

# UNA Processes and procedures related to Sexual Misconduct Policy

The procedures described below have been developed by the Title IX Coordinator and will apply to all allegations of Sexual Harassment or other forms of sexual misconduct defined in the Sexual Misconduct Policy. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g. vandalism, physical abuse of another, etc.). All other allegations of misconduct, including other forms of sex-based discrimination or discriminatory harassment on a basis other than sex, will be addressed through other University policies.

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## Promptness

The University shall make a good faith effort to complete every aspect of the Grievance Process in a reasonably prompt timeframe. In general, this should take no more than 90 business days; however, in certain circumstances, short delays may be necessary. The following factors, among others, may be the basis for brief delays or extensions:

- Absence of a party or witness for a limited amount of time;
- Coordinating with law enforcement during a concurrent or staggered investigation;
- Arranging for disability accommodations;
- Arranging for translation services;
- Unavailability of advisor for a limited amount of time;
- Vacancies in Title IX positions;
- Holidays, illnesses, closure for a natural disaster or other emergency (e.g. hurricane, tornado, earthquake, blizzard, pandemic).

Each party will receive regular updates throughout the investigation and grievance process. This will typically come via communication from the Investigator after each 30-day period. In these update emails, Investigators will share any cause for delay thus far in the process. On occasion, the Investigator may reach out prior to, or in-between, 30-day update intervals to alert the parties to potential or actual delays. At any time, parties may reach out to the assigned investigator or directly to the Title IX Coordinator for information on the status of their case.

# Privacy

Every effort is made by the University to preserve the privacy<sup>1</sup> of reports. The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.<sup>2</sup>

The University reserves the right to designate which officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA. Only a small group of officials who need to know will typically be told about the complaint, this may include, but is not limited to: The Office of Title IX staff, the Vice President for Student Affairs and other staff within the division, UPD, the Threat Assessment Team, and in certain circumstances, members of the Executive Committee. Information will be shared as necessary with Investigators, hearing panel members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.<sup>3</sup> The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically in the [Sexual Misconduct Policy](#).

## Rights of Parties Involved in Grievance Process

The following rights exist during the Formal Grievance Process, generally for all parties unless otherwise noted:

- The right to an equitable investigation and resolution of all credible allegations of Prohibited Conduct made in good faith to UNA officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.

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<sup>1</sup> As it relates to University policies, Privacy and confidentiality have distinct meanings. Privacy means that information related to a complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with FERPA. The privacy of employee records will be protected in accordance with Human Resources policies. Confidentiality exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. UNA has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities.

<sup>2</sup> Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

<sup>3</sup> All employees who are involved in the response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by all UNA officials.
- The right to have UNA policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by UNA officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by UNA officials of options to notify proper law enforcement authorities, including on-campus (UPD) and local police, and the option(s) to be assisted by UNA authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by UPD and/or other UNA officials.
- The right to be informed of supportive measures, such as mutual No Contact Orders; counseling; advocacy; health care; student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location;
  - Assistance from UNA staff in completing the relocation;
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation);
  - Transportation accommodations;
  - Visa/immigration assistance;
  - Arranging to dissolve a housing contract;
  - Exam, paper, and/or assignment rescheduling or adjustment;
  - Receiving an incomplete in, or a withdrawal from, a class(es);
  - Transferring class sections;
  - Temporary withdrawal/leave of absence;
  - Campus safety escorts; and
  - Alternative course completion options.
- The right to have UNA maintain supportive measures for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures or otherwise interfere with the University's obligations under Title IX.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.

- The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the decision-maker.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any UNA representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process, subject to any limitations in the Sexual Misconduct Policy, such as an Advisor complying with UNA procedures and rules of decorum.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the Title IX Coordinator.
- The right to not have to provide a statement during the Investigation or provide a statement or answer questions at the live-hearing. However, the investigation may continue and a decision regarding responsibility may be made based on the available statements and evidence.

- The right to be notified that information and materials the University obtains during its investigation into allegations of Prohibited Conduct may be disclosed to law enforcement in response to a valid subpoena.
- The right to a fundamentally fair resolution as defined in these procedures.
- The right to have access to published policies regarding Prohibited Conduct and University disciplinary procedures, including the possible range of sanctions.

## Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take.

The Title IX Coordinator will conduct an initial assessment of the report that includes offering supportive measures to the parties and determining whether a formal complaint will be filed.

## Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an initial assessment can include, in no particular order:

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- Seeking to determine if the person impacted, the Complainant, wishes to make a formal complaint, and assisting them in doing so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency to determine whether the allegation would fall under Title IX, the Sexual Misconduct Policy, both, or neither.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

If the Complainant wishes to move forward with the Formal Grievance Process<sup>4</sup>, a formal complaint must be filed. Formal complaints can be filed by a Complainant<sup>5</sup> or the Title IX Coordinator. Formal complaints cannot be filed by third-parties; however, nothing prevents a third-party from alerting the Title IX Coordinator of allegations of Prohibited Conduct. In their discretion, the Title IX Coordinator may file a Complaint based on a violence risk assessment conducted by the University's Threat Assessment Team or other designated personnel.

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<sup>4</sup> If the formal grievance process is started, a request could be made by a party to enter into an Informal Resolution at any point prior to the live-hearing.

<sup>5</sup> Or their parent

# Violence Risk Assessment

A violence risk assessment (VRA) may be used in the following determinations:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Restricted Access of a Respondent on the basis of threat to healthy/safety;
- Whether the Title IX Coordinator should pursue a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning, trespass warning, or campus ban is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

## Jurisdiction

During the initial assessment, the Title IX Coordinator shall review the facts of the case to see whether a dismissal is required or permitted under the Sexual Misconduct Policy or 34 CFR part 106. If any dismissal occurs, both parties shall receive written notice of said dismissal, any appeal rights, and an amended Complaint with any remaining charges.

In order to make such a determination, the Title IX Coordinator first determines whether the alleged Prohibited Conduct falls within the scope of 34 CFR part 106.

- If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, 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 complaint.

After determining the scope of the conduct, the Title IX Coordinator shall determine whether the alleged Prohibited Conduct occurred within the University's education program or activity. In making such a determination, the Title IX Coordinator shall consider whether the University:

- Owns the premises where the harassment occurred?
- Exercises oversight over the activity?
- Supervises the activity?
- Has disciplinary authority over the activity or those within it?
- Funds the program or activity? Sponsors, promotes, or endorses the event or circumstances?

If it determined by the Title IX Coordinator that 34 CFR part 106 does not apply<sup>6</sup> the Title IX Coordinator shall dismiss<sup>7</sup> any Title IX claims in the formal complaint; however, the Title IX Coordinator must then assess whether the alleged prohibited conduct still falls under the jurisdiction of the Sexual Misconduct Policy or if it is due to be referred to another office. The Title IX Coordinator will determine whether the Office of Title IX has jurisdiction to investigate based on the Sexual Misconduct Policy, including whether the Respondent is a University student, staff-member, or faculty-member. If the Title IX Coordinator determines that the Office of Title IX does not have jurisdiction; the Title IX Coordinator may refer the alleged Prohibited Conduct to another department.

If the Title IX Coordinator determines that the University does not have jurisdiction, the Title IX Coordinator may refer the alleged Prohibited Conduct to another department. In situations where the Respondent's identity is unknown or is not a member of the UNA Community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as issuing a campus ban. Additionally, when the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

If the Title IX Coordinator determines that the University does have jurisdiction, the Title IX Coordinator shall then determine the classification of the Prohibited Conduct. If the Prohibited Conduct falls under Type III, the Title IX Coordinator shall refer the formal complaint to another office. If the Prohibited Conduct falls under Type I or Type II the Title IX Coordinator shall

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<sup>6</sup> Dismissing a claim under Title IX is merely procedural, and does not limit the University's authority to address a complaint with an appropriate process and remedies.

<sup>7</sup> If a complaint is dismissed, any party may appeal that decision pursuant to the Sexual Misconduct Policy as outlined in the Appeals section of these procedures.

continue with the Grievance Process outlined in the Sexual Misconduct Policy and these procedures.<sup>8</sup>

## Grievance Process Pool Makeup

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. The pool can be made up of internal or external trained third-party neutral professionals. Members of the pool are listed on the Title IX website and referenced annually with the distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Office of Title IX.

The list of Pool members and a description of the Pool can be found at [www.una.edu/titleix](http://www.una.edu/titleix)

### a. Pool Member Roles

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices]
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker
- To provide supportive measures or remedies

### b. Pool Member Appointment

The Title IX Coordinator selects members of the Pool after going through a selection process. Once selected, the Title IX Coordinator, in consultation with the President, appoints the pool, which then acts with independence and impartiality. The Title IX Coordinator continues to oversee the Pool and can, in limited circumstances, end that individual’s involvement with the case or request their removal from the Pool. Those circumstances can include, but are not limited to, the University becoming aware of a Pool member’s bias towards or against complainants or respondents generally, a failure to comply with the procedures outlined, or failure to respond to Title IX communications in a prompt manner.

Members of the pool are typically trained for a designated role within the grievance process as a result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles. In certain circumstances, members of the Pool may be trained in a variety of roles and can rotate amongst the different roles listed in order to provide substitutes or a greater depth of experience when necessary.

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<sup>8</sup> If the conduct falls under Type 1 and the Title IX Coordinator determines that the University does not have jurisdiction under Title IX, but does have jurisdiction under the Sexual Misconduct Policy, the Title IX prong of the allegation may be dismissed; however, the policy violation will still be processed through the grievance process under the Sexual Misconduct Policy.

### **c. Pool Member Training**

The Pool members receive annual training jointly OR based on their respective roles. This training includes, but is not limited to:

- The scope of the University's policies and procedures as it relates to their roles;
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;
- Implicit bias;
- Disparate treatment and impact;
- Reporting, confidentiality, and privacy requirements;
- Applicable laws, regulations, and federal regulatory guidance;
- How to implement appropriate and situation-specific remedies;
- How to investigate in a thorough, reliable, and impartial manner;
- How to uphold fairness, equity, and due process;
- How to weigh evidence;
- How to conduct questioning;
- How to assess credibility;
- Impartiality and objectivity;
- How to render findings and generate clear, concise, evidence-based rationales;
- The definitions of all Prohibited Conduct;
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy;
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- Any technology to be used at a live hearing;
- Issues of relevance of questions and evidence;
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence; and
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations.

Specific training is also provided for Appeal Decision-makers, intake personnel, University employees who also serve as Advisors, and Chairs. All Pool members are required to attend these training sessions annually. The current materials used to train all members of the Pool are publicly available on the University's Title IX website at [www.una.edu/titleix](http://www.una.edu/titleix).

### **d. Pool Membership**

The overall Pool typically includes:

- 3 or more Hearing Chairs;
- 6 or more members from the Division of Academic Affairs and/or faculty, including at least 5 tenured faculty;
- 2 or more representatives from the University staff/administration;
- 1 or more representative from Athletics;

Employees who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator. If an employee is interested in serving in a role as an advisor, the employee is still encouraged to contact the Title IX Coordinator in order to receive training on University policy and procedures.

All interested parties, even those who have previously served in similar roles, are subject to an application process. This process is designed to ensure no member of the pool is biased toward or against Respondents or Complainants generally.<sup>9</sup> A bias toward or against Respondents or Complainants generally can be grounds for removal from the Pool.

## Advisors

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible, willing, and available.<sup>10</sup>

University employees who are interested in serving as an Advisor are strongly encouraged to contact the Title IX Coordinator for training on this role before taking on this role.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s). Therefore, it is advisable, but not a requirement, that an Advisor of Choice is someone who is not a witness to the allegations. In some instances, it may best facilitate the Grievance Process for the party to have more than one Advisor; therefore, requests for multiple advisors, not including as discussed below, should be sent to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. During the live-hearing, all parties must have an Advisor present.

### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose this option, the Advisor will have previously received training facilitated by the University and be familiar with the University's process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with the University's policies and procedures.

### **b. Advisors in Hearings/University Provided Advisor**

Under U.S. Department of Education regulations applicable to Title IX, live questioning is required during the hearing and the questioning must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. Therefore, unless the parties have already requested a University Provided Advisor, at the conclusion of the investigation stage of the grievance process, the Title IX Coordinator may appoint a trained Advisor for the limited purpose of being available to conduct any questioning at a live-hearing. A party may choose to disregard this appointment and bring their own Advisor of Choice to the

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<sup>9</sup> Unless the Pool member solely serves as an advisor.

<sup>10</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

live-hearing; however, in that instance, both Advisors would remain present for the live-hearing.<sup>11</sup> No party may proceed without an Advisor.

If the party's Advisor of Choice will not or cannot question the other party or witnesses, either by lack of attendance or otherwise, the University Provided Advisor shall do so thoroughly, regardless of the participation or non-participation of the party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

### **c. Advisor's Role**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. At the live-hearing, it is required that the Advisor, rather than the party, question other parties and witnesses. Therefore, the parties should consider consulting with their advisor before the live-hearing to discuss potential questions that the party might like to pose to the other party and witnesses through their advisor.

The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not choose, or cannot afford, an attorney, the University is not obligated to provide an attorney.

During the investigative stage, the University expects to hear from parties directly. This includes answering questions and providing evidence. However, advisors are allowed to be present and can advise during interviews, or during breaks, if needed.

### **d. Pre-Interview Meetings**

Advisors may request to meet with the Title IX Coordinator or the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University policies and procedures. At times, this may be best accomplished via a phone call or by an in-person meeting, with or without the party. At no time will the specifics of the case be discussed without the party signing a FERPA release allowing the case to be discussed with the party's Advisor.

### **e. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. This includes Advisors refraining from addressing University officials (i.e. investigators) in a meeting or interview unless invited to (e.g., asking procedural questions). Likewise, the Advisor may not make a presentation or speak on the behalf of the advisee to the Investigator(s) or Decision-Maker(s) except during the questioning portion of the live-hearing.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. It is the expectation of the University that prior to taking any breaks, the last question asked shall be answered by the party.

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<sup>11</sup> This can be the same Advisor they've used at the interview stage, or a different Advisor.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role. Repeated oversteps may result in the Advisor being barred from participating in the process moving forward.

During the live-hearing, all Advisors will be expected to follow any rules of decorum as laid out by the Hearing Chair at the beginning of the live-hearing. The Chair will have broad authority to respond to disruptive or harassing behaviors, this may include a recess of the hearing or the exclusion of the offending person. The Chair is responsible for ensuring an orderly, fair, impartial, and respectful hearing.

**f. Sharing Information with the Advisor**

The Office of Title IX expects that the parties may wish to have documentation and evidence related to the allegations shared with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process. In certain circumstances, the Office of Title IX can share information with both the party and their Advisor; however, if a party requests that all communication be made exclusively through their Advisor, the Office of Title IX will not comply with that request.

**g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the Office of Title IX. The Title IX Coordinator may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by these privacy expectations.

**h. Expectations of an Advisor**

The Office of Title IX generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. The Office of Title IX may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient, stable, and available.

**i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

**j. Assistance in Securing an Advisor**

An Advisor can be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. At times, the Office of Title IX can attempt to assist a party in securing an Advisor.

The Office of Title IX keeps a list of trained University employees who are at times willing to serve as an Advisor. The list is available at [www.una.edu/titleix](http://www.una.edu/titleix).

Additionally, there are community resources that may be of assistance to those seeking an Advisor.

### *Local Attorneys*

The Alabama State Bar Association provides a Lawyer Referral Service. Additional information is also available at [www.alabar.org](http://www.alabar.org).

The Lauderdale County Bar Association maintains contact information for area lawyers in different practice areas and other local bar associations are likely to do the same. Information about local bar presidents is available at <https://www.alabar.org/about/local-bar-presidents/>. Some of these attorneys may offer discounted or pro bono rates for student services.

Additionally, some of these attorneys may have undergone training related to University policies and procedures.

### *Respondent-specific Organizations*

For further inquiries related to an Advisor, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

### *Complainant-specific Organizations*

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]

## Counterclaims

The Title IX Coordinator and the University are obligated to ensure that the grievance process is not abused for retaliatory purposes. The Title IX Coordinator permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent are often made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the

Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

## Supportive Measures

The Title IX Coordinator will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice of a complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The Title IX Coordinator will maintain the privacy of the supportive measures, provided that privacy does not impair the ability to provide the supportive measures. The Title IX Coordinator will act to ensure as minimal an academic impact on the parties as possible. The Title IX Coordinator will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services;
- Referral to community-based service providers;
- Student financial aid counseling;
- Education to the community or community subgroup(s);
- Altering campus housing assignment(s);
- Altering work arrangements for employees or student-employees;
- Safety planning;
- Providing campus safety escorts;
- Providing transportation accommodations;
- Implementing contact limitations (no contact orders) between the parties;<sup>12</sup>
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence;
- Referral to UPD for University Trespass;
- Timely Warnings as required by federal law;
- Increased security and monitoring of certain areas of the campus;
- Any other actions deemed appropriate by the Title IX Coordinator;

## Removals

When the University has jurisdiction to act under 34 CFR Part 106, i.e. the alleged prohibited conduct is Type 1 and occurs as part of the University's education program or activity, the Title

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<sup>12</sup> Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement as proscribed in the Policy.

IX Coordinator can act to remove a Respondent entirely or partially from the University's education program or activities on an emergency basis when, and only when, an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.<sup>13</sup> For cases that fall outside of 34 CFR Part 106, the University may also explore a "Restricted Access Removal."

Restricted Access is the removal of a respondent from the College's education program or activity on an emergency/temporary basis. Restricted Access is not disciplinary in nature and is not recorded on the respondent's transcript or permanent employee file. Restricted Access is evaluated on an individualized basis to determine the appropriate level of access to campus and participation in the College's programs and activities. Students placed on Restricted Access are often, but not always, permitted to continue to participate in classes and other academic obligations, and may or may not be able to remain in College housing, extracurriculars, eat in the dining hall, or be present on campus during unstructured periods of time.

At the request of the Title IX Coordinator, the University's Threat Assessment Team, or another designated individual, will perform an individualized safety and risk analysis. Depending on the results of the individualized safety and risk analysis, the Title IX Coordinator may engage in an Emergency Removal or implement Restricted Access. The Title IX Coordinator will notify all parties, in writing, of any removals or restrictions and any subsequent changes to either.

All parties will have the opportunity to challenge any such removal or restriction. In all cases in which removal or restrictions are imposed, the student, employee, or two representatives from a student organization<sup>14</sup> will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such removal or restriction being imposed, or as soon thereafter as reasonably possible, to show cause why the removal or restriction should not be implemented or should be modified.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal or restriction prior to the meeting to allow for adequate preparation.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or restriction is appropriate. This meeting is not about reaching factual conclusions about whether the Respondent is responsible for the underlying sexual harassment or sexual misconduct allegations. When this meeting is not requested within 3 days of the notice, objections to the removal or restriction will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

The Title IX Coordinator has sole discretion under this policy to implement or stay a removal or restriction and to determine the conditions and duration. Violation of a removal or restriction under this policy will be grounds for discipline, which may include expulsion or termination.

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<sup>13</sup> This section also applies to any restrictions that the Title IX Coordinator, in conjunction with a coach or athletic administrator, may place on a student-athlete

<sup>14</sup> In most circumstances, this will be the organization president and the organizational advisor. For more information please see the Organizational Misconduct Protocol or the Student Code of Conduct.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to:

- removing a student from a residence hall,
- temporarily re-assigning an employee,
- restricting a student's or employee's access to or use of facilities or equipment, including geographical restrictions on-campus, up to a full campus ban,
- allowing a student to withdraw or take grades of incomplete without financial penalty,
- authorizing an administrative leave, and/or
- suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics, and
- suspending a student's participation in on-campus education activities and programs, including classes.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

The Title IX Coordinator, in conjunction with other appropriate College personnel, may impose administrative leave on employee respondents if the facts and circumstances surrounding the reported conduct support such leave. Administrative leave is a separate process from Restricted Access and is not disciplinary in nature. Employees placed on administrative leave will receive written notice of the conditions of that leave, but will not be able to challenge the administrative leave.

## Appointment of Neutral Investigators

After a formal complaint has been filed, the case will be assigned to two trained investigators. Information about current Investigators are available at [www.una.edu/titleix](http://www.una.edu/titleix). This is usually done within two (2) business days of a formal complaint being signed.

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the Prohibited Conduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

# Notice of Investigation and Allegations

The Title IX Coordinator or assigned investigator will send out the Notice of Investigation and Allegations (NOIA) to both parties. The NOIA facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- 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,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

The NOIA will include all known possible alleged Prohibited Conduct at the time of the offense, including collateral conduct. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing 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. Delivery to the party's "@una.edu" email will be the default delivery method. Students, staff, and faculty are expected to check the email account regularly in order to receive communications related to their case. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

# Informal Resolutions

During the formal grievance process it is possible that at some point, one or both parties may request to explore possible options for an Informal Resolution. Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution 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 prior to the Informal Resolution being concluded.

Prior to implementing Informal Resolution, the Title IX Coordinator 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.

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

## *Alternate Resolution*

Alternate Resolution is an informal process by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution. An Alternate Resolution will be developed specifically to the facts of each case.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the 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 Alternate 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 Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate 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 the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### *Respondent Accepts Responsibility for Alleged Violations*

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.

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 implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused. Any statements made in good-faith in an attempt to resolve the case will not be considered part of the Investigative Report or relied upon in the hearing.

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.

### *Negotiated Resolution*

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. This will vary from case to case; however, in some instances, this can be accomplished by implementing supportive measures such as No Contact Orders in conjunction with Educational Conversations or Referrals to Counseling. Negotiated Resolutions are not appealable.

## Investigation

Investigations are completed expeditiously, normally within thirty (45) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The Office of Title IX will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. Each party will receive regular updates throughout the investigation and grievance process. This will typically come via communication from the Investigator after each 30 day period. In these update emails, Investigators will share any cause for delay thus far in the process. On occasion, the Investigator may reach out prior to or in-between 30 day update intervals to alert the parties to potential or actual delays. At any time, parties may reach out to the assigned investigator or directly to the Title IX Coordinator for information on the status of their case.

The Office of Title IX may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, accommodations for disabilities or health conditions, and/or natural disasters or other emergency situations. The Office of Title IX will promptly resume its investigation and resolution process as soon as feasible. During such a delay, supportive measures may be implemented and will continue as deemed appropriate. University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced. However, any party is welcome to provide documentation of such.

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

The Office of Title IX will record all interviews and investigative meetings. Likewise, any live-hearing will be recorded. The Office of Title IX will hold the official recording and any unauthorized audio or video recording of any kind is permitted during investigation meetings.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant;
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures;
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated;
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
- Meet with the Complainant to finalize their interview/statement, if necessary;
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations;

- Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- Write a comprehensive Investigative Report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence.
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions as to the notion of Responsibility;
- The Investigator assesses credibility throughout the investigative process and includes that credibility assessment in the Investigative Report;
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor);
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period;
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback;
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report; and
- The Investigator prepares to present the Investigative Report and answer questions related to the investigation at the live-hearing.

# Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the Office of Title IX's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, emergencies) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## Evidentiary Considerations in the Investigation

The investigation does not consider:

- 1) incidents not directly related to the possible violation, unless they evidence a pattern;
- 2) the character of the parties;
- 3) statements made by either party while the parties were exploring participating in an Informal Resolution before returning to the formal grievance process;
- 4) the outcome, or rationale for, supportive measures or removals/restrictions;
- 5) questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege; or
- 6) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Any evidence related to the above will be regarded as irrelevant in the Investigative Report.

## Referral for Hearing

Provided that the formal complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select appropriate Decision-makers from the Pool depending on whether the Respondent is a faculty member, staff member, or a student. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

## Hearing Decision-maker Composition

The Title IX Coordinator will designate a three-member panel from the Pool. Within the panel, one of the three members will be appointed as Chair by the Title IX Coordinator. In cases wherein the Respondent is a faculty member, all three panel members will be faculty members. The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving or who have served as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

## Evidentiary Considerations in the Hearing

Any evidence that the Decision-makers determine is relevant and credible may be considered. The Decision-makers deem irrelevant: 1) questions not directly related to the possible violation, unless they evidence a pattern; 2) questions that are unduly repetitious; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Further, the Decision-makers do not consider statements by either party made during attempted Informal Resolutions. Likewise, absent extraordinary circumstances, as determined by the Chair, the Decision-makers do not consider the implementation of Supportive Measures or during removals/restrictions in determining whether alleged Prohibited Conduct occurred. Finally, questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege will not be considered and is deemed irrelevant.

There is a distinction between questions of relevance and admissibility and weight. Irrelevant evidence is not admissible at the hearing. All relevant information, that is not otherwise inadmissible, may not be weighted the same. The decision-makers are trained to weight evidence appropriately during the hearing.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for consideration by the Decision-makers at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice of hearing will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-makers. For compelling reasons, the Title IX Coordinator may reschedule the hearing.
- Notification that the parties will be required to have an Advisor present for questioning. The parties may have the assistance of an Advisor of their choosing at the hearing. Additionally, the University will also appoint an Advisor to be present for questioning at the hearing.
- A copy of all the materials provided to the Decision-makers about the matter, unless they have been provided already.<sup>15</sup>
- An invitation to each party to submit to the Chair a written impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the ADA/504 Coordinator or the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

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<sup>15</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

# Alternative Hearing Participation Options

If a party or parties prefer not to, or cannot, attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## Pre-Hearing Preparation

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

The parties will be given a list of the names of the Decision-makers at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that an actual or perceived bias or conflict of interest would preclude an impartial hearing of the allegations.

The Title IX Coordinator will give the Decision-makers a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the hearing and will be exchanged between each party by the Chair. Comments that are provided at least two (2) days prior to the hearing will be provided to the Chair in advance and therefore, the Chair may be better prepared to make relevancy determinations in an expedient manner at the hearing.

## Pre-Hearing Evidentiary Determinations

Prior to the hearing, the parties are invited to submit the questions or topics the parties and/or Advisors wish to ask or discuss at the hearing. When these questions or topics are provided to the Title IX Coordinator and shared with the Chair at least two days prior to the scheduled hearing, the Chair may be able to rule on their relevance ahead of time, therefore avoiding any improper evidence being introduced. Likewise, this enables the Chair to provide more appropriate phrasing recommendations. However, this advance review opportunity does not

preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

Upon comment from either party in advance of the hearing, or on the day of the hearing prior to the taking of testimony, the Chair will consider requests by either party that evidence identified in the final Investigation Report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator for questions related to the issues of relevancy; however, the Chair has final say over these determinations.

## Hearing Procedures

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Sexual Misconduct Policy.

Participants at the hearing may include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties,<sup>16</sup> Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-makers and the parties and will then be excused.

## Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. Likewise, in a situation involving cross-complaints, in which a party is a Complainant in one case and a Respondent in another, and the allegations involve overlapping conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

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<sup>16</sup> Including three (3) organizational representatives when an organization is the Respondent

# The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final<sup>17</sup> opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Hearing Facilitator, if present, otherwise, the Chair, conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the Title IX Coordinator or a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## Investigator Presents the Final Investigation Report

The Lead Investigator will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Lead Investigator will be present during the entire hearing process, but not during deliberations. Secondary investigators, in some circumstances, may be called as witnesses.

Neither the parties nor the Decision-makers should ask the Investigator(s) their opinions on credibility aside from what is discussed in the Investigative Report, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. As determined by the Chair, witnesses may be called prior to the parties in order to release them if there is a scheduling concern. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors.<sup>18</sup> All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during all questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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<sup>17</sup> Challenges for removal are ordinarily due two days prior to the hearing; it is the expectation that if a challenge is raised at the hearing, the alleged bias or conflict was not previously discoverable to the party making the objection.

<sup>18</sup> This may be referred to as cross-examination

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct questioning on behalf of that party.

The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses; however, unless prompted, the Advisors are not to offer additional arguments along with the question itself. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair 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 in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## Refusal to Submit to Questioning and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to questioning from the other party or Decision-Maker(s).<sup>19</sup>

## Recording Hearings

Hearings (but not deliberations) are recorded by the Office of Title IX for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

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<sup>19</sup> Based on the August 24, 2021 Department of Education letter.

# Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations. The Chair can ask the facilitator to come in during parts of the deliberation and to remain outside of deliberations for the remaining aspects of deliberation.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers may then consider the previously submitted party impact statements in determining appropriate sanction(s). Impact statements are provided prior to the hearing so that they can be reviewed by the other party. The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other parties. The Decision-makers may – at their discretion – consider the statements, but they are not binding.

In cases involving student and or staff Respondents, the Decision-makers will review the statements and any pertinent conduct history provided by the Office of Title IX, the Office of Student Conduct, or the Office of Human Resources and will determine the appropriate sanction(s). In cases involving faculty respondents, the Decision-makers will review the statements and then recommend an appropriate sanction, the Decision-makers will then contact the Vice Provost<sup>20</sup> who will consult with the Dean overseeing the Respondent's college. The Vice Provost will review any pertinent conduct or employee history with the Dean or otherwise held in the Provost's office. The Vice Provost will affirm or deviate from the Decision-makers recommendation within 10 days.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations<sup>21</sup>, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

## Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the Notice of Outcome, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 3 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or

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<sup>20</sup> Or senior Vice Provost

<sup>21</sup> In the case of faculty cases, it is understood that deliberations may take additional time as to allow the Vice Provost's involvement. Therefore, additional notification of an extension is not required.

emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the parties; and/or
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

### **a. Student Sanctions**

The following are the usual sanctions<sup>22</sup> that may be imposed upon students or organizations singly or in combination:

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<sup>22</sup> Existing policies on transcript notations will apply to these proceedings. This includes if a student is suspended or expelled, a hold may exist preventing a student's ability to re-enroll and/or obtain transcripts and/or graduate. All sanctions must be satisfied prior to re-enrollment or graduation eligibility.

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Deferred Suspension*: A deferred suspension is a designated period of time during which a student, while continuing to be enrolled, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student is found responsible for any additional violation(s) of the Standards of Conduct while the student is on deferred suspension, then the sanction of suspension will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Students who are placed on deferred suspension are also generally given educational sanctions.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at University.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

## **b. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*

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If a student requests an official transcript, a letter may be sent with the transcript about the student's status at UNA i.e. that the student is not in good standing.

- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Revocation of tenure*
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate or that otherwise appear in the Staff or Faculty Handbooks or the Employee Manual and Handbook.

## Withdrawal or Resignation While Charges Pending

a. Students: If a student has an allegation pending under this Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process may end, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. A hold may be placed on their ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to University unless and until all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 7 days of the delivery of the Notice of Outcome. A single Appeal Decision-maker will Chair the appeal. The Appeal Decision-maker will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing) unless it is appeal for review of a sanction involving revocation of tenure. In that instance, the request will be forwarded to the provost.

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **Appeals are limited to the following grounds:**

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
- (D) In the event of a case involving a tenured faculty Respondent who is found responsible, after a sanction including the revocation of tenure is issued, each party will have an automatic opportunity to appeal the sanction to the University provost, or designee. This will not limit any other grounds for appeal.

In the case of a sanction involving tenure revocation, the automatic appeal for the sanction should be exercised prior to an appeal involving any other grounds. After the provost makes a determination, the parties will have another opportunity to appeal for any remaining grounds allowable under the policy within seven (7) days of that decision.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Decision-maker will render a decision in no more than 7 business days, barring exigent circumstances. All decisions will apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided (other than an automatic review of the revocation of tenure), the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When an appeal results in a new finding or sanction of the revocation of tenure, that sanction can be appealed automatically to the provost.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the four available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

## Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## Recordkeeping

The Office of Title IX will store all current training materials for the Title IX Coordinator, Investigators, Decision-makers, and facilitators on the Title IX website at [www.una.edu/titleix](http://www.una.edu/titleix). All other training materials, along with other records kept as required by law or pursuant to the Sexual Misconduct Policy are stored by the Office of Title IX electronically or physically in the Office of Title IX.

# Disability Accommodations in the Grievance Process

UNA is committed to providing qualified students, employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the formal grievance process through the Office of Title IX. Anyone needing such accommodations or support should contact Jeremy Martin, ADA/504 Coordinator and Director of Disability Services or the Office of Human Resources, who 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.

## **a. Students with Disabilities**

The Director of Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

## **b. Employees with Disabilities**

Pursuant to the ADA, UNA will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 Coordinator and providing necessary documentation. The ADA/504 Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## Revision

These procedures will be reviewed and updated annually by the Title IX Coordinator. UNA reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.



**Last Reviewed: September 22, 2021**