

## STUDENT AND EMPLOYEE ANTI-HARASSMENT AND DISCRIMINATION POLICY

Paul Mitchell The School Rapid City is committed to providing a work and school environment free of unlawful harassment or discrimination. In furtherance of this commitment, all students and employees are required to take the mandatory sexual harassment and prevention training upon starting in school and again in January of each year. The school's policy prohibits harassment or discrimination based on race, religion, creed, color, national origin, ancestry, sex (including pregnancy, childbirth, or related medical conditions), military or veteran status, physical or mental disability, medical condition, marital status, age, sexual orientation, gender, gender identity or expression, genetic information, or any other basis protected by the federal, state, or local law. Additionally, in accordance with Title IX of the Education Amendments of 1972, the school prohibits discrimination based on sex, which includes sexual harassment and sexual violence, and the school has jurisdiction over the investigation of Title IX complaints.

Title IX applies to all of the school's educational programs or activities, whether such programs or activities occur on-campus or at an off-campus events. The school's anti-harassment and discrimination policy applies to all persons involved in the operation of the school and prohibits unlawful harassment and discrimination by any employee of the school, as well as students, customers or service guests, third parties, vendors, or anyone who does business with the school. It further extends to prohibit unlawful harassment by or against students.

Any employee, student, or contract worker who violates this policy will be subject to disciplinary action. To the extent a customer or service guest, vendor, or other person with whom the school does business engages in unlawful harassment or discrimination, the school will take appropriate corrective action. The grievance procedure will provide that grievances may be filed about discrimination in any academic, educational, extracurricular, athletic, or other programs operated or sponsored by, or related to, the school, whether the programs take place on the campus of the school, during a school-sponsored field trip, or during other off-campus events.

As part of the school's commitment to providing a harassment-free working and learning environment, this policy shall be disseminated to the school community through publications such as the school's catalog, the school's website, new employee orientations, student orientations, and other appropriate channels of communication. The school will provide training to key staff members to enable them to handle any allegations of discrimination and harassment, including sexual harassment or sexual violence, promptly and effectively. The school will respond quickly to all reports, and will take appropriate action to prevent, to correct, and, if necessary, to discipline behavior that violates this policy.

### **Definitions Regarding Sex Discrimination**

*Dating violence* is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

*Domestic violence* the definition of "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

*Sex discrimination* is defined as treating individuals differently on the basis of sex with regard to any aspect of services, benefits, or opportunities the school provides, such as:

- Treating a person differently in determining whether he or she satisfies any requirement or condition for the provision of an aid, benefit, or service.
- Providing different aid, benefits, or services, or providing aid, benefits, or services in a different manner.
- Denying any person an aid, benefit, or service.
- Subjecting any person to separate or different rules of behavior, sanctions, or other treatment in providing an aid, benefit, or service.
- Aiding or perpetuating discrimination against any person by providing significant assistance to any agency, organization, or person, which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees.
- Otherwise limiting any person in the enjoyment of any right, privilege, advantage, or opportunity.

*Sexual harassment* is defined as conduct on the basis of sex that satisfies one or more of the following:

- ❶ An employee of the school conditioning the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct;
- ❷ Unwelcome conduct determined by a **reasonable person** to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the recipient's **education program or activity**; or
- ❸ "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). The federal definitions identified in this paragraph are included as a part of the school's policy.

*Sexual violence* is defined as physical sexual acts engaged in without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence; dating violence; and stalking.

*Stalking* is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

### **General Definitions**

*Actual knowledge* means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.

*Campus* is defined as any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor). Education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment occurs in the school's education program or activity, against a person.

*Complainant* is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Any third-party, as well as the complainant, may report sexual harassment. While parents and guardians do not become complainants (or respondents); however, the school recognizes the legal rights of parents and guardians to act on behalf of parties (including by filing formal complaints) in Title IX matters.

*Consent* is informed, voluntary, and revocable. Consent is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity. It must be given without coercion, force, threats, or intimidation. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Once consent is withdrawn, the sexual activity must stop immediately.

*Corrective* measures are defined as actions taken to address a security breach or privacy violation, with the intent to counteract the breach or violation and reduce future risks. The school's owner and School Director are the school's designated officials who have the authority to institute corrective measures.

*Formal complaint* is defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.

*Non-campus building or property* is defined as any building or property owned or controlled by a student organization recognized by the institution; and any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution. Educational programs or activities, whether such programs or activities occur on-campus or off-campus. A school may address sexual harassment affecting its students or employees that falls outside Title IX's jurisdiction in any manner the school chooses, including providing supportive measures or pursuing discipline

*Public property* is defined as all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

*Respondent* is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

*Sexual assault* is defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual assault occurs when a physical sexual activity is engaged in without the consent of the other person or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through the use of drugs or alcohol, and taking advantage of the other person's incapacitation (including voluntary intoxication).

*Supportive measures* are defined as individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

*Rape Shield Protections* limit or prohibit the use of evidence of a victim's past sexual history to undermine that victim's credibility. The purpose of rape shield laws is to protect victims from the emotional distress of being cross-examined about their sexual history on the witness stand. Evidence regarding the victim's reputation and evidence of past sexual behavior not related to the rape accusation at hand is prohibited.

### **Prohibited Conduct**

Title IX protects students' rights to educational opportunities free from sex discrimination. This policy strictly prohibits sexual or other unlawful harassment or discrimination, as well as sexual violence, dating violence, domestic violence and stalking, as defined above. Sexual or other unlawful harassment or discrimination that includes any verbal, physical, or visual conduct, racial epithets, slurs and derogatory remarks, stereotypes, jokes, posters or cartoons based on race, religion, creed, color, national origin, ancestry, sex (including pregnancy, childbirth, or related medical conditions), military or veteran status, physical or mental disability, medical condition, marital status, age, sexual orientation, gender, gender identity or expression, genetic information, or any other basis protected by the federal, state, or local law basis if:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's education or employment; An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo);
- Submission to, or rejection of, such conduct by an individual is used as a basis for decisions concerning that individual's education or employment; or
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity. It creates a hostile or offensive environment, which means the alleged conduct is sufficiently serious to limit or deny a student or student's ability to participate or benefit from the student's education program.

Sexual harassment is conduct based on sex, whether directed toward a person of the opposite or same sex, and may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented "kidding" or "teasing," practical jokes, jokes about or displays of obscene printed or visual material, questions about sexual fantasies, preferences, or history, and physical contact, such as patting, pinching, or intentionally brushing against another person's body. Gender-based harassment, including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping are strictly prohibited, even if those acts do not involve conduct of a sexual nature.

## **Complaint/Grievance Procedure**

The following grievance procedures shall be used to address sex discrimination complaints filed by students/ employees or complaints filed on their behalf against employees, other students, or third parties.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed below for the Title IX Coordinator. Only a complainant may file a formal complaint that initiates a Title IX grievance procedure.

If you believe that you have experienced or witnessed harassment or sexual violence, you need to notify the Title IX coordinator as soon as possible after the incident. Do not allow an inappropriate situation to continue by not reporting it, regardless of who is creating the situation. No employee, contract worker, student, vendor, customer or service guest, or other person who does business with the school is exempt from the prohibitions in this policy. The school Director or Education Leader, if they are informed of a Title IX complaint will refer all harassment complaints to the Title IX coordinator. In order to facilitate the investigation, your complaint should include details of the incident or incidents, dates and times, names of the individuals involved, and names of any witnesses. A sex discrimination complaint should be filed within seven (7) days from the date of the alleged discriminatory incident in order for the school to take timely and appropriate action. All documentation pertaining to the complaint/grievance process will be confidential. The complaint/grievance once received will be maintained in the Title IX Coordinator's office, which has limited staff access.

All complaints involving a student, employee, contract worker, vendor, customer or service guest, or other person who does business with the school will be referred to the campus's Title IX Coordinator to begin the complaint process outline in this policy. The Title IX Coordinator is listed below and has the responsibility of Intake reports and complaints, initiating the formal complaint process, and providing supportive measures to both the complainant and respondent.

If the school has actual knowledge of sexual harassment in an educational program or activity at the school, against a person in the United States, they will respond promptly in a manner that is not deliberately indifferent. A school is considered deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

The grievant/complainant may use the Title IX Grievance Form, but it is not required, to file a Title IX discrimination complaint.

### **Title IX Coordinator:**

Kelli Selbach  
333 Omaha Street Suite 6 & 7,  
Rapid City, SD 57701  
kellis@rapidcity.paulmitchell.edu  
(605)348-4247

The school ensures that its Title IX Coordinator(s), Investigator(s), Decision-Maker(s), and Informal Resolution Facilitator(s) have adequate training on what constitutes sexual harassment, including sexual violence, dating violence, domestic violence, sex discrimination, and stalking, and that they understand how the school's grievance procedures operate. Please refer to the end of this policy for a listing of the various roles of individuals involved in the Title IX process, their responsibilities, and training requirements.

### **Reporters**

We encourage all individuals who have a Title IX complaint to meet with the Title IX Coordinator to begin the formal grievance process. If the school Director or Education Leader, who are not Title IX Coordinators, are informed of a Title IX complaint they must notify the Title IX Coordinator of the complaint immediately, as long as they have the Complainant's consent that they can report the incident to the Title IX Coordinator. These are the only school employees that a complainant may discuss Title IX allegations with that are required under the school's policy to be obligated to inform the Title IX Coordinator of information that they received, as long as the Complainant grants that authority. Once any of these reports are notified of complaint allegations the notice triggers the start of the complaint process by the Title IX Coordinator.

## **Formal Complaint**

A “formal complaint” is defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school. A formal complaint may be filed with the school’s Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information located in the school’s policy. The phrase “document filed by a complainant” means a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

The Title IX Coordinator will meet with the complainant to explain the process of filing a formal complaint. The complainant must be the alleged victim unless the parent or legal guardian has a legal right to act on their behalf. Anyone may report a Title IX violation; however, only a complainant may file a formal complaint that initiates a Title IX grievance procedure. The Title IX Coordinator will defer to the complainant’s wishes as to whether or not they want to file a formal complaint.

If the Title IX Coordinator is the one who signs and initiates a formal complaint, the Title IX Coordinator is not a complainant or a party during a grievance process and must comply with requirements for Title IX personnel to be free from conflicts of interest and bias.

The school’s Title IX Policy provides for a consistent, transparent grievance process for resolving formal complaints of sexual harassment. The school’s policy is required to treat complainants equitably by providing remedies any time a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process prescribed in the school’s policy. Any remedies, which are required to be provided to a complainant when a respondent is found responsible, will be designed to maintain the complainant’s equal access to education and may include the same individualized services described as supportive measures; however, any remedies imposed do not need to be non-disciplinary or non-punitive and need not avoid burdening the respondent.

Once a formal complaint has been filed, the school will provide a written notice to each of the parties involved, which will include a copy of the school’s written Grievance Process, a list of the allegations, including specific information regarding the allegations, and a notice that the parties have a right to an advisor. The advisor should not be a lawyer. If during the investigation additional allegations are investigated, then a new notice must be provided to the parties, which identifies the new issues.

## **Grievance Procedure**

The school’s grievance procedures are designed to ensure that the Title IX complaint process is free from conflicts of interest and to treat everyone equally during the process, which requires Title IX personnel (Title IX Coordinators, Investigators, Decision-Makers, and people who facilitate any informal resolution process) to be free from conflicts of interest or bias for or against complainants or respondents. In order to accomplish this, we have put into place the following requirements.

- ① All Title IX personnel must include training on the definition of sexual harassment, the scope of the school’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- ② The school provides all decision-makers with training on any technology to be used at a live hearing. In addition, the school’s decision-makers and investigators receive training on issues of relevance, including how to apply the rape shield protections provided (only for complainants), prior to participating in any Title IX investigation.
- ③ The federal regulations governing Title IX allegations requires that there is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The school may remove a respondent from the recipient’s educational program or activity on an emergency basis, provided that the school undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. In the case of a school employee, the school may place the individual on mandatory administrative leave.

- ④ All of the materials the school uses to train Title IX personnel are located on the school's website under the Required Disclosures section on the home page.
- ⑤ Once the hearing takes place, the Decision-Maker may take the following actions against the respondent: dismiss the complaint; place the individual on probation; suspend the individual; terminate the individual; require the individual to go to counseling; change the respondent's schedule; or require the individual to retake the Title IX training.
- ⑥ The school may provide the following remedies to a complainant: an escort; removal from shared classes; academic support services, such as tutoring; and medical or counseling services.
- ⑦ The school has chosen to use the preponderance of the evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents).
- ⑧ Upon completion of the Title IX process, either party may file an appeal of the decision. The school's appeal process is outlined below.
- ⑨ Throughout the grievance process the school will not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- ⑩ All provisions, rules, or practices that are a part of the school's grievance process for handling formal complaints of sexual harassment apply equally to both parties.

To initiate a criminal investigation, reports of sexual violence should be made to "911" or local law enforcement. The criminal process is separate from the school's disciplinary process. To the extent that an employee or contract worker is not satisfied with the school's handling of a harassment or discrimination complaint, he or she may also contact the appropriate state or federal enforcement agency for legal relief.

The school will make appropriate referrals to law enforcement. The school will also notify complainants of the right to proceed with a criminal investigation and a Title IX complaint simultaneously. The school will not wait for the criminal investigation or criminal proceeding to be concluded before beginning its own investigation.

### **Investigation of Allegations**

In response to all complaints, the school will ensure prompt and equitable resolution through a reliable and impartial investigation of the allegations, including the opportunity for both parties to present witnesses or other evidence. The school will follow its written grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. During this process the school will not restrict an individual's rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, when complying with Title IX.

The federal regulations require a school to investigate sexual harassment allegations in any formal complaint, which can be filed by a complainant, or signed by a Title IX Coordinator. The regulations affirm that a complainant's wishes with respect to whether the school investigates should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegations in a formal complaint do not meet the definition of sexual harassment, or did not occur in the school's education program or activity against a person in the United States, the school must dismiss such allegations for purposes of Title IX but may still address the allegations in any manner the school deems appropriate under the school's own code of conduct, which is published in the school's catalog. The school may also dismiss a complaint if: the complainant withdraws the complaint; if the respondent is no longer enrolled or employed at the school; or if circumstances prevent institution from being able to investigate the complaint allegations. In this case, each party needs to be notified that the complaint has been dismissed and the reasons why it has been dismissed.

The time necessary to conduct an investigation will vary based on complexity of the allegation but will generally be completed within sixty (60) days of receipt of the complaint, which includes appeals and informal resolutions, with an allowance for short-term and good cause delays or extensions of the time frame. If a complainant requests confidentiality, the school will take all reasonable steps to investigate and respond to the complaint consistent with the request. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school will inform the complainant that its ability to respond may be limited.

The preponderance of the evidence standard will apply to investigations, meaning the school will evaluate whether it is more likely than not that the alleged conduct occurred.

During the investigation, the school will provide interim measures, as necessary, to protect the safety and well-being of students and/or employees involved and are designed to restore or preserve equal access to the education program or activity without unreasonably burdening the other party and to protect the safety of all parties, the school's educational environment, or deter sexual harassment.

The Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures; consider the complainant's wishes with respect to supportive measures; inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and explain to the complainant the process for filing a formal complaint. The school will offer supportive measures, at no cost, to the person alleged to be the victim (referred to as the "complainant"), which may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures to help protect the alleged victim and deter sexual harassment. The respondent is also eligible for the same supportive measures that the complainant has available. The school will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures. The school's Title IX Coordinator is responsible for coordinating the effective implementation of all supportive measures that will be provided before sanctions in any grievance procedure are imposed.

The school will investigate the allegations in any formal complaint and send written notice to both parties (complainants and respondents) of the allegations upon receipt of a formal complaint. The Title IX Coordinator has the responsibility of investigating the complaint allegations; however, if it is in the best interest of the parties involved the school may choose another employee or hire a third-party to conduct the investigation.

During the grievance process, and when investigating the complaint allegations, the school will abide by the following procedures:

- ① The school will apply a presumption that the respondent is not responsible during the grievance process (presumption of innocence). The burden of gathering evidence and burden of proof is the responsibility of the school, not on the individual parties.
- ② The school will provide equal opportunity for the parties involved to present fact and expert witnesses and other inculpatory and exculpatory evidence. Witnesses cannot be anonymous.
- ③ The school will not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders") to support their case.
- ④ Both parties to the complaint will have the same opportunity to select an advisor of the party's choice who may be, but need not be, an attorney.
- ⑤ The school as a part of the investigative process will send written notice of any investigative interviews, meetings, or hearings to both parties. Any interviews that occur can have both parties' advisors present.
- ⑥ The schools will send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence provided.
- ⑦ The school will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond to the report.

- ⑧ The school will dismiss allegations of conduct that do not meet the definition of sexual harassment or did not occur in a school's educational program or activity against a person in the U.S. Such dismissal is only for Title IX purposes and does not preclude the school from addressing the conduct in any manner the school deems appropriate.
- ⑨ The school may, in their discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
- ⑩ The school will give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- ⑪ The school may, in their discretion, consolidate formal complaints where the allegations arise out of the same facts or circumstances, whether it is complaints against multiple respondents or by multiple complainants.
- ⑫ The school will protect the privacy of a party's medical, psychological, and similar treatment records by stating that the school cannot access or use such records unless the school obtains the party's voluntary, written consent to do so.

### Live Hearings

The school's Title IX grievance process provides for a live hearing. If the complaint goes to a live hearing, then each party must have an advisor. The appointed Decision-Maker is the individual who will be conducting the hearing. The following conditions will apply for a live hearing:

- ① The Decision-Maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenge credibility.
- ② Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by either the complainant or respondent personally.
- ③ At the request of either party, the school will provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- ④ Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.
- ⑤ The live hearing provides for the opportunity for all parties' advisors to examine and cross-examine witnesses, including challenging the credibility of witnesses. Hearsay statements and irrelevant information is are not permitted.
- ⑥ The school's process provides for rape shield protections for complainants deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
- ⑦ If either party does not have an advisor present at the live hearing, the school will provide, at no cost to that party, an advisor of the school's choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. Only the advisor may cross-examine the witnesses.
- ⑧ If a party or witness does not submit to cross-examination at the live hearing, the Decision-Maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.



- 9 Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- 10 As a part of the process, the school will create an audio or audiovisual recording, or transcript, of any live hearing, as a part of the record.

### **Final Determination of the Investigation**

The school's grievance process uses the preponderance of the evidence standard to determine responsibility. The school's grievance process uses the same standard of evidence for all formal complaints of sexual harassment whether the respondent is a student or an employee (including faculty member). The Decision-Maker(s) in the process are required to objectively evaluate all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

The Decision-Maker in all instances cannot be the Title IX Coordinator or the investigator in order to ensure that the investigative process is fair and free of bias. The Decision-Maker will issue a written determination regarding responsibility with findings of fact to include the following:

- 1 Must identify the standard of evidence used based on the school's written policy.
- 2 Identify the allegations that constitute sexual harassment.
- 3 Describe the procedures the school used from the filing of the formal complaint through the hearing process.
- 4 Make findings of fact and conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation.
- 5 Include the imposition of any sanctions or disciplinary actions imposed on the respondent, and whether any remedies will be provided to the complainant.
- 6 State the procedures to file an appeal and the allowable bases for an individual to appeal the decision.
- 7 Upon conclusion the written determination will be sent simultaneously to the parties.
- 8 The Title IX Coordinator is responsible for implementation of any remedies imposed by the Decision-Maker.

### **Appeal Process**

The school will allow either or both parties the opportunity to appeal the Decision-Maker's determination regarding responsibility from a school's dismissal of a formal complaint or any allegations therein. Either party can appeal based on the following:

- 1 Procedural irregularity that affected the outcome of the matter;
- 2 Newly discovered evidence that could affect the outcome of the matter; and/or
- 3 The Title IX personnel had a conflict of interest or bias, that affected the outcome of the decision.

### **Informal Resolution**

The school provides the opportunity for the parties involved in the formal complaint allegations to facilitate an informal resolution, such as mediation, so long as both parties give voluntary, informed, written consent to attempt an informal resolution. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint. The school will provide written notice to the parties of the allegations, requirements of the resolution process, and any limitations.

If the complaint allegations are in regard to an employee of the school sexually harassing a student, the opportunity for an informal resolution is not available.

A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

### **Retaliation Prohibited**

The school prohibits any form of retaliation, intimidation, threats, coercion, discrimination, or harassment against any individual who filed or otherwise participated in the filing or investigation of a complaint of discrimination. Actions do not have to be on the basis of sex or involve sexual harassment to constitute retaliation. Retaliation complaints may use the same grievance process as sexual harassment complaints. Any individual who believes he or she has been subjected to retaliation may file a separate complaint under this procedure. The school will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding, which does not constitute retaliation.

The following circumstances do not constitute retaliation, including:

- ① Exercising one's rights protected under the First Amendment.
- ② Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.
- ③ Charging an individual with code of conduct violations that do not involve sexual harassment but arise out of the same facts or circumstances as a report or formal complaint of sexual harassment; however, for the purpose of interfering with any right or privilege secured by Title IX does constitute retaliation.

### **Reporting Requirements**

Victims of sexual misconduct should be aware that school administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to other members of the campus community. The school will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The school reserves the right to notify parents/guardians of dependent students regarding any health or safety risk or a change in student status. The school will also notify the local police department of any crimes that have been brought to their attention.

Any allegations or violations of Title IX will be reported to the school's Clery Act coordinator to be included in the school's annual reporting requirements.

### **Record Keeping**

All records of the Title IX formal complaint including, the investigation, evidence, decision making process, hearings, and decision letters will be maintained by the school for at least 7 years.

### **Required Training**

The school's Title IX Coordinator, Investigator, Decision-Maker, or any person designated by the school to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally, or an individual complainant or respondent. Each individual that is part of the Title IX process is required to take training that includes how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Part of the required training is to ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the school's education program or activity, how to serve impartially, how to make relevancy determinations, how to conduct an investigation and grievance process including hearings, appeals and informal resolution.

The school will provide the Decision-Maker(s) with training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. The school will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

**Additional Information**

Employees and students may contact the Title IX coordinator with any questions related to this policy. In addition, the U.S. Department of Education Office for Civil Rights (“OCR”) investigates complaints of unlawful harassment of students in educational programs or activities. This agency may serve as a neutral fact finder and will attempt to facilitate the voluntary resolution of disputes with the parties. For more information, visit the OCR website at:

<http://www2.ed.gov/about/offices/list/ocr/index.html>.