

SOUTHERN WESLEYAN UNIVERSITY P O L I C Y

Policy Title: Sexual Misconduct Policy	Policy Number: 4.3
Authority: Title IX Coordinator, President’s Cabinet, President	See Also: <ul style="list-style-type: none"> • Student Handbook • Faculty Handbook • Staff Handbook • 4.1 - Protection of Minors Policy • 4.4 - Personal Relationships Policy
Date Adopted: Effective 08/14/2020; Adopted 8/18/2020 Date Updated: Effective 08/24/2021; Adopted 12/07/2021	

NOTE This Sexual Misconduct Policy is adopted pursuant to Title IX of the Educational Amendments of 1972 and its implementing regulations at 34 CFR § 106 and should be construed to be consistent with Title IX and those regulations. The effective date of this policy is August 14, 2020. Southern Wesleyan University is currently reviewing and revising other University policies to ensure conformity with this Policy. In the case of any inconsistency between the terms of any other University policy and this one, the terms of this Policy shall prevail to the extent that Title IX is implicated in the matter. In accordance with U.S. Department of Education’s bulletin issued August, 24, 2021, as a result of *Victim Rights Law Center et al. v. Cardona* (D. Mass. July 28, 2021), Article V, Section 5.12 has been amended to reflect the federal court’s decision.

Table of Contents

ARTICLE I. Introduction and Terminology	3
1.01 Notice of Nondiscrimination and Background.....	3
1.02 Title IX Coordinator	4
1.03 Reporting Sexual Misconduct	4
1.04 Confidential Support and Resources	4
1.05 Inquiries Concerning this Policy and University Compliance.....	5
1.06 Applicability of this Policy and Exclusions	5
1.07 Sexual Misconduct Board	6
1.08 Definitions	6
1.09 Standard of Proof.....	9
1.10 Sanctions and Remedies	9
 ARTICLE II. Statements of Policy	 10
2.01 Prohibition on Sexual Misconduct	10
2.02 Prohibition on Retaliation	0

2.03 Prohibition on Providing False Information or Interfering with an Investigation 11

2.04 Amnesty 11

2.05 Confidentiality and Privacy 11

2.06 Prompt Resolution 12

2.07 Presumption that Respondent is Not Responsible 12

2.08 Impartiality and Conflicts of Interest 12

2.09 Training 12

2.10 Recordkeeping 13

ARTICLE III. Procedures Applicable to All Reports of Sexual Misconduct 13

3.01 Reports of Sexual Misconduct and Initial Assessment 13

3.02 Consolidation of Proceedings 13

3.03 Initial Information for Complainant 14

3.04 Supportive Measures 14

3.05 Formal Complaints 15

3.06 When a Complainant Does Not Wish to Proceed 15

3.07 Notice to the Parties Upon Receipt of Formal Complaint 15

3.08 Emergency Removal 16

3.09 Notification of Law Enforcement 16

3.10 Investigations and Interviews 16

3.11 Draft Investigation Report 17

3.12 Technical Dismissal for Purposes of Title IX 18

3.13 Permanent Dismissal 18

3.14 Determination of Which Hearing Procedures Apply / Institutional Discretion 18

ARTICLE IV. Informal Resolution 19

4.01 Availability of Informal Resolution 19

4.02 Timing of Informal Resolution 19

4.03 Right to Withdraw Prior to Final Resolution 19

4.04 Mechanism A: Respondent Acceptance of Responsibility 20

4.05 Mechanism B: Negotiated Resolution 20

ARTICLE V. Hearing Procedures for Title IX Offenses 20

5.01 Access to Gathered Evidence 20

5.02 Finalization of the Investigation Report 21

5.03 Appointment of Panel 21

5.04 Notice of the Hearing 21

5.05 Separate Rooms and Virtual Participation 21

5.06 Responsibilities of the Panel and the Chair 22

5.07 Role of Advisors in Hearing 22

5.08 Record of Hearing 22

5.09 Confidentiality of Hearings 22

5.10 Types of Evidence Excluded 22

5.11 Access to Evidence and Investigation Report during Hearing 23

5.12 Testimony at Hearing / Refusal to Submit to Cross-Examination 23

5.13 Order of Hearing 24

5.14 Panel Deliberations 24

5.15 Panel Determination and Notice 24

ARTICLE VI. Hearing Procedures for Non-Title IX Sexual Misconduct 25

6.01 Non-Title IX Sexual Misconduct Involving Faculty or Staff Respondents 25

6.02 Non-Title IX Sexual Misconduct Involving Student Respondents 25

6.03 Credible Evidence Determination 25

6.04 Meetings with Respondent and Complainant 25

6.05 Appointment of Panel 26

6.06 Notice of Hearing 26

6.07 Separate Rooms and Virtual Participation 26

6.08 Record of Hearing 27

6.09 Confidentiality of Hearings 27

6.10 Role of Advisors During Hearing 27

6.11 Failure of Respondent to Appear 27

6.12 Responsibilities of the Panel and the Chair 27

6.13 Presentation of Evidence 28

6.14 Panel Deliberations 28

6.15 Panel Determination and Notice 29

ARTICLE VII. Appeal 29

7.01 What Decisions Are Appealable 29

7.02 Who May Appeal 29

7.03 Bases for Appeal 29

7.04 Content and Timing of Appeal 30

7.05 Access to Record 30

7.06 Stay of Sanctions 30

7.07 Notice to Non-Appealing Party / Opportunity to Respond 30

7.08 Appellate Panel 30

7.09 Appellate Panel Review and Decision 31

7.10 Decision of Appellate Panel / Notice to Parties 31

ARTICLE I. Introduction and Terminology

1.01 Notice of Nondiscrimination and Background

Southern Wesleyan University (the “University”) does not discriminate on the basis of race, national origin, sex, or physical handicap in any of its policies, practices, or procedures. The University reserves its right to operate as a church-related institution and to develop policies consistent with the religious tenets of its sponsoring denomination, The Wesleyan Church.

To ensure conformity with federal law prohibiting discrimination on the basis of sex, including Title IX of the Educational Amendments of 1972 (“Title IX”) and its implementing regulations at 34 CFR § 106, the University has established this Sexual Misconduct Policy to address all forms of Sexual Misconduct as defined below, including sexual harassment, sexual stalking, sexual assault, and other forms of conduct that include sexual discrimination or violence as a substantial element.

1.02 Title IX Coordinator

The University’s Title IX Coordinator (the “Title IX Coordinator”) oversees the administration of this Policy and coordinates the University’s compliance with Title IX. The Title IX Coordinator’s contact information is:

Melissa Frazier Director of Human Resources and
Title IX Coordinator
208 Correll Hall
907 Wesleyan Drive
Central, SC 29630
864-644-5483
mfrazier@swu.edu

1.03 Reporting Sexual Misconduct

Individuals who believe they have experienced, witnessed, or learned of Sexual Misconduct, including sex discrimination, harassment, and/or retaliation in violation of this Policy, should report any incident to the Title IX Coordinator. Reports may be made in person, by mail, by telephone, or by e-mail using the contact information above. A report may be made to the Title IX Coordinator at any time, including during non-business hours, by mail, telephone, or e-mail.

1.04 Confidential Support and Resources

A student or employee may discuss an incident involving alleged Sexual Misconduct with any of the following University employees who are deemed Confidential Employees or with an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergy person, etc.) without concern that his or her identity will be reported to the Title IX Coordinator.

- *SWU’s Counseling and Health Center Staff*, who provide free confidential and professional medical and mental health services to students upon request. The Center is located on the top floor of the Jennings Campus Life Center. To schedule an appointment, call 864-644-5131
- *SWU’s Chaplain*, who can provide confidential pastoral and spiritual counseling. To schedule an appointment with the Rev. Heath Mullikin call 864-644-5524.

In addition to the foregoing, the Pickens County Advocacy Center provides free 24 hours a day/365 days a year intervention services to victims of sexual assault. An advocate will meet with victims at the hospital as well as assist them with reporting options. Advocates can be contacted by calling the 24/7 hotline at 864-442-5500.

1.05 Inquiries Concerning this Policy and University Compliance

Questions regarding Title IX, including its application and/or concerns about noncompliance by the University should be directed to the Title IX Coordinator or to the Office for Civil Rights at the United States Department of Justice at the Address below:

Assistant Secretary for Civil Rights
Office for Civil Rights, National Headquarters
U.S. Department of Education
Lyndon Baines Johnson Dept. of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: 800-421-3481
Fax: 202-453-6012; *TDD:* 800-877-8339
Email: OCR@ed.gov

1.06 Applicability of this Policy and Exclusions

This Policy applies to any allegation of Sexual Misconduct, if the conduct giving rise to the allegation is related to the University's academic, educational, athletic, extracurricular, internship, or practicum programs or activities. Subject to the foregoing, the Policy applies (i) to allegations made by or against a student, an employee of the University, or a third party; (ii) regardless of the sex, sexual orientation, sexual identity, gender expression, or gender identity of any party to the alleged conduct; and (iii) regardless of where the alleged Sexual Misconduct occurred.

Excluded from this policy are the following offenses as defined in the University's Student Handbook: (i) Consensual Sexual Behavior, (ii) Explicit Behavior, and (iii) Stalking not on the basis of gender. These offenses, which are still misconduct, are resolved under the procedures for other student misconduct in the Student Handbook.

In addition, sexual misconduct involving minors is addressed in SWU's Protection of Minors policy and will be dealt with pursuant to that policy except to the extent such misconduct implicates Title IX.

1.07 Sexual Misconduct Board

Hearings under this Policy shall be conducted by members of the Sexual Misconduct Board (“SMB”). The SMB consists of seven persons, each of whom is either an employee of the University or a non-employee who is licensed and in good standing to practice law in the State of South Carolina.

The Title IX Coordinator appoints the members of the SMB, each of whom is normally expected to serve for three years but may serve a longer term at the discretion of the Title IX Coordinator. The Title IX Coordinator may remove a member of the SMB at any time and for any reason or no reason.

1.08 Definitions

“Advisor” means a person who advises a Party during the Sexual Misconduct process and performs such other roles as are specified in this Policy. An Advisor may be, but is not required to be, an attorney. An Advisor may also be a family member of the Party, or a coach, faculty member, pastor, or other member of the SWU community.

“Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct.

“Consent.” (*While SWU requires all members of the University community to abstain from intimate forms of sexual conduct outside of marriage, Title IX requires the University to define consent for the purposes of compliance with federal law.*) Consent is the knowing and voluntary agreement to engage in a particular sexual activity. Consent may be expressed through words or conduct.

In the case of a dispute over whether consent was given, the words and acts in question are to be evaluated in light of the totality of the circumstances as they would be understood and perceived by reasonable persons, with characteristics of the parties in question, under similar circumstances. This includes consideration of any past pattern between the parties.

Consent is not effective if it results from: (a) coercion (including intimidation or the threat or use of force); (b) temporary or ongoing incapacity (including either physical or legal incapacity); (c) deception; or (d) any other circumstance that would prevent or deter the consenting party from voluntarily choosing whether or not to engage in sexual activity.

While consent may be expressed by conduct, consent must be clear and must apply to the specific act in question. Consent will not be inferred from any of the following standing alone: (i) Silence or lack of resistance; (ii) A current or previous dating or sexual relationship; (iii) Consent to sexual conduct other than the act in question; (iv) Consent to sexual conduct at a different time; (v) Consent to sexual conduct with a different person; (vi) Attire or flirtatious or provocative comments or conduct; (vii) Agreeing to go on a date and/or accepting gifts, meals, or entertainment.

Consent can be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent to particular sexual activity is withdrawn, that sexual activity should cease as promptly as is reasonably practicable.

“Formal Complaint” has the definition set forth in § 3.05.

“Parties” refers to the Complainant and Respondent under this Policy.

“Reasonable Person” means a reasonable person under similar circumstances and with relevant characteristics similar to those of the person in question.

“Respondent” means an individual who has been reported to have engaged in conduct that could constitute Sexual Misconduct.

“Sexual Exploitation” means any act of taking non-Consensual or abusive sexual advantage of another person for one’s own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

1. Causing or attempting to cause another person to be Temporarily Incapacitated in order to subject such person to conduct of a sexual nature to which the person has not consented;
2. Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of images of private sexual activity or a person’s intimate parts (including genitalia, groin, breast or buttocks) without Consent via media such as, but not limited to, the Internet, social media, or email;
3. Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
4. Voyeurism, including non-consensual observation of private sexual activity or a person’s intimate parts; or
5. Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.

“Sexual Intimidation” includes but is not limited to (i) threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent, and (ii) engaging in indecent exposure (intentionally exposing one’s sexual organs with the intention of alarming, distressing, and/or offending others).

“Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct that would be deemed by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to

the University's education program or activity (including conduct that constitutes Sexual Exploitation or Sexual Intimidation if such conduct reaches this level); or

3. Sexual Assault, defined as
 - a. Any sexual act upon another person, without the Consent of that person, including instances in which that person is incapable of giving Consent.
 - b. Incest or Statutory Rape under the law of South Carolina.

4. Dating Violence, defined as
 - a. Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the victim and includes but is not limited to sexual or physical abuse or the threat of such abuse.

5. Domestic Violence, defined as
 - a. Violence on the basis sex committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of South Carolina; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of South Carolina.

6. Stalking, defined as
 - a. engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a Reasonable Person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
 - b. For the purposes of this definition—
 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - (ii) "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

"Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct includes but is not limited to (i) Sexual Harassment, (ii) Sexual Exploitation, and (iii) Sexual Intimidation.

For purposes of this policy, Sexual Misconduct does not include the following offenses as defined in the University's Student Handbook: (a) Consensual Sexual Misconduct, (b) Explicit

Behavior, and (c) Stalking not on the basis of gender. In addition, Sexual Misconduct does not include any conduct prohibited in SWU's Protection of Minors policy except to the extent such conduct implicates Title IX.

"Supportive Measures" has the definition set forth in § 3.04.

"Temporarily Incapacitated" means lacking, for a period of time, the physical and/or mental ability to make informed, rational judgments or to communicate clearly. A person may be Temporarily Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, or having consumed alcohol or taken drugs.

"Title IX Coordinator" refers to that individual identified in § 1.02 or his/her designee.

"Title IX Offenses" means allegations of Sexual Harassment (i) against a Complainant in the United States (ii) who is a student or employee or seeking to be a student or employee of the University, (iii) that occurs in locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and includes any building owned or controlled by a student organization officially recognized by the University.

1.09 Standard of Proof

The standard of proof for all determinations under this Policy, including determinations of a Respondent's responsibility for a violation of this Policy, will be a preponderance of the evidence. For example, a finding of responsibility shall be made only if it is more likely than not that the Respondent violated the Policy.

1.10 Sanctions and Remedies

Sanctions and remedies that may be imposed under this policy, following a determination of responsibility, include the following.

For student Respondents:

- Educational Training
- No classes or extra-curricular activities shared with Complainant
- Disciplinary probation
- Withholding of grades, official transcript, or degree
- Removal from one or more classes; involuntary withdrawal from the University; bar against readmission bar against enrollment (in the case of an applicant)
- Suspension of rights and privileges, including but not limited to participation in athletic or extra-curricular activities
- Denial of degree
- Suspension from the University for a period of time

- Expulsion (permanent separation from the University)
- Revocation of degree and withdrawal of diploma
- Other sanctions or remedies as deemed appropriate under the circumstances

For employee Respondents:

- Employment probation;
- Job demotion or reassignment
- Suspension with or without pay for a specific period of time
- Dismissal or termination
- Ineligibility for rehiring
- Other sanctions or remedies as deemed appropriate under the circumstances

ARTICLE II. Statements of Policy

2.01 Prohibition on Sexual Misconduct

The University prohibits Sexual Misconduct and is fully committed to the Biblical Standard of sexual integrity as defined and practiced by the Wesleyan Church. The University strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases, in conformity with all applicable laws and regulations. To that end the University has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and the University will properly address all allegations of Sexual Misconduct.

However, not all unwelcome conduct of a sexual nature requires the types of procedures set forth in Articles V and VI of this Policy. Accordingly, as set out below, while the University will address all allegations of Sexual Misconduct pursuant to the procedures in Article III, only those acts that qualify as Title IX Offenses will be resolved and disciplined pursuant to the procedures under Article V, and only certain other acts of Sexual Misconduct will be resolved and disciplined pursuant to the procedures in Article VI.

2.02 Prohibition on Retaliation

The University and each and every member of the University's community are prohibited from directly or indirectly retaliating against any person for engaging in protected activity under this Policy.

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the grievance process, supporting a Complainant or Respondent, providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Retaliation includes taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for engaging or considering engaging in protected activity.

Bad faith accusations against a Complainant or witness of code of conduct violations constitute retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may have been subjected to retaliation.

2.03 Prohibition on Providing False Information or Interfering with an Investigation

Any individual who knowingly files a false report under this Policy or who interferes with or provides false statements or information during an investigation under this Policy may be subject to disciplinary action.

2.04 Amnesty

The University considers the reporting and resolution of Sexual Misconduct cases to be of paramount importance. The University does not condone the use of alcohol or illegal drugs, but the University will extend amnesty to Complainants, third parties who report Sexual Misconduct, witnesses, and those assisting a potential victim of Sexual Misconduct from punitive sanctioning for use of drugs and/or alcohol when evidence of such use is discovered in the course of a Sexual Misconduct report or investigation or while individuals are assisting a potential victim. Similarly, the University may, in its discretion, provide amnesty for other minor conduct code violations that are discovered in the course of Sexual Misconduct report or investigation.

2.05 Confidentiality and Privacy

From the time a report is made, the University will make all reasonable efforts to maintain the confidentiality and privacy of the Parties involved and any witnesses in a report of Sexual Misconduct, and will not disclose any information except as permitted under the Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of Title IX, including the conducting of any investigation, hearing or grievance procedure arising under this Policy.

Typically, only a small group of University officials who need to know about a report of Sexual Misconduct will be informed of the details of an investigation. In addition, information will be shared only as necessary with investigators, SMB members, witnesses, and the Parties.

2.06 Prompt Resolution

The University is committed to resolving allegations of Sexual Misconduct promptly, once it has received notice or a Formal Complaint. Complaints can typically take 90-120 days to resolve, including any appeals. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid undue delays within its control.

Any time the general timeframes for resolution outlined in this Policy will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay. Delays may arise for numerous reasons, including but not limited to considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities. Delay shall not in and of itself be a basis to dismiss claims of a violation.

2.07 Presumption that Respondent is Not Responsible

A Respondent will be presumed to be not responsible for the alleged Sexual Misconduct until a determination regarding responsibility is made at the conclusion of the processes set forth in this Policy.

2.08 Impartiality and Conflicts of Interest

The Title IX Coordinator and all persons involved in administering the procedures under this Policy (including any investigators and members of the SMB) are to act with independence and authority free from bias and conflicts of interest. To raise any concern regarding bias or a potential conflict of interest concerning the Title IX Coordinator, a report should be made to the President of the University or the Deputy Title IX Coordinator.

Reports of bias or a potential conflict of interest regarding anyone else involved in administering the procedures under this Policy should be made to the Title IX Coordinator promptly and are deemed waived if not raised within 24 hours following notice to the Parties of the identity of the person(s) involved. Because the University is a small and close-knit community, the fact that a person involved in administering the Policy knows a party or witness does not, by itself, normally constitute a conflict of interest.

2.09 Training

The Title IX Coordinator, any deputy coordinators, investigators, and the SMB receive annual training concerning the definitions under this policy (including the definitions of Sexual Misconduct and Title IX Offense), how to conduct the investigation and grievance process, and University policies related to Sexual Misconduct. All training materials used to train these

personnel will be posted on the University's website at <https://www.swu.edu/life-at-swu/titleix/>.

2.10 Recordkeeping

The University (through the appropriate office) will retain for seven years the following documents generated pursuant to this Policy:

- (1) Any Investigation Report, determination regarding responsibility, and any audio or audiovisual or transcript recording of a hearing;
- (2) Any disciplinary sanctions imposed on the Respondent or remedies provided to the Complainant;
- (3) Any appeal and the determination thereof;
- (4) Any Informal Resolution and the result thereof;
- (5) Any materials used to train personnel pursuant to § 2.09;
- (6) Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment.

ARTICLE III. Procedures Applicable to All Reports of Sexual Misconduct

3.01 Reports of Sexual Misconduct and Initial Assessment

Reports of Sexual Misconduct should be made to the Title IX Coordinator. The Title IX Coordinator shall make the determination of whether a report involves a charge or allegation of Sexual Misconduct. If so, it will be handled under the procedures in this policy. Otherwise, for matters involving student misconduct, the matter will be handled according to the normal procedures for student misconduct as set forth in the Student Handbook, or for matters involving faculty or staff misconduct, the matter will be handled according to the procedures in the applicable faculty or staff handbook.

If a report involves an allegation of Sexual Misconduct by the Title IX Coordinator, the report shall be made to President of the University or the Deputy Title IX Coordinator, who shall perform the function of Title IX Coordinator for as long as allegations concerning the Title IX Coordinator are being considered.

3.02 Consolidation of Proceedings

Where a report (or Formal Complaint) involves both Sexual Misconduct and allegations of non-sexual misconduct, the Title IX Coordinator retains discretion to handle the entire matter pursuant to these procedures, if fairness, efficiency, or accuracy would be best served.

In addition, the University may consolidate Formal Complaints as to allegations against more than one Respondent, or by more than one Complainant against one or more Respondents,

where the allegations of Sexual Misconduct arise out of the same facts and circumstances, and where fairness, efficiency, or accuracy would be best served.

3.03 Initial Information for Complainant

If a report involves a charge or allegation of Sexual Misconduct, the Title IX Coordinator shall promptly contact the Complainant to

- Discuss the availability of Supportive Measures as set forth in 3.04;
- Consider the Complainant's wishes with respect to Supportive Measures;
- Inform the Complainant of the availability of Supportive Measures with or without filing a Formal Complaint; and
- Explain the process for filing a Formal Complaint

3.04 Supportive Measures

The University offers and implements appropriate and reasonable Supportive Measures to the Parties upon notice of alleged Sexual Misconduct.

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 University will maintain the privacy of the Supportive Measures, provided that privacy does not impair the University's ability to provide the Supportive Measures. The University acts to ensure as minimal an academic/occupational impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

Supportive Measures may include:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Altering campus housing assignments
- Extensions of deadlines or other course-related adjustments
- Modification of work or class schedules
- Mutual restrictions on contact between the parties (no-contact orders)
- Any other non-punitive actions deemed appropriate by the Title IX Coordinator

If no Supportive Measures are provided to a Complainant, the University will document the reasons why the University's response was not clearly unreasonable in light of the known circumstances.

3.05 Formal Complaints

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Misconduct. Formal Complainants may be filed with the Title IX Coordinator in person, by mail, or by e-mail, using the contact information set forth in § 1.02.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a party; the alleged victim remains the Complainant.

3.06 When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for his/her name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, he/she may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a Sexual Misconduct investigation.

3.07 Notice to the Parties Upon Receipt of Formal Complaint

Upon receipt of a Formal Complaint, the Title IX Coordinator will provide written notice to each of the Parties that contains the following:

- A copy of or link to this Policy;
- Notice of the allegations of Sexual Misconduct with sufficient detail known at the time so as to allow the Party to prepare a response before any initial interview, including the identity of the party or parties involved, the conduct constituting Sexual Misconduct, and the date and location of the alleged incident(s), if known;
- A statement that the Respondent is presumed not responsible, as set forth in § 2.07;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney, and who may be present for all meetings, interviews, and hearings and participate in ways consistent with this Policy, and who may inspect and review evidence related to the allegations;
- A reminder that § 2.02 forbids retaliation against anyone for engaging in protected activity under this policy;
- A reminder that § 2.03 forbids filing false statements or information under this Policy;
- Information concerning the availability of Supportive Measures pursuant to § 3.04;
- Information concerning the Informal Resolution process in Article III; and
- An offer to meet with the Parties to address any questions concerning this Policy or the issues addressed in the Notice.

When the University determines to investigate additional allegations not included in the initial notice, a new notice of the additional allegations will be provided to the Parties.

3.08 Emergency Removal

The University can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis 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. This risk analysis is performed by the Title IX Coordinator, in consultation with the Vice President for Student Life.

In all cases in which an emergency removal is imposed, the student Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. 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 is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived.

Where the Respondent is an employee, any existing provisions addressing interim action in the employee's applicable handbook shall apply, and in the absence of such provisions the Title IX Coordinator shall determine whether to place the employee on administrative leave during the pendency of this process.

3.09 Notification of Law Enforcement

The Title IX Coordinator shall determine whether local law enforcement or other authorities should be notified of the allegations of a Formal Complaint or other report of Sexual Misconduct.

3.10 Investigations and Interviews

The Title IX Coordinator will ensure that all Formal Complaints of Sexual Misconduct are investigated in a thorough and appropriate manner. Investigations normally are concluded within 90 days of the filing of a Formal Complaint. The Parties should be provided periodic updates on the progress of the investigation, as needed.

The Title IX Coordinator or his/her designee(s) shall serve as Investigator(s). The Title IX Coordinator shall inform the Parties of the identity of the Investigator(s) and indicate that any concerns about bias of an Investigator should be raised within 24 hours. See § 2.08. The

Investigators act as neutral and impartial fact-finders and gather evidence during the investigation.

The Investigator shall interview the Complainant, Respondent, and any witnesses, and gather any pertinent evidentiary materials.

The Parties have the same rights to identify witnesses, including both fact and expert witnesses, and inculpatory and exculpatory evidence during the Investigation.

The Parties shall be entitled to have an Advisor present for all interviews, but the Advisor has no speaking role or authority during the interview, and may not interfere in the interview. The Advisor may consult with the party during breaks in the interview.

The Investigator will undertake reasonable efforts to identify a time for interviews with a Party that are acceptable to the Party and his/her Advisor. In any event, notice of the date, time, and location of interviews will be provided at least 24 hours in advance to the Party being interviewed.

Interviews may be conducted remotely.

Interviews will be recorded and the recordings will be made available to the Parties. In addition, the investigator will also make a summary of the relevant portions of the interview and send that summary to the Party or witness interviewed, who then reviews the summary and certifies its accuracy.

3.11 Draft Investigation Report

At the conclusion of the Investigation, the Investigator compiles a draft Investigation Report that contains the following:

- A description of the procedural steps taken under this Policy
- A summary of the relevant evidence gathered
- The summaries for all of the interviews
- Copies of all documentary or other evidence

3.12 Technical Dismissal for Purposes of Title IX

Under Title IX regulations, the University is required to distinguish between Sexual Misconduct that is “under Title IX” (that is, misconduct that would constitute a Title IX Offense under this Policy) and other Sexual Misconduct that is a violation of University policy. Consequently, if at any time following receipt of a Formal Complaint the Title IX Coordinator determines that an allegation of Sexual Misconduct would not qualify as a Title IX Offense even if proved, the Title IX Coordinator shall dismiss the complaint for purposes of Title IX. This technical dismissal does

not bring the proceedings to an end; it only clarifies that the misconduct alleged does not fall under the Title IX regulations and that the grievance process will not proceed under those procedures set forth in Article V (unless the Title IX Coordinator determines otherwise pursuant to § 3.14).

Notice to the Parties of a technical dismissal for purposes of Title IX will explain

- the reasons for the Title IX Coordinator's decision;
- that the procedures in Article V are not applicable (unless the Title IX Coordinator determines otherwise pursuant to § 3.14); and
- that the Formal Complaint will continue according to the procedures in Article VI

3.13 Permanent Dismissal

The University may (but is not required to) permanently dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Notwithstanding circumstances constituting (1) or (2) above, the University may determine to proceed with a Formal Complaint if the University determines in its sole discretion that doing so is appropriate or necessary to carry out the purposes of this Policy.

Upon any permanent dismissal, the Recipient will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal in Article VII.

3.14 Determination of Which Hearing Procedures Apply / Institutional Discretion

Before a Formal Complaint proceeds to a hearing, the Title IX Coordinator shall determine whether the matter involves a Title IX Offense or not. If it does involve a Title IX Offense, the matter shall proceed using the hearing process outlined in Article V. If it does not involve a Title IX Offense, the Title IX Coordinator shall dismiss the Complaint for purposes of Title IX according to the procedures in § 3.12 and the matter shall proceed using the hearing process outlined in Article VI.

The Title IX Coordinator retains discretion (i) to process a Sexual Misconduct matter that is not a Title IX Offense pursuant to the procedures in Article V, and (ii) to consolidate a matter that involves both a Title IX Offense and Sexual Misconduct that is not a Title IX Offense and process

it under the procedures in Article V if, in either case, fairness, efficiency, or accuracy would be best served.

ARTICLE IV. Informal Resolution

4.01 Availability of Informal Resolution

Informal Resolution pursuant to this Article is available to resolve all Formal Complaints of Sexual Misconduct if (1) the Title IX Coordinator determines that Informal Resolution is an appropriate mechanism for resolving the Complaint; (2) all Parties provide voluntary, written consent to participate in the Informal Resolution process; and (3) the allegation of Sexual Misconduct does not involve allegations that a University employee committed Sexual Harassment of a student.

As a general matter, Informal Resolution may not be used to resolve less than all the misconduct in a Formal Complaint, but the Title IX Coordinator retains discretion to make exceptions to this general rule.

4.02 Timing of Informal Resolution

Informal Resolution may occur at any time following the receipt of a Formal Complaint, including before an investigation or hearing. Efforts towards Informal Resolution pause the customary timeframe for resolving a Formal Complaint as set forth in § 2.06.

4.03 Right to Withdraw Prior to Final Resolution

At any time prior to agreeing to a resolution, either Party has the right to withdraw from the Informal Resolution process and to request that the Formal Complaint proceed under the applicable resolution procedures.

4.04 Mechanism A: Respondent Acceptance of Responsibility

The Respondent may accept responsibility for all of the alleged Sexual Misconduct at any point during the resolution process. If the Respondent indicates an intent to accept responsibility, the formal resolution process will typically be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in § 3.01.

If Informal Resolution is applicable, the Title IX Coordinator will propose sanctions, confer with the Parties, and determine whether all parties and the University are able to agree on responsibility, sanctions, and remedies. If so, the Title IX Coordinator accepts the finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies.

This result is not subject to appeal once all parties indicate their written assent to all agreed-upon terms of resolution.

4.05 Mechanism B: Negotiated Resolution

The Title IX Coordinator or his/her designee may, with the consent of the Parties, attempt to negotiate and implement an agreement to resolve the allegations that satisfies all Parties and the University.

The Title IX Coordinator or his/her designee may use formal mediation sessions, informal meetings, or any other reasonable method to effect a negotiated resolution.

The University must approve any final negotiated resolution. The result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of resolution.

ARTICLE V. Hearing Procedures for Title IX Offenses

The procedures in this Article are applicable ONLY for alleged Sexual Misconduct that is determined to be a Title IX Offense, subject to a decision by the Title IX Coordinator to apply this Article to other Sexual Misconduct pursuant to § 3.14, and not otherwise resolved pursuant to the procedures for Informal Resolution in Article IV.

5.01 Access to Gathered Evidence

If the matter has not been previously resolved the Title IX Coordinator shall provide, at the same time, access to all Parties (and their Advisors, if the Party has submitted a signed information release for the Advisor) to all the evidence obtained in the investigation that directly relates to the allegations (including any evidence the University does not intend to rely on at the hearing).

Each Party will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the Title IX Coordinator, who will make the responses available to the Investigator. The Investigator will include the responses in the final Investigation Report.

5.02 Finalization of the Investigation Report

Upon receipt of the Parties' responses to the evidence under § 5.01, the Investigator(s) shall consider the responses, finalize the Investigation Report, and provide a copy of the Report to the Title IX Coordinator. The Title IX Coordinator will make the completed Report available to the Parties (and their Advisors, if the Party has submitted a signed information release for the Advisor) at the same time at least 10 days prior to the hearing.

5.03 Appointment of Panel

Upon the determination that a hearing will be required to resolve the matter, the Title IX Coordinator shall appoint a three-member hearing panel (the “Panel”) from the members of the SMB. Those three members will be identified to the Parties in advance of the hearing and shall be responsible for hearing and deciding the matter.

Upon notice to the Parties of the identity of the Panel members, either Party should notify the Title IX Coordinator within 24 hours of any concerns about bias or a conflict of interest with a Panel member. The Title IX Coordinator has the discretion to decide whether to remove the challenged Panel member and replace him/her with another member of the SMB. The Title IX Coordinator shall remove a Panel member if there is a substantial risk of bias or the appearance of bias.

5.04 Notice of the Hearing

The University will provide at least 10 days written notice of the hearing to participants (and any Advisors, upon receiving a Party’s signed information release). The notice will include:

- (1) The date, time and location of the of the hearing;
- (2) The names of all participants in the hearing, including parties, advisors, the Panel, and witnesses;
- (3) The alleged violations; and
- (4) A reminder that the hearing will proceed according to the process in this Article V.

5.05 Separate Rooms and Virtual Participation

At the request of either Party, the University will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Panel and the Parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually.

5.06 Responsibilities of the Panel and the Chair

The members of the Panel have the right to question the Parties and any and all witnesses, will deliberate to determine responsibility, and will determine appropriate sanctions. The Panel is entitled to have the advice and assistance of outside general counsel for the University at any point during these proceedings, including during a pause in deliberations.

The Panel will select one of its members as Chair. The Chair, in consultation as necessary with the other members of the Panel, oversees the hearing, makes certain the process is followed, maintains order, and rules on all objections regarding exhibits and testimony of participants at the hearing. The Chair shall interpret and apply these rules in the interests of truth, justice,

order, and the University's overarching goals of education and character building. The Chair will have a vote.

5.07 Role of Advisors in Hearing

Each Party may have an advisor at the hearing. Advisors are not permitted to actively participate in the hearing except for asking questions of the other Party and any witnesses. If a Party does not have an Advisor, the University will appoint one for the Party, without fee or charge. The appointed Advisor may be, but is not required to be, an attorney.

5.08 Record of Hearing

The University will record the hearing in audio or audiovisual format and may, at its discretion, transcribe the recording. The recording and any transcript will be available for the Parties to review, upon request.

No one else at the hearing is entitled to make a record of the hearing.

5.09 Confidentiality of Hearings

Hearings are closed except to the members of the Panel, the Parties, any Advisors, and the Title IX Coordinator. Witnesses are admitted to the hearing singly, only to give testimony and submit to questions from the Panel and Advisors. After such testimony each witness is excused. Witnesses are required to maintain confidentiality concerning the proceedings.

5.10 Types of Evidence Excluded

The following types of evidence are excluded and may not be relied upon for a determination of responsibility:

- (1) Privileged information: No person will be required to disclose information protected under a legally recognized privilege. The Panel must not allow into evidence or rely upon any testimony or evidence that contains or discloses such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- (2) Complainant's prior sexual history or disposition: Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant *unless* such questions and evidence are offered to prove that someone other than the Respondent committed the conduct in question or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent to the alleged conduct.
- (3) A Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or

paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the Party provides voluntary, written consent to the use of such evidence.

5.11 Access to Evidence and Investigation Report during Hearing

Each party will have access to all of the evidence from the investigation, including a copy of the completed Investigation Report, as outlined in § 5.02 in this Policy.

5.12 Testimony at Hearing / Refusal to Submit to Cross-Examination

At the discretion of the Chair, the Panel may ask the first questions during the testimony of any Party or witness. Each party's Advisor will have an opportunity to ask relevant questions and follow-up questions of the other Party and of any witnesses that participate in the hearing, including questions that challenge credibility.

Each Advisor may ask questions directly, orally, and in real time at the hearing. The Parties will not be permitted to personally ask questions of the other Party or any witnesses that participate in the hearing. The Advisors may ask questions under the following procedure:

- (1) The Advisor will ask a question of the applicable participant
- (2) Before the participant answers the question, the Chair will rule as to whether the Advisor's question is relevant to the alleged conduct charges
- (3) If the Chair rules the Advisor's question as not relevant, the Chair must explain his/her decision to exclude the question. If the Chair permits the question, the participant will answer.

The Panel may consider any statement of that Party or witness when reaching a responsibility determination whether the Party or witness is or is not present at the hearing nor available for cross-examination. In addition, the Panel may not draw an inference concerning the Respondent's responsibility for misconduct based solely on a Party or witness's absence from the hearing or refusal to answer questions.

5.13 Order of Hearing

The Panel has final discretion on how best to organize the hearing, but as a general matter, the hearing proceeds as follows:

- (1) Opening statements from the Parties
- (2) Presentation by the Title IX Coordinator or Investigator of a summary of the evidence gathered in the Final Investigation Report, followed by questions to the Title IX Coordinator or Investigator from Panel and Parties' Advisors

- (3) Complainant's testimony and presentation of evidence and witnesses, with questions from the Panel and Respondent's Advisor following
- (4) Respondent's testimony and presentation of evidence and witnesses, with questions from the Panel and Complainant's Advisor following
- (5) Closing statements from the Parties
- (6) Hearing comes to a close and all in attendance are dismissed from the hearing

5.14 Panel Deliberations

Following the hearing the Panel will go into closed deliberations to determine whether the Respondent is responsible for the Sexual Misconduct. The determination shall be made according to a preponderance of the evidence. *See* §1.09.

If the Panel determines Respondent is responsible, the Panel will consider the information presented in the hearing to determine the appropriate sanctions.

No record is made of Panel deliberations, and the vote of individual Panel members will not be recorded. A majority vote of the Panel (two votes out of three) will be required for a finding of responsibility and for the imposition of sanctions.

5.15 Panel Determination and Notice

The Panel shall issue a written Determination that includes the following:

- (1) Identification of the allegations potentially constituting Sexual Harassment, along with any other alleged misconduct being resolved in the proceeding;
- (2) A description of the procedural steps taken from receipt of the Formal Complaint through the determination, including all notifications to the Parties, interviews with the Parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- (3) Findings of fact supporting the determination;
- (4) Conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
- (5) The disciplinary sanctions, if applicable (*see* § 1.10)
- (6) The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
- (7) The University's procedures and permissible bases for the Parties to appeal.

Normally, the Panel should endeavor to issue its written Determination within 7 calendar days of the end of the hearing. The Chair will send the Determination to the Title IX Coordinator, who will provide it to both Parties simultaneously. Either Party may then appeal pursuant to the procedures in Article VII.

ARTICLE VI. Hearing Procedures for Non-Title IX Sexual Misconduct

The procedures in this Article are applicable ONLY for alleged Sexual Misconduct that is not a Title IX Offense and not otherwise resolved pursuant to the procedures for Informal Resolution in Article IV.

6.01 Non-Title IX Sexual Misconduct Involving Faculty or Staff Respondents

Allegations of Sexual Misconduct that would not constitute a Title IX Offense and that involve a faculty or staff member Respondent are to be resolved according to the procedures for addressing misconduct in the applicable faculty or staff handbook, and are not handled under this Article VI.

6.02 Non-Title IX Sexual Misconduct Involving Student Respondents

Allegations of Sexual Misconduct that would not constitute a Title IX Offense and that involve a student Respondent are handled according to the procedures of this Article VI.

6.03 Credible Evidence Determination

Upon review of the material gathered by the Investigator, the Vice President for Student Life shall determine whether some credible evidence of Sexual Misconduct exists. If it does, the matter will proceed as outlined in these procedures. If not, the matter will be concluded as to the Respondent and the Formal Complaint dismissed, but the Vice President for Student Life may still consider whether other forms of remedial or community-based steps are appropriate to educate the Respondent or reduce the risk of future Sexual Misconduct.

Neither Party has a right to appeal the Vice President for Student Life's determination of whether credible evidence exists.

6.04 Meetings with Respondent and Complainant

Once the Vice President for Student Life determines that credible evidence of Sexual Misconduct exists, he or she will meet individually one or more times with the Parties to discuss (i) the charges brought against the Respondent, (ii) an overview of the hearing process, and (iii) whether the Parties would be interested in pursuing the Informal Resolution process outlined in Article III.

During the meeting with Respondent or at another time determined by the Vice President for Student Life, the Respondent will indicate his/her plea of "responsible" or "not responsible."

6.05 Appointment of Panel

Upon the determination that a hearing will be required to resolve the matter, the Vice President for Student Life shall appoint a three-member hearing panel (the “Panel”) from the members of the SMB. Those three members will be identified to the Parties in advance of the hearing and shall be responsible for hearing and deciding the matter.

Upon notice to the Parties of the identity of the Panel members, either Party should notify the Vice President for Student Life within 24 hours of any concerns about bias or a conflict of interest with a Panel Member. The Vice President for Student Life has the discretion to decide whether to remove the challenged Panel member and replace him/her with another member of the SMB. The Vice President for Student Life shall remove a Panel member if there is a substantial risk of bias or the appearance of bias.

6.06 Notice of Hearing

The Parties will receive written notice of the hearing at least 48 hours prior to the hearing. The notice will include

- (1) A statement of the alleged policy violation(s)
- (2) A copy or access to all evidence gathered by the Investigator
- (3) The date, time and location of the hearing
- (4) A reminder that the hearing will proceed according to the process in this Article V

6.07 Separate Rooms and Virtual Participation

At the request of either Party or the determination of the University, the University will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Panel and the Parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually.

6.08 Record of Hearing

The University will record the hearing in audio or audiovisual format and may, at its discretion, transcribe the recording. The recording and any transcript will be available for the Parties to review, upon request.

No one else at the hearing is entitled to make a record of the hearing.

6.09 Confidentiality of Hearings

Hearings are closed except to the members of the Panel, the Parties, any Advisors, the Investigator, the Vice President for Student Life, and the Title IX Coordinator. Witnesses are

admitted to the hearing singly, only to give testimony and submit to questions from the Panel. After such testimony each witness is excused. Witnesses are required to maintain confidentiality concerning the proceedings.

6.10 Role of Advisors During Hearing

The Advisor's role is limited to communicating directly with the student he/she is advising. The Advisor may not directly participate in the hearing or ask questions of a party, witnesses, or panel members.

6.11 Failure of Respondent to Appear

The Respondent shall appear either virtually or in-person before the Panel for the hearing. If the Respondent elects not to appear (including by withdrawing from the University) the Panel will proceed and make its decision in the absence of the Respondent, with the information available to it.

6.12 Responsibilities of the Panel and the Chair

The members of the Panel have the right to question the Parties and any and all witnesses, will deliberate to determine responsibility, and will determine appropriate sanctions. The Panel is entitled to have the advice and assistance of outside general counsel for the University at any point in these proceedings, including during a pause in deliberations.

The Panel will select one of its members as Chair. The Chair, in consultation as necessary with the other members of the Panel, oversees the hearing, makes certain the process is followed, maintains order, and rules on all objections regarding exhibits and testimony of participants at the hearing. The Chair shall interpret and apply these rules in the interests of truth, justice, order, and the University's overarching goals of education and character building. The Chair will have a vote.

6.13 Presentation of Evidence

The hearing under this Article is not adversarial in nature and shall be conducted in a manner that preserved the educational tone of the proceedings.

- (1) The Investigator will serve as the representative for the University at the hearing. The Investigator will present the case on behalf of the University in the interest of justice—that is, this presentation will not advocate for one party or the other, but will endeavor to present all pertinent evidence objectively.
- (2) After the presentation by the Investigator, the Complainant will have the opportunity to call and present witnesses, including himself/herself, and to present any other relevant materials the Panel may accept.

- (3) The Respondent will then have the opportunity to call and present witnesses, including himself/herself, and to present any other relevant materials that the Panel may accept.
- (4) The Respondent and the Complainant shall each have the opportunity to submit questions to the Panel Chair to be asked of each witness or the other Party at the hearing. The Chair shall have discretion not to ask inappropriate questions. The members of the Panel may also question each witness and each Party.
- (5) The Respondent or the Complainant may decline to answer questions posed by the Panel. However, the Panel shall make its decision based on the information available at the hearing and may draw inferences from any refusal to respond.
- (6) Nothing in this policy shall be construed to provide access by any person to materials protected from disclosure by FERPA, such as the Respondent's prior disciplinary records, even if such materials are part of the case presented by the University.
- (7) The Respondent can normally have a maximum of five competent witnesses to give testimony related to the specific charges in a hearing to determine whether the Respondent is responsible for the alleged Sexual Misconduct. The Complainant will normally be allowed a like number of witnesses in each hearing. The Panel may allow additional witnesses if the interests of fairness would be served by doing so.
- (8) The Respondent and Complainant must each submit the names of the witnesses he or she will call to the Chair at least 24 hours prior to the hearing in question. The Chair will promptly provide the names of witnesses to the other party.
- (9) Witnesses may appear virtually before the Panel to testify. Written or tape recorded statements, rather than personal testimony by the witnesses, may be permitted at the Chair's discretion when extenuating circumstances prevent the witness from appearing, and where doing so will not result in injustice. Failure of a witness to be present at the time of the hearing, except in extenuating circumstances, will not be grounds to delay the hearing.
- (10) All participants are dismissed at the close of the hearing.

6.14 Panel Deliberations

Following the hearing, the Panel will go into closed deliberations to determine whether the Respondent is responsible for the Sexual Misconduct. The determination shall be made according to a preponderance of the evidence. *See* § 1.09.

If the Panel determines the Respondent is responsible, the Panel will consider the information presented in the hearing to determine the appropriate sanctions.

No record is made of Panel deliberations, and the vote of individual Panel members will not be recorded. A majority vote of the Panel (two votes out of three) will be required for a finding of responsibility and for the imposition of sanctions.

6.15 Panel Determination and Notice

The panel does not issue a written decision, beyond reporting its results in a written Determination. The Determination includes the Panel's determination of responsibility or non-responsibility and disciplinary sanctions, if applicable (*see* § 1.10). The Chair of the Panel ordinarily shall provide the Determination to the Vice President for Student Life within 24 hours after beginning deliberations, absent circumstances making this impossible. The Vice President for Student Life shall then provide the Determination to both Parties simultaneously, along with information on applicable appeal procedures. Either Party may then appeal pursuant to the procedures in Article VII.

ARTICLE VII. Appeal

7.01 What Decisions Are Appealable

The only determinations in this Policy which are appealable are findings of responsibility, non-responsibility, or sanctions pursuant to §§ 5.15 or 6.15, and determinations to dismiss a Formal Complaint pursuant to § 3.13.

7.02 Who May Appeal

Either Party may appeal an appealable decision.

7.03 Bases for Appeal

In order for an appeal to be reviewed by the Appellate Panel, the appeal must make some reasonable showing that at least one of the following criteria is present:

- (1) A substantive procedural error affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal of the Formal Complaint was made that could, if introduced, have affected the outcome of the matter;
- (3) The Title IX Coordinator, investigator(s), or decision makers rendering the decision had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;

If the Title IX Coordinator determines that the appeal does not meet one of the above criteria, he/she may dismiss the appeal.

7.04 Content and Timing of Appeal

An appeal must contain, in writing, detailed specifications of all bases under which the Party is appealing. Appeals must be received by the Title IX Coordinator no later than 48 hours (not counting weekends or holidays) after the Determination is received by the Party appealing.

7.05 Access to Record

During the period prior to the deadline for filing an appeal, the Parties will be provided reasonable access to the recording of the hearing and to all materials introduced at the hearing.

7.06 Stay of Sanctions

A timely appeal will have the effect of staying all sanctions pending resolution of the appeal. Accordingly, absent a determination by the Title IX Coordinator of extraordinary circumstances, in the event of a sanction of suspension, expulsion, or another sanction that would prevent a student Respondent from completing or participating in academic work, the student Respondent shall be allowed to continue classes and clinical work during pendency of the appeal.

7.07 Notice to Non-Appealing Party / Opportunity to Respond

Upon receipt of an appeal, the Title IX Coordinator shall provide a copy of the Appeal to the non-appealing Party. The non-appealing Party (or the University) then has 48 hours (not counting weekends or holidays) to provide a written statement in support of, or challenging, the outcome.

7.08 Appellate Panel

Appeals (and any responses) are reviewed by a three-person Appellate Panel made up of members of the SMB who were not involved in the decision under review. Upon receipt of the written appeal under 7.04, the Title IX Coordinator shall appoint the Appellate Panel and so inform the Parties, who may object to bias of an appointed Appellate Panel member within 24 hours. *See* § 2.08.

7.09 Appellate Panel Review and Decision

An appeal is not a rehearing, and the Appellate Panel normally considers the appeal only on the written appeal, any written responses, and the record of the hearing but may, in its sole discretion, receive testimony in exceptional circumstances. The Appellate Panel will take one of the following four actions:

- (1) Affirm the decision of the Hearing Panel

- (2) Uphold the finding of responsibility but make changes to the sanctions
- (3) Overturn the decision of the Hearing Panel and find no violation
- (4) Remand the decision to the Hearing Panel for further appropriate proceedings (such as, for example, consideration of other appropriate evidence)

No record is made of Appellate Panel deliberations, and the vote of individual Appellate Panel members will not be recorded. A majority vote of the Appellate Panel (two votes out of three) will be required for any decision.

7.10 Decision of Appellate Panel / Notice to Parties

The Appellate Panel normally decides an appeal within 7 days of receipt of any response to the appeal. The Appellate Panel provides a written decision announcing its decision and the rationale to the Title IX Coordinator, who provides the decision at the same time to both Parties. The decision of the Appellate Panel is final and not subject to further appeal.