

## **Institute Procedures for Responding to Reports of Title IX Sexual Harassment**

### **Section 1. Introduction and Reporting**

All reports and allegations of sexual misconduct will be directed to the Title IX Coordinator. Unless designated as a Confidential Resource, any employee with knowledge about sexual harassment as defined in this policy has the duty to report it immediately.

Any person may report sexual harassment, whether or not the person reporting is the person alleged to have experienced the conduct that could constitute sex discrimination or sexual harassment. Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator, which will result in the Title IX Coordinator receiving the person's verbal or written report. This report may be made at any time, including non-business hours. This constitutes the Institute having "actual knowledge" of sexual harassment.

The Institute's Title IX Coordinator is:

**April L. Woodward, Esq.**

Director, Title IX Compliance

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Upon receiving a report, the Title IX Coordinator will make supportive measures available to the complainant irrespective of whether a complainant chooses to report to local law enforcement or Public Safety or pursues a formal complaint to initiate the Title IX Grievance Process. The Title IX Coordinator will consider the complainant's wishes in how the Institute will respond to allegations of sexual harassment; however, there are instances where the Title IX Coordinator may file a formal complaint if the complainant declines to do so. Circumstances under which the Title IX Coordinator may sign a formal complaint include but are not limited to: allegations of violence, threats, use of weapons, and serial predation, or similar factors that may indicate potential harm to the wider campus community.

### **Section 2. Jurisdiction**

The Title IX Coordinator will first determine if the misconduct meets the jurisdictional requirements of Title IX:

1. The conduct falls within the definition of sexual harassment for purposes of Title IX;
2. The conduct occurred against a person in the United States;
3. The conduct occurred when the complainant was participating or attempting to participate in the education program or activity of the Institute.

If the conduct meets all the Title IX jurisdictional requirements, the matter will proceed according to the Title IX grievance process, which is further described below.

If the conduct does not meet all Title IX jurisdictional requirements, the Title IX Coordinator must dismiss for Title IX purposes and may refer the matter to be adjudicated under Student Code of Conduct or Human Resources policies as appropriate, depending on the status of the respondent.

### **Section 3. Emergency removal of respondents**

An employee-respondent may be placed on administrative leave prior to the conclusion of a grievance process, including before a formal complaint is filed. The Institute may also pursue emergency removal of a student-respondent. Emergency removal is permitted under the following circumstances: 1) an individualized safety and risk analysis is conducted (by the Dean of Students or designee when the respondent is a student or by the Vice President of Human Resources when the respondent is an employee); 2) it is determined that an immediate physical threat to the health or safety of students or others arising from the alleged sexual harassment justifies removal; and 3) the respondent is provided with notice and an opportunity to challenge the decision immediately following the removal.

### **Section 4. Amnesty**

To foster the safety and security of the entire community, the Institute encourages community members to report all incidents of sexual or gender-based harassment, misconduct, and violence. Students are sometimes afraid to report such incidents for fear of being held accountable for other policy violations such as alcohol or drug use. In order to encourage students to obtain resources and report incidents, the Institute will not pursue the conduct process against a student who reports an incident of sexual and gender-based harassment, misconduct, and violence for such policy violations that occur in connection with the reported incident. Students who are interviewed as witnesses in such cases will not be subject to the student conduct process for such policy violations that occur in connection with the reported incident.

### **Section 5. Training of Title IX Personnel**

Title IX Training will be required of all persons designated as a Title IX Coordinator, Investigator, hearing officer/decision-maker, or any person designated to facilitate an informal resolution process or to decide an appeal. Title IX Training includes training on the definition of sexual harassment for purposes of Title IX; the scope of the Institute's education program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The Institute will ensure that hearing officers/decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, except as described further in the live hearing section of this procedure. Investigators will also receive training on issues of relevance in order to create an Investigative Report that fairly summarizes relevant evidence. Any person serving in these roles must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

In accordance with Federal law, all training received by Title IX personnel will be conspicuously posted on the Institute's website.

### **Section 6. Written Notification to Parties**

Once the Institute has received a formal complaint, the Title IX Coordinator or designee will provide written notice of the formal complaint to the parties. The written notice will include the following:

- Notice of the investigation and the Institute's grievance process, including any informal process

- The identities of the parties involved in the incident, if known
- The conduct allegedly constituting sexual harassment under Title IX
- The date and location of the alleged incident, if known
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process
- Notice to the parties that each may have an Advisor of their choice, who may be, but is not required to be, an attorney and who may inspect and review evidence and reports, attend meetings, and who is responsible for cross-examining the other party
- A description of the range of possible disciplinary actions or sanctions based on the outcome of a “preponderance of the evidence” standard
- A description of any available informal resolution process
- Informing the parties of any provision in the Institute’s policies that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. The notice will be updated if allegations are added after the initial notice.

The Title IX Coordinator, or designee, will contact the complainant and the respondent individually to discuss the availability of supportive measures and consider the complainant’s and respondent’s wishes with respect to supportive measures.

### **Section 7. Dismissing a formal Title IX complaint**

The Title IX Coordinator ***must*** dismiss a formal complaint if:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined by Title IX even if proved, or
- The conduct did not occur in the Institute’s education program or activity, or
- The conduct did not occur against a person in the United States, or
- At the time of filing a formal complaint, a complainant is not participating or attempting to participate in the education program or activity of the Institute.

The Title IX Coordinator ***has the authority to*** dismiss a formal complaint if:

- The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; or
- The respondent is no longer enrolled or employed by the Institute; or
- Specific circumstances prevent the Institute from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Notification of dismissal will be sent to the complainant and respondent, along with the reason for dismissal. Following dismissal under the Title IX policy, the Title IX Coordinator may also consider pursuing the complaint as violation of another policy located within the Employee Handbook or Student Code of Conduct.

Acceptable bases for appeal of the dismissal of a formal complaint and the process for filing an appeal are described in the Appeals section below. A party may also appeal the Institute's failure to dismiss a formal complaint at various points in the Process, as described in the Appeals section below. Parties will

have five (5) business days to appeal the Institute's decision to dismiss or not to dismiss the formal complaint.

### **Section 8. Investigation Process**

The Title IX Coordinator (or designee) will serve as an Investigator to the case. The Investigator will collect evidence, interview involved parties, request statements, inquire about additional witnesses, and document their findings in an initial Investigative Report. Prior to finalizing the Investigative Report, the Investigator will send to each party and the party's Advisor, all evidence obtained that is directly related to the complaint to review, including the evidence upon which the Institute does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source. Each party will be given a **minimum of 10 days** to submit a meaningful written response, which the Investigator will consider prior to finalizing the Investigative Report.

**After the 10-day review period**, the Investigator will finalize the Investigative Report summarizing relevant evidence. **At least 10 days prior to a hearing**, the Investigator will send to each party and the party's Advisor, the Investigative Report for their review and written response. Additionally, each party will be provided **at least 10 days to submit meaningful written response** to the Investigative Report prior to the Live Hearing. If either party disagrees with the Investigator's determination about relevance, the party can raise that issue in the party's written response to the Investigator's Report and/or to the Hearing Officer/Decision-maker(s) at the Live Hearing.

The Title IX Coordinator will review the Investigative Report and determine whether to dismiss the formal complaint for Title IX purposes using the criteria outlined in the Dismissing the Formal Complaint section above. If the formal complaint is not dismissed, the Title IX Coordinator will transmit the Investigative Report, including the parties' responses to the report, to the Hearing Officer/Decision-maker(s). If an incident results in a Respondent being simultaneously charged with Title IX sexual harassment and other Institute policy violations that do not constitute sexual harassment, the Institute may choose to address all allegations according to the procedures outlined in this Policy or to address separate misconduct under a different policy.

### **Section 9. Live Hearing**

Live Hearings are conducted before a Hearing Officer/Decision-maker(s) with all parties able to simultaneously hear and see the party or witness answering questions. The Institute may conduct a virtual hearing with the parties in separate rooms, with technology enabling participants simultaneously to see and hear each other. The Institute will maintain an audio/visual recording, or transcript, of any Live Hearing and make it available to the parties for inspection and review upon request.

At the Live Hearing, the Decision-maker(s) will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination question or any other question from an Advisor, the Hearing Officer/Decision-maker will determine whether the question is relevant and

explain any decision that 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, or if the questions and evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party does not have an Advisor present at the Live Hearing, the Institute will provide, free of charge to that party, an Advisor of the Institute's choice, who may be, but not required to be, an attorney, to conduct cross-examinations on behalf of that party. If a party or witness does not submit to cross-examination at the Live Hearing, the Hearing Officer/Decision-maker(s) may nevertheless rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Officer/Decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.

### **Section 10. Written Determination**

In determining responsibility, the Hearing Officer/Decision-maker(s) will use the "preponderance of the evidence" standard for formal complaints involving students and employees. A preponderance of the evidence means that it is more likely than not that the alleged policy violation occurred. The written determination will be provided to the parties simultaneously. The written determination will include:

- Identification of the allegations potentially constituting sexual harassment under Title IX
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of the Institute's policies or code of conduct to the facts
- A statement of, and rationale for, the result as to each allegation including:
  - The determination regarding responsibility.
  - Any disciplinary sanctions the Institute will impose on the Respondent
  - Whether remedies designed to restore or preserve equal access to the Institute's education program or activity will be provided by the Institute to the complainant. Upon a finding of responsibility, remedies provided need not avoid burdening the Respondent.

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

### **Section 11. Appeals**

Either party may appeal the **decision of the Title IX Coordinator** to dismiss, or not dismiss, a formal complaint. The Title IX Coordinator will notify the other party in writing when an appeal is filed.

Either the complainant or respondent can make a written appeal of **the written determination after the live hearing** on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal or decision not to dismiss was made and that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator (s), or Hearing Officer/Decision-maker(s) 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

Appeals must be submitted within five (5) business days of the notification to a party of dismissal or failure to dismiss a formal complaint or the receipt of determination regarding responsibility from hearing officers/decision-maker(s).

Either party may send written appeals to the Title IX Coordinator to be distributed to the person(s) who will decide the appeal. Any person designated by the Institute to decide the appeal will not be the Title IX Coordinator, Investigator, Decision-maker, or any person who facilitated an informal resolution process in the matter. Upon accepting the appeal, the decision-maker will review the investigation documentation and may let the original outcome stand or, if new information is discovered that is significant enough to alter the original decision, reopen the investigation. The decision-maker will issue a written decision describing the results of the appeal and the rationale for the results. This written decision will be simultaneously sent to both parties and will be final.

### **Section 12. Recordkeeping**

The Institute will maintain for a period of seven years:

- Each sexual harassment investigation including any determination regarding responsibility
- Any audio or audiovisual recording or transcript of the Live Hearing
- Any disciplinary actions/sanctions imposed on the respondent
- Any remedies provided to the complainant designed to restore or preserve equal access to the Institute's education program or activity
- Any appeal and the result therefrom
- Any informal resolution and the result
- All materials used to train the Title IX Coordinator, Investigators, decision-makers, any person who facilitates an informal resolution process
- Records of any action, including any supportive measures, taken in response to a report or formal complaint of sexual harassment

### **Section 13. Retaliation**

The Institute strongly encourages students to report all incidents of sexual or gender-based harassment, misconduct, or violence. The Institute prohibits intimidation, retaliation, threats, harassment, or other types of conduct that attempts to prevent the reporting of such an incident or participation in an investigation, conduct process, or other Institute process related to such an incident. Any individual who feels subjected to this type of conduct should immediately report their concerns to the Title IX Office.

Furthermore, this policy and Title IX prohibit retaliation against a complainant or witnesses for filing or participating in the investigation of a sexual harassment complaint. No person at the Institute may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Charges against an individual for a policy or code of conduct violation that does not involve sexual harassment, but arise out of the same facts or circumstances as a report of complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The Institute will investigate any reports of retaliation and take appropriate disciplinary action. Any concerns regarding retaliation should be brought to the immediate attention of the Title IX Coordinator.