

Utah Tech University Policy

154: Title IX Sex-Based Discrimination, Sexual Harassment, and Retaliation



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I. Purpose

- 1.1 Utah Tech University (hereinafter referred to as “University”) is committed to creating and maintaining an inclusive, respectful, safe, and non-threatening environment for University Community Members, and will promptly address and resolve all Title IX incidents of Sex-Based Discrimination, Sexual Harassment, and Retaliation under Policy 154.
- 1.2 Policy 154 defines and prohibits Sex-Based Discrimination, Sexual Harassment, and Retaliation, in the University’s education programs and activities; details how to report a violation of Policy 154; describes the University’s resources and supportive measures to protect those involved in the process; and outlines procedures for addressing a reported violation of Policy 154 including investigation, due process and sanctioning.
- 1.3 Policy 154 applies to any person who is (1) employed by, attending, or affiliated with the University; (2) attempting to participate or participating in any University program or activity, including but not limited to administrators, faculty, staff, students, trustees, independent contractors, volunteers, and guests; and/or, (3) visiting University Premises. Inquiries about the application of Title IX and Policy 154 may be directed to the University Title IX Coordinator and/or to the United States Department of Education Office for Civil Rights.

II. Scope

- 2.1 Policy 154 applies to Sex-Based Discrimination, Sexual Harassment, and Retaliation (as defined by Policy 154), that is committed within the United

States by or against any member of the University Community and (1) in the course of the University's operations; or (2) on University Premises; or (3) in connection with a University or University-recognized program or activity in the United States; or (4) at any University-sponsored event or organizational activity whether on or off University Premises; or (5) if the University exercised substantial control over the Respondent in the context of where or how the alleged incident occurred. The University may conduct an investigation into the alleged conduct of any Respondent.

- 2.2 A student is responsible for compliance with this Policy 154 from receipt of notice of admission through the University's awarding of a degree or the student's departure from the University.
- 2.3 An employee is covered by Policy 154 when representing the University (or deemed to be a representative of the University) whether before, during, or after work. Policy 154 also applies to any person who is both a student and an employee of the University.
- 2.4 Any individual subjected to Sex-Based Discrimination, Sexual Harassment, or Retaliation is encouraged to file a Formal Complaint with the Office of Equity Compliance and Title IX. Any University Community Member who has experienced Sex-Based Discrimination, Sexual Harassment, or Retaliation is also encouraged to utilize Supportive Measures available through the University, whether or not the person(s) who caused the harm is a University Community Member. Supportive Measures are available whether or not a Formal Complaint is filed.
- 2.5 Policy 154 is not intended to infringe on or restrict rights guaranteed by the United States Constitution, including free speech under the First Amendment, due process clauses of the Fifth and Fourteenth Amendments, and under the Fourth Amendment.

III. Definitions

- 3.1 **Actual Knowledge:** Notice of Sex-Based Discrimination, Sexual Harassment, or Retaliation allegations to the University's Title IX Coordinator or any University Official With Authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge. This standard is not met when the only University official with Actual Knowledge is a Respondent.
- 3.2 **Advisor:** Any person a Complainant or Respondent chooses to support and/or consult with during any proceeding or meeting under Policy 154.

The Advisor may, but is not required to be, an attorney. If a Party does not select or have an Advisor for the live hearing, the University will appoint an Advisor to the Party for purposes of the live hearing who has been trained as an Advisor.

- 3.3 **Alternate Resolution:** An informal process by which a mutually agreed-upon resolution of an allegation of Sex-Based Discrimination, Sexual Harassment, or Retaliation is reached.
- 3.4 **Complainant:** An individual who is alleged to be the victim of conduct prohibited by Policy 154.
- 3.5 **Coercion:** The use of an express or implied threat, intimidation, or physical force placing an individual in fear of immediate harm or physical injury or causing a person to engage in unwelcome sexual activity. Coercion may include administering a drug, intoxicant, or other substance with intent to impair one's ability to consent prior to engaging in sexual activity.
- 3.6 **Confidential Resource:** A mental health counselor, health service provider, a University Ombuds, and/or a victim advocate with whom a Complainant may speak confidentially if a Complainant would like the details of an incident to be kept confidential.
- 3.7 **Consent:** Knowing, voluntary, and clear permission by word or action to engage in a sexual activity. Cannot be obtained through Coercion, fraudulence, or from a person whom the Respondent knows, or should reasonably know, is incapacitated. Must be given by each participating Party and may be given only by someone who is 18 years of age or older and who is not mentally and/or physically incapacitated. Consent is active, not passive. Consent requires an affirmatively-communicated willingness through words and/or actions to participate in a sexual activity. Silence alone may not be interpreted as Consent.
- 3.8 **Consent Responsibility:** Since each individual may experience the same interaction in different ways, it is the responsibility of each Party to determine that the other has Consented before engaging in a sexual activity. Policy 154 is violated by a Respondent who engages in a sexual activity with a Complainant without Complainant's Consent.
 - 3.8.1 If Consent is not clearly provided prior to engaging in the sexual activity, Consent may be ratified by word or action at some point during the sexual activity or thereafter, but clear communication from the outset is advisable. Consent requires a clear expression in words or actions that the other individual Consents to a specific

sexual activity. Reasonable reciprocation may be implied. For example, if a person kisses you, you can kiss them back (if you want to) without the need to explicitly obtain the person's Consent to being kissed back. Consent can be withdrawn at any time. If Consent is withdrawn, that sexual activity should immediately cease. Consent to some sexual contact (such as kissing or Fondling) cannot be presumed to be Consent for other sexual activity (such as intercourse). A current or previous intimate relationship is insufficient to constitute Consent. Use of alcohol or drugs does not diminish an individual's responsibility to obtain Consent prior to engaging in a sexual activity.

3.8.2 The existence of Consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous pattern evidenced.

3.9 **Draft Investigative Report:** A document issued by an investigator providing a summary of Complainant's allegations, Respondent's responses, relevant evidence, and material witnesses, as well as preliminary factual findings.

3.10 **Final Investigative Report:** A document issued by an investigator after each Party's opportunity to review the Draft Investigative Report and evidence collected during the investigation, which fairly summarizes all relevant evidence, identifies material witnesses, and describes the investigation procedures.

3.11 **Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator against a Respondent alleging conduct that would constitute a violation of Policy 154 and requesting that the University investigate the allegation(s). At the time of filing a Formal Complaint, a Complainant must be participating in, or attempting to participate in, an education program or activity of the University. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed on the Title IX website or in Policy 154. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant nor otherwise a Party.

3.11.1 **Document Filed by Complainant:** A document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the

Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to confirm a Complainant's intent to file a Formal Complaint.

- 3.12 **Grievance Process:** A formal process commenced by the filing of a Formal Complaint, including formal investigation and presentation to a live hearing panel for determination as to whether a Respondent is responsible for a violation of Policy 154, and the issuance of any related sanction(s).
- 3.13 **Incapacitation:** The physical and/or mental inability to make an informed, rational judgment. An individual cannot Consent to a sexual activity if the individual is disoriented, unable to understand what is occurring, helpless, asleep, or unconscious for any reason. An indication of Incapacitation may include, but is not limited to, mental or physical disability, lack of sleep, alcohol use, illegal/date-rape/prescription drug use, unconsciousness, or being involuntarily physically restrained. Being intoxicated by drugs or alcohol does not diminish the responsibility of one Party to a sexual activity to obtain Consent from the other Party to the sexual activity.
- 3.14 **Informal Resolution:** A process whereby the parties voluntarily work with the Title IX Coordinator or designee to reach a mutually agreeable resolution of the alleged misconduct.
- 3.15 **Notice of Investigation:** The written communication issued by the Title IX Coordinator apprising the parties of the University's initiation of an investigation following the filing of a Formal Complaint.
- 3.16 **Notice of Opportunity to Review Draft Investigative Report and Evidence:** The written communication issued by an investigator to the parties at the conclusion of the initial investigation, apprising the parties and their Advisors of their equal opportunity to review and respond to evidence and the Draft Investigative Report.
- 3.17 **Party:** A Complainant or Respondent.
- 3.18 **Preponderance of Evidence:** More likely than not, based on all of the relevant evidence and reasonable inferences from the relevant evidence. This is the evidentiary standard used to determine if a policy violation occurred.
- 3.19 **Protected Activity:** Exercising any right or privilege secured by local, state,

or federal law or by University policy. For example, an individual making a report, filing a Formal Complaint, testifying, assisting, participating, or refusing to participate, in any manner in an investigation, proceeding, or hearing under Policy 154. Other examples of Protected Activity include reporting (internally or externally) an incident of Sexual Harassment in good faith, assisting an individual in making such a report, participating in a Grievance Process, acting in good faith to oppose conduct that constitutes a violation of Policy 154, honestly participating as an investigator, witness, Hearing Officer, Hearing Panelist, Sanction Evaluator, or Appeal Examiner, or otherwise assisting in an investigation or proceeding related to an alleged violation of Policy 154.

- 3.20 **Respondent:** An individual reported to have engaged in conduct that may violate Policy 154.
- 3.21 **Responsible Employee:** A University Official or any employee who has been given the duty to report to the Title IX Coordinator conduct prohibited by Policy 154 committed by any University Community Member. A Responsible Employee does not include a Confidential Resource.
- 3.22 **Retaliation:** Any act or attempted act (1) for the purpose of interfering with any right or privilege secured by Title IX or Policy 154 or because an individual has reported Sex-Based Discrimination, Sexual Harassment, or Retaliation; or (2) against an individual who has participated, or who is expected to participate, or who has refused to participate, in an investigation, procedure or proceeding under Policy 154. Prohibited retaliatory acts include, but are not limited to, intimidation, threats, Coercion, or discrimination. A complaint alleging Retaliation may be filed according to the Grievance Process Procedures under Policy 154 (See Grievance Process General Principles, Section 6.2).
- 3.23 **Sanction:** A penalty or discipline imposed by a Hearing Panel on a Respondent found to be in violation of Policy 154.
- 3.23.1 Sanctions for a Student Respondent: Sanctions may include, but are not limited to, educational activities or experiences, loss of privileges, restorative justice measures, service projects, substance abuse and/or mental health care referrals, suspension or expulsion. The Dean of Students or designee will serve as the Sanction Evaluator and provide the Hearing Panel with the Sanction Recommendation.

- 3.23.2 **Sanction for an Employee Respondent:** Sanctions for a violation of Policy 154 may include, but are not limited to, verbal guidance, corrective discussion, disciplinary actions, administrative leave, suspension, or dismissal. The Director of Human Resources or designee, in consultation with the Employee Respondent's Supervisor or designee, will serve as the Sanction Evaluator and provide the Hearing Panel with the Sanction Recommendation.
- 3.24 **Sanction Evaluator:** An individual employed by the University and designated and trained to serve in an advisory role to a Hearing Panel. In this role, a Sanction Evaluator reviews case materials and provides a recommendation to the Hearing Panel as to what, if any, Sanction(s) should be imposed on a Respondent as a consequence for Respondent's violation(s) of Policy 154.
- 3.25 **Sex-Based Discrimination:** Adverse action or conduct toward any University employee or student in the terms or conditions of employment, University admission, education, access to a University program or activity, or other University benefit or service, on the basis of inclusion or perceived inclusion (in the case of sexual orientation, gender identity, or gender expression) in the protected classes of sex, pregnancy, pregnancy-related conditions, sexual orientation, gender identity, gender expression, or family, marital or parental status, which has the effect of denying or limiting participation in a University program or activity; or used as the basis for a University's or University employee's decision affecting the individual (often referred to as "Quid Pro Quo").
- 3.26 **Sexual Harassment:** Conduct committed by an individual upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved, which is one of the following:
- 3.26.1 **Quid Pro Quo:** When a University employee conditions the provisions of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; or
- 3.26.2 **Unwelcome Conduct:** Conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to an educational program or activity of the University. Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of Consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the

same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous pattern that may be evidenced.

3.26.3 **Sexual Assault:** As defined at 20 U.S.C. 1092(f)(6)(A)(v) and the Uniform Crime Reporting System of the Federal Bureau of Investigation, any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent, including but not limited to any of the following:

3.26.3.1 Rape: The carnal knowledge (penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ) of another person without the Consent of the victim, including instances where the victim is incapable of giving Consent because of the victim’s age or because of the victim’s temporary or permanent mental or physical incapacity.

3.26.3.2 Sodomy: Oral or anal sexual intercourse with another person, without the Consent of the victim, including instances in which the victim is incapable of giving Consent because of the victim’s age or because of the victim’s temporary or permanent mental or physical incapacity.

3.26.3.3 Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.

3.26.3.4 Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving Consent because of age or because of temporary or permanent mental or physical incapacity.

3.26.4 **Sex Offenses, Non-forcible:** Includes any of the following:

- 3.26.4.1 Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Utah Law.
- 3.26.4.2 Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of Consent of 18 years of age.
- 3.26.5 **Dating Violence:** Violence committed by a person who is in, or has been in, a social relationship of a romantic or intimate nature with a Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
- 3.26.6 **Domestic Violence:** Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Utah, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Utah.
 - 3.26.6.1 The parties must be family members, current or former spouses, or have an intimate relationship and not be merely unrelated roommates.
- 3.26.7 **Sex-Based Stalking:** Engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress.
 - 3.26.7.1 For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to: Acts in which the Respondent directly, indirectly, or through third parties, 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.

- 3.26.7.2 “Reasonable person” means a person under a similar circumstance and with a similar identity to the Complainant.
- 3.26.7.3 Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 3.26.8 **Sexual Exploitation:** Any act attempted or committed by a person for sexual gratification, financial gain, or other advancement through the abuse or exploitation of another person’s sexuality. Examples of Sexual Exploitation include, but are not limited to, non-consensual observation of an individual who is undressed or engaging in a sexual act, non-consensual audio or videotaping of sexual activity, prostituting another person, human trafficking, allowing others to observe a personal consensual sexual act without the knowledge or Consent of all involved parties, and knowingly exposing an individual to a sexually transmitted infection without that individual’s knowledge.
- 3.27 **Supportive Measures:** Upon notice of alleged Sex-Based Discrimination, Sexual Harassment, and/or Retaliation, non-disciplinary, non-punitive, free of charge individualized services will be offered to the Complainant and/or the Respondent by the University as appropriate and reasonably available. Such measures are 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 workplace, or deter Sexual Harassment, Sex-Based Discrimination, and/or Retaliation.
- 3.27.1 At the time that Supportive Measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that the Complainant may file a Formal Complaint with the University either at that time or in the future, if Complainant has not done so already.
- 3.27.2 The Title IX Coordinator will ensure that a Party’s wishes are considered with respect to Supportive Measures and that the Party’s privacy is maintained as much as possible, without impairing the University’s ability to provide the Supportive Measures. The University will act to ensure as minimal an academic impact on the parties as possible.

- 3.27.3 Supportive Measures may include, but are not limited to safety planning, counseling, medical and/or other health care services, academic support, extensions of deadlines or other course or program-related withdrawals, safety escort services, mutual restrictions on contact between the parties, altering University work and/or housing assignments, referral to community-based service providers, visa and immigration assistance, student financial aid counseling, leaves of absence, referral to The Employee Assistance Program, increased security and monitoring of certain areas of the University Premises, and other similar measures.
- 3.27.4 The University must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures. Any other measures deemed appropriate and effectively implementing Supportive Measures.
- 3.28 **Title IX Coordinator:** An employee authorized, trained and designated by the University to coordinate its efforts to comply with its Title IX responsibilities under federal law.
- 3.29 **University Community Member:** An individual employed by or affiliated with the University or a participant in any University program or activity, including but not limited to, administrators, faculty, staff, students, independent contractors, volunteers, trustees, advisory board members, and guests or visitors to any University Premises.
- 3.30 **University Official with Authority:** An individual employed by the University with authority to institute corrective measures to redress Sex-Based Discrimination, Sexual Harassment, and/or Retaliation on behalf of the University, specifically administrators, administrative faculty (including Deans and Department Chairs), directors, supervisors, and coaches. The mere ability or obligation to report misconduct under Policy 154 or to inform a University Community Member about how to report misconduct under Policy 154, or having received training to do so, does not give an individual authority to institute corrective measures on behalf of the University.
- 3.31 **University Premises:** All land, buildings, facilities, and other property in the possession of, or owned, used, leased, or controlled by the University.

IV. Policy

4.1 Nondiscrimination Notice and Prohibition Against Sex-Based Discrimination, Sexual Harassment, and Retaliation

4.1.1 The University does not discriminate, and prohibits discrimination, on the basis of sex including gender, gender identity, gender expression, pregnancy, or parental, family or marital status, or sexual orientation, in any education program or activity that it operates, including in admission and employment. The University also prohibits sexual harassment and Retaliation as defined in Policy 154. Inquiries about the application of Title IX and its regulations to the University may be referred to the University's Title IX Coordinator and/or to the U.S. Department of Education Office for Civil Rights. Contact information for both is located at: <https://titleix.utahtech.edu>.

4.2 The following conduct (as defined in Policy 154) is prohibited:

4.2.1 Sex-Based Discrimination;

4.2.2 Sexual Harassment; and

4.2.3 Retaliation.

4.3 Employee relationships with students and subordinate employees are subject to Policy 302.

4.4 Consent Required: A participant in a sexual encounter is responsible for ensuring Consent of each individual prior to engaging in a sexual activity. Any individual who engages in a sexual activity without receiving Consent as defined in Policy 154, or who engages in a sexual activity in which one of the parties withdraws Consent at any point, violates Policy 154.

4.5 Retaliation Reporting and Response: An act of alleged Retaliation should be reported immediately and will be promptly investigated. The University will take appropriate steps to protect individuals who fear they may be subjected to Retaliation. A complaint alleging Retaliation may be filed according to the same procedures for filing a complaint of Sex-Based Discrimination or Sexual Harassment.

4.6 Nothing in Policy 154 shall be interpreted as diminishing any Party's rights protected under the United States Constitution, or under Title VII of the Civil Rights Act of 1964 to be free from discrimination.

4.7 Title IX Contact and Reporting Information

- 4.7.1 How to Contact the Title IX Coordinator: The University will provide and notify applicants for admission or employment, students, and employees with the name or title, office address, electronic mail address, and telephone number of the University employee designated as the Title IX Coordinator; the nondiscrimination policy statement contained in Section 4.1 of Policy 154; the University's grievance procedures and grievance process contained in Policy 154, including how to report or file a Formal Complaint of Sex-Based Discrimination, sexual harassment, and/or retaliation; and, how the University will respond.
- 4.7.2 Dissemination of Title IX Contact Information: The University will prominently display the contact information and policy statement described in 4.1 on the University's website and in each handbook or catalog that it makes available to applicants for admission and employment, students, and employees of the University.
- 4.7.3 How to Report a Title IX concern: Any person may report Sex-Based Discrimination, Sexual Harassment, and/or Retaliation (whether or not the person reporting is the person alleged to be the victim of the conduct), to the Title IX Coordinator using any of the following methods:
- 4.7.3.1 In Person: Holland Centennial Commons Building, 579 (during University business hours);
 - 4.7.3.2 By Mail: Addressed to the Title IX Coordinator, 225 South University Avenue, Holland Centennial Commons Building, 579 St. George, UT 84770;
 - 4.7.3.3 By Email: titleix@utahtech.edu
 - 4.7.3.4 Via Online Submission:
https://cm.maxient.com/reportingform.php?DixieStateUniv&layout_id=0; or
 - 4.7.3.5 Via Other Means: By any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- 4.7.4 Mandatory Reporting for Incidents Involving a Minor: Consistent with Utah Code Section 62A-4a-403, anyone who reasonably suspects any incident of suspected abuse or sexual harassment (as

defined in Section 3.19 of Policy 154) involving a minor shall immediately report the incident to the University's police department or the local police department. If the reporting individual is an employee of the University, the employee shall also notify the Title IX Coordinator and the employee's supervisor that they have reported the incident to the police.

- 4.7.5 **Mandatory Reporting by a University Official with Authority to Implement Corrective Measures:** Any University Official with Authority to implement corrective measures must promptly report any concern of Sex-Based Discrimination, Sexual Harassment, and Retaliation to the Title IX Coordinator via any of the reporting options listed at <https://titleix.utahtech.edu>. **Mandatory Reporting by a Responsible Employee:** Any Responsible Employee must promptly report any concern of Sex-Based Discrimination, Sexual Harassment, and Retaliation to the Title IX Coordinator via any of the reporting options listed at <https://titleix.utahtech.edu/>.
- 4.7.6 **Exceptions to the Responsible Employee reporting requirement under Section 4.7.6 are:**
 - 4.7.6.1 Information disclosed at public awareness events (e.g. Take Back the Night, candlelight vigils, protests, speak outs), or other public forums where individuals may disclose incidents of prohibited conduct as part of educating others; or
 - 4.7.6.2 Disclosures made in the course of academic work product consistent with the assignment (e.g. public speaking class, creative writing assignment, group work).
- 4.7.7 **Others Who Should Report:** All other University Community Members who become aware of Sex-Based Discrimination, Sexual Harassment, or Retaliation should report such issues, with the Consent of the alleged victim, to the Title IX Coordinator.
- 4.7.8 **Who May Not Report:** Licensed mental health counselors and medical professionals working within the scope of their licenses, or designated advocates authorized by the Title IX Coordinator (Confidential Resources), generally may not report incidents of Sex-Based Discrimination, Sexual Harassment, or Retaliation except with written Consent, other than in instances of imminent danger or when the victim is a minor or vulnerable adult.
- 4.7.9 **Time Limits on Reporting**

- 4.7.9.1 There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the University's ability to investigate, respond, and provide remedies may be more limited or impossible.
- 4.7.9.2 Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer Supportive Measures and/or remedies, and/or engage in informal or formal action, as appropriate.
- 4.7.9.3 When the notice/complaint is affected by a significant time delay, the University will typically apply the policy and procedures in place at the time of the alleged misconduct.

4.7.10 Confidentiality

- 4.7.10.1 The University maintains as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures.
- 4.7.10.2 Except as may be permitted by the federal *Family Educational Rights and Privacy Act* (FERPA), its regulations, or as required by *Utah Government Records and Management Act* (GRAMA), the federal *Health Information Portability and Accountability Act* (HIPAA), or other law, or to carry out the purposes of Title IX including conducting any investigation, hearing, or judicial proceeding arising under Title IX, the University keeps confidential the identity of any individual who makes a report of Sex-Based Discrimination, Sexual Harassment, or Retaliation, including any individual who has filed a Formal Complaint, any Complainant, any individual who has been reported to be in violation of Policy 154, any Respondent, and any witness.
- 4.7.10.3 The University will protect confidential communications to designated University advocates authorized by the Title IX Coordinator and protected under the *Utah Campus Advocate Confidentiality Amendments* (Utah Code § 53B-28-101 *et seq.*), where disclosure is not required by applicable federal law,

including Title IX, Title VII, or the *Clery Act*, or Consented to in writing.

- 4.7.10.4 **Amnesty:** An individual who makes a good faith report of Sex-Based Discrimination, Sexual Harassment, or Retaliation that was directed at the individual or another person or group, will not be sanctioned by the University for a violation of University policy related to the use of drugs or alcohol which the University discovers because of the report.

4.8 Disability Accommodation in the Title IX Process

- 4.8.1 The University is committed to providing reasonable accommodations and support to qualified students, employees or others with disabilities, to ensure equal access to the University's Title IX process. Complainants, Respondents, and other participants may request accommodations necessary under the *Americans with Disabilities Act (ADA)* or Section 504 of the Rehabilitation Act. Students needing such accommodations or support should contact the Disability Resource Center. Employees needing such accommodations should contact the Executive Director of Human Resources. The Disability Resource Center or Human Resources will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

4.9 Rights of Complainant and Respondent Following a Report

- 4.9.1 The Complainant and Respondent have equal rights:
 - 4.9.1.1 To be treated with dignity and respect by University employees;
 - 4.9.1.2 To take advantage of Supportive Measures;
 - 4.9.1.3 To receive timely notice of proceedings, processes and outcome under Policy 154;
 - 4.9.1.4 To have an Advisor present at any meeting or hearing under Policy 154;
 - 4.9.1.5 To refuse to engage in Informal Resolution of a complaint;
 - 4.9.1.6 To present witnesses, including fact and expert witnesses,

and other inculpatory and exculpatory evidence;

4.9.1.7 To receive amnesty for certain student misconduct, such as drug and alcohol violations, that occurred ancillary to the complaint at hand and consistent with Policy 154;

4.9.1.8 To be free from retaliation for reporting violations of Policy 154 or cooperating with an investigation;

4.9.1.9 To be informed in writing of the outcome or resolution of the complaint, any Sanctions, and the rationale for the outcome, where permissible;

4.9.1.10 To exercise a right of appeal as afforded in Policy 154.

4.9.2 The Complainant shall have the right to:

4.9.2.1 At all times decide if or when to file a complaint, report to law enforcement, and determine whether to proceed with a complaint, at the individual's discretion.

4.9.3 The Respondent shall have the right to:

4.9.3.1 Be presumed not responsible for all allegations until found responsible for the alleged conduct by a hearing panel under Policy 154.

4.10 Training

4.10.1 The University shall comply with federal law requirements for training of Title IX Coordinators, investigators, Hearing Officers, Hearing Panelists, Sanction Evaluators, Appeal Examiners, and any person who facilitates an Informal Resolution process (jointly or in their respective roles) on:

4.10.1.1 the definition of Sexual Harassment;

4.10.1.2 the scope of the University's Title IX policy and procedures as it applies to the University's education programs and activities;

4.10.1.3 reporting, confidentiality, and privacy requirements;

4.10.1.4 definitions of all prohibited conduct under Policy 154 and how to apply the definition of Consent consistently, impartially, and in accordance with Policy 154;

- 4.10.1.5 how to conduct an investigation;
 - 4.10.1.6 the University's Grievance Process including live hearing, appeal, and the Informal Resolution process;
 - 4.10.1.7 how to uphold fairness, equity, and due process;
 - 4.10.1.8 how to determine appropriate Sanctions; and,
 - 4.10.1.9 how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias, including implicit bias.
- 4.10.2 Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Sex-Based Discrimination, Sexual Harassment, and Retaliation.
- 4.10.3 The University will ensure Hearing Officers and Hearing Panelists are trained on how to determine 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, on evidentiary standards, and on live hearing procedures.
- 4.10.4 The University will ensure that investigators are trained in how to investigate thoroughly, reliably, and impartially, and on issues of relevance, in order to create an investigative report that fairly summarizes relevant evidence.
- 4.10.5 The University will provide training to the Hearing Officer(s) and Hearing Panelists, on all technology to be used in live hearings.
- 4.10.6 All materials used to train Title IX Coordinators, investigators, Hearing Officers, Hearing Panelists, Sanction Evaluators, Appeal Examiners, and any person who facilitates an Informal Resolution process must be made publicly available on the University's website.

4.11 Recordkeeping

- 4.11.1 The Office of Equity Compliance and Title IX will maintain the following records for a period of seven (7) years:
 - 4.11.1.1 Each Sex-Based Discrimination, Sexual Harassment, and/or Retaliation investigation including any Written Determination regarding responsibility, any audio, audiovisual recording, or

transcript required by Policy 154, any Sanction(s) imposed on a Respondent, and any remedies provided to a Complainant designed to restore or preserve equal access to the University's education program or activity;

4.11.1.2 Any appeal and the result;

4.11.1.3 Any Informal Resolution and the result; and,

4.11.1.4 All materials used to train Title IX Coordinators, investigators, Hearing Officers, Hearing Panelists, Sanction Evaluators, Appeal Examiners and any person who facilitates any Informal Resolution process.

4.11.2 For each report to the Title IX Coordinator of Sex-Based Discrimination, Sexual Harassment, or Retaliation in a University education program or activity against a person in the United States, the Office of Equity Compliance and Title IX must create, and maintain for a period of seven (7) years, a record of any action, including any Supportive Measures, taken in response to a report or Formal Complaint of Sex-Based Discrimination, Sexual Harassment, or Retaliation. In each instance, the Office of Equity Compliance and Title IX must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a Complainant with Supportive Measures, then the Office of Equity Compliance and Title IX must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

V. References

5.1 Americans with Disabilities Act (ADA) (as amended)

5.2 Campus Sexual Violence Elimination Act (Campus SaVE) – Reauthorization of the Violence against Women Act of 2013 (VAWA)

5.3 Family Educational Rights and Privacy Act (FERPA)

5.4 Health Insurance Portability and Accountability Act (HIPAA)

5.5 Jean Clery Disclosure of Campus Security Policy and Campus Crime

Statistics Act (Clery Act)

- 5.6 Title VII of the Civil Rights Act of 1964 (Title VII)
- 5.7 Title IX of the Higher Education Amendments Act of 1972 (Title IX)
- 5.8 Utah Code § 53B-27-101 et seq. Campus Advocate Confidentiality Amendments
- 5.9 Utah Code § 53B-28-302 Code of Conduct Violation-Report of Sexual Violence
- 5.10 Utah Code § 53B-28-304 Criminal Retaliation Against a Victim or Witness
- 5.11 Utah Code § 63G-2 Government Records Access and Management Act (GRAMA)
- 5.12 Utah Code § 63G-7-301 Waivers of Immunity-Exceptions
- 5.13 Utah Code § 76-5-404.1 Sexual Abuse of a Child
- 5.14 Utah Code § 77-36 Cohabitant Abuse Procedures Act
- 5.15 Utah Code § 77-38 Rights of Crime Victims Act
- 5.16 Utah State Board of Higher Education Policy R256 Student Disciplinary Process
- 5.17 Utah State Board of Higher Education Policy R842 Restrictions on Faculty/Staff Relationships with Students
- 5.18 University Policy 552: Student Rights and Responsibilities
- 5.19 University Policy 164: Non-Sex Based, Non-Discrimination, and Anti-Harassment

VI. Procedures

- 6.1 Initial Review of Reports under Policy 154
 - 6.1.1 University Response upon receiving a report of Sex-Based Discrimination, Sexual Harassment or Retaliation: The Title IX Coordinator shall promptly contact the Complainant to (1) discuss the availability of Supportive Measures, including counseling and health care; (2) inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal

Complaint; (3) consider the Complainant's wishes with respect to Supportive Measures and with respect to filing a Formal Complaint; (4) if appropriate, provide the Complainant information on pursuing criminal charges; (5) explain the importance of preserving potential evidence, including all text and/or email communications which may be related to the incident, and if the incident involves a possible criminal offense not disturbing the crime scene; and (6) explain the process for filing a Formal Complaint as well as the option for Informal Resolution. The Title IX Coordinator will determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and Grievance Process.

- 6.1.2 If supportive and remedial response is preferred, the Title IX Coordinator will communicate with the Complainant to identify Complainant's wishes, and the Title IX Coordinator will then seek to facilitate implementation. No formal Grievance Process is initiated, though the Complainant may elect to initiate one later, if desired.
- 6.1.3 If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the reported concern is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution. A Formal Complaint must be filed in order to utilize the Informal Resolution process or formal Grievance Process.
- 6.1.4 If a formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - 6.1.4.1 If it does, the Title IX Coordinator will initiate the Grievance Process and the investigation, directing the investigation to address: an incident, and/or a pattern of alleged misconduct, and/or a culture/climate issue, based on the nature of the Formal Complaint.
 - 6.1.4.2 If it does not fall within the scope of Title IX, the Title IX Coordinator determines that Title IX does not apply (and will "dismiss" the Formal Complaint), assesses which other University policies may apply, which resolution process may be applicable, and will refer the matter accordingly. Dismissing a complaint under Title IX/Policy 154 is procedural, and does not limit the University's authority to

address a complaint/reported concern with an appropriate process and remedy, or under a different University policy and process.

- 6.1.5 **Immediate Removal:** The Title IX Coordinator may use sole discretion, or confer with the University's Crisis Assessment Risk and Evaluation (CARE) team, to determine whether a Respondent must be removed from the University's education programs or activities on an emergency basis as an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of misconduct. The Title IX Coordinator may take immediate action when necessary to secure the physical health and/or safety of a Complainant. At the time that an Immediate Removal is imposed, the Title IX Coordinator will inform the Respondent of the Immediate Removal action and the reason(s) for the action, and inform the Respondent that a meeting will take place to review the Immediate Removal.
 - 6.1.5.1 **Immediate Removal Meeting Procedures:** As soon as practical, but no later than ten (10) University Business Days from the time the Immediate Removal is imposed, a meeting will take place between the Respondent, the Title IX Coordinator, and a University police officer to review the Immediate Removal. The Respondent will have an opportunity at the meeting to demonstrate to the Title IX Coordinator and the University police officer why the Immediate Removal should not continue. An Advisor for the Respondent may accompany the Respondent to this meeting as a support person, but the Advisor may not actively participate in the meeting.
 - 6.1.5.2 Based on reasonable evaluation of the information presented by the Respondent at the meeting, the Title IX Coordinator will notify the Respondent within 48 hours of the meeting of the Title IX Coordinator's decision to remove, sustain, or modify the Immediate Removal.
- 6.1.6 **Non-Student Employee Leave:** A non-student employee Respondent may be placed on paid administrative leave in accordance with Policy 154.
- 6.1.7 The Title IX Coordinator must further assess the reported conduct for any *Clery* obligations, including issuance of a timely warning, and report to University Police or local law enforcement when

necessary.

6.2 Grievance Process General Principles

- 6.2.1 Complainants, Respondents, and witnesses will be treated equitably and with respect throughout the grievance proceedings.
- 6.2.2 The Title IX Coordinator, investigator, Hearing Officer, Hearing Panelist, Sanction Evaluator, and the Appeal Examiner will evaluate all relevant evidence, both inculpatory and exculpatory, objectively and determine credulity without respect to a person's status as Complainant, Respondent, or witness.
- 6.2.3 Any deadlines or timeframe provided in Policy 154 may be extended by the Title IX Coordinator for good cause with written notice to the parties citing the reason(s) for the extension. Good cause may include considerations such as the absence of a Party, a Party's Advisor, or witness; concurrent law enforcement activity or investigation; or the need for language assistance or accommodation of disabilities.
 - 6.2.3.1 A Party may also submit a request for a temporary delay or limited extension to the Title IX Coordinator. Any such request should include the reason(s) for the request. If the request is reasonable under the circumstances, the Title IX Coordinator may grant the request in whole or part. If no good cause exists, the Title IX Coordinator may deny the request in writing.
- 6.2.4 Any person designated as a Title IX Coordinator, investigator, Hearing Officer, Hearing Panelist, Sanction Evaluator, or Appeal Examiner shall be free of conflict of interest or bias for or against Complainants or Respondents generally or individually. All potential instances of bias or a conflict of interest must be promptly reported to the Title IX Coordinator. The Title IX Coordinator will determine whether actual bias or an actual conflict of interest exists by consulting with appropriate University representatives. If the Title IX Coordinator is the individual alleged to have bias or a conflict of interest, then a representative from Human Resources will determine whether any bias or conflict of interest exists.
- 6.2.5 Respondents, Complainants, and witnesses shall not knowingly make materially false statements or knowingly submit materially false information during the Grievance Process. However, a

determination regarding responsibility alone is not sufficient to conclude that any individual proffered a material falsehood.

6.2.6 Complainants and Respondents shall have Supportive Measures made available and be given the opportunity to request modifications necessary for physical and/or emotional safety.

6.2.7 Formal Complaint Requirements and Review by Title IX Coordinator

6.2.7.1 A Formal Complaint shall be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information posted for the Title IX Coordinator in section 4.8.3 above.

6.2.7.2 The Formal Complaint shall be filed, in writing, may not be anonymously filed, and must contain:

6.2.7.2.1 The factual allegations of Sex-Based Discrimination, Sexual Harassment, or Retaliation including:

6.2.7.2.1.1 Complainant's connection to the University (e.g. student, employee, or other person seeking to participate in a program or activity of the University);

6.2.7.2.1.2 A concise statement describing the incident;

6.2.7.2.1.3 When and where the misconduct occurred;

6.2.7.2.1.4 The identity (if known) of the person against whom the Formal Complaint is being made;

6.2.7.2.1.5 Why the Complainant believes it violates Policy 154; and

6.2.7.2.2 Complainant's signature (electronic or handwritten) or other designation that the Complainant is the individual choosing to file a Formal Complaint; or

6.2.7.2.3 Be signed by the Title IX Coordinator.

6.2.7.3 By filing a Formal Complaint, the Complainant is giving Consent for the Title IX Coordinator, designated deputy coordinators, and/or investigators to discuss the information provided with other persons who may have relevant factual

knowledge of the circumstances of the Formal Complaint, and is authorizing the collection and examination of all records and other documentation relevant to the circumstances of the Formal Complaint.

6.2.7.4 When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party under Policy 154, and the Title IX Coordinator will comply with the requirements of impartiality under Policy 154. The Title IX Coordinator may initiate a Formal Complaint if the Title IX Coordinator determines the factual allegations, if proven true, present a risk of substantial harm to a member of the University Community and one of the following aggravating factors is alleged:

6.2.7.4.1 Use of threat;

6.2.7.4.2 Use of a weapon;

6.2.7.4.3 Use of violence;

6.2.7.4.4 A continued pattern of behavior; and/or

6.2.7.4.5 Predatory behavior.

6.2.7.5 A Formal Complaint will be initially reviewed by the Title IX Coordinator. From the information contained in the Formal Complaint, the Title IX Coordinator will determine whether the allegations contained in the Formal Complaint fall within the jurisdiction of Policy 154.

6.2.7.6 If the Title IX Coordinator determines that the Formal Complaint falls within the jurisdiction of Policy 154, the Title IX Coordinator will prepare a Notice of Investigation as defined in Policy 154.

6.2.7.7 The Complainant shall be instructed by the Title IX Coordinator to provide and preserve all corroborating or potentially relevant evidence in any format, and to provide a list of potential witness names and contact information if available.

6.2.7.8 The University will provide written notice (with sufficient time for the Party to prepare to participate) of the date, time, location, participants, and purpose of all hearings,

investigative interviews, or other meetings.

6.2.8 Consolidation of Formal Complaints

6.2.8.1 The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Discrimination, sexual harassment, or retaliation arise out of the same facts or circumstances.

6.2.9 Dismissal of Formal Complaints

6.2.9.1 Required Dismissal: The University must investigate all allegations in a Formal Complaint unless the conduct alleged in the Formal Complaint:

6.2.9.1.1 Would not constitute Sex-Based Discrimination, Sexual Harassment, or Retaliation as defined in Policy 154 even if proven;

6.2.9.1.2 Did not occur in the University's education programs, or activities; or

6.2.9.1.3 Did not occur in the United States.

6.2.9.2 If the alleged misconduct does not fall within the criteria outlined in section 6.2.7 *et seq*, the University must dismiss the Formal Complaint with regard to that conduct for the purposes of Title IX.

6.2.9.3 Permitted Dismissal: The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

6.2.9.3.1 A Complainant notifies the Title IX Coordinator in writing that the Complainant wants to withdraw the Formal Complaint or any allegations therein;

6.2.9.3.2 The Complainant is no longer participating or attempting to participate as a member of the University Community;

6.2.9.3.3 The Respondent is no longer affiliated with the University; or

6.2.9.3.4 Specific circumstances prevent the University from gathering evidence sufficient to reach a determination concerning the Formal Complaint.

6.2.9.4 Upon a Required or Permitted Dismissal of the Formal Complaint, the Title IX Coordinator shall promptly (within five (5) University Business Days) send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the parties.

6.2.9.5 If a Complaint is dismissed under Required Dismissal or Permitted Dismissal, the allegations may be addressed by, and action may be taken under, another University policy, process, procedure, or rule.

6.3 Informal Resolution

6.3.1 At any time prior to reaching a determination regarding responsibility, the University may facilitate an Informal Resolution process, such as mediation or remedies-based resolution, that does not involve a full investigation and adjudication. The decision to enter into an Informal Resolution process is a voluntary option for the parties, and neither Party is required to enter into such.

6.3.2 Informal Resolution can include two different approaches: when the parties agree to resolve the matter through an Alternate Resolution mechanism (including mediation, restorative practices, etc.); or when the Respondent accepts responsibility for violating Policy 154 and desires to accept a Sanction(s) and end the resolution process.

6.3.3 To initiate an Informal Resolution process, a Complainant needs to submit a Formal Complaint as defined above. If a Respondent wishes to initiate an Informal Resolution process, the Respondent should contact the Title IX Coordinator to so indicate.

6.3.4 It is not necessary to pursue an Informal Resolution process first in order to pursue a formal Grievance Process, and any Party participating in Informal Resolution can stop the process at any time and begin or resume the formal Grievance Process.

6.3.5 Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any Sanctions or measures that may result from participating in such a process, including information regarding any records that

will be maintained or shared by the University.

6.3.6 The University shall not offer or facilitate an Informal Resolution process to resolve an allegation that an employee sexually harassed a student.

6.3.7 The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through an Informal Resolution process before proceeding and will not pressure the parties to participate in an Informal Resolution process.

6.3.8 Alternate Resolution

6.3.8.1 The Complainant and the Respondent must Consent in writing to the use of Alternate Resolution.

6.3.8.2 The Title IX Coordinator must approve the use of Alternate Resolution. The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution may be most successful for all parties: the parties' amenability to Alternate Resolution; likelihood of potential resolution, taking into account any power dynamics between the parties; the parties' motivation to participate; civility of the parties; cleared violence risk assessment/ongoing risk analysis; disciplinary history; whether an emergency removal is needed; skill of the Mutually Agreed- Upon Resolution Facilitator with this type of complaint; complaint complexity; emotional investment/intelligence of the parties; rationality of the parties; goals of the parties; adequate resources to invest in Mutually Agreed-Upon Resolution (time, staff, etc.)

6.3.8.3 The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by this resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

6.3.9 Respondent Accepts Responsibility for Alleged Violations

6.3.9.1 The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution

process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

- 6.3.9.2 If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, Sanctions, and/or remedies. If so, the Title IX Coordinator shall implement the accepted finding(s) that the Respondent is in violation of University policy. The Title IX Coordinator shall implement the agreed-upon Sanction(s) and/or remedy(ies), in coordination with any other appropriate administrator(s), as necessary.
- 6.3.9.3 This resolution under section 6.3.9 is not subject to appeal once all parties indicate their written agreement to all terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process may resume at the same point where it was paused.
- 6.3.9.4 When a resolution is accomplished, the appropriate Sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

6.4 Investigation

- 6.4.1 Every University Community Members must fully cooperate with the University's procedures and processes under Policy 154. At a minimum, the University's Grievance Process may proceed to conclusion even in the absence of a Party's participation. In some cases, a refusal to cooperate by a University Community Member could result in discipline.
- 6.4.2 After the Title IX Coordinator determines all criteria for a Formal Complaint exist, the University will conduct a thorough, impartial investigation by interviewing witnesses, collecting documentary evidence, and preparing a written report of relevant evidence. The purpose of the investigation is to gather all relevant evidence. The burden of gathering evidence rests on the University and not on the parties. The University reserves the right to retain an external investigator to conduct the investigation following Policy 154. The

University strives to complete all investigations within forty-five (45) University Business Days; however, an investigation may take longer depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, and/or other circumstances. The process proceeds as follows:

- 6.4.2.1 The Title IX Coordinator will assign the Formal Complaint to an internal or external investigator who has no apparent conflict of interest. If the Title IX Coordinator determines an assigned investigator has a conflict of interest or is otherwise unavailable, the Title IX Coordinator may assign the Formal Complaint to an external or backup investigator.
- 6.4.3 Upon initiating an investigation, the University will provide the parties with a Notice of Investigation, with copies of Policy 154 and the Formal Complaint attached or enclosed. The Notice of Investigation shall include:
 - 6.4.3.1 A meaningful summary of the allegations;
 - 6.4.3.2 The identity of the parties involved (if known);
 - 6.4.3.3 The precise misconduct being alleged;
 - 6.4.3.4 The date and location of the alleged incident(s) (if known);
 - 6.4.3.5 The specific policy sections implicated;
 - 6.4.3.6 A description of the applicable procedures;
 - 6.4.3.7 A statement of the potential Sanctions/responsive actions that could result;
 - 6.4.3.8 A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
 - 6.4.3.9 A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
 - 6.4.3.10 A statement about the University's policy on Retaliation;

- 6.4.3.11 Information about the privacy of the process;
 - 6.4.3.12 Information on the right for each Party to have an Advisor of their choosing and suggestions for a way to identify an Advisor;
 - 6.4.3.13 A statement informing the parties that Policy 154 prohibits knowingly false statements, including knowingly submitting false information during the resolution process;
 - 6.4.3.14 A link to the University's VAWA brochure;
 - 6.4.3.15 The name of the investigator(s);
 - 6.4.3.16 Instructions to notify the Title IX Coordinator upon receipt of the Notice of Investigation of any perceived conflict of interest or bias that the assigned investigator(s) may have; and
 - 6.4.3.17 An instruction to preserve any evidence that may be related to the allegations.
- 6.4.4 Amendments and updates to the Notice of Investigation may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.
- 6.4.5 The Notice of Investigation will be written and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.
- 6.4.5.1 An investigator may conduct all, or any part of, an investigation by in-person communication or the use of audio or virtual technology.
 - 6.4.5.2 The University shall 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 University obtains the Party's voluntary, written Consent to do so for the Grievance under Policy 154.

- 6.4.5.3 Advisors and witnesses will be instructed by the investigator(s) that the University expects them to maintain the privacy of the information learned due to their participation in the process. This information may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University.
- 6.4.6 The University presumes the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.
- 6.4.7 The University will not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence to the investigator(s). This section notwithstanding, Retaliation is prohibited. Any attempt to alter or prevent a witness or Party from testifying is a form of prohibited Retaliation. The parties may be directed to cease communications with one another (i.e., a "no contact order"). State laws protecting against defamation and tortious invasion of privacy still apply.
- 6.4.8 The University will provide an equal opportunity for the parties to identify relevant witnesses for the investigator to contact, including fact and expert witnesses, and to provide other inculpatory and exculpatory evidence to the investigator.
- 6.4.9 An investigator will not question the Complainant, or otherwise seek evidence, regarding the Complainant's sexual predisposition or prior sexual conduct with anyone other than a Respondent for purposes of determining Consent.
- 6.4.10 Each Party may choose to be accompanied by an Advisor of the Party's choice, who may be an attorney (at the Party's own expense), to any related meeting or proceeding during the investigation. The Advisor may not disrupt a meeting or other proceeding or speak on behalf of the Party. The Advisor's role outside of the live hearing is limited to listening and quietly conferring with the Party. If an Advisor is disruptive, the Advisor may be excluded from the meeting and future meetings or proceedings.

- 6.4.11 At any time before or during the investigation, an investigator may recommend that the University provide Supportive Measures to a Party or witness. Any individual's intentional interference with Supportive Measures may be considered Retaliation and a separate violation of Policy 154.
- 6.4.12 If either Party fails to participate in the investigation, the investigator may make factual findings without the response of that Party, or the University may dismiss the case.
- 6.4.13 The University will provide each Party an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including all inculpatory or exculpatory evidence, so that each Party can meaningfully respond to the evidence prior to the conclusion of the investigation.
- 6.4.14 If, at any point during the investigation, the University determines a need to investigate allegations not included in the Formal Complaint, the University must provide notice of additional allegations to the parties, if known.
- 6.4.15 Upon conclusion of the investigative fact-finding, the investigator shall prepare a Draft Investigative Report that summarizes the Complainant's allegations and Respondent's responses, summarizes the relevant evidence and the material witnesses supporting or opposing the allegation(s), and includes preliminary factual findings.
- 6.4.16 Before the Draft Investigative Report is finalized as the Final Investigative Report, the investigator(s) will issue a written Notice of Opportunity to Review Draft Investigative Report and Evidence, attaching a copy of the Draft Investigative Report in a secure electronic format or hard copy format, which notifies the parties and their Advisors of their equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination of responsibility, whether inculpatory or exculpatory.
- 6.4.17 The parties may submit a written response to the investigator via email within ten (10) University Business Days of the date of the Notice of Opportunity to Review Draft Investigative Report and Evidence. This is the parties' final opportunity to submit any

additional information or witnesses and to challenge the investigator(s) for bias during the investigation. In the absence of good cause, an investigator shall not consider information discoverable through the exercise of due diligence that is not provided to the investigator(s) at this juncture. The investigator(s) shall consider any written response, information, or evidence provided by the parties.

6.4.18 Within seven (7) University Business Days of the expiration of the parties' written response period, the investigator(s) will prepare a proposed Final Investigative Report that contains a statement of the factual allegations and the positions/responses of the parties; fairly summarizes all of the relevant evidence; contains the names of material witnesses; and describes the procedural steps taken during the investigation. If an investigation involves multiple Complainants, multiple respondents, or both, the investigator(s) may prepare a single Final Investigative Report.

6.4.19 Within three (3) University Business Days of the investigator's completion of the proposed Final Investigative Report, the Title IX Coordinator or designee shall review the report to ensure compliance with Policy 154.

6.4.20 Once the Final Investigative Report is approved by the Title IX Coordinator or designee, it shall be provided by the investigator to the parties and their Advisors, if any, in a secure electronic transmission or hard copy format, at least fifteen (15) University Business Days prior to a live hearing, and simultaneously submitted to the Title IX Coordinator.

6.5 Pre-Hearing Disclosures, Impact Statement and Pre-Hearing Conference:

6.5.1 Required Disclosure of Witness and Expert Testimony: At least five (5) University Business Days before the hearing date, the Complainant(s), the Respondent(s), and the Title IX Coordinator on behalf of the University, must provide the Hearing Officer a list of documents and witnesses, including expert witnesses, intended to be presented at the live hearing. The Hearing Officer will then provide via email the respective document and witness lists to the Title IX Coordinator and the parties on the following University Business Day.

6.5.1.1 Unless otherwise stipulated, if an expert witness is listed, the witness list must be accompanied by a written report

prepared and signed by the expert witness containing the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; and the expert qualifications of the witness.

- 6.5.1.2 The Hearing Officer will review, resolve, and make a written record of the decision on any challenge posed by a Party of an investigator's bias during the investigation process prior to the commencement of a live hearing at a pre-hearing conference.
 - 6.5.1.3 The parties and the University may submit, at or prior to the pre-hearing conference, a written statement containing the substantive relevant testimony of that Party or a witness. This statement must be approved by the Hearing Officer as to relevancy prior to being presented at the live hearing as per section 6.6.3.3.
- 6.5.2 After the issuance of the Final Investigative Report and at least three (3) University Business Days prior to the live hearing, a Party may submit an impact statement to the Title IX Coordinator. The impact statement is not evidence. Impact statements may be considered at the sanctioning phase, if a policy violation is found by the Hearing Panel.
- 6.5.2.1 The Title IX Coordinator will ensure that each Party has an opportunity to review any impact statement submitted by the other Party(ies) by emailing the impact statement received from a Party to the other Party on the University Business Day following receipt of the impact statement.
- 6.5.3 Each Party, after the issuance of the Final Investigative Report and at least five (5) University Business Days prior to the live hearing, must submit a list of initial questions which the Party seeks to have posed at the live hearing. This does not preclude additional questions being posed at the live hearing on behalf of a Party by the Party's Advisor.
- 6.5.4 A pre-hearing conference shall be coordinated by the Title IX Coordinator and chaired by the Hearing Officer. Parties and Advisors are encouraged, but not required, to be present. A pre-

hearing conference may be scheduled separately for each Party. The pre-hearing conference shall be conducted at least two (2) University Business Days prior to a scheduled live hearing and at least ten (10) University Business Days after the issuance of the Final Investigative Report being sent to the parties and Advisors, if applicable.

6.5.4.1 The purpose of the pre-hearing conference shall be to:

- 6.5.4.1.1 Identify the Hearing Panelists and address any objections to members of the panel;
- 6.5.4.1.2 Address evidentiary issues or questions to be posed at the hearing (i.e. numbers of witnesses, use of documents, expected length of hearing, etc.);
- 6.5.4.1.3 Ensure parties will have Advisors available to conduct cross examination and that the Advisor is familiar with the hearing process under Policy 154; and
- 6.5.4.1.4 Provide a forum to address any questions related to the Live Hearing process and procedures.

6.6 Live Hearing

6.6.1 Notice and Assignment of Hearing Officer and Hearing Panel:

- 6.6.1.1 The Title IX Coordinator will schedule a live hearing to occur no sooner than ten (10) University Business Days after the issuance of the Final Investigative Report; assign a Hearing Officer and Hearing Panel; and issue to the parties and the parties' Advisors, in either an electronic or hard copy format, a Notice of Hearing containing dates, deadlines, and/or requirements for the orderly administration of the live hearing as established by the Hearing Officer. The Hearing Officer and the Hearing Panelists cannot be the same person(s) as the Title IX Coordinator or the investigator(s) and shall be selected from trained Hearing Officers and Hearing Panelists.
- 6.6.1.2 The Notice of Hearing will contain a statement informing the parties that the University must, upon either Party's request, provide for a live hearing where the parties are located in separate rooms with technology enabling the Hearing Officer, the Hearing Panelists and the parties to simultaneously see

and hear the Party or witness answering questions.

- 6.6.1.3 If a Party raises an issue of bias or conflict of interest of an Investigator or Hearing Officer at the hearing, the Hearing Officer may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Hearing Officer should not permit irrelevant questions that probe for bias.
- 6.6.1.4 Record of Hearing: The University will record the hearing and make a copy of the recording or transcript of the hearing available to the parties for inspection and review. The official recording will be the sole property of the University, and the parties are prohibited from disseminating or making copies of the recording or transcript. The deliberation of the Hearing Panel will not be recorded. The recording of the live hearing will be preserved for seven (7) years from the date of the issuance of the Written Determination.
- 6.6.1.5 Location of Hearing: The hearing shall be conducted with all parties physically present in the same geographical location or, upon request by either Party or the Hearing Officer, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other.

6.6.2 Advisors

- 6.6.2.1 Notice of Right to Advisor: Each Party may be accompanied to the live hearing by an Advisor, who may be, but is not required to be, an attorney. Even if an attorney is selected by a Party to serve as an Advisor, all notices related to the live hearing and appeal process will be directed to and sent to the Party, not the attorney, and it is the Party's responsibility to provide copies to the Party's Advisor.
 - 6.6.2.1.1 A Party shall notify the Title IX Coordinator at least five (5) University Business Days prior to the date of the hearing if the Party intends to have an Advisor of the Party's choice at the hearing. If a Party does not so notify the Title IX Coordinator, the University will have at the hearing an Advisor to conduct cross-examination on behalf of that Party, without fee or

charge to the Party.

- 6.6.2.2 Advisor Expectations: The University will not limit the choice or presence of an Advisor, but the Hearing Officer may limit an Advisor's participation if the Advisor becomes unreasonably disruptive to the proceedings.
- 6.6.2.3 An Advisor may not present evidence on a Party's behalf, present argument, testify, disrupt, or otherwise obstruct the live hearing. An Advisor's role, besides privately consulting with a Party, is exclusively to ask on behalf of a Party all relevant questions and follow-up questions of the other Party and any witnesses, including questions challenging credibility. Cross-examination at the live hearing must be conducted directly, verbally, and in real time by a Party's Advisor and never by a Party personally. Only questions relevant to determining the veracity of the allegations will be allowed.
- 6.6.2.4 A Party's Advisor may appear and conduct cross-examination for a Party even if the Party does not appear. Additionally, where one Party does not appear and that Party's Advisor of choice does not appear, a University-provided Advisor must still cross-examine the other, appearing Party "on behalf of" the non-appearing Party, resulting in consideration of the appearing Party's statements but not the non-appearing Party's statements (without any inference being drawn based on the non-appearance).
- 6.6.2.5 If a Party's Advisor of choice refuses to comply with the Rules of Decorum set forth in Section 6.6.4, the University may provide that Party with a University-appointed Advisor to conduct cross-examination on behalf of that Party at the live hearing.

6.6.3 Live Hearing Procedures

- 6.6.3.1 The Hearing Officer explains the hearing procedures and introduces the participants.
- 6.6.3.2 An investigator will then present a summary of the Final Investigative Report, including items that are contested and those that are not. The investigator is subject to questioning by the Hearing Officer and Hearing Panelists and the parties'

Advisors. The investigator(s) will be present during the entire hearing process, but not during deliberations.

- 6.6.3.3 Prior to each party/witness being questioned, the Hearing Officer will allow a party/witness to read a pre-approved as to relevancy written statement of the party/witness's substantive testimony.
- 6.6.3.4 After the investigator presents a summary of the Final Investigative Report and is questioned, the Hearing Officer will first ask questions of the Complainant; the Hearing Officer will then permit the Complainant's Advisor to ask further questions of the Complainant, and the Hearing Officer will then permit the Respondent's Advisor to ask cross-examination questions of the Complainant. The Hearing Officer will then ask questions of the Respondent; the Hearing Officer will then permit the Respondent's Advisor to ask further questions of the Respondent; the Hearing Officer will then permit the Complainant's Advisor to ask cross-examination questions of the Respondent. Then, in the order determined by the Hearing Officer, additional witnesses will be questioned by the Hearing Officer. Then the Complainant's Advisor will be permitted by the Hearing Officer to ask questions and then Respondent's Advisor will be permitted by the Hearing Officer to ask questions of the witness. After each party/witness is questioned in this manner, the Hearing Officer will briefly adjourn and inquire of the other Hearing Panelist whether they have any additional questions which they would like to have posed to the party/witness. The Hearing Officer will then reconvene the hearing and ask any additional follow up questions, if any, from the Hearing Panel.
- 6.6.3.5 Only relevant questions will be permitted, and the Hearing Officer shall determine relevance. All questions are subject to a relevance determination by the Hearing Officer prior to a Party or witness responding to the question. An Advisor, while remaining seated during questioning, will pose each proposed question orally. The proceeding will then pause, to allow the Hearing Officer to consider it, and the Hearing Officer will determine whether the question will be permitted, disallowed, or must be rephrased prior to the Hearing Officer instructing the Party or witness to proceed with responding.

6.6.3.5.1 Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) offered to prove that someone other than the Respondent committed the conduct alleged in the Formal Complaint; or (2) they concern specific incidents of the Complainant's prior sexual behavior with Respondent and are offered to prove Consent.

6.6.3.6 The Hearing Officer will have sole authority to determine whether a question is relevant and whether it will be permitted. The Hearing Officer may explore arguments regarding relevance with the Advisors, if the Hearing Officer so chooses. The Hearing Officer will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

6.6.3.7 The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Officer's determinations of relevancy are final. The Hearing Officer may consult with legal counsel on any questions of relevancy. The Hearing Officer may ask an Advisor to explain why a question is or is not relevant, but the Hearing Officer will not allow explanation from an Advisor on relevance after the Hearing Officer has ruled on a question's relevance.

6.6.3.8 The Hearing Officer may exclude expert or other testimony that the Hearing Officer deems to be irrelevant.

6.6.4 Rules of Decorum and Enforcement of Compliance

6.6.4.1 The parties, the parties' Advisors, and all other participants in the live hearing must comply with the following Rules of Decorum:

6.6.4.1.1 Treat all other hearing participants respectfully and in a non-abusive manner.

6.6.4.1.2 Ask questions in a respectful, non-confrontational manner. Aggressive or abusive questioning of any Party

or witness is not permitted.

6.6.4.1.3 All requests to address the Hearing Panel shall be addressed to the Hearing Officer.

6.6.4.1.4 The Hearing Officer will rule on all requests, objections, and points of order.

6.6.4.1.5 The Hearing Officer's ruling(s) shall be final and all participants shall abide thereby.

6.6.4.1.6 Rules of common courtesy and decency shall be observed at all times.

6.6.4.1.7 An Advisor may request clarification of a procedural matter or object on the basis of procedure at any time by addressing the Hearing Officer after recognition by the Hearing Officer.

6.6.4.2 If a Party's Advisor of choice refuses to comply with the University's Rules of Decorum (for example, yelling at or arguing with the other Party), the Hearing Officer may exclude the Advisor from the hearing and utilize a University-appointed Advisor to the Party. Similarly, if an Advisor that the University provides refuses to comply with the Rules of Decorum, the University may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

6.6.4.3 The University (including any official acting on behalf of the University, such as the Hearing Officer) has the right at all times to determine what constitutes appropriate behavior on the part of an Advisor or other participant in the hearing and to take appropriate steps to ensure compliance with the Rules of Decorum.

6.6.5 Role of University at Live Hearing

6.6.5.1 The University is not a Party to the live hearing, but the University, not the parties, bears the burden of presenting the evidence in the Final Investigation Report.

6.6.5.2 The University will remain objective and impartial throughout the Grievance Process, including the presentation of the Final Investigation Report at the live hearing.

6.6.6 Hearing Panel Deliberations

- 6.6.6.1 Upon completion of the live hearing, the Hearing Panel shall deliberate in closed session with only the Hearing Officer and Hearing Panelists present.
- 6.6.6.2 After deliberating, the Hearing Panel shall make a finding based on the Preponderance of the Evidence with respect to each alleged policy violation. Each finding will be one of the following: “responsible,” “not responsible,” or “insufficient evidence.” The Hearing Panel’s findings are reached on a simple majority vote.
- 6.6.6.3 After deliberation, the Hearing Panel will complete a Summary of Hearing panel findings which will reflect the Hearing Panel’s decision as to each alleged policy violation. The Hearing Panel must submit the Summary of Hearing Panel Findings to the Title IX Coordinator within two (2) University Business Days of the conclusion of the live hearing. In the event that the Summary of Hearing Panel Findings reflects any violation of Policy 154, within two (2) University Business Days the Title IX Coordinator will submit the Summary of the Hearing Panel Findings, the impact statements, if any, and the Final Investigative Report to the appropriate Sanction Evaluator.
 - 6.6.6.3.1 In the event the Summary of Hearing Panel Findings does not reflect any finding of responsibility for a violation of Policy 154, the Title IX Coordinator will instruct the Hearing Panel to prepare and issue the Written Determination to the Title IX Coordinator within twenty (20) University Business Days as outlined in section 6.6.7.
- 6.6.6.4 Within five (5) University Business Days of receipt of the information submitted for review, the Sanction Evaluator will review the submitted information and will make a recommendation to the Hearing Panel for the appropriate Sanction(s).
- 6.6.6.5 For Student Sanctions: In cases where the Respondent is a student, the Dean of Students or designee will act as the Sanction Evaluator and will consult with and recommend to the Hearing Panel what, if any, disciplinary action is

warranted for the Respondent.

- 6.6.6.6 For Employee Discipline: The Executive Director of Human Resources or designee will act as the Sanction Evaluator and will consult with and recommend to the Hearing Panel what, if any, disciplinary action is warranted for the Respondent.

6.6.7 Written Determination

- 6.6.7.1 The Hearing Officer or Hearing Panel will provide the Written Determination to the Title IX Coordinator within twenty (20) University Business Days after the live hearing concludes. The Written Determination must include the following:

- 6.6.7.1.1 Identification of the allegations potentially constituting Sex-Based Discrimination, Sexual Harassment and/or Retaliation as defined in Policy 154.

- 6.6.7.1.2 A description of the procedural steps taken from the receipt of the Formal Complaint through the Written Determination, including any notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held.

- 6.6.7.1.3 Findings of fact supporting the Written Determination.

- 6.6.7.1.4 Conclusions regarding the application of Policy 154 to the facts.

- 6.6.7.1.5 A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, and disciplinary Sanctions the University imposes on the Respondent, and whether the University shall provide remedies designed to restore and preserve equal access to the University's education program and activity to the Complainant.

- 6.6.7.1.6 The University's procedures and permissible bases for the Complainant and Respondent to appeal.

- 6.6.7.2 The Hearing Officer shall issue the Written Determination to the Title IX Coordinator and the parties simultaneously via email.

6.6.7.3 The Written Determination regarding responsibility and Sanctions becomes final when the Appeals Outcome is final or the time to appeal has passed without an appeal being filed.

6.7 Appeals

6.7.1 Either Party may appeal the Written Determination. The Appeal Outcome is final.

6.7.2 A Party may appeal the finding of responsibility or a Sanction for any of the following reasons:

6.7.2.1 A procedural irregularity occurred in the investigation or hearing process that affected the outcome reflected in the Written Determination.

6.7.2.2 New evidence that was not reasonably available at the time of the issuance of the Written Determination or dismissal, which could affect either the determination of whether a violation of Policy 154 occurred or the severity of the Sanction.

6.7.2.3 The Title IX Coordinator, the investigator(s), a Hearing Panelist, or the Hearing Officer had a conflict of interest or substantiated bias that affected the outcome.

6.7.2.4 The outcome was clearly erroneous based on the facts and evidence presented to the Hearing Panel.

6.7.2.5 The Sanctions imposed are substantially disproportionate to the severity of the policy violation(s).

6.7.3 The Title IX Coordinator must receive a Party's written Notice of Appeal within ten (10) University Business Days after the issuance of the Written Determination. The Notice of Appeal must outline the ground(s) for the appeal and attach any supporting documentation.

6.7.4 Within five (5) University Business Days of the receipt of an appeal, the Title IX Coordinator will notify each Party:

6.7.4.1 That a Notice of Appeal has been filed;

6.7.4.2 An Appeal Examiner(s) has been assigned to consider the appeal;

- 6.7.4.3 Contact information for the Appeal Examiner(s);
- 6.7.4.4 That the Title IX Coordinator has confirmed that the Appeal Examiner(s) has no known conflict of interest;
- 6.7.5 Within ten (10) University business days of the Title IX Coordinator sending such notice to the parties, each Party may submit a Written Statement on Appeal to the Appeal Examiner(s) supporting or challenging the Written Determination.
- 6.7.6 The Appeal Examiner(s) may review the parties' Written Statements on Appeal, Written Determination, Final Investigation Report, and all evidence introduced at the live hearing, and the hearing recording or transcript when considering the appeal.
- 6.7.7 Within twenty (20) University Business Days, the Appeal Examiner(s) will provide to the parties the Written Decision on Appeal which may affirm or modify the Written Determination, remand the decision to the Hearing Panel, order further investigation or a new investigation, or overturn the Written Determination in whole or in part and shall include the rationale for the Appeal Examiner(s)' Decision.
- 6.7.8 The Appeal Examiner(s)' Decision on Appeal is final and concludes the University's Title IX process.
- 6.7.9 Title IX Appeal Examiner(s) Composition:
 - 6.7.9.1 A single impartial external Appeal Examiner selected by the University; or
 - 6.7.9.2 Appeal Examiner Panel Chair: One pool member will be randomly selected to chair each Appeal Examiner Panel as necessary; each can vote when selected as chair; each cannot concurrently serve as a chair or member of any other appeal board committee currently convened. Chairs may recuse themselves from any appeal board for any potential conflict of interest or potential bias.
 - 6.7.9.3 An Appeal Examiner Panel comprised of four University employees: two full-time, tenured faculty members and two full-time staff members selected jointly by the Title IX Coordinator, the Faculty Senate, and the Staff Association to serve a three (3)- year, staggered term, who will have full

voting rights.

- 6.7.9.4 Appeal Examiner Panelists: A pool of six University employees, three full-time, tenured faculty and three full-time staff will be selected jointly by the Title IX Coordinator, the Faculty Senate, and the Staff Association to serve staggered three (3) year terms as part of an appeal board pool. Three members will be randomly selected to serve on a specific board from the member pool and the chair pool, with each member having the right of recusal for any potential conflict of interest or potential bias.

VII. Addenda—N/A

Policy Owner: General Counsel

Policy Steward: Director of Equity Compliance and Title IX Coordinator

History:

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