol, at a given location or by a particular group);
- the extent of any threat to the University community.

The University will take all reasonable steps to respond to the report consistent with the request for confidentiality or request not to pursue an investigation made by the complainant, however, the scope of the response by the University may be impacted or limited based on the nature of the complainant's request. The University will likely be unable to conduct an investigation into the particular incident or to pursue disciplinary action against the respondent and also maintain confidentiality.

The University will strive to accommodate the complainant's request for confidentiality or no action in most cases, to the extent possible consistent with the University's legal obligations. There may be times when, in order to provide a safe, non-discriminatory environment for all students and employees, the University may not be able to honor a complainant's request for confidentiality or no action. The presence of one or more of the factors above could lead the University to move forward with a complaint resolution process (even without the participation of the complainant). In this instance, the Title IX Coordinator will inform the complainant about the chosen course of action, and may, at the complainant's request, communicate to the respondent that the complainant asked the University not to investigate and that the University determined it needed to do so. A complainant can choose not to participate in any complaint resolution process.

In instances where the University moves forward with a complaint resolution process without the participation of the complainant, the complainant will have the same rights as provided to a complainant under this Policy, even if the individual did not sign the formal complaint.

### **D. Statistical Reporting and Timely Warning**

The University is obligated to provide the University community with general information regarding incidents of sexual violence and other crimes occurring on campus. However, publicly available recordkeeping, including Clery Act reporting and disclosures such as the annual security report and daily crime log, will not include names or other information that may personally identify either party, to the extent permitted by law. As required by federal law, the University includes statistics about certain offenses in its annual security reports and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. To ensure that a complainant's personally identifying information will not be included in publicly available recordkeeping, the Title IX Coordinator/Deputy Coordinator shall describe the alleged incidents by removing the complainant's and respondent's names and any other identifiers that would enable the public to identify the complainant or respondent in the context of the incident report.

In addition, the Clery Act requires the University to issue a crime alert (timely warning) to the campus community about certain reported offenses which may represent a serious or continuing threat to students and employees. The timely warning may include that an incident has been reported, general information surrounding the incident, and how incidents of a similar nature might be prevented in the future. The timely warning will not include any identifying information about the complainant.

In completing recordkeeping and issuing timely warnings, the University will protect a complainant's confidentiality to the extent possible even if the complainant does not specifically request confidentiality.

Reports to University confidential resources may be shared to be included in statistics as required by law, but no identifiable information will be shared.

## **VIII. Immediate and Ongoing Assistance Following an Incident of Sexual Misconduct**

The University will seek to support any person adversely impacted by Sexual Misconduct. Both the University and the community provide a variety of resources to assist and support individuals who have experienced Sexual Misconduct or are affected by allegations of Sexual Misconduct. These resources, both immediate and ongoing, are available to all persons irrespective of their decision to report to the University or to law enforcement.

Support services that may be available include, but are not limited to, connecting the individual with appropriate on-campus and off-campus counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and support services; making changes to academic, living, transportation, and/or working arrangements; assistance in filing a criminal complaint; and providing information about restraining orders and other available protections and services. Additional information about ongoing assistance is in section X(E) Supportive /Interim Measures below. To receive information about obtaining support services, individuals should contact the Title IX Coordinator or a confidential resource. The University will provide written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for persons affected by Sexual Misconduct, both within the University and in the community. In addition, a complete description of and contact information for University and community resources, both confidential and non-confidential, and additional information regarding what individuals can do if they experience Sexual Misconduct is provided in the XV. Support Resources section at the end of this Policy and on the University's website. Individuals who believe they have been subjected to any form of Sexual Misconduct are encouraged to seek support from these resources.

## **IX. Reporting Sexual Misconduct**

### **A. Reporting to the University**

The University urges anyone who experiences or becomes aware of an incident involving Sexual Misconduct to report the incident to the University. Individuals can expect to have reports of Sexual Misconduct taken seriously by the University. To report an incident of Sexual Misconduct to the University, contact one of the following:

- Title IX Coordinator  
Dr. Cassy Bailey  
785.594.8431 – direct work line  
cbailey@bakerU.edu  
Long Student Center, room 200

- Deputy Title IX Coordinator  
785.594.8362 – direct work line  
Constant Hall, Lower Level  
Baldwin City, Kansas 66006

Reports can be made by telephone, mail, email, in person, and online at on the University's Website at <http://secure.ethicspoint.com/domain/media/en/gui/30199/index.html>. Reports may be made at any time, including non-business hours by phone, email, mail, or the University's website. Reports can be made anonymously using the University's online reporting form. Reports to the University should include as much information as possible, including the names of the complainant, respondent, and other involved individuals, and the date, time, place, and circumstances of the incidents, to enable the University to respond appropriately.

Upon receiving a report of Sexual Misconduct, the Title IX Coordinator or Deputy Coordinator will promptly contact the complainant to discuss the availability of supportive measures with or without the filing of a formal complaint and to explain the process of filing a formal complaint. In addition, when a student or employee reports to the University that they have been affected by Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined by this Policy, whether the offense occurred on or off campus, the University will provide the student or employee with a written explanation of the student's or employee's rights and options, along with the procedures Complainants should follow.

#### 1. Anonymous Reports

The University will accept anonymous reports of Sexual Misconduct. Reports may be filed anonymously using the University's online reporting form. The individual making the report is encouraged to provide as much detailed information as possible to allow the University to investigate the report and respond as appropriate. The University will likely be limited in its ability to investigate an anonymous report unless sufficient information is furnished to enable the University to conduct a meaningful investigation.

#### 2. Employee Reporting Obligations

In order to enable the University to respond effectively to incidents and to prevent future instances of Sexual Misconduct, all University employees who are not confidential resources who obtain or receive information regarding a possible violation of this Policy must report that information to the Title IX Coordinator (student reports) or Deputy Coordinator (employee reports). Student employees who receive such information in the course of their work position or duties also must report the information to the Title IX Coordinator or Deputy Coordinator. Such report should be made as soon as possible and should include all relevant details needed to assess the situation. This includes, to the extent known, the names of the complainant, respondent, and others involved in the incident, as well as relevant facts, including the date, time, and location of any incident.

Employees who receive such reports of Sexual Misconduct should not attempt to "investigate" the allegation or require the complainant/reporting individual to provide all of the details surrounding the alleged misconduct. To the extent the complainant/reporting individual provides details that information should be provided to the Title IX Coordinator or Deputy Coordinator. Upon receiving a report of alleged or possible Sexual Misconduct, the Title IX Coordinator will evaluate the information received and determine what further actions should be taken, consistent with the complaint resolution process and this Policy. Failure of a University employee, including student workers, to report sexual misconduct to the Title IX Coordinator or Deputy Coordinator may result in disciplinary action.

University employees who are not confidential resources and receive a report of Sexual Misconduct are required to forward the report directly to the Title IX Coordinator or Deputy Coordinator and should not share information about the report with any other individual. If the employee is uncertain whether the information should be reported to the Title IX Coordinator or Deputy Coordinator, the employee should seek guidance from the Title IX Coordinator or Deputy Coordinator before providing the Title IX Coordinator with any identifiable information regarding the report.

#### 3. Mandatory Reporting of Child Abuse

Any University employee becoming aware of the abuse (physical or sexual), neglect, or abandonment of a child under the age of 18 must report it immediately to the Title IX Coordinator. In addition, under Kansas law, teachers, school

administrators, and other employees of an educational institutions which the child is attending are mandatory reporters and must also immediately report the suspected abuse or neglect to the department for children and families or other appropriate state recipient (such as law enforcement). See Kan. Stat. § 38-2223.

## **B. Reports to Law Enforcement**

Some types of Sexual Misconduct prohibited by this Policy are also crimes. Individuals who believe they may have been subjected to criminal Sexual Misconduct are strongly encouraged to notify local law enforcement authorities. If the individual requests, campus authorities will assist in notifying law enforcement authorities. The University will comply with an individual's request for assistance in notifying authorities. Individuals also have the option to decline to notify such authorities. Individuals may file a criminal complaint and a formal complaint under this Policy simultaneously. However, reporting to law enforcement is not necessary for the University to proceed with a complaint resolution process.

Individuals who would like to report Sexual Misconduct to law enforcement should contact the following:

- Emergency **911**
- Baldwin City Campus
  - Baldwin City Police Department (BCPD) **785.594.3850**
  - Reports can be filed over the phone or in person at 203 1<sup>st</sup> Street, Baldwin City, Kansas 66006.
  - Meeting with BCPD will include a private interview with an Officer.

## **C. Protection from Abuse Orders, Protection from Stalking, Sexual Assault, or Human Trafficking Orders, and University No Contact Directives**

Individuals who would like to avoid contact with another individual have several options available to them, including seeking a protective order from a civil court or requesting a no contact directive from the University.

### **1. Protection from Abuse Orders and Protection from Stalking, Sexual Assault, or Human Trafficking Orders**

Protection from Abuse Orders and Protection from Stalking, Sexual Assault, or Human Trafficking Orders are legal orders issued by a state court which forbid someone from making contact with another. Protection from Abuse Orders protect an individual from an intimate partner or household member and Protection from Stalking, Sexual Assault, or Human Trafficking Orders protect an individual who has experienced stalking, sexual assault, or human trafficking. The University does not issue Protection from Abuse Orders or Protection from Stalking, Sexual Assault, or Human Trafficking Orders, but such orders may be obtained by filing a petition in any district court. The Douglas County courthouse is located at 1100 Massachusetts Street, Lawrence, KS 66044. Petition forms may be obtained from the Clerk of District Court or online at <https://www.kansasjudicialcouncil.org/legal-forms/protection-orders>. Additional information about obtaining a Protection from Abuse Order or Protection from Stalking, Sexual Assault, or Human Trafficking Order is available at <https://www.kansaslegalservices.org/node/2036/pfa-tips-tricks-part-1-preparing-your-pfapfs>.

### **2. No Contact Directives**

A no contact directive is a University-issued directive that prohibits one or both parties from communication or contact with another. Generally, no contact directives issued prior to the conclusion of the complaint resolution process will be mutual and serve as notice to both parties that they must not have verbal, electronic, written, or third party communication with one another. To request a no contact directive from the University, individuals should contact the Title IX Coordinator for students or Deputy Coordinator for employees:

The University is responsible for honoring requests for information about available options for protective orders and no contact orders and has a responsibility to comply with and enforce such orders. To request additional information about available options for protective orders and no-contact orders, contact the Title IX Coordinator or Deputy Coordinator. A Protection from Abuse Order and Protection from Stalking, Sexual Assault, or Human Trafficking Order is enforced by contacting local law enforcement. A University no contact directive is enforced by contacting Campus Safety or the Title IX Coordinator/Deputy Coordinator. The University will fully cooperate with any protective order and/or no contact order issued by a criminal, civil, or tribal court.

#### **D. Amnesty**

Sometimes individuals are hesitant to report to University officials because they fear that they themselves may be charged with Policy violations, such as underage drinking at the time of the incident. It is in the best interests of the University Community that individuals with knowledge of Sexual Misconduct choose to report to University officials. To encourage reporting, Baker University offers immunity to any individual who reports a violation of this Policy in good faith or who participates in a complaint resolution process under this Policy from other violations of University Policy (including the University's drug and alcohol policy) in which an individual engaged in connection with the alleged incident of Sexual Misconduct, except as outlined in this section. Amnesty is also extended to respondents and witnesses who participate in the complaint resolution process, in addition to complainants. Amnesty may not be extended in instances where any individual is harmed by the conduct constituting a violation of other University policies, where the individual engaging in a violation of another University policy holds a leadership role on campus, including a leadership role over students or employees, or where an employee is engaging in a violation of another University policy with a student, in which case the University may still pursue disciplinary action for the alleged violation of other University policies. When amnesty is provided, the University may still impose counseling, educational or programming requirements or other prevention measures to assist in avoiding further violations.

#### **E. Emergency Removal**

The University reserves the right to remove a student respondent, in whole or in part, from the University's education program or activity on an emergency basis. Prior to removing the student respondent on an emergency basis, the University will undertake an individualized safety and risk analysis and will determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct justifies removal. If a student respondent is removed on an emergency basis, the University will provide the student respondent with notice and an opportunity to challenge the decision immediately following the removal.

#### **F. Administrative Leave**

The University reserves the right to place a non-student employee respondent on administrative leave during the pendency of the complaint resolution process.

#### **G. Obligation to Act in Good Faith**

Reports and formal complaints of alleged Sexual Misconduct should be made only in good faith. Reports and formal complaints that are not made in good faith may be considered retaliation under this Policy and/or may violate other University policies. An allegation that a person has violated the obligation to act in good faith will be handled through the procedures identified below in section XIII. Complaints of Related Misconduct.

### **X. GENERAL PROVISIONS FOR COMPLAINT RESOLUTION PROCESS**

The procedures applicable to a formal complaint alleging a violation of this Policy depend on the particular circumstances of a case, including the type of Sexual Misconduct that is alleged. The procedures set forth in this section and in section XI. Procedures for Sexual Misconduct Complaint Resolution Process below will apply to formal complaints alleging Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking. The procedures in the Student Handbook or Employee Handbook will apply to formal complaints alleging Non-Title IX Sexual Harassment or Sexual Exploitation. Upon receiving a formal complaint, the Title IX Coordinator / Deputy Coordinator will make a preliminary determination of the procedures that will apply to the complaint resolution process, including an initial determination of whether the formal complaint will be processed according to the Procedures in this Policy, the Student Handbook, or Employee Handbook. If the initial determination is that the procedures under this Policy will apply, prior to providing access to information at the end of the investigation phase, the Title IX Coordinator / Deputy Coordinator will make a final determination as to the procedures that will apply to the remainder of the complaint resolution process.

If a formal complaint includes both an allegation Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking and an allegation of Non-Title IX Sexual Harassment or Sexual Exploitation, the University reserves the right to process the allegations in the same complaint resolution process or to separate the allegations into separate processes.

For formal complaints that will be processed pursuant to the procedures in this Policy, the University will promptly and equitably respond to the formal complaint in accordance with the provisions and procedures set forth below. The University will provide a fair and impartial complaint resolution process. A fair process is one that treats the parties equitably, provides complainant an opportunity to file a formal complaint alleging a violation of this Policy and an

opportunity to present evidence of the allegations prior to a decision on responsibility, provides respondent notice of the allegations and an opportunity to respond to and present evidence related to those allegations prior to a decision on responsibility, and provides both parties an opportunity to challenge the credibility of the other party and any witnesses prior to a decision on responsibility.

Each complaint resolution process under this Policy will require an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties. The University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a complaint resolution process.

### **A. Trained Officials**

Each complaint resolution process under this Policy will be conducted by individuals, including coordinators, investigators, Hearing Panel members, appeal officials, and any person who facilitates an informal resolution process, who do not have a conflict of interest or bias for or against complainants or respondents generally or for or against the individual complainant or respondent. In addition, those individuals will receive annual training on the definition of Title IX Sexual Harassment; the scope of the University's education program or activity; how to conduct an investigation and complaint resolution process, including hearings, appeals, and informal resolution processes, as applicable; how to serve impartially, including by avoiding prejudgment of the facts at interest, conflicts of interest, and bias; issues related to sexual harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking; and how to conduct an investigation and decision-making process that protects the safety of all and promotes accountability. Investigators will receive training on issues of relevance to create an investigator report that fairly summarizes relevant evidence. Hearing Panel members will receive training on any technology to be used at a live hearing and issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The training is free of bias such as sex stereotypes or generalizations, promotes impartial investigations and adjudications, and includes the following topics, as applicable: relevant evidence and how it should be used, proper techniques for questioning witnesses, basic rules for conducting proceedings, avoiding actual or perceived conflicts of interest, and the University's policies and procedures.

### **B. Equal Rights of the Complainant and Respondent**

The following principles are applicable to all complaint resolution processes under this Policy. In all Sexual Misconduct complaint resolution processes under this Policy, the complainant and respondent are entitled to:

- Respect, sensitivity, and dignity;
- Appropriate support from the University;
- Privacy to the extent possible based on applicable law and University policy;
- Information regarding all applicable policies and procedures;
- Written explanation of available resources;
- The right to participate or decline to participate in the complaint resolution process, with the acknowledgement that not participating, either totally or in part, may or may not prevent the process from proceeding with the information available;
- Equitable procedures that provide both parties with a prompt and impartial complaint resolution process conducted by officials who receive annual training on conduct prohibited by this Policy;
- Notice of the allegations and defenses and an opportunity to respond;
- Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings at which the party's participation is invited or expected, with sufficient time for the party to prepare, to participate;
- Timely notice of meetings that are part of the complaint resolution process at which the complainant or respondent may be present;
- An equal opportunity to identify relevant witnesses and other evidence and to suggest possible topics to be covered with witnesses during the formal complaint resolution process;
- For the complainant, not to be questioned or have evidence considered regarding the complainant's prior sexual conduct with anyone other than the respondent, unless such questions or evidence are to prove that

- someone other than the respondent committed the alleged Sexual Misconduct;
- The right to appeal the decision and/or the sanctions in certain circumstances, as discussed in section XI(F)(7) Appeals below;
- The right to notification, in writing, of the resolution, including the outcome of any appeal;
- For the complainant, the right to report the incident to law enforcement at any time or to decline to do so;
- The right to be free from retaliation as defined in this Policy;
- The right to be accompanied to any complaint resolution process meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of advisor for either the complainant or respondent in any meeting related to the complaint resolution process. See section X(C) Right to an Advisor below for additional information and requirements regarding the conduct of advisors.
- An equal opportunity to inspect and review a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, as set forth in section XI(F)(2) Access to Information below.
- The right to receive a copy of the investigation report for their review and written response, as set forth in section XI(F)(2) Access to Information below.
- A live hearing, at which each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, as set forth in section XI(F)(3) Live Hearing below.

### C. Advisor

The complainant and the respondent in a complaint resolution process under this Policy (both the informal and formal resolution processes) have the right to be accompanied to meetings by an advisor of their choice, who may be, but is not required to be, an attorney. Generally, the advisor selected by the complainant or respondent should be free of conflicts of interest in the complaint resolution process and, if a member of the University community, the advisor should be free of conflicts in his or her position in the community. An individual has the right to decline a request to serve as an advisor in the University's complaint resolution process.

Guidelines and requirements for advisors are:

- The purpose of the advisor is to support an individual during the complaint resolution process. An advisor is permitted to accompany the individual to interviews or other meetings or proceedings throughout the complaint resolution process. In selecting an advisor, each party should consider the potential advisor's availability to attend interviews and meetings, which may occur in-person. As a general matter, the University will not delay its process to accommodate the schedules of advisors.
- Advisors may confer with their advisee, but, with the exception of live hearings (discussed below), advisors may not actively participate in the complaint resolution process. The advisor may accompany the complainant or respondent to all meetings relating to the complaint resolution process. The advisor may not appear in lieu of the complainant or respondent or speak on their behalf in either in-person or written communications to the University. The advisor may not communicate directly with the investigator(s), Hearing Panel, appeal officer(s), the Title IX Coordinator / Deputy Coordinator, or any other school official involved in the complaint resolution process and may not interrupt or otherwise delay the complaint resolution process.
- At the live hearing, advisors will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions. Additional information about an advisor's role at the live hearing is included in section XI(F)(3) Live Hearing below.
- Advisors will receive a copy of all directly-related evidence and the investigation report, as set forth in section XI(F)(2) Access to Information below.
- If a party selects an attorney as an advisor, the advisor's participation in the complaint process is in the role of an advisor and not as an attorney representing a party. The advisor will have access to highly confidential information and is prohibited from sharing information obtained as an advisor during the complaint process with anyone, including other individuals who may be part of an attorney-client relationship with the party.
- Parties must notify the Title IX Coordinator / Deputy Coordinator who they have selected as their advisor. Advisors will be required to sign an Advisor Agreement acknowledging receipt and understanding of these requirements. Failure to comply with these requirements, including violations of confidentiality, or other forms of interference with the complaint resolution process by the advisor may result in disqualification of an advisor. The University reserves the right to dismiss an advisor. Should this occur, the University may, at the Title IX Coordinator's / Deputy Coordinator's discretion, permit the complainant or respondent to select a new advisor, depending on the circumstances.
- The University will notify a party to a complaint resolution process if another party involved in the complaint resolution process has obtained an advisor and will indicate whether the other party's advisor is an attorney.

#### **D. Requests for Reasonable Accommodations**

Individuals who need a reasonable accommodation should contact the Title IX Coordinator. The University will consider requests for reasonable accommodations submitted to the Title IX Coordinator on a case-by-case basis. Accommodations the University may provide include:

- Providing reasonable accommodations as required by law to an individual with a disability who requests an accommodation necessary to participate in the complaint resolution process.
- Providing an interpreter for individuals who are limited English-language proficient.

#### **E. Supportive/Interim Measures**

After receiving a report of alleged Sexual Misconduct, the Title IX Coordinator / Deputy Coordinator will consider whether supportive/ interim actions, accommodations, or protective measures are reasonably necessary or appropriate to protect the parties and the broader University community. Such supportive/interim measures will be available without fee or charge to the complainant, respondent, and others adversely impacted by the complaint resolution process, if requested and reasonably available. Such measures will be designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or to deter sexual harassment.

The University will provide written notification to affected individuals about options for, available assistance in, and how to request changes to academic, living, transportation and working situations, or protective measures. The University will comply with a student's reasonable request for a living and/or academic situation change following an alleged incident of Sexual Misconduct. The University will make such accommodations and provide such protective measures, with or without a formal complaint, even when an individual asks to keep a reported violation of this Policy confidential or requests that the University not investigate the matter, and regardless of whether an individual chooses to report to law enforcement.

Examples of possible supportive/interim measures include, without limitation:

- Establishing a "no contact" directive prohibiting the parties involved from communicating with each other;
- Changing an individual's on-campus residency, dining, or transportation arrangements;
- Special parking arrangements;
- Assistance in finding alternative housing;
- Changing an individual's student or employee status or job responsibilities, or location;
- Changing an individual's work or class schedule;
- Providing academic accommodations or providing assistance with academic issues;
- Providing security escorts;
- Providing a temporary cell phone;
- Access to counseling and medical services;
- Making information about protective orders and criminal no contact orders available and providing assistance with respect to obtaining and enforcing such orders;
- Assistance in identifying an advocate to help secure additional resources or assistance, including off-campus and community advocacy, support, and services, legal assistance, visa and immigration assistance, and student financial aid.

The University determines which measures are appropriate for a particular individual on a case-by-case basis. Such measures will vary based on the particular facts and circumstances, including, but not limited to, the specific need expressed by the individual, the age of the individuals involved, the severity or pervasiveness of the allegations, any continuing effects on the individual, whether the complainant and respondent share the same residence hall, dining hall, class, transportation, or job location, and whether other judicial measures have been taken to protect the complainant. The Title IX Coordinator will be responsible for determining what measures will be put in place.

To request an accommodation or interim measure, individuals should contact the Title IX Coordinator or Deputy Coordinator.

The University will maintain as confidential any accommodations or protective measures provided to an individual, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or protective measures. The University will only disclose information necessary to provide the accommodations or protective measures in a timely manner to individuals who need to know the information in order to effectively provide the

accommodations or protective measures. The Title IX Coordinator will determine what information about an individual should be disclosed and to whom this information will be disclosed based on the facts and circumstances of the specific situation and the accommodation to be provided. The University will inform the individual before sharing personally identifying information that the University believes is necessary to provide an accommodation or protective measure. The University will tell the individual which information will be shared, with whom it will be shared, and why it will be shared.

Additional services are available on campus and/or in the community, as described in the Support Resources section at the end of this Policy and on the University's website.

Any concern about a violation of a supportive/interim measure should be reported to the Title IX Coordinator or Deputy Coordinator promptly. Complaints of a violation of a supportive/interim measure will be handled as discussed in section XIII. Complaints of Related Misconduct below.

#### **F. Non-Participation and Silence**

Either party may decline, at any time, to provide information or participate further in the complaint resolution process. If, at any time during the complaint resolution process, a party decides not to participate, the University may still proceed with the complaint resolution process and make a determination based upon the information available. If at any time the complainant declines to participate in the process, the University's ability to meaningfully investigate and adjudicate a complaint may be limited. In such cases, the University will proceed with the complaint resolution process, if possible to do so without the complainant's participation, and will make a determination based upon the information available. A complainant's silence in response to a respondent's denials or defenses will not necessarily be viewed as an admission of the denials or defenses, but may leave the respondent's denials or defenses undisputed. Similarly, a respondent's silence in response to a complainant's allegation will not necessarily be viewed as an admission of the allegation, but may leave the complainant's allegations undisputed. Even if a party decides not to participate or chooses to stop participating at a phase of the process, the party will still be given the option to participate during additional phases of the process.

If a party is not willing to answer all relevant questions from the other party's advisor at the live hearing, the Hearing Panel will not be able to rely on any statement of that party in reaching a determination regarding responsibility. The Hearing Panel, however, will not draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross-examination or other questions. For more information, see section XI(F)(3) Live Hearings below.

#### **G. Obligation to be Truthful**

All parties and witnesses have an obligation to be truthful in this process. Engaging in dishonesty or encouraging others to engage in dishonesty may be considered retaliation or interference with process under this Policy and/or violate other University policies. An allegation that a person has violated the obligation to be truthful will be handled through the procedures identified in section XIII. Complaints of Related Misconduct below.

#### **H. Conflicts of Interest**

If a complainant or respondent has any concern that any individual acting for the University under this Policy has a conflict of interest or bias, for or against complainants or respondents generally or for or against the individual complainant or respondent, such concern should be reported in writing to the Title IX Coordinator or Deputy Coordinator. Any concern regarding a conflict of interest or bias must be submitted within two (2) calendar days after receiving notice of the person's involvement in the process. The Title IX Coordinator will review the concerns and take appropriate steps to ensure that no conflicts of interest or bias exist on the part of anyone investigating or adjudicating a formal complaint under this Policy.

If complainant or respondent has any concern that the Title IX Coordinator or Deputy Coordinator has a conflict of interest or bias, such concern should be reported in writing to President of the University. If the Title IX Coordinator or Deputy Coordinator has a conflict of interest or bias with respect to a formal complaint, the President of the University shall appoint another person to oversee adherence to the Sexual Misconduct Policy with respect to the formal complaint at issue.

The parties should be mindful that the University has a small and close-knit campus community. That a party simply knows an individual acting for the University under this Policy or has had some limited interaction with such individual generally will not be deemed a disqualifying conflict of interest or bias in most instances. However, the University encourages the parties to bring any concern of conflict of interest or bias to the Title IX Coordinator's attention for consideration.

## **I. Time Frames for Resolution**

The University is committed to the prompt and equitable resolution of allegations of Sexual Misconduct. Specific time frames for each phase of the complaint resolution process under this Policy are set forth in the section XI. Procedures for Sexual Misconduct Complaint Resolution below. Each phase of the process will generally be as follows:

- Step 1: Review of formal complaint and notice of allegations to the parties: ten (10) calendar days
- Step 2: Investigation Process: forty-five (45) calendar days
- Step 3: Review of directly-related evidence and investigator consideration of evidence response statement: seventeen (17) calendar days
- Step 4: Review of investigation report and submission of written response from the complainant and respondent: five (5) calendar days
- Step 5: Live Hearing and Determination: twenty-five (25) calendar days
- Step 6: File Appeal: two (2) calendar days from the parties' receipt of the notice of the determination
- Step 7: Determination of appeal: twenty (20) calendar days from the filing of the appeal

In any Sexual Misconduct complaint resolution process, the process may include additional days between these phases as the University transitions from one phase to another. The parties will be notified when each listed phase begins and when it ends. If any transition period will last longer than five (5) calendar days, the parties will be notified of the delay and the reason for it.

Circumstances may arise that require the extension of time frames based on the complexity of the allegations, the number of witnesses involved, the availability of the parties involved, the availability of witnesses, the effect of a concurrent criminal investigation, unsuccessful attempts at informal resolution, any intervening school break, the need for language assistance or accommodation of disabilities, or other unforeseen circumstance. The above timelines are intended to provide a guide for the process with the goal of resolving the complaint in a timely manner.

In cases where an incident has also been reported to law enforcement, the University will not delay its investigation and resolution processes in order to wait for the conclusion of a criminal investigation or proceeding. The University will, however, comply with requests by law enforcement for cooperation in a criminal investigation. As such, the University may need to delay temporarily an investigation under this Policy while law enforcement is in the process of gathering evidence. This process typically takes seven (7) to ten (10) calendar days. Once law enforcement has completed its gathering of evidence, the University will promptly resume and complete its investigation and resolution procedures.

To the extent additional time is needed during any of the phases of the process discussed above or further below, the University will notify all parties of the delay and the reasons for it. When a time frame for a specific phase of the process, as set forth below, is less than five (5) calendar days, the University may, in its discretion, use business days to calculate the time frame deadline. Efforts will be made to complete the process in a timely manner balancing principles of thoroughness, fundamental fairness, and promptness.

Complainants are encouraged to begin the complaint resolution process as soon as possible following an alleged Sexual Misconduct incident. There is no statute of limitation for reporting prohibited conduct to the University under this Policy; however, the University's ability to respond, including to conduct an effective investigation if appropriate, may diminish over time, as evidence may erode, memories may fade, and respondents or witnesses may no longer be affiliated with the University. If a complaint is brought forward more than four (4) calendar years after an alleged incident, the University, in its discretion, may decline to process a complaint under these procedures, but reserves the right to take other administrative action as appropriate depending on the specific circumstances of the complaint, and will provide reasonably appropriate supportive/interim measures, assist the complainant in identifying external reporting options, and take reasonable steps to eliminate prohibited conduct, prevent its recurrence, and remedy its effects. If the respondent is still a member of the University community as a student or employee, the complaint generally will be processed under these procedures.

## **J. Presumption of Non-Responsibility**

The presumption is that the respondent is not responsible for a policy violation. The respondent is presumed not responsible until a determination regarding responsibility is made at the conclusion of the complaint resolution process. The respondent will be deemed responsible for a policy violation only if the appointed Hearing Panel

concludes that there is sufficient evidence, by a "preponderance of evidence," to support a finding that the respondent more likely than not engaged in Sexual Misconduct.

#### **K. Application of Policy**

When the University receives a formal complaint of a violation of this Policy, the University will generally apply the sexual misconduct definitions from the policy that was in effect at the time of the alleged misconduct. The complaint resolution procedures applicable to the formal complaint will be those in effect at the time that the report or formal complaint is made. For cases involving allegations of Title IX Sexual Harassment, the University will apply the definitions from the policy that is in effect at the time the formal complaint is made to determine what procedures apply and the definitions from the policy that was in effect at the time the alleged misconduct occurred to determine whether a policy violation occurred.

#### **L. Reservation of Flexibility**

The procedures set forth in this Policy reflect the University's desire to respond to formal complaints in good faith and in compliance with legal requirements. The University recognizes that each case is unique and that circumstances may arise which require that it reserve some flexibility in responding to the particular circumstances of the matter. The University reserves the right to modify the procedures or to take other administrative action as appropriate under the circumstances.

In instances where a formal complaint is made against an individual who is not a student or employee of the University, the University reserves discretion to use a process or procedures other than those outlined below, as appropriate under the circumstances.

### **XI. PROCEDURES FOR SEXUAL MISCONDUCT COMPLAINT RESOLUTION**

When the University receives a formal complaint of a potential Sexual Misconduct Policy violation, the University will promptly and equitably respond pursuant to the guidelines and procedures set forth below.

As discussed above, different procedures apply to allegations of Sexual Misconduct depending on the particular circumstances of a case, including the type of Sexual Misconduct that is alleged. Further information is provided below.

#### **A. Initial Meeting Between Complainant and Title IX Coordinator**

In most cases, the first step of the complaint resolution process is a preliminary meeting between the complainant and the Title IX Coordinator or Deputy Coordinator. The purpose of the preliminary meeting is to allow the Title IX Coordinator / Deputy Coordinator to gain a basic understanding of the nature and circumstances of the report or formal complaint; it is not intended to be an investigation interview.

As part of the initial meeting with the complainant, the Title IX Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate needs of the complainant and the campus;
- Notify the complainant of the right to contact law enforcement and seek medical treatment;
- Notify the complainant of the importance of preservation of evidence;
- Provide the complainant with information about on- and off-campus resources;
- Notify the complainant of available supportive/interim measures with or without filing a formal complaint;
- Provide the complainant with an explanation of the procedural options, including how to file a formal complaint (if the complainant has not already done so) and the complaint resolution process;
- Advise the complainant of the right to have an advisor of choice, as applicable under this Policy;
- Discuss the complainant's expressed preference for the manner of resolution and any barriers to proceeding; and,
- Explain the University's policy prohibiting retaliation.

All reports and formal complaints of Sexual Misconduct will be reviewed by the Title IX Coordinator / Deputy Coordinator to determine the risk of harm to individuals or to the campus community. Steps will be taken to address these risks in consultation with Campus Safety and appropriate school officials.

If the Title IX Coordinator / Deputy Coordinator determines that the report or formal complaint, even if substantiated, would not be a violation of this Policy, they may dismiss the matter or refer it to another applicable

disciplinary procedure. The parties will be notified of that determination and the complainant will be informed of other procedures for resolving the complaint and of other resources that may be available to the complainant.

## **B. Formal Complaint and Notice of the Allegations**

The filing of a formal complaint typically begins the complaint resolution process under this Policy. Generally, the complainant files a formal complaint with the Title IX Coordinator / Deputy Coordinator. However, in some cases, the University may move forward with a complaint resolution process even if the complainant chooses not to make or move forward with a complaint. Generally, the Title IX Coordinator / Deputy Coordinator will make a determination of whether the University will move forward with a complaint resolution process when the complainant has not filed a formal complaint. If the University decides that it has an obligation to move forward with a complaint resolution process, the Title IX Coordinator / Deputy Coordinator will sign the formal complaint and the University will notify the complainant before proceeding. See section VII(C) Requests for Confidentiality or No Action above for more information. The Title IX Coordinator / Deputy Coordinator signing the formal complaint does not make the Title IX Coordinator / Deputy Coordinator a party to the complaint resolution process or adverse to the respondent.

Formal complaints of Sexual Misconduct should be made through the Title IX Coordinator / Deputy Coordinator.

When the Title IX Coordinator has received a formal complaint, the Title IX Coordinator / Deputy Coordinator will assess the formal complaint to determine if it states any allegations of Sexual Misconduct. If the formal complaint alleges Sexual Misconduct, the Title IX Coordinator / Deputy Coordinator will make a preliminary determination of whether the procedures under this Policy or the procedures in the Student Handbook or Employee Handbook will apply to the formal complaint.

If the initial determination is that the formal complaint will be processed under the procedures in this Policy, the Title IX Coordinator / Deputy Coordinator will provide a written notice of allegations to the parties who are known. The written notice will include:

- Notice of the University's complaint resolution process, including the informal resolution process;
- Notice of the allegations, including the identities of the parties involved in the incident(s), if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the complaint resolution process;
- Notice that the parties have the right to an advisor of choice, as applicable under this Policy, who may be, but is not required to be, an attorney;
- Notice that the parties have the right to inspect and review evidence, as applicable under this Policy; and
- Notice of policy provisions that prohibit knowingly making false statements or knowingly submitting false information during the complaint resolution process, including in section IX(G) Obligation to Act in Good Faith and X(G) Obligation to be Truthful above.

If the University moves forward to investigate allegations about the complainant or respondent that are not included in the notice provided, the notice will be updated to provide notice of the additional allegations to the parties whose identities are known.

When the Title IX Coordinator / Deputy Coordinator has received a formal complaint of Sexual Misconduct that will be processed pursuant to the procedures under this Policy, the Title IX Coordinator / Deputy Coordinator will also meet with the respondent and will:

- Notify the respondent of the complaint and alleged policy violations;
- Provide the respondent an explanation of the complaint resolution process, including the informal resolution process;
- Notify the respondent of the importance of preservation of evidence;
- Notify the respondent of any supportive/interim measures that have been put in place that directly relate to the respondent (i.e., no contact order);
- Notify the respondent of available supportive/interim measures;
- Provide the respondent with information about on- and off-campus resources;
- Advise the respondent of the right to have an advisor of choice, as applicable under this Policy; and
- Explain the University's policy prohibiting retaliation.

This stage of initial review of the formal complaint by the Title IX Coordinator / Deputy Coordinator and initial notice of the allegations to the parties generally will take no more than ten (10) calendar days. In some cases, more time may be required.

### **C. Investigation of Other University Policy Violations**

If a formal complaint of Sexual Misconduct also implicates alleged violations of other University policies, the Title IX Coordinator or Deputy Coordinator, in coordination with other appropriate school officials, will evaluate the allegations to determine whether the investigation of the alleged Sexual Misconduct and the other alleged policy violations may be appropriately investigated together without unduly delaying the resolution of the Sexual Misconduct formal complaint. Where the Title IX Coordinator / Deputy Coordinator, in coordination with other appropriate school officials, determines that a single investigation is appropriate, the determination of responsibility for each of the alleged policy violation will be evaluated under the applicable policy. The adjudication may be conducted in accordance with this Policy or the adjudication of the other policy violation may be conducted separately from the adjudication of the alleged Sexual Misconduct.

### **D. Consolidation of Formal Complaints**

The University reserves the right to consolidate formal complaints into one complaint resolution process as to allegations of Sexual Misconduct against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Sexual Misconduct arise out of the same facts or circumstances.

### **E. Informal Resolution Process**

Following a formal complaint, at any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process. In cases involving allegations of Sexual Assault or more serious Sexual Misconduct, informal resolution may not be appropriate. In addition, in cases involving allegations that an employee engaged in Title IX Sexual Harassment against a student, informal resolution is not appropriate.

If the complainant, the respondent, and the University all agree to pursue an informal resolution, the Title IX Coordinator / Deputy Coordinator will attempt to facilitate a resolution that is agreeable to all parties. The Title IX Coordinator / Deputy Coordinator will not be an advocate for either the complainant or the respondent in the informal resolution process, but, rather, will aid in the resolution of the formal complaint in a non-adversarial manner. Under the informal process, the University will only conduct such fact-gathering as is useful to resolve the formal complaint and as is necessary to protect the interests of the parties, the University, and the campus community.

As part of the informal resolution process, the University will not compel a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of informal resolution. Participation in the informal resolution process is voluntary, and the complainant and respondent have the option to discontinue the informal process and request a formal complaint resolution process at any time prior to reaching an agreed upon resolution. In addition, the University also always has the discretion to discontinue the informal process and move forward with a formal complaint resolution process. If at any point during the informal resolution process prior to reaching an agreed upon resolution, the complainant or respondent or the University wishes to cease the informal resolution process and to proceed through the formal resolution process, the informal resolution process will stop and the formal resolution process outlined below will be followed.

Prior to engaging in an informal resolution process, the University will provide the parties with a written notice disclosing: the allegations, the requirements of the informal resolution process, including the circumstances under which the informal resolution process precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. In addition, the University will obtain the parties' voluntary, written consent to the informal resolution process.

Any informal resolution must adequately address the concerns of the complainant, as well as the rights of the respondent and the overall intent of the University to end, remedy, and prevent policy violations. Informal resolution may involve the imposition of individual and community remedies designed to maximize the complainant's access to the educational and extracurricular activities of the University. Examples of potential remedies are provided in the Supportive/Interim Measures section of the Policy. The recommended resolution may also include other institutional responses, requirements, or sanctions imposed on the respondent.

The informal resolution process ends when a resolution has been reached or when the complainant, the respondent, or the University terminates the process. A successful informal resolution results in a binding agreement between the parties. If the parties to the formal complaint and the University agree in writing to the terms and conditions of a recommended resolution within five (5) calendar days of the Title IX Coordinator / Deputy Coordinator presenting the recommended resolution to the parties, the case will be resolved without further process under this procedure. If all parties to the formal complaint and the University do not agree in writing to the terms and conditions of the recommended resolution within five (5) calendar days of the Title IX Coordinator / Deputy Coordinator presenting the recommended resolution to the parties, the formal complaint will be referred to the formal resolution process.

Appeals are not allowed in cases where all parties have agreed to a voluntary alternative resolution of the matter.

The informal resolution process generally will take no more than fifteen (15) calendar days. In some cases, more time may be required.

## **F. Formal Resolution Process**

If the formal complaint is not processed or resolved through the informal resolution process discussed above, the formal complaint will be processed according to the formal resolution process outlined below.

### **I. Investigation**

The Title IX Coordinator / Deputy Coordinator will designate one or more investigators to conduct a prompt and equitable investigation. The parties will receive written notice of the investigator(s) appointed. If any party has a concern that the investigator(s) has a conflict of interest or bias, the party should report the concern in writing as indicated in section X(H) Conflicts of Interest above.

The investigator(s) will conduct the investigation in a manner appropriate to the circumstances of the case, which will typically include audio-recorded interviews with the complainant, the respondent, and any witnesses. The complainant and respondent will have the opportunity to advise the investigator(s) of any witnesses they believe should be interviewed, other evidence they believe should be reviewed by the investigator(s), and questions they believe the investigator(s) should ask the other party or witnesses, including questions challenging credibility. The investigator(s), in consultation with the Title IX Coordinator / Deputy Coordinator, has (have) discretion to assess the relevancy of any proposed witnesses, evidence, and questions, and to determine which interviews to conduct, including the discretion to conduct interviews of individuals not identified by the parties. The investigator(s) may also decline to ask a question or questions suggested by the parties. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The complainant and respondent will be given equal opportunity to present witnesses they believe should be interviewed and other inculpatory and exculpatory evidence as part of the investigation. Any witness that a party wishes to call at a hearing must be identified as part of the investigation process, prior to the issuing of the investigation report.

The parties will be informed of a close of evidence date. The parties must submit any and all information and evidence they would like considered as part of the investigation by the close of evidence date. After the close of evidence date, the parties will not be permitted to submit new or additional evidence that existed prior to the close of evidence date, unless the investigator(s), in consultation with the Title IX Coordinator, determine(s) otherwise.

At the conclusion of the investigation, the investigator(s) generally will compile an investigation report that fairly summarizes the relevant evidence. The investigation report may consist of any information, documents, data, or other evidence that will be provided to the Hearing Panel. At the investigator's discretion, such information may include, as applicable: the formal complaint; the notice of allegations; any other evidence obtained during the investigation; and the investigator's report of the investigation. The investigation report will be forwarded to the Title IX Coordinator / Deputy Coordinator. The Title IX Coordinator / Deputy Coordinator will review the investigation report and has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information added, removed, or redacted from the investigation report.

The University will strive to complete the initial investigation within forty-five (45) calendar days from the date the investigator is appointed, but this time frame may be extended depending on the circumstances of each case. The final investigation report will not be completed until after the review of directly related evidence. See section XI(F)(2) Access to Information below for more information.

### **2. Access to Information**

As discussed above, prior to providing access to information at the end of the investigation phase, the Title IX Coordinator / Deputy Coordinator will make a final determination as to the procedures that will apply to the

remainder of the complaint resolution process. If it is determined that the allegations are allegations of Non-Title IX Sexual Harassment or Sexual Exploitation, the formal complaint will be referred to the procedures in the Student Handbook or Employee Handbook. Allegations of Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking will be processed pursuant to the procedures set forth below.

**a. Review of Directly Related Evidence**

The parties will have an equal opportunity to inspect and review a copy of any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source. [The Title IX Coordinator / Deputy Coordinator will send a copy of such evidence to each party and each party's advisor in electronic format or hard copy. The parties will have a ten (10) calendar day period to review the evidence and prepare a written response to the evidence (the "Evidence Response Statement"). Each party's Evidence Response Statement may not exceed 2,500 words in length. The Evidence Response Statement must be submitted to the Title IX Coordinator / Deputy Coordinator within the ten (10) calendar day period described above. The Evidence Response Statement may be used as an opportunity to clarify information contained in the directly related evidence, to present the party's viewpoint about whether the evidence directly related to the allegations is relevant and therefore whether it should be included in the investigation report, and to identify evidence previously provided to the investigator that was not included in the directly related evidence which the party believes is directly related and relevant. While the parties may be assisted by their advisors in preparation of the Evidence Response Statement, the Evidence Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Evidence Response Statement.

The parties and parties' advisors may use the evidence reviewed at this step only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the evidence with any other individual. Prior to being provided the evidence obtained as part of the investigation that is directly related to the allegations, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

The Title IX Coordinator / Deputy Coordinator will review the parties' Evidence Response Statements and may remove or redact any portions of the parties' Evidence Response Statements that exceed the word limit of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent or information subject to a legal privilege without a waiver).

The investigator will consider the parties' Evidence Response Statements prior to completion of the investigation report.

All the evidence made available for the parties' review will be available during the hearing.

**b. Review of Investigation Report**

The Title IX Coordinator / Deputy Coordinator will send a copy of the investigation report to each party and each party's advisor in electronic format or hard copy at least ten (10) days prior to the live hearing. The parties will have a five (5) calendar day period to review the investigation report and prepare a written response to the report (the "Written Response Statement"). Each party's Written Response Statement may not exceed 2,500 words in length. The Written Response Statement must be submitted to the Title IX Coordinator / Deputy Coordinator within the five (5) calendar day period described above. The Written Response Statement may be used as an opportunity to clarify points in the investigation report, identify information previously given to the investigator(s) that is not included in the investigation report which the party believes should have been included, or raise other concerns regarding the evidence. The Written Response Statements may include an impact statement as well. While the parties may be assisted by their advisors in preparation of the Written Response Statement, the Written Response Statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. The parties may not address each other in the Written Response Statement.

The parties and parties' advisors may use the investigation report only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the investigation report with any other individual. Prior to being provided the investigation report, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms. [

The Title IX Coordinator / Deputy Coordinator will review the parties' Written Response Statements. Based on the statements, the Title IX Coordinator / Deputy Coordinator has the discretion to ask the investigator(s) for clarification, additional investigation, and/or to have information added, removed or redacted from the investigation report. In addition, the Title IX Coordinator / Deputy Coordinator may remove or redact any portions of the parties' Written Response Statements that exceed the word limits of the statements as set forth above or that otherwise exceed the permitted scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

### 3. Live Hearing

Upon completion of the investigation and access to information phases, the Title IX Coordinator / Deputy Coordinator will compile the adjudication file which will be shared with the Hearing Panel. The parties will be given access to any information that is included in the adjudication file to the extent that it includes additional information that the parties did not review as part of the access to information step discussed above in section XI(F)(2) Access to Information.

The matter will be submitted to a Hearing Panel to hold a live hearing and to make a determination regarding responsibility and, if appropriate, sanctions. The Hearing Panel will conduct a prompt and equitable live hearing.

#### a. Appointment of the Hearing Panel

The Title IX Coordinator / Deputy Coordinator will designate a panel of three adjudicators to serve as the Hearing Panel. One of the appointed adjudicators will serve as the chair of the Hearing Panel. Generally, the Hearing Panel may include faculty, staff, administrators, or outside parties with specific Title IX expertise. The University reserves the right to appoint any trained individuals who are without conflict or bias to the Hearing Panel. The Hearing Panel will not include the Title IX Coordinator / Deputy Coordinator or the investigator from the same matter. If any party has a concern that a member of the Hearing Panel has a conflict of interest or bias, the party should report the concern in writing as indicated in section X(H) Conflicts of Interest above.

#### b. Live Hearing

At the live hearing, each party's advisor will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such questions will be conducted directly, orally, and in real time by the party's advisor and will never be conducted by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question at the hearing, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. 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 in the formal complaint, 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. The party and the witness may choose not to answer any relevant question from the other party's advisor. The Hearing Panel may rely on any statement of that party or witness without the cross-examination or question answering in reaching a determination regarding responsibility. The Hearing Panel will not 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.

All evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available at the hearing.

The hearing will generally be held by video-conference with the parties, witnesses, and Hearing Panel located in separate locations and technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. The University reserves the right to determine that a hearing will instead be conducted with all participants, including the parties, witnesses, and the Hearing Panel physically present in the same location. In the event that the live hearing is held with the participants in the same location, at the request of either party, the University will provide for the parties to be located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or witness answering questions.

The University will create an audio or audiovisual recording, or transcript, of any live hearing and, upon request, will make it available to the parties for inspection and review. The parties will not receive a copy of the audio or audiovisual recording or transcript. Instead, access to the audio or audiovisual recording or transcript will generally

be provided during normal business hours in a designated on-campus location. The audio or audiovisual recording or transcript cannot be removed from that location, nor can duplications be made.

c. University Appointed Advisors

If a party does not have an advisor present at the live hearing, the University will provide an advisor to the party, without fee or charge to that party, to conduct cross-examination on behalf of that party. If a party will not have an advisor present at the hearing, the party must inform the Title IX Coordinator / Deputy Coordinator at least three (3) calendar days prior to the live hearing so that the University may appoint an advisor for the hearing. The appointed advisor's role will be limited to relaying the party's questions to be asked of other parties and witnesses. The appointed advisor shall not perform any function beyond relaying the party's desired questions. The University reserves the right to appoint any individual as the University deems appropriate to act as an advisor at a live hearing. The University's appointment of an advisor is final and a party who refuses to work with an appointed advisor at the live hearing will forfeit his or her right to conduct cross-examination or other questioning at the hearing.

d. Live Hearing Procedures

Additional information about live hearings is available upon request from the Title IX Coordinator / Deputy Coordinator.

e. Decision-Making Process

The presumption is that the respondent is not responsible for a policy violation. The respondent will be deemed responsible for a policy violation only if the Hearing Panel concludes that there is sufficient evidence as determined by the "preponderance of evidence" to support a finding that the respondent engaged in Sexual Misconduct. If the Hearing Panel determines that the respondent is responsible for a policy violation, the Hearing Panel will then determine what sanctions and remedies are warranted.

As discussed above, if a party or witness does not submit to cross-examination at the live hearing, the Hearing Panel will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Hearing Panel, however, will not 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.

When a respondent is found not responsible for a Policy violation, but nevertheless is found to have engaged in inappropriate conduct—for example, inappropriate remarks that do not rise to the level of a violation of this Policy—the University may, in its discretion, require the respondent to receive appropriate education and/or training. The University may also recommend counseling or other support services for the complainant or respondent.

#### 4. Sanctions and Remedies

The Hearing Panel or Hearing Panel's designee will impose sanctions and/or remedies as necessary to end the misconduct, prevent its recurrence, and address its effects. If an individual other than the Hearing Panel will determine sanctions, the parties will receive notice of that individual's appointment. If any party has a concern that the individual appointed to determine sanctions has a conflict of interest or bias, the party should report the concern in writing as indicated in section X(H) Conflicts of Interest above.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of Sexual Misconduct in order to protect the rights and personal safety of the complainant, students, faculty, staff, and other University community members. These measures may be both remedial (designed to address a complainant's safety and well-being and continued access to educational or workplace opportunities) or sanctions (involving action against a respondent). Not all forms of Sexual Misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion or termination, depending on the severity of the offense. The University also reserves the right to impose different sanctions if the respondent has been found responsible for a violation of University policy previously.

Individuals who are found responsible under this Policy may face sanctions as appropriate for students, employees, visitors, or others, including, but not limited to the following sanctions. Each of these sanctions and other sanctions may be imposed alone or in combination for a respondent found responsible for Sexual Misconduct:

- Required education or training;
- Probation;

- Warnings;
- Loss of privileges;
- Fines;
- Restitution;
- Behavioral contracts;
- Community service hours;
- Campus housing suspension, ranging from 2 weeks to 5 years, with reinstatement requirements that could include behavioral contracts, required assessment or education, demonstrated rehabilitation;
- Conditions upon the individual's presence on campus or at University events;
- Temporary or permanent restricted access to areas of campus, and campus events, activities, organizations, or courses;
- Conditions upon presence on campus or at University events;
- No trespass or no-contact orders;
- Removal or non-renewal of scholarships or honors;
- Suspension from the University, ranging from 2 weeks to 5 years, with reinstatement requirements that could include behavioral contracts, required assessment or education, demonstrated rehabilitation, and conditions upon the individual's presence on campus or at University events;
- Expulsion from the University;
- Revocation of admission to the University;
- Loss of salary or benefit such as sabbatical or research or travel funding;
- Suspension of promotion and salary increases, ranging from 2 weeks to 5 years, with reinstatement requirements that could include behavioral contracts, required assessment or education, demonstrated rehabilitation, and conditions upon the individual's presence on campus or at University events;
- Suspension or withdrawal of faculty privileges, ranging from 2 weeks to 5 years, with reinstatement requirements that could include behavioral contracts, required assessment or education, demonstrated rehabilitation, and conditions upon the individual's presence on campus or at University events;
- Transfer or change of job or responsibilities;
- Reassignment or removal from an elected or appointed position;
- Formal censure for faculty through the American Association of University Professors (AAUP);
- Revocation of tenure status for faculty;
- Written reprimand or demotion; and/or
- Termination of employment.

When an investigation reveals that a campus organization (such as a student club, athletic team, campus academic department, or staff/faculty committee) has committed or promoted behavior involving Sexual Misconduct, the organization may be sanctioned. Sanctions to the organization may include, but are not limited to, loss of University privileges (including, but not limited to, prohibition on the organization's participation in certain activities and the use of University facilities), educational requirements for organization members, required additional oversight of organization activities, temporary loss of funding and/or loss of recognition by the University, and permanent loss of organization recognition, in addition to individual members of the organization who are determined responsible for a Policy violation being subject to the sanctions listed above. All campus organizations/departments are responsible for the actions of its members when they are operating on behalf of the organization/department.

Remedies for the complainant are designed to restore or preserve equal access to the University's education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Remedies, accommodations, and protective measures for the complainant include implementing or extending all or some of the following actions, without limitation:

- A mutual or one-sided no contact order;
- Prohibiting the respondent from being on University property;
- Prohibiting the respondent from participating in University-sponsored events;
- Changing an individual's on-campus residency, dining, or transportation arrangements, or prohibiting an individual from residing in a University residence;
- Special parking arrangements;
- Assistance in finding alternative housing;
- Changing an individual's student or employee status or job responsibilities;
- Changing an individual's work or class schedule;
- Providing academic accommodations or providing assistance with academic issues;
- Providing security escorts;

- Providing a temporary cell phone;
- Access to counseling and medical services;
- Making information about protective orders and criminal no-contact orders available to a complainant; and/or
- Assistance identifying an advocate to help secure additional resources or assistance, including on campus and off-campus resources, and community advocacy, support, and services.

Remedies designed to address the University community include increased monitoring, supervision, and/or security at locations or in connection with activities where the prohibited conduct occurred or is likely to reoccur and targeted or broad-based educational programming or training for relevant persons or groups.

The Title IX Coordinator / Deputy Coordinator is responsible for effective implementation of any remedies.

Any concern about a violation of an imposed sanction should be reported to the Title IX Coordinator / Deputy Coordinator.

#### 5. Notice of Determination

The complainant and respondent will simultaneously receive a written notice of the determination of the formal complaint.

Prior to being provided the notice of determination, the parties and parties' advisors will be required to sign a non-disclosure agreement. The parties and parties' advisors are prohibited from disseminating or otherwise sharing the notice of determination with any other individual, except as permitted in the non-disclosure agreement.

The written notice will include the allegations potentially constituting Sexual Misconduct, 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 the parties and witnesses, site visits, methods used to gather other evidence, and hearings held), findings of fact supporting the determination, conclusions regarding the application of the University's policy to the facts, the determination regarding responsibility as to each allegation, any imposition of sanctions, whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the complainant, and the rationales for the determination and sanctions (including how the evidence was weighed, how the information supports the result, and the standard of evidence applied). The written notice will also include information about the procedures and permissible bases for appeal, as set forth below, and when the result becomes final. In addition, the written notice will include any other steps the University has taken to eliminate the conduct and prevent its recurrence.

The written notice of determination will generally be received within twenty-five (25) calendar days from the date the live hearing concluded. In some cases, more time may be required.

The determination of the Hearing Panel may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final and the sanctions, if any, will be effective.

#### 6. Dismissal of Formal Complaint Prior to the Live Hearing

If the allegations in a formal complaint are initially included in the notice of allegations as allegations of Title IX Sexual Harassment, but facts are gathered during the course of the complaint resolution process that indicate that the alleged conduct does not meet the definition of Title IX Sexual Harassment under this policy, the University will dismiss the formal complaint as to those allegations. Even if a formal complaint or any allegations of Title IX Sexual Harassment are dismissed, the University reserves the right to move forward with a complaint resolution process using the procedures in this Policy or other procedures in the Student or Employee Handbooks, as applicable.

In cases involving allegations of any Sexual Misconduct, the University may, at its discretion, dismiss the case prior to the live hearing in certain circumstances. Circumstances that may lead to dismissal prior to the live hearing include, but are not limited to: the complainant notifies the Title IX Coordinator / Deputy Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, the respondent is no longer enrolled or employed by the University, or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If the University dismisses a formal complaint, the University will promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. A dismissal of a formal complaint may be appealed as provided below.

## 7. Appeals

The parties may appeal a decision to dismiss a formal complaint or any allegations therein, as discussed above in section XI(F)(6) Dismissal of Formal Complaint Prior to the Live Hearing. The parties may also appeal the Hearing Panel's decision regarding responsibility. The right of appeal is available to all parties regardless of their participation in the investigation or hearing.

Grounds for appeals are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator/Deputy Coordinator, investigator(s), or Hearing Panel 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.

### a. Submitting an Appeal

A party may request an appeal by submitting a written appeal statement, not to exceed 2,000 words, challenging the outcome of the complaint resolution process. The written appeal statement must explain which of the grounds above the party is invoking for the appeal and must be received by the Title IX Coordinator / Deputy Coordinator within two (2) calendar days following the date that the notice of determination was sent to the complainant and respondent. While the parties may be assisted by their advisors in preparation of the appeal, the appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf. Failure to file a timely appeal constitutes a waiver of any right to an appeal.

The Title IX Coordinator / Deputy Coordinator will review the appeal statement to determine whether the appeal states a permissible ground for appeal (as set forth above), such that the appeal will be considered. The Title IX Coordinator / Deputy Coordinator may remove or redact any portions of the appeal statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

If the Title IX Coordinator / Deputy Coordinator determines that the appeal states a permissible ground for appeal, the non-appealing party will be notified of the appeal and provided an opportunity to review the appeal statement and submit a written response in support of the outcome. Any written response from the non-appealing party in support of the outcome must not to exceed 2,000 words and must be submitted to the Title IX Coordinator / Deputy Coordinator within two (2) calendar days of receiving notice of the appeal. While the party may be assisted by their advisors in preparation of the responsive appeal statement, the responsive appeal statement must be submitted by the party, must be the party's own statement, and may not be used to submit the statements of others on the party's behalf.

The Title IX Coordinator / Deputy Coordinator will review any responsive appeal statement and may remove or redact any portions of the statement that exceed the word limit or that otherwise exceed the scope of information that may be considered in the complaint resolution process (such as treatment records without consent, information subject to a legal privilege without a waiver, or evidence relating to the complainant's prior sexual history if an exception does not apply).

The Title IX Coordinator / Deputy Coordinator generally will compile an appeal file, which may consist of any information, documents, or other evidence that is provided to the appeal officers. Such information may include, the written appeal statement, the responsive appeal statement, the notice of determination, the adjudication file in its entirety or in part, any previously undiscovered evidence (if discovery of new evidence is a ground for the appeal), and any other information determined to be necessary for the appeal officer's decision, at the discretion of the Title IX Coordinator / Deputy Coordinator.

The appeal file will be made available for review by the complainant and respondent. The parties will not receive copies of the appeal file. Instead, the Title IX Coordinator / Deputy Coordinator will provide a two (2) calendar day

period for the complainant and respondent to have access to review the appeal file and such access generally will be provided during normal business hours in a designated on-campus location. The appeal file cannot be removed from that location, nor can copies be made or pictures taken of the contents.

The parties and parties' advisors may use the appeal file reviewed at this step and any additional information reviewed during the consideration of the appeal (see below), only for purposes of participating in the complaint resolution process and are prohibited from disseminating or otherwise sharing the appeal file or additional information with any other individual. Prior to being provided access to the appeal file or any additional information, the parties and parties' advisors will be required to sign a non-disclosure agreement agreeing to such terms.

Appeals will be considered by an appeal officer designated by the Title IX Coordinator / Deputy Coordinator. Generally, the appeal officer will be an executive officer of the University. However, the University reserves the right to appoint any trained appeal officer who is free of conflict of interest or bias. The parties will receive written notice of the appeal officer appointed. If any party has a concern that an appeal officer has a conflict of interest, the party should report the concern in writing as indicated in the section X(H) Conflicts of Interest above.

#### b. Consideration of Appeal

The appeal officer will not rehear the case, but will review the appeal file and consider whether it is more likely than not that the above-listed grounds for appeal have been satisfied. The appeal officer may, in their discretion, seek additional information from the Title IX Coordinator / Deputy Coordinator, investigator, or another appropriate individual. If the appeal officer receives any additional information, the parties shall have an opportunity to review the additional information.

The appeal officer has the authority to affirm the findings or remand the findings for reconsideration. If the appeal officer determines there is sufficient evidence to conclude that it is more likely than not that one of the above grounds for appeal is satisfied, the matter will generally be remanded for further investigation and/or deliberations by the Hearing Panel, and/or an additional live hearing, as determined by the appeal officer.

If remanded, the appeal officer, in consultation with the Title IX Coordinator / Deputy Coordinator, will determine whether the matter should be remanded to the original Hearing Panel or whether new Hearing panel should review the matter. The appeal officer may not change the Hearing Panel's determination of whether the respondent was responsible or not responsible for a Policy violation. Only the Hearing Panel reviewing the matter on remand from an appeal may change the determination of the original Hearing Panel of whether the respondent was responsible or not responsible for a Policy violation. If the reasons for remand relate to the investigation or warrant additional investigation, the appeal officer, in consultation with the Title IX Coordinator / Deputy Coordinator, will determine whether the matter should be remanded to the previous investigator(s) or whether a new investigator(s) should be appointed.

Upon remand, the investigator(s) and Hearing Panel shall utilize the same process as required for all complaint processes under this Policy. If the matter is remanded, the determination made on remand will be appealable under the procedures discussed in this Section.

If the appeal officer determines there is insufficient evidence to conclude that it is more likely than not that one or more grounds for appeal have been satisfied, the appeal officer will dismiss the appeal. This dismissal decision is final and is not appealable. If the appeal officer dismisses the appeal, the sanctions will be effective on the date the appeal officer's decision is provided to the parties.

The appeal officer will simultaneously issue a written decision to the parties describing the result of the appeal and the appeal officer's rationale for the result. The University will strive to complete the appeal within twenty (20) calendar days following the appeal officer's receipt of the appeal file from the Title IX Coordinator / Deputy Coordinator; however, in some cases, more time may be required.

## **XII. RECORDKEEPING RELATING TO SEXUAL MISCONDUCT**

The Title IX Coordinator or Deputy Coordinator, in coordination with other appropriate University officials, is responsible for maintaining records relating to Sexual Misconduct reports and formal complaints. The Title IX Coordinator / Deputy Coordinator will maintain records of all incidents reported and all formal complaints made under this Policy, as well as their outcomes in order to track patterns and systemic concerns.

When a formal complaint is pending, each official having a role in the complaint resolution process is responsible for handling records appropriate to their role. When the process is complete, the official records relating to the formal complaint will be provided to the Title IX Coordinator / Deputy Coordinator, who will maintain such records in accordance with the University's record retention requirements and applicable law. Records related to Sexual Misconduct reports and formal complaints will be treated as confidential and shared only on a need-to-know basis, as required by law, or to conduct a complaint resolution process.

The Title IX Coordinator / Deputy Coordinator will maintain, for at least 7 years, records of: each sexual harassment investigation (including any determination regarding responsibility, recording/transcript of the hearing, disciplinary sanctions imposed, and remedies provided); any appeal and its result; any informal resolution and results; all training materials for the Title IX team; actions taken in response to a report or formal complaint (including supportive measures); the basis for not providing supportive measures to the complainant or respondent if applicable; and documentation that the University took measures designed to restore or preserve equal access to the education program or activity.

### **XIII. COMPLAINTS OF RELATED MISCONDUCT**

Any complaint relating to retaliation or interference with process in violation of this Policy, violations of supportive/interim measures, violation of the obligation to act in good faith, violation of the obligation to be truthful, violations of sanctions, or violations of a non-disclosure agreement should be reported promptly to the Title IX Coordinator for student matters or the Deputy Coordinator for employee matters. The University will provide a prompt and equitable process for the resolution of such complaints. The University will take appropriate action against any individual who retaliates against another person or interferes with a process in violation of this Policy or who violates supportive/interim measures, the obligation to act in good faith, the obligation to be truthful, sanctions, or a non-disclosure agreement.

When the University receives a complaint of retaliation or interference with process or of violations of supportive/interim measures, the obligation to act in good faith, the obligation to be truthful, sanctions, or a non-disclosure agreement, the Title IX Coordinator / Deputy Coordinator may exercise discretion to determine an appropriate responsive process based on the facts and circumstances. At the discretion of the Title IX Coordinator or Deputy Coordinator, options for resolution include, but are not limited to, informal discussions and resolution facilitated by the Title IX Coordinator / Deputy Coordinator, investigation and/or determination by the Title IX Coordinator / Deputy Coordinator, or assignment of a designated individual to investigate the complaint and/or determine an appropriate response. This process will be separate and distinct from the Complaint Procedures outlined above for addressing Sexual Misconduct complaints. The Title IX Coordinator / Deputy Coordinator will document the complaint received, the process used, and the outcome. The University will notify the parties of the outcome of the complaint. In instances where the outcome of the process results in a suspension longer than one semester, expulsion, or termination of employment, the impacted individual may appeal the decision in accordance with the appeal rights as set forth in this Policy.

### **XIV. ALTERNATIVE PROCEDURES**

Nothing in this Policy is intended to interfere with the right of any individual to pursue other avenues of recourse which may include, but are not limited to, filing a complaint with the United States Department of Education's Office for Civil Rights (OCR). The OCR office for institutions located in Kansas is:

Office of Civil Rights  
U.S. Department of Education  
8930 Ward Parkway, Suite 2037  
Kansas City, MO 64114-3302  
816.268.0550  
OCR.KansasCity@ed.gov

### **XV. SUPPORT RESOURCES**

Emergency 911

Baldwin City Campus

- Dean of Students, Title IX Coordinator, 200 Long Student Union **785.594.8431**
- Chief Human Resources Officer, Deputy Title IX Coordinator, Constant Hall **785-594-8362**
- Counseling Center **785.594.8409**

- University Minister, Osborne Chapel lower level **785.594.4553**
- Sexual Assault and Abuse Care Center Advocate, Counseling Center **785.843.8985**
- Baldwin City Police Department **785.594.3850**
- Campus Safety **785.594.8430**
- Sexual Assault and Abuse Care Center, Lawrence **785.843.8985**
- Lawrence Memorial Hospital **785.505.5000**

#### State Resources

- For a listing of Kansas City hospitals specializing in Sexual Assault Nurse Exam or Forensic Evidence Collection, please visit <http://mocsa.org/need-help/sexual-assault>.
- The Kansas Crisis Hotline is a toll-free, 24-hour statewide hotline linking victims of Domestic Violence and Sexual Assault to local services. The Kansas Crisis Hotline **1.888.363.2287**, <http://www.kcsdv.org/find-help/in-kansas/dv-sa-services.html>.

#### National Resources

- National Domestic Violence Hotline. Trained advocates are available 24/7 to talk confidentially about individuals experiencing Domestic Violence, seeking resources or information, or questioning unhealthy aspects of their relationship.
  - <http://www.thehotline.org/>
  - **1.800.799.7233**
  - TTY: **1.800.787.3224**
- National Suicide Prevention Hotline. Skilled, trained counselors are available 24/7 to listen to your problems and help you connect with mental health services in your area. Calls are confidential and free.
  - <http://www.suicidepreventionlifeline.org/>
  - **1.800.273.8255** or **1.800.784.2433**
- National Hopeline (if despondent). Calls are connected to certified crisis center nearest to the caller's location. Staff and volunteers are trained and certified in crisis intervention.
  - <http://www.hopeline.com/> or <http://www.hopeline.com/gethelpnow.html>
  - **1.800.442.4673** or **1.800.442.HOPE**
- Rape, Abuse & Incest National Network (RAINN). Calls are completely confidential. Trained counselors provide support for rape, Sexual Assault, and incest Complainants.
  - <https://rainn.org/get.help/national.sexual.assault.hotline>
  - <https://ohl.rainn.org/online/> (online hotline)
  - **1.800.656.HOPE** or **1.800.656.4673**

## EVIDENCE

### PRESERVING EVIDENCE

Evidence of a Sexual Assault and the attacker's identity may be left on the Complainant's body. Therefore, do not wash in any way until you have been examined at a hospital emergency room. Complainants of Sexual Assault should go in for the exam as quickly as possible because the evidence deteriorates quickly and may be important in proving the assault in criminal proceedings. Hospital staff is trained to collect forensic evidence, check for injuries and deal with the possibility of exposure to sexually transmitted diseases. A Sexual Assault nurse examiner (SANE) is a hospital staff member who handles Sexual Assault and is specifically trained to: provide comprehensive care to Sexual Assault survivors; demonstrate competence in conducting a forensic examination; have the ability to testify as an expert witness; and show compassion and sensitivity to survivors of Sexual Assault.

## RECOMMENDED CARE PROCEDURES

### RECOMMENDED PROCEDURE TO TAKE IF YOU ARE A VICTIM OF RELATIONSHIP OR DOMESTIC VIOLENCE

- If you are in immediate danger, call 911 for help
- Contact the Dean of Students or Title IX Coordinator for support, or to file a complaint against the perpetrator
- Contact law enforcement (not required)
- Devise a safety plan and notify friends and family members of your safety plan
- Seek medical treatment if you have been physically hurt by the other person
- Seek counseling services which can provide resources and support regarding how to handle relationships that involve violence

### RECOMMENDED PROCEDURES TO TAKE AFTER A SEXUAL ASSAULT

- If you are in immediate danger, call 911 for help

- Immediate medical attention is recommended to treat any injuries that may have been sustained, including any possible sexually transmitted infection, and to collect or establish information related to the rape or assault. Immediate medical needs can be taken care of by a hospital. University officials may accompany the person, at his or her request or consent, and render whatever assistance needed.
- Seek counseling services which can provide resources and support regarding Sexual Assault
- At the Baldwin City campus, counseling for both a person who has been affected by Sexual Assault and those accused may be provided by the Baker Counseling Center staff or those who are in a position to assist. In the event that long-term assistance is necessary, referrals to the appropriate outside resources may be made.
- Contact law enforcement (not required)
- Contact the Dean of Students for support, or to file a complaint against the perpetrator

#### RECOMMENDED PROCEDURES TO TAKE IF YOU ARE BEING STALKED

- If you are in immediate danger, call 911 for help
- Clearly communicate an unwillingness to engage in further contact with the stalker
- Set firm personal boundaries with the person engaging in the stalking behavior
- If you are not comfortable with face-to-face interaction with the stalker, write a letter to the person
- Keep a journal of all contacts that the stalker has made with you and keep records of other interactions
- Devise a safety plan and let your friends, family, or others know about it
- Contact the Dean of Students for support, or to file a complaint against the perpetrator
- Contact law enforcement (not required)
- Seek medical treatment if you have been physically hurt by the other person
- Seek counseling services which can provide resources and support regarding how to handle Stalking

#### RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a nonconsensual sexual act. Suggestions to avoid committing a nonconsensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly, understanding you have the right to withdraw consent at ANY time.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake or drug use and acknowledge that alcohol and drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of Sexual Misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- Don't make assumptions about consent, someone's sexual availability, whether they are attracted to you, or whether the potential partner is physically or mentally able to consent. If there are any questions or ambiguity then you do not have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading the situation. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state under any circumstances.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size, or position with the University. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.

Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and nonverbal communication and body language.

#### EDUCATIONAL PROGRAMS

Educational programs will be provided to University students, faculty, and staff about the issues of Sexual Misconduct. Programs will define the offenses, outline procedures for reporting, and resources available for support.

## **APPENDIX A**

### **Kansas Criminal Law Definitions**

#### **Sexual Assault**

As defined by Kansas law, rape is (1) knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances: when the victim is overcome by force or fear or when the victim is unconscious or physically powerless; (2) knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender; sexual intercourse with a child who is under 14 years of age; sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority. As defined by Kansas law, sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another. See Kan. Stat. § 21.5501 et seq.

#### **Domestic Violence**

Kansas law defines domestic violence to include an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. Domestic violence also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. See Kan. Stat. § 21-5111.

#### **Dating Violence**

Kansas law does not specifically define dating violence, but under Kansas law domestic violence includes an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship. See Kan. Stat. § 21-5111.

#### **Stalking**

Under Kansas law, stalking is (1) Recklessly engaging in a course of conduct targeted at a specific person which would cause a reasonable person in the circumstances of the targeted person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear; (2) engaging in a course of conduct targeted at a specific person with knowledge that the course of conduct will place the targeted person in fear for such person's safety or the safety of a member of such person's immediate family; or (3) after being served with, or otherwise provided notice of, any protective order included in K.S.A. 21-3843, prior to its repeal or K.S.A. 2019 Supp. 21-5924, and amendments thereto, that prohibits contact with a targeted person, recklessly engaging in at least one act listed in subsection (f)(1) that violates the provisions of the order and would cause a reasonable person to fear for such person's safety, or the safety of a member of such person's immediate family and the targeted person is actually placed in such fear. See Kan. Stat. § 21-5427.