



MALONE UNIVERSITY
CHRIST'S KINGDOM FIRST

Complaint Resolution Process
for Sexual Discrimination, Harassment and Misconduct

Maintained by:
Office of Human Resources

Approved: July 2021

Acknowledgements:

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**Interim Sexual Harassment and Interpersonal Violence Resolution
Process & Grievance Process for Title IX Sexual Harassment
Effective: August 2021**

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I. Introduction

A. Purpose

Malone University is committed to maintaining a safe and healthy educational and employment environment that is free from discrimination, harassment and misconduct on the basis of sex or other characteristics protected by law, in its educational programs and activities, admissions, or employment.

The purpose of this document is implementing and executing the University's Prohibition of Sexual Discrimination, Harassment and Misconduct ("Procedure") as outlined in the Malone University Student Handbook. The University wants to ensure a safe and healthy educational and employment environment, and meet legal requirements in accordance with: Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the University's programs or activities; relevant sections of the Violence Against Women Reauthorization Act; Title VII of the Civil Rights Act of 1964, and other applicable laws and University policies.

B. General Information

Malone University ("the University") will act on any Actual Knowledge or Formal Complaint regarding an alleged violation of the University's Sexual Harassment and Interpersonal Violence Policy that is received by the Title IX Coordinator or a Deputy Title IX Coordinator. These actions will include, as appropriate, steps to eliminate the harassment, prevent its recurrence and address its effects.

Title IX Coordinator contact information:

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Concerns regarding violations of the Sexual harassment and Interpersonal Violence Policy can be reported online, both during and outside of business hours, on the Malone Title IX webpage.

C. Scope

The Sexual Harassment and Interpersonal Violence Complaint Resolution Process & Grievance Process for Title IX (collectively, "Resolution Processes") applies to all Reports and Formal Complaints brought within the scope of the University's Title IX Policy.

- This Sexual Harassment and Interpersonal Violence Complaint Resolution Process will be used to resolve Formal Complaints implicating any of violations described in Section V(D) of the Sexual Harassment and Interpersonal Violence Policy.
- The additional procedures described in the Grievance Process for Title IX Sexual Harassment (Section XII of this document) will be used to resolve any Formal Complaint(s) of Title IX Sexual Harassment, which is defined in Section V(D)(1) of the Sexual Harassment and Interpersonal Violence Policy.

These Resolution Processes are the exclusive processes for resolution of Formal Complaints brought under the University's Sexual Harassment and Interpersonal Violence Policy.

Definitions contained in the Sexual Harassment and Interpersonal Violence Policy will be applicable to this Sexual Harassment and Interpersonal Violence Process as well.

While all Formal Complaints involving employees of a third-party contractor will be investigated, alternative procedures may be utilized to respond to such complaints.

- In cases in which the Complainant is not a student or employee of the University (including employees of a third-party contractor) and where the Respondent is a current student or employee (whether staff or faculty), the matter will be handled through the University process deemed most appropriate by the Title IX Coordinator or designee based on an individualized assessment of the circumstances in each specific case. Appropriate processes for resolution of the complaint may include, but are not limited to: the Resolution Processes described in this document; student conduct processes; processes relating to staff misconduct through Human Resources and Human Resources policies; processes relating to faculty misconduct through the Provost's Office and Faculty Handbook; referrals to criminal processes through local law enforcement; or other processes as appropriate.
- In cases in which the Complainant is a student or employee (whether staff or faculty) and the Respondent is an employee of a third-party contractor over whom the University lacks substantial control, the University may use alternative procedures and coordinate the resolution with the procedures of the third-party contractor. However, this will not prevent the University from offering reasonable and appropriate Supportive Measures to the Complainant.

II. Confidentiality

Where a non-confidential University employee becomes aware of an allegation that the University's Sexual Harassment and Interpersonal Violence Policy has been violated, the information must be reported to the University's Title IX Coordinator. For a list of confidential resources and further information regarding confidentiality, please consult Section IX of the Sexual Harassment and Interpersonal Violence Policy.

Once the University receives Actual Knowledge of an alleged violation of the Sexual Harassment & Interpersonal Violence Policy, the University will keep private the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment and Interpersonal Violence, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

While Complainants, Respondents, and witnesses are encouraged to respect the private and sensitive nature of every matter, nothing in these procedures is intended to restrict the ability of any party to discuss the allegations under investigation or to gather and present relevant evidence.

Other relevant provisions on Confidentiality are set out in Section IX of the University's Sexual Harassment and Interpersonal Violence Policy.

III. Pre-Complaint Efforts

Before filing a Formal Complaint, every reasonable effort should be made to constructively and amicably resolve issues among the parties. Whenever appropriate and safe in light of the circumstances, the University encourages anyone experiencing an issue to first attempt discussing the issue with the party(s) involved. Such discussions also may help prevent tense situations from escalating to an actual hostile environment. **However, the University strongly discourages individuals from attempting to engage in such discussions on their own when the safety of any individual may be in jeopardy.** The University also does not expect a party to contact the person involved if doing so is impracticable, or if the party believes that the conduct cannot be effectively addressed through informal means.

Complainants are encouraged to contact the Title IX Coordinator if, prior to taking the step of filing a Formal Complaint, they have questions regarding the process, they are uncertain as to whether their problem is appropriate for pre-complaint efforts, or they are interested in advice on ways to discuss the issue with the other person, etc. However, individuals should not wait to contact the Title IX Coordinator or another University official until behavior becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The University will take a proactive approach to preventing and addressing sexual harassment and interpersonal violence, including stopping the harassment if it is found to have occurred, remedying its effects, and preventing its recurrence.

The University also may determine that some reports are not appropriate for pre-complaint resolution based on an individualized assessment of whether any proposed resolution is likely to satisfy the stated purpose of the Sexual Harassment and Interpersonal Violence Policy. In conducting this individualized assessment, the University will consider: the preferences of the parties; the voluntary concurrence of the Complainant; the nature of the alleged behaviors; the policies implicated; the safety of the parties; the safety of the campus community; the parties' ability to access educational programs and opportunities; and any pattern of reported violations. Some reports of sexual harassment or interpersonal violence—such as reports involving violent behavior—may not be appropriate for pre-complaint resolutions.

Pre-complaint resolution efforts are voluntary, and the parties have a right to end the process at any time. Pre-complaint resolution efforts also do not preclude any person from filing a Formal Complaint at a later time. If satisfactory resolution is not reached after discussion with the other individual(s), the Complainant or Title IX Coordinator may file a Formal Complaint to initiate the Resolution Processes described in this document.

IV. Title IX Officers

Formal Complaints brought forward under the University's Sexual Harassment and Interpersonal Violence Policy are resolved using both the Sexual Harassment and Interpersonal Violence Resolution Process, and/or the Grievance Process for Title IX Sexual Harassment. An important part of both of these Resolution Processes is the role of appointed Title IX Officers. The current Title IX Officers are announced as part of an annual distribution of the University's Sexual Harassment and Interpersonal Violence Policy. Additional Title IX Officers may also be appointed and trained as needed at any time. The list of current Title IX Officers can be found on the Malone University website page for Title IX.

Title IX Officers include the Title IX Coordinator, the Deputy Title IX Coordinators, and other University employees (both faculty and staff) who are specially trained to serve as Title IX Officers on an *ad hoc* basis in a number of different roles ("*Ad Hoc* Title IX Officers"). Generally, Title IX Officers may serve as facilitators of an informal resolution process. The Title IX Coordinator appoints the Title IX Officers.

Title IX Officers receive regular training on the following topics:

- the definition of sexual harassment;
- the scope of the University's education programs and activities;
- how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable;
- how to apply definitions under the Sexual Harassment and Interpersonal Violence Policy consistently and impartially as to consent;
- how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias;

- on any technology to be used at a live hearing or in any other stage of the Resolution Processes;
- on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant;
- issues of relevance to create an investigative report that fairly summarizes relevant evidence;
- other topics as necessary to adequately serve in their role as an investigator, or member of the Title IX Resolution Team.

Additionally, any materials used to train the Title IX Officers will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment and Interpersonal Violence.

At the discretion of the Title IX Coordinator, the University may also retain external contractors to serve as *ad hoc* Title IX Officers. Any such external contractor retained by the University must be trained in the manner required by law to serve in the appointed role. Where the University retains such a contractor to serve in any of these roles, the Complainant and Respondent will be made aware of the external contractor's identity and appointed role within the Resolution Process(es).

V. Filing a Complaint and Mandatory Reporting

Any person who believes that they have experienced one of the Prohibited Behaviors described in Section V(D) of the Sexual Harassment and Interpersonal Violence Policy, and who wishes to learn more about Supportive Measures or make a Formal Complaint, should contact the Title IX Coordinator or Deputy Title IX Coordinator in person, by email, by phone, or electronically by using the Online Reporting Form located on the Title IX webpage.

Most University employees receiving reports of a potential violation of the Sexual Harassment and Interpersonal Violence Policy are responsible employees with a mandatory duty to report the potential violation(s) to the Title IX Coordinator promptly after becoming aware of a report or incident. Only employees acting in their professional role and with a legal obligation to maintain confidentiality—such as counselors, doctors, nurses acting at the direction of a doctor, and clergy acting in those roles—are expected to maintain confidentiality consistent with their professional and legal obligations; those individuals are exempt from the reporting requirement. For further information, please see the Section IX of the Sexual Harassment and Interpersonal Violence Policy or the University's Mandatory Reporting Policy.

All Reports and Formal Complaints will be treated with privacy and shared only with those with a need to know. Subject to the University's obligation to take action regarding violations when warranted, a reasonable effort will be made to maintain the privacy of those submitting a Report or filing a Formal Complaint of a possible violation. In all cases, the University will give consideration to the Complainant's preferences with respect to which Resolution Processes are pursued, but the University reserves the right, when necessary to protect the community and the University or fulfill other legal obligations, to investigate and pursue a resolution when the Complainant chooses not to initiate or participate in a Formal Complaint.

VI. Intake: Review of Reports and Formal Complaints

A. Reports to the Title IX Coordinator

All Reports will be reviewed and acted upon promptly. Upon receiving a Report, the Title IX Coordinator (or designee) will promptly conduct a review to determine if the Report on its face alleges a policy violation, and, if so, which policy violations are alleged in the report.

- Where a report does allege a possible policy violation, the Title IX Coordinator (or designee) will promptly contact the Complainant to discuss:
 - the availability of Supportive Measures with or without the filing of a Formal Complaint;
 - consider the Complainant's wishes with respect to Supportive Measures;
 - explain to the Complainant the process for filing a Formal Complaint;
 - offer information on applicable University policies and procedures including the non-retaliation policy, and/or
 - discuss the option to pursue criminal charges through local law enforcement if a potential crime has occurred.

- Where the person submitting the report is not the Complainant ("Third-Party Reporter"), the Title IX Coordinator (or designee) will respond to the Third-Party Reporter to advise that the University will contact any prospective Complainant(s) to discuss their options for support and/or resolution. However, the Third-Party Reporter will generally not be permitted to receive more information about how the matter is addressed. Exceptions may exist, such as where the Third-Party Reporter is the parent or legal guardian of a Complainant who is a minor child.

B. Formal Complaints

Upon receipt of a Formal Complaint, the Title IX Coordinator (or designee) will provide a written Notice of Investigation to the parties (Complainant(s) and Respondent(s) who are known). The written Notice of Investigation will contain, at minimum:

- Notice of the University's Resolution Processes, including the Grievance Procedures for Title IX Sexual Harassment (where applicable), and any options for informal resolution of the Formal Complaint.
- Notice of the allegations of Prohibited Behavior, as defined by Section V(D) of the University's Sexual Harassment & Interpersonal Violence Policy. Sufficient details of the alleged behavior known at the time will include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting Prohibited Behavior, as defined by Section V(D), and
 - the date and location of the alleged incident, if known.

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Resolution Processes.
- A statement informing the parties that they may have an Advisor of their choice—who may be, but is not required to be, an attorney (see Section XI(A)(4) below regarding Advisors).
- A statement informing the parties that they may inspect and review evidence in accordance with the procedures described in the Resolution Processes.
- A statement informing the parties of any provision of any applicable University policy that prohibits knowingly making false statements or knowingly submitting false information during the Resolution Processes.
- A statement regarding non-retaliation.

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Prohibited Behavior under the Sexual Harassment and Interpersonal Violence Policy against more than one Respondent, or by more than one Complainant against one or more Respondents, or one party against the other party, where the allegations arise out of the same facts or circumstances. Further, where a Formal Complaint alleges violations of both Title IX Sexual Harassment and Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX arising from the same set of facts or circumstances, the University will have the discretion to adjudicate all alleged violations together under the Grievance Process for Title IX Sexual Harassment. If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Investigation provided pursuant to paragraph above, the University must provide written notice of the additional allegations to the parties whose identities are known.

C. Dismissal of Reports and Formal Complaints

If the Title IX Coordinator's review determines that a Report does not allege any violation of the University's Sexual Harassment and Interpersonal Violence Policy, the case will be closed, and the Complainant will be so notified in writing. Where a Formal Complaint is dismissed for failing to allege any violation of the University's Sexual Harassment and Interpersonal Violence Policy, both the Complainant and Respondent will be notified in writing. However, the Title IX Coordinator may refer the Report or Formal Complaint to the Provost, Human Resources or Dean of Students Office for a determination as to whether the conduct may violate another University policy depending on the constituency of the Respondent.

The University's ability to move forward in reviewing or investigating any matter depends on a number of factors including, but not limited to, knowledge of any party's identity and/or the Complainant's willingness to file a Formal Complaint. If a Report is submitted anonymously, the University's ability to investigate may be limited. Additionally, if the Complainant does not wish to file a Formal Complaint, an investigation typically will not follow unless the safety and well-being of the University community or legal compliance would be jeopardized if an investigation is not undertaken. In considering such requests by Complainants for anonymity or to not proceed with any investigation, the Title IX Coordinator must weigh the request against the University's obligation to provide a safe, non-discriminatory environment for all members of our community, including the Complainant.

Where the Complainant chooses not to file a Formal Complaint, the University will also assess whether there are any available actions that will increase safety and equitable access to educational programs or activities without restricting or infringing upon the rights of other members of the community. Examples of such actions may include—but are not limited to—increasing security measures, offering preventative education to the community, or offering individual Supportive Measures.

Note that specific provisions on the dismissal of Formal Complaints of Title IX Sexual Harassment apply to the Grievance Process for Title IX Sexual Harassment (Section XII(C) below). Where a matter is dismissed from the Grievance Process for Title IX Sexual Harassment, it may still be resolved through the broader Sexual Harassment and Interpersonal Violence Resolution Process or other University processes as applicable.

VII. Timeliness of Resolutions

The Resolution Processes shall be completed as promptly as possible, with the goal of completing the Resolution Process in less than 120 calendar days. However, the unique nature of each case will result in varying timeframes for resolution. The Title IX Coordinator will consider whether extenuating circumstances interfere with such timely completion. During the course of any resolution, the parties will typically be notified at regular intervals and/or upon request of the status of the resolution process. Where good cause for delay of the resolution process exists, the Title IX Coordinator will notify the parties in writing. Examples of good cause for delay include, but are not limited to:

- the absence of a party, a party's Advisor, or a witness;
- the need for language assistance or disability-related accommodations;
- concurrent law enforcement activity.

In cases where a police investigation has been conducted or is being conducted, law enforcement may be unable to provide some information to the Title IX Coordinator. The University's investigation may be delayed by the University for a short period of time upon a request from law enforcement, and the Title IX Officers will promptly resume the resolution process once that period has elapsed or as soon as possible. In the absence of such a request by law enforcement, and where the University reasonably believes that it can proceed without unduly interfering with any law enforcement investigation, the University will proceed with its own Resolution Processes.

VIII. Supportive Measures

The Title IX Coordinator will work with other University officials to coordinate the effective implementation of appropriate Supportive Measures for the Complainant, Respondent, or witnesses. Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the

Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter Sexual Harassment and Interpersonal Violence.

Supportive Measures may include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; escorts by the Malone Police Department; mutual restrictions on contact between the parties; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the campus; and other similar measures.

The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures. The University will share information regarding Supportive Measures with those with a need to know in order to implement the measures effectively.

IX. Emergency Removal

In the instance that the University has reason to believe that there is an immediate threat to the physical health or safety of any student or other individual arising from allegations of Sexual Harassment or Interpersonal Violence, University officials may remove the person posing that threat from the University's education program or activity and/or from a position of employment on an emergency basis.

Before ordering the emergency removal of any person, the Title IX Coordinator will lead an individualized safety and risk analysis in consultation with other appropriate University officials. The appropriate University officials to provide consultation will be determined based on the circumstances of the individual case, but may commonly include: administrators with responsibility for student conduct; Human Resources personnel; Malone Police Department; licensed counselors in the University Counseling Center; and appropriate members of the University's Senior Leadership Team. The Title IX Coordinator may also consult with appropriate external resources, such as local law enforcement, licensed counselors, outside legal counsel, and persons with relevant personal information about the involved parties.

Where the individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any person arising from the allegations of Sexual Harassment or Interpersonal Violence justifies removal, the party subject to removal will be notified immediately, and will be provided with a written explanation of the decision as soon as practically possible.

Any removed person may challenge the emergency removal by submitting an appeal in writing to the Title IX Coordinator (or designee) at any point during the period in which the emergency removal is in effect, including immediately following the removal. The removed party's written appeal will be considered by the Title IX Coordinator or designee, who will determine whether the information presented in the appeal is sufficient to change the prior determination that an

immediate threat to the physical health or safety of any person exists. That determination will be made in consultation with any appropriate University officials and/or external resources, as described above. The Title IX Coordinator will also notify the Complainant(s) (or any other person substantially impacted by the perceived threat) of the appeal, and offer the Complainant(s) the opportunity to respond to the information contained within the removed person's appeal. The Title IX Coordinator will issue a final determination on each appeal in writing to the removed person and the Complainant(s). While the removed person may submit more than one appeal to offer new information for consideration, appeals that are substantively duplicative of prior appeals in the same case will not be considered.

In the absence of an appeal by the removed person, the emergency removal will remain in effect until the University has the opportunity to determine an appropriate final outcome through the Resolution Processes, or until the University possesses information that indicates that the threat to physical health and safety of any person no longer exists.

X. Resolutions by Agreement

The University encourages resolutions by the agreement of both parties (sometimes referred to as an "informal resolution") when the parties desire to resolve the situation cooperatively and expeditiously. Either party may propose a resolution by agreement for certain alleged violations of the University's Sexual Harassment and Interpersonal Violence Policy. The parties also may agree to consider a resolution by agreement at any point during the Formal Investigation and Hearing Process (Section XI) or Grievance Process for Title IX Sexual Harassment (Section XII), which will be subject to the approval of the University.

Prior to facilitating any resolution by agreement, the University will provide written notice to both the Complainant and Respondent disclosing:

- the allegations;
- the requirements of the resolution by agreement process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and
- any consequences resulting from participating in the resolution by agreement process, including the records that will be maintained or could be shared.

After providing the written notice, the University will obtain the parties' voluntary, written consent to the process of seeking resolution by agreement.

In all instances, the Title IX Coordinator will determine if an informal resolution is appropriate based on an individualized assessment. **For allegations of Title IX Sexual Harassment involving a Complainant who is a student and a Respondent who is an employee, resolutions by agreement will not be available.** Some other Formal Complaints of sexual harassment or interpersonal violence—particularly those involving allegations of violent behavior—may not be appropriate for resolutions by agreement and may require use of the Formal Investigation and Hearing Process

described below. In every instance, the University will determine whether a Formal Complaint is appropriate for resolution by agreement based on the individualized assessment of whether any proposed resolution is likely to satisfy the stated purpose of the Sexual Harassment and Interpersonal Violence Policy. In conducting this individualized assessment, the University will consider:

- the willingness of the parties to participate;
- the parties' desired outcomes and preferences;
- the voluntary concurrence of the Complainant;
- the nature of the alleged violations;
- the policies implicated;
- any pattern of reported violations;
- the safety of the parties;
- the safety of the campus community;
- the parties' ability to access educational programs and opportunities; and
- the ability of the informal resolution process to meet the goals of the Sexual Harassment and Interpersonal Violence Policy.

Resolutions by agreement may involve a multitude of interventions and remedies. Some may include mediation, targeted or broad-based educational programming or training for relevant groups or individuals, one-on-one discussions with the Respondent, formal mentoring relationships, agreed-upon interventions, and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Sexual Harassment and Interpersonal Violence Policy.

Regardless of whether a resolution by agreement or the Formal Investigation and Hearing Procedure is utilized, the Respondent will be advised of the substance of the Complainant's allegation(s). Where the parties opt to attempt resolution by agreement, and the parties have failed to achieve any resolution promptly, the University may elect to begin the investigative phase of the Formal Investigation and Hearing process while the parties continue to work toward a resolution by agreement. Similarly, the Complainant or Respondent may request to engage in the process of reaching a resolution by agreement at any point during the Formal Investigation and Hearing process by contacting the Title IX Office.

The process of reaching a resolution by agreement is completely voluntary, and both the Complainant and Respondent have the right to withdraw from the process of seeking resolution by agreement at any time in order to begin or resume the Formal Investigation and Hearing Process.

Where the Complainant and Respondent reach an agreement on an appropriate resolution, and the University finds the terms of that agreement to be acceptable and appropriate under the Sexual Harassment and Interpersonal Violence Policy, the terms of the resolution will be documented in writing and distributed to the Complainant and Respondent.

XI. Formal Investigation and Hearing Procedures

A. Investigation Phase

1. Investigator(s)

The Title IX Coordinator will appoint one or more Title IX Officers to serve as Investigator(s). The Investigator(s) will conduct a thorough, reliable and impartial investigation of the Formal Complaint. The number of Investigators assigned to a particular matter is at the discretion of the Title IX Coordinator. The assigned Investigator(s) may include the Title IX Coordinator or an external contractor with the requisite training.

Any real or perceived conflict of interest between an Investigator and a party must be disclosed by the named Investigator or any party to the Title IX Coordinator in writing. Where a concern regarding bias or conflict of interest is expressed by any person, the Title IX Coordinator (or Dean of Students or University President, where the Title IX Coordinator is serving as Investigator) will assess whether the Investigator in question is capable of serving in a neutral, fair, and objective manner, and will issue a written determination to the parties.

The Investigator(s) will act under the supervision of the Title IX Coordinator and/or an assigned Deputy Title IX Coordinator(s) during the course of the investigation.

1. The Investigative Process

The Investigator(s) is tasked with gathering all information that is relevant to the Formal Complaint and reasonably available during the period of investigation. The Investigator(s) is also responsible for preparing a written investigation report that fairly summarizes the relevant evidence that was gathered in the course of the investigation.

The investigation generally will include: interviews with the parties, if available; interviews with other witnesses as necessary and appropriate; and a review of other relevant information as appropriate. Participants in an investigation are encouraged to honor the privacy of all parties and to treat information received during the investigation as private so as to protect the integrity of the investigation; however, this is not meant to impinge on any legal rights they may have otherwise, such as their ability to speak with others about the investigation or to gather their own evidence to present to the Investigator(s).

The Respondent shall be permitted to review a copy of the Formal Complaint. If the Respondent cannot be located, attempts at notification shall be documented.

The Complainant shall be provided with a copy of the written response provided by the Respondent, if any, or otherwise informed of the substance of the response to the allegations.

Both the Complainant and Respondent will be provided the opportunity to provide oral (through an interview) and written statements. Both parties will receive written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings in which they are invited or expected to participate, with sufficient time (up to one week) for the party to prepare to

participate. No audio or video recording of any kind is permitted during meetings with the Investigator(s) or other campus officials involved in the investigation phase. A party may opt not to participate at all in the investigation or to provide a written statement in lieu of or in addition to any interview(s) with the Investigator(s). However, it is important to note that any decision by the parties not to participate, or to limit participation, in turn limits the ability of the University to discover facts that may support their version of the key events, as the investigation results will be based on the facts available to the Investigator(s) at the time of the investigation.

While the task of gathering relevant information is the responsibility of the Investigator(s), all parties will have an equal opportunity to present relevant witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence that they wish to be considered by the Investigator(s). Each party will have the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses during subsequent investigative interviews.

During the course of the investigation, the Investigator(s) will make all reasonable efforts to obtain information that is relevant to the Formal Complaint. However, the Investigator(s) (or any other University personnel, including external contractors) cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the employee obtains that party's voluntary, written consent to do so for a resolution process described in this Process document. (If a party is not an "eligible student," as defined in 34 CFR 99.3, then the University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).

1. Prior Sexual History

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. For example, if the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have bearing on whether consent was sought and given during the incident in question. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion.

1. Advisors

The Complainant, Respondent, and any interviewed witnesses have a right to be accompanied by one Advisor of their choosing during any meeting or interview.

The Advisor may be a friend, mentor, advocate, family member, attorney or any other person a party chooses. The same individual may also not serve as Advisor to multiple participants (whether Complainants, Respondents, or witnesses) in the same Investigation and Hearing process.

The role of the Advisor is to offer guidance and advice to the advisee throughout the process. The Advisor may be present at interviews and any other proceedings, but may not speak on behalf of the advisee.¹ The parties are expected to ask and respond to questions on their own behalf, without representation by their Advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process.

Advisors are expected to refrain from interfering with the investigation and hearing process. Any Advisor who steps out of their role in any meeting will be warned once, and only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, they may be asked to leave the meeting. Advisors who serve in an additional role, such as an outside attorney, must nonetheless comply with the requirements for Advisors during the process.

¹However, an exception exists for Advisors to pose cross-examination questions on behalf of an advisee during a hearing pursuant to the Grievance Process for Title IX Sexual Harassment, described in Section XII below.

The University expects that the parties will wish the University to share documentation related to the allegations with their Advisor. The University provides a consent form that authorizes such sharing. Each party must complete this form before the University is able to share records or information with an Advisor. The parties are not otherwise restricted from discussing information with others who may support or assist them in preparing and presenting during the process. Advisors are expected to maintain the privacy of the records shared with them by the University, which may include legally protected educational records. Advisors may not share records with third parties, disclose records publicly, or use records for purposes not explicitly authorized by the University.

The University 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 the University's privacy expectations.

The parties must advise the Investigator(s) of the identity of their Advisor at least one (1) business day prior to the date of their first meeting with the Investigator(s). However, parties are encouraged to provide earlier notice to the Investigator(s) if they wish for the Advisor to have access to any materials that may be available for review prior to such a meeting. The parties must provide subsequent timely notice to the Investigator(s) if they change their choice of Advisor at any time.

Any party also may request the assistance of a University-appointed Advisor. Upon receiving such a request, the Title IX Coordinator will appoint an Advisor from a pool of Title IX Officers who are trained as Process Advisors. The University's Process Advisors are specially trained to understand the University's Sexual Harassment and Interpersonal Violence Policies and resolution procedures so that they can provide informed guidance to students during the process.

The University's Process Advisors do not provide guidance on processes external to the University (e.g. criminal or civil processes) and do not provide legal advice of any kind. Although information

shared privately with University Process Advisors will not be sought or used by the Investigator(s) or Complaint Review Panel, such communications are not legally confidential or privileged.

1. The Investigation Report

At the conclusion of the investigation, the Investigator(s) will prepare a written investigation report. Two versions of the investigation report will be shared with the parties: the preliminary investigation report, and the final investigation report.

The preliminary investigation report will include a statement of the allegations and issues; a description of the applicable standards; and any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including any inculpatory or exculpatory evidence, whether obtained from a party or other source, and regardless of whether the University intends to rely on that evidence in reaching a determination regarding responsibility. The preliminary investigation report is intended to provide the parties with an opportunity to review and respond to all available evidence before the report is finalized and referred to the Complaint Review Panel for the final hearing.

The Complainant, Respondent, and their respective Advisors will each have the opportunity to review and respond to a copy of the preliminary investigation report, which may be in either electronic or hard copy at the discretion of the Title IX Coordinator. Upon receiving access to the preliminary investigation report, the parties then will have at least ten (10) business days to provide the Investigator(s) with any additional information, evidence, or witnesses they wish to be considered, as well as the opportunity to submit a written statement in response to the content of the preliminary investigation report. Parties also may propose additional questions for the Investigators to ask of any party or witness, which will be assessed by the Investigators for relevance and propriety in determining whether to direct those questions to the parties or witnesses.

Following the parties' opportunity to review and respond to the preliminary investigation report, the Investigators will assess whether any additional investigation is necessary. Once the Investigators determine that no additional investigation is necessary, the investigation report will be finalized. Prior to finalizing the investigation report, the Investigator(s) will incorporate into the report any responses or relevant evidence provided by the parties or additional witnesses, unless such information must be excluded pursuant to these procedures or applicable law.

The Complainant, Respondent, and their respective Advisors will each have the opportunity to review an electronic copy of the final investigation report. The parties and their Advisors will have access to the final investigation report at least ten (10) business days prior to the beginning of the hearing (described below). The parties may use this time to submit any suggested questions that it would like the hearing body to ask of the parties, witnesses, or Investigator(s) before it makes any final determination. Such questions will be submitted to the Complaint Review Panel through the Title IX Coordinator. Ultimately, the hearing body will retain the discretion to determine whether asking any questions submitted by the parties is relevant to make an informed determination.

B. Hearing Phase

The hearing processes set out below apply to Formal Complaint(s) of Prohibited Behavior under the Sexual Harassment and Interpersonal Violence Policy, except that alternative procedures described in the Grievance Process for Title IX Sexual Harassment (Section XII of this document) will be used to resolve any Formal Complaint(s) of Title IX Sexual Harassment.

1. The Complaint Review Panel Hearing

Once the investigation report is finalized, the Title IX Coordinator will forward the final investigation report and accompanying evidence to the designated *ad hoc* Title IX Officer—designated as the Chair of Employee Hearings if the Respondent is an employee, or the Chair of Student Hearings if the Respondent is a student—to convene a three-person Complaint Review Panel (CRP). The CRP will include the appropriate Chair (or designee), and two (2) Title IX Officers who have not participated in the investigation phase. The CRP will serve as the hearing body.

The CRP will make a final determination regarding responsibility and sanctions, if applicable, after holding an asynchronous hearing in which it considers all available information. On the date that the CRP is convened, the Investigator(s) will be present and available to answer any questions that the CRP may have regarding the investigation report, but will not be present during any deliberations when the CRP determines responsibility (or sanctions, if applicable).

Typically, the Complainant and the Respondent will have the opportunity to appear separately before the CRP to provide a statement and address the CRP regarding the investigation report. At the discretion of the CRP, such an appearance by the parties may be in person, by phone, or via live video conference. The appearance before the CRP is voluntary and optional, and the CRP shall not consider the Complainant's or Respondent's decision not to appear before the CRP as relevant evidence in making a determination and imposing sanctions, if applicable. Parties may not use their appearance before the CRP to introduce new evidence that was not previously shared with Investigator(s) or attempt to introduce evidence that was excluded due to relevance under this process.

1. Determining Responsibility and Sanctions

a. Preponderance of the Evidence Standard

For the purposes of the CRP's determination process and evidentiary standards, the Respondent is presumed not responsible for the alleged conduct unless and until the CRP finds there is sufficient information to support a finding of responsibility. When determining responsibility, the CRP will base its finding on a preponderance of the evidence, that is, whether it is more likely than not that the Respondent violated the policy as alleged.

b. Findings of the CRP

The CRP may make findings of responsibility on individual alleged actions, or an aggregation of alleged actions. The CRP will make a finding in one of the following ways for each alleged violation of policy:

- **Responsible** – Finding that evidence/information available to the University indicates that it is more likely than not that the Respondent violated the policy as alleged.
- **Not responsible** – Finding that evidence/information available to the University indicates that it is more likely than not that the Respondent did not violate the policy as alleged.

c. Sanctions and Responsive Actions

Sanctions or responsive actions to resolve the Formal Complaint may include, but are not limited to:

- educational programs;
- coaching, or mentorship;
- verbal or written reprimand or warning;
- time and place restrictions;
- probation;
- suspension;
- deferred suspension;
- dismissal;
- termination; and
- remedies for the Complainant, as appropriate.

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

- The nature, severity of, and circumstances surrounding the violation;
- The safety of the individuals involved and/or the University community;
- An individual's conduct history;
- Previous allegations or allegations involving similar conduct;
- Any other information deemed relevant by the CRP;
- The need for sanctions or responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions or responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation; and/or
- The need to remedy the effects of the sexual discrimination, harassment and/or retaliation on the Complainant and the community.

Prior to making a final determination on sanction(s), the CRP typically will consult with the Title IX Coordinator and with one or more of the following offices regarding the effectiveness, consistency and practical application of any proposed sanction(s) to the Respondent in those circumstances:

- For sanctions related to staff: The Vice President for Human Resources and Community, or designee.
- For sanctions related to faculty: The Provost, or designee.
- For sanctions related to students: The Dean of Students, or designee.

Should a Respondent unilaterally withdraw or separate from the University while a formal investigation and hearing process is pending, the Title IX Coordinator will have the discretion to either:

- continue the formal investigation and hearing process, or
- postpone the process until the Respondent requests to rejoin the University.

In either event, the individual will not be permitted to return to the University until the matter has been fully resolved through one of the resolution processes described in these procedures, and all conditions of the resolution process (including sanctions, if any) have been satisfied.

Any sanction resulting from the formal investigation and hearing process, following any appeal, that involves the dismissal for cause of a faculty member can be appealed through the corresponding Faculty Handbook procedures, so long as an adequate remedy for any violation determined under this process remains in place. Such an appeal can only consider whether the finding from the formal investigation and hearing process constitutes cause for the recommended sanction under the Faculty Handbook and cannot include a rehearing on the finding of whether a violation of the Sexual Harassment and Interpersonal Violence Policy occurred. The factual findings and conclusions from the formal investigation and hearing process, including any appeal, shall be determinative as to whether the University's Sexual Harassment and Interpersonal Violence Policy has been violated. The Faculty Handbook procedures shall be limited to a determination of whether the finding constitutes cause for termination of the faculty member. All other sanctions involving faculty can only be appealed using the process outlined in this policy.

C. Notice of Outcome

Once the CRP reaches a decision regarding responsibility—and sanctions, where applicable—the parties will receive written notice from the Chair of the CRP via a “Notice of Outcome” which will typically be issued to the parties within five (5) business days of the conclusion of the asynchronous hearing. The Chair of the CRP will notify the parties if extenuating circumstances prevent the parties from receiving the Notice of Outcome within that time frame. The Notice of Outcome will specify the finding on each alleged policy violation, any sanctions that may result, and the rationale supporting the essential findings to the extent the University is permitted to share them under state or federal law. The notice also will include information on when the results are considered by the University to be final and any appeal options that are available.

If the CRP makes a finding of “responsible” and includes accompanying sanctions, the appropriate University official, depending on the constituency of the Respondent—the Dean of Students (students), the Vice President for Human Resources (staff) or the Provost (faculty)—will be responsible for implementing the sanctions.

Any accommodation or remedy afforded to the Complainant will be consistent with the seriousness of the offense and will be designed and imposed in a manner reasonably calculated to end the harassment, to prevent recurrence, and remedy the effects.

In instances where a violation of the Sexual Harassment and Interpersonal Violence Policy has been found to have occurred, the Title IX Coordinator and/or Deputy Title IX Coordinator will document and monitor the implementation of any accommodation or remedy. As appropriate, the Title IX Coordinator and/or Deputy Title IX Coordinator also may follow-up with the parties to ensure that the accommodation or remedy is effectively preventing recurrence of the harassment and serving as the proper remedy for any discriminatory effects on the Complainant and others. All resolutions may be subject to follow-up after a period of time to ensure that accommodations, remedies and any other resolution measures have been implemented effectively.

D. Issues Outside of the Sexual Harassment and Interpersonal Violence Policy

Where an issue arises in a matter that is outside the scope of the policy or this process – i.e., an issue not related to misconduct involving sex/gender or interpersonal violence – those matters will be referred to the appropriate office to address under other appropriate University policies. If such issues arise, staff employees may contact Human Resources at (330) 471-8379; faculty may contact the Provost’s office at 330-471-8119; and students should contact the Dean of Students Office at 330-471-8273.

Any visitor to campus who experiences perceived misconduct outside the scope of the policy or process should consult with the appropriate office, Human Resources at 330-471-8119. In any situation where an emergency exists, contact the Malone Campus Safety at (330) 471-8251 or 330-471-8111 or call 911.

XII. Grievance Process for Title IX Sexual Harassment

Where the Formal Complaint alleges facts that, if true, would constitute Title IX Sexual Harassment as defined by Section V(D)(1) of the Sexual Harassment and Interpersonal Violence Policy, the Grievance Process for Title IX Sexual Harassment in this section will govern the resolution process. Conversely, where a Formal Complaint does not allege facts that would constitute Title IX Sexual Harassment, this section will not apply. Where a Formal Complaint alleges violations of both Title IX Sexual Harassment and Sexual Harassment and Interpersonal Violence Beyond the Purview of Title IX arising from the same set of facts or circumstances, the University will have the discretion to adjudicate some or all of the alleged violations together under the Grievance Process for Title IX Sexual Harassment.

This Grievance Process for Title IX Sexual Harassment incorporates Sections I through XI(A) above. Where any material conflict exists between those incorporated sections and these provisions of the Grievance Process for Title IX Sexual Harassment, the provisions of this section will control.

A. Investigation Phase

The Investigation Phase of the Grievance Process for Title IX Sexual Harassment will follow the same procedures described in Section XI(A) above.

B. Hearing Phase

At the conclusion of the investigation phase, the Title IX Coordinator will forward the final investigation report and accompanying evidence to the designated Title IX Officer—designated as the Chair of Employee Hearings if the Respondent is an employee, or the Chair of Student Hearings if the Respondent is a student—to convene a three-person Complaint Review Panel (CRP), which will serve as the hearing body and decision-maker(s) on questions of responsibility, and as applicable, sanctions and other responsive actions. The Chair of Employee Hearings or Chair of Student Hearings may serve as the Chair of the CRP, or may appoint a designee to serve. The CRP will only make final determinations after holding a live hearing.

The Chair of the CRP will schedule a separate pre-hearing informational meeting with the Complainant and the Respondent, which shall be no later than five (5) business days before the date of the hearing. Each party's respective Advisor is also permitted to attend the pre-hearing informational meeting. The parties and/or Advisor(s) are not required to attend the pre-hearing informational meeting, but a party's and/or Advisor's decision not to attend will not be accepted as grounds for rescheduling the hearing.

The Chair of the CRP will use the pre-hearing informational meeting to:

- review the hearing agenda, procedures and general expectations of the parties;
- review the standard of evidence;
- review the features of any technology to be used by the participants during the hearing (e.g. Zoom or other video conferencing programs);
- discuss which witnesses are expected to appear and speak at the hearing;
- discuss the role of the Advisor in the hearing, and/or to discuss the appointment of an Advisor if a party does not have an Advisor of choice;
- discuss any disability-related accommodations or other adjustments that the party or Advisor may require in order to effectively participate in the hearing; and
- answer any questions that the parties and/or Advisors may have about the hearing process.

The Chair of the CRP will also schedule a date and time for the live hearing, which shall be no sooner than ten (10) business days after the date on which the parties receive access to a copy of the final investigation report. The CRP will make reasonable efforts to conclude the hearing in one day, but hearings may occur over multiple days if necessary. Any hearing may be rescheduled for good cause, at the discretion of the Chair of the CRP.

The live hearing conducted by the CRP may be held in person or by using real-time video conferencing, at the discretion of the Chair of the CRP. Where the hearing is held in person, arrangements will be made for the parties to give their statements and answer questions from separate rooms using real-time video conferencing which enables the CRP and parties to simultaneously see and hear the party or the witness answering questions.

The parties will have access to a copy of the final investigation report and all other available evidence during the course of the live hearing conducted by the CRP.

Every live hearing will be documented by audio recording. At the discretion of the Chair of the CRP, a video recording may also be created where deemed feasible and helpful. Each recording will be retained by the Title IX Coordinator and remain available to the parties for inspection upon request in accordance with Section XI of the Sexual Harassment and Interpersonal Violence Policy.

The Chair of the CRP will attempt to schedule the appearance of all necessary and relevant witnesses (including the parties, Investigator(s), and witnesses identified by the parties in the pre-hearing informational meeting) at the live hearing. Each individual may appear either in person or via real-time video conferencing which allows all participants to simultaneously see and hear each other. Witnesses and parties will appear for the purpose of answering relevant questions and relevant follow-up questions—including those challenging credibility—posed by the members of the CRP, and by each party's Advisor (i.e. "cross-examination"). Such questions at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice, and never by a party personally. If a party does not have an Advisor present at the live hearing, the University must provide without fee or charge to that party, an Advisor of the University's choice (who may be, but is not required to be, an attorney) to conduct cross-examination on behalf of that party.

Participation in the hearing by all witnesses and parties is voluntary. Where any individual is not available to appear at the hearing to answer relevant questions by the CRP and parties' Advisors—or declines to answer relevant questions during their appearance—the CRP must not rely on any statement of that individual in reaching a determination regarding responsibility. However, the CRP also cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a question, the CRP must first determine whether the question is relevant. Where the relevance of any question is disputed, the Chair of the CRP will determine whether the disputed question is relevant before an individual is expected to answer the question. The Chair of the CRP will also explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. (See Prior Sexual History, Section XI(A)(3)).

Following the conclusion of the hearing, the CRP will issue a determination in writing to both parties simultaneously. The written determination will typically be delivered to the parties within one week of the hearing's conclusion, but may be extended with written notice of delay to the parties.

The written determination of the CRP will include:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the relevant provisions of the Sexual Harassment and Interpersonal Violence Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator is responsible for effective implementation of any remedies/sanctions prescribed by the CRP.

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

C. Dismissal of a Formal Complaint of Title IX Sexual Harassment

Under certain circumstances, a Formal Complaint will be dismissed prior to resolution and/or prior to the conclusion of the live hearing conducted by the CRP.

The Title IX Coordinator **MUST** dismiss the Formal Complaint of Title IX Sexual Harassment from the Grievance Process for Title IX Sexual Harassment if:

- the conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in the Sexual Harassment and Interpersonal Violence Policy, even if proved;
- the conduct did not occur in the University's education program or activity; OR
- the conduct did not occur against a person in the United States.

However, such a dismissal from the resolution process described by the Grievance Process for Title IX Sexual Harassment does not preclude action under another University resolution process, including those described Sections III, X, and XI in this document.

Further, the Title IX Coordinator has the discretion to dismiss the Formal Complaint of Title IX Sexual Harassment, if at any time during the investigation or hearing:

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

Where a Formal Complaint of Title IX Sexual Harassment is dismissed by the Title IX Coordinator, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. Complainants and Respondents alike have the right to appeal any dismissal of the Formal Complaint using the Appeal Process described in Section XIII below.

XIII. The Appeal Process

A. Filing an Appeal

For the formal resolution processes described in Sections XI and XII above (including any decision to dismiss the Formal Complaint described under Section XII(C)), any Complainant or Respondent may request an appeal of the findings by completing and submitting an Appeal Request Form (see Appendix A). The appealing party must submit the Appeal Request Form and all supporting documentation within five (5) business days of receiving notice from the Title IX Coordinator of the notice of dismissal of the Formal Complaint, or outcome of the hearing by the CRP.

The three grounds for appeal are as follows:

1. Significant and relevant new evidence, which previously could not have been presented, has since been discovered, secured or made available
2. The sanctions or decisions levied are unduly arbitrary or unjustified and the student can provide reasonable evidence or apparent cause to support this contention
3. There was a substantially prejudicial failure to follow fair and proper procedure, and the student has reasonable evidence to prove this

A properly filed and timely appeal will generally stay any sanction(s) imposed unless doing so would be inconsistent with the University's Title IX obligations and/or it is determined by the Title IX Coordinator, in consultation with others involved in monitoring University safety matters, that this action would present an unreasonable danger to any person or property or be disruptive to the University's living, learning or work environment.

Upon receipt of a party's appeal request form, the Title IX Coordinator will notify the other party in writing that an appeal has been filed. The other party will also receive access to an electronic copy of the written appeal. Both parties will receive a description of the appeal procedures from the Title IX Coordinator.

B. The Appeal Review Panel

Upon receiving an appeal request, the Title IX Coordinator will designate a three-member Appeal Review Panel ("ARP"), which will consist of the following:

- The Chair of the ARP, who shall be a Deputy Title IX Coordinator who did not participate in the investigation or CRP; and
- Two (2) other Title IX Officers who were not involved in the investigation or CRP.

No member of the ARP may be the decision-maker(s) that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator. Additionally, no member of the ARP may have any other conflict of interest which would prevent them from assessing the appeal in an objective and impartial manner.

²Note that a decision by a party to withhold information for any reason, including pending criminal charges or litigation, does not qualify that same information as being "reasonably unavailable" for the purposes of the appeal.

C. Appeal Outcomes

Generally, within five (5) business days after receipt of a request for appeal, the Chair of the ARP will conduct an initial review of the appeal request(s) to determine whether the appeal is timely and satisfies the grounds for appeal. Should the time to review a party's request for appeal require more than five (5) business days, the party will be notified in writing. If the appeal request is not timely or does not satisfy the grounds for appeal, the appeal request will be denied, the individual who submitted the appeal request will be notified, and the finding and sanction(s) or other responsive action(s) will stand. The decision not to accept an appeal request is final and is not subject to further appeal.

If the appeal request is timely and meets the grounds for appeal, the Title IX Coordinator will notify both parties that the appeal has been accepted for consideration. The Title IX Coordinator will then

share the appeal request with the other party (reporting or responding), and that individual may file a response within five (5) calendar days. The response (if any) will be shared with the other party.

The ARP will then convene to deliberate over the issues presented in the appeal, and any response. An appeal is not a full re-hearing of the allegation(s) but is a review of the findings and relevant evidence related only to one or more of the stated grounds for appeal noted in Section XIII(A). The ARP can take any of the following actions:

- Affirm the original findings;
- Remand the case to the original Investigator(s) or CRP for consideration of new evidence or to remedy a procedural error or omission, or to the CRP to assign new sanctions that are within the parameters or guidelines set by the University for this type of violation or account for the cumulative conduct record of the Respondent;
- Remand the case to a new Investigator(s) or new CRP. In a rare case where an error or omission cannot be cured by the original Investigator(s) or original CRP members (as in a case of bias), the ARP may order a new investigation with a new Investigator(s);
- Administratively alter the sanction if the sanction is substantially outside the parameters or guidelines set by the University for this type of violation or the cumulative conduct record of the Respondent; or
- Refer the assigning of sanctions or responsive actions to the CRP.

Decisions rendered by the ARP or actions taken following the ARP's decision are final and not subject to further appeal. Cases that are sent back to the Investigator(s) or CRP are not eligible for a second appeal by the same party.

Both parties will be informed simultaneously in writing of the outcome of the appeal and the rationale for the result.

XIV. Statement of Rights of Complainants and Respondents

All Complainants and Respondents have the right:

- To be treated with respect by University officials, parties, and other participants in the Resolution Processes.
- To a fair, thorough, and objective resolution of any Formal Complaint of Sexual Harassment and/or Interpersonal Violence made in good faith to the appropriate University official(s).
- If a Respondent, to receive a written Notice of Investigation if accused in a Formal Complaint of violating the University's Sexual Harassment and Interpersonal Violence Policy; if a Complainant, the right to receive written notification that the Respondent has been officially notified of the Formal Complaint.

- If a Respondent, to be notified of the substance of the allegations made by the Complainant. If a Complainant, to be notified of the substance of the Respondent's response, if any, to the allegations.
- To be informed of and have access to both on-campus and off-campus support services.
- To experience a safe living, educational and work environment.
- To bring an Advisor of their choosing, including, but not limited to, a friend, mentor, parent, advocate, or attorney, during any meeting, interview, or hearing. The role of the Advisor is to offer guidance and advice to the advisee throughout the process. They may be present at any meeting or interview, but are not permitted to speak, except for the purpose of asking questions on cross-examination of parties and witnesses during a hearing, as described in the Grievance Process for Title IX Sexual Harassment.
- To have a resolution process facilitated by a Title IX Coordinator, Investigator, decision-maker, or any person designated to facilitate an informal resolution process, who is free of conflict of interest or bias for or against Complainants or Respondents generally, or any individual Complainant or Respondent.
- To decline to participate in any of the Resolution Processes.
- To receive amnesty for minor student misconduct (such as alcohol or minor drug violations) that is ancillary to the incident.
- To be free from retaliation for filing a complaint or otherwise participating in an investigation in good faith.
- To have Formal Complaints resolved in a manner that is substantially consistent with these procedures.
- To full participation in the Resolution Processes.
- To be informed in writing of the outcome/resolution of the Formal Complaint, sanctions where permissible, and the rationale for the outcome where permissible.
- If a Complainant, the right to be informed by University officials, when appropriate, of options to report sexual harassment to proper law enforcement authorities and the option to receive assistance in notifying those authorities, if the individual so chooses.
- To request accommodations or interim remedies/actions, as appropriate, including, but not limited to, academic accommodations. For residential students, the ability to request housing and living accommodations, if appropriate.
- The right to regular updates on the status of the Resolution Processes.

XV. Revision

These Resolution Processes, along with the Sexual Harassment and Interpersonal Violence Policy, will be reviewed and updated annually, if necessary, by the Title IX Coordinator with appropriate input from senior leaders and other appropriate stakeholders. Typically, such review and update will be concluded each summer, based on appropriate review and input from the preceding academic year. In addition, the Title IX Coordinator may make minor modifications to the Grievance Process at any time and during the academic year that do not materially jeopardize the fairness owed to any party.

The Title IX Coordinator may also vary procedures materially at any time and during the academic year with notice (on the University's website, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in the current policy and/or procedures. Policy and procedures generally will be effective as of the

date of implementation. Policy and procedures in effect at the time of the offense will apply even if the policy or procedure is changed subsequently, unless the parties consent to be bound by the current policy.

XVI. Discretion

Where an issue is encountered during a case that is not addressed specifically by this Grievance Process or the Policy, the University has the discretion to determine, in a good faith effort to comply with the Policy and applicable legal requirements, how to address such an issue.

APPENDIX A

Appeal Request Form for Appeals under the Policy Prohibiting Sexual Harassment, Sexual Assault, and Interpersonal Violence

Please submit your completed form to the Title IX Coordinator no later than 48 hours of the date indicated on the Decision Notification. Responses to all questions on the form are required and must be completed in order for the Appeal Request to move forward. Any incomplete forms will not be processed. If you have any questions about the appeal process, please call 330-471-8158.

Name: _____
Today's Date: _____ Phone: _____ Email: _____

1. On what grounds is the appeal being requested? (Check all that apply)

- **New Information:** Appeal requesting consideration of new information or other relevant facts that are sufficiently material to affect the outcome, This is only an appropriate basis for appeal when such information was not available at the time the determination regarding responsibility or dismissal of the Formal Complaint was made.
- **Procedural Irregularities:** Appeal asserting irregularities in the application of the Procedures to Resolve Complaints of Sexual Harassment, Sexual Assault, and Interpersonal Violence that affected the outcome of the matter. Minor procedural deviations that do not materially affect the outcome are not a basis for reversing a decision.
- **Bias:** Appeal asserting that the Title IX Coordinator, investigator(s), hearing officer, or decision maker had a conflict of interest of bias for or against complainants or respondents generally, or for or against the particular Complainant or Respondent involved in the subject case, that affected the outcome of the matter.
- **Appropriateness of Sanction:** Appealing whether the sanction(s) imposed was appropriate in relation to the Policy violation for which the Respondent was determined to be responsible.

2. Please indicate how the selected ground(s) for appeal applies to your situation? If needed, you may write on the back or attach any additional documentation to this form to support your appeal.

HR USE ONLY

Notification Date: _____
Submission Date: _____
Decision Date: _____

Appeal Administrator's Decision:
_____ Deny the Appeal
_____ Allow the Appeal to Proceed

Reasons for denial if applicable: