

# Policy and Procedures

<b>SECTION:</b> <b>Administration</b>	<b>NO.</b> <b>2.1.35</b>		
<b>CHAPTER:</b> <b>General</b>	<b>ISSUED:</b> 08/14/2020	<b>REV. A</b> 5/9/2023	<b>REV. B</b>
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## **PURPOSE OF POLICY**

In accordance with its history, mission, and credo, Creighton University believes that each individual should be treated with respect and dignity and that any form of Sexual Harassment is a violation of human dignity. For purposes of this policy, Sexual Harassment includes *Quid Pro Quo* Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. The University condemns and prohibits these actions and will take all reasonable efforts to prevent such conduct and promptly address conduct found to be in violation of this policy.

Consistent with the University's Non-Discrimination Notice, it is the policy of the University to provide a workplace and an educational environment, as well as other education programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state laws and regulations, including the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (*see C.F.R. 106 et seq.*), and to affirm its commitment to promoting the goals of fairness and equity in all aspects of its educational programs and activities, Creighton University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of Sexual Harassment and/or retaliation.

Sexual Harassment and retaliation are considered serious violations of University policy. Due to their serious nature, allegations of these types of violations are resolved under this policy and not through other disciplinary processes at the University (e.g. University Committee on Student Discipline, Faculty or Academic Council, Department of Human Resources). The full range of University discipline, including separation, termination, suspension, and expulsion, may be imposed. For a complete list of potential institutional actions, please reference the Sanctions section later in this policy.

The purpose of this policy is:

- To communicate processes for investigating complaints in a manner that is fair, equitable, and reasonably protects the privacy of individuals involved in situations of alleged harassment, discrimination, sexual misconduct, relationship misconduct, and/or retaliation.

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- To enable Creighton in its efforts to provide a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, sexual misconduct, relationship misconduct, and retaliation.
- To enable Creighton in its efforts to protect those individuals who report or provide information related to alleged violations of this policy and all of those involved in the investigation or adjudication of this policy from retaliation of any kind.
- To promote compliance with federal and state civil rights laws, including but not limited to Title IX of the Education Amendments of 1972 (“Title IX”) (*see* C.F.R. § 106 *et seq.*), Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*), the Violence Against Women Act of 1994, (*see* 42 U.S.C. § 13701 *et seq.*; reauthorized 34 U.S.C. § 12291), and the Clery Act (*see* 20 U.S.C. § 1092.)
- To set forth guidance for preventing Sexual Harassment and retaliation.
- To enable Creighton in its effort to take timely corrective action when Sexual Harassment and/or retaliation occur.
- To establish a consistent process for resolving complaints Sexual Harassment and/or retaliation in a fair and just manner.

### **SCOPE OF POLICY**

This policy applies to Sexual Harassment that occurs within the University’s Education Programs or Activities and that is committed by an administrator, faculty member, staff member, student, contractor, guest, or other member of the University community.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of the University’s Education Programs or Activities; such misconduct may be prohibited by the Standards of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee.

Creighton may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest. A substantial Creighton interest includes:

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- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of Creighton University.

Consistent with the U.S. Department of Education’s implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University’s Education Programs or Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Standards of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other University policies and standards if committed by an employee, including but not limited to the Creighton Romantic or Intimate Relationships Policy.

Incidents reported to the Office of Title IX and Civil Rights Compliance under this policy may, at times, also involve allegations of the Student Standards of Conduct or other University policies. To the extent that these alleged violations directly relate to the allegations under this Policy, they may be investigated and considered with a referral to the appropriate University office for follow-up.

If the Respondent is unknown or is not a member of the Creighton community, the Title IX Coordinator or their designee will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report. Even if the Respondent is not a member of the Creighton community, Supportive Measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or the VIP Center.

All outside parties who conduct business with the University through affiliation and other agreements will be expected to comply with the policies and procedures of their employers and with this policy as specified by the terms of any contract or agreement between the University and such third party. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

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## GLOSSARY

The University provides the following definitions for the purposes of this policy.

**Advisor of Choice:** A person who may accompany a Complainant or Respondent to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. This person is chosen by a Complainant or Respondent or, if requested by the Complainant or Respondent, appointed by the University. The advisor may be, but is not required to be, an attorney.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute harassment or discrimination; or retaliation for engaging in a protected activity.

**Day:** A business day when Creighton University is in normal operation.

**Education Programs or Activities:** All operations of Creighton University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off-campus locations, events, or circumstances over which Creighton University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs, including any building owned or controlled by a student organization that is officially recognized by Creighton University.

**Final Determination:** A conclusion by the preponderance of the evidence standard whether the conduct occurred as alleged and whether it did or did not violate University policy.

**Finding:** A conclusion by the preponderance of the evidence standard that the conduct did or did not occur as alleged.

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**Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s Education Programs or Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.

**Formal Resolution Process:** A method of formal resolution to address conduct that falls within the policies included below, and which complies with the requirements of 34 C.F.R. Part 106.45.

**Formal Resolution Process Team:** Trained individuals who serve as investigators, informal resolution facilitators, hearing officers, appeal officers, and advisors (though not at the same time or with respect to the same case).

**Hearing Decision-maker or Board:** Those who have decision-making and sanctioning authority within Creighton University’s Formal Resolution Process.

**Hostile Environment Sexual Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person access to the University’s Education Programs or Activities.

**Investigator:** The person or persons charged by Creighton University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file.

**Official with Authority (OWA):** An employee of Creighton University charged with the responsibility to implement corrective measures for Sexual Harassment on behalf of the University.

**Parties:** The Complainant(s) and Respondent(s), collectively.

**Relevant Evidence:** Evidence that tends to prove or disprove an issue raised by the allegations in the Complaint.

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**Remedies:** Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Creighton University’s educational program.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Resolution:** The result of an informal or Formal Resolution Process.

**Sanction:** A consequence imposed by the University on a Respondent who is found to have violated this policy.

**Sexual Harassment:** Conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.

**Standard of Proof:** The standard of proof used under this policy is a Preponderance of the Evidence.

**Student:** Any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Creighton University.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, and reasonably available, and without fee or charge to a Complainant and/or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed, that are designed to restore or preserve equal access to the University’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the University’s education environment, or to deter Sexual Harassment.

**Title IX Coordinator:** The official designated by Creighton University to ensure compliance with Title IX and Creighton's Title IX program. The Title IX Coordinator has the primary responsibility for coordinating Creighton’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and

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prevent discrimination, harassment, and retaliation prohibited under this policy. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks. The Title IX Coordinator may consult with other University officials and legal counsel as necessary when carrying out their duties under this policy.

**Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Formal Resolution Process Team.

### **OFFICIALS WITH AUTHORITY**

Creighton University has designated certain administrators as “Officials with Authority” to address and correct Sexual Harassment and retaliation. In addition to the Title IX Team, Officials with Authority may also accept notice or complaints at the University. Officials with Authority include the following individuals:

- President
- Provost
- Executive Vice President
- Vice Provosts
- Deans
- Senior Director for Student Formation, Student Life
- Associate Vice President- Human Resources
- Assistant Vice President- Public Safety
- Athletic Director

The University identifies that faculty, administrators, staff and student employees in the administration of their job duties, have reporting responsibilities, both under University policy and under local, state, and federal law. Three reporting categories have been identified by the University (child abuse and vulnerable adult reporting; Title IX/discriminatory and concerning behavior reporting; and crime reporting) and individuals may fall into one, two, or three categories based on their position. This is further explained in the Required Reporting of Abuse, Title IX, and Other Crimes Policy 2.1.26.

Individuals have the right to file a complaint with an outside agency. Contact information for outside agencies and additional resources are available at [www.creighton.edu/titleix](http://www.creighton.edu/titleix).

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### **HOSTILE ENVIRONMENT SEXUAL HARASSMENT**

Because we value *Cura Personalis*, "Care for the individual person," all members of the Creighton community are expected to respect each person as a child of God and treat each individual with dignity. Students, faculty, and staff all have the right to work and learn in a respectful, non-discriminatory environment. Any form of discrimination or discriminatory harassment violates this principle and will not be tolerated by the University.

The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a Hostile Environment.

When harassment rises to the level of Hostile Environment Sexual Harassment, the University may impose sanctions on the Respondent through application of the complaint resolution process set forth below.

The University further reserves the right to address offensive conduct and/or harassment that does not rise to the level of Hostile Environment Sexual Harassment or that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under this policy, but may be addressed through conversation, remedial actions, education, collaborative discernment resolutions, and/or other informal resolution mechanisms.

Creighton's policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include relevant, but controversial or sensitive subject matters protected by academic freedom that do not constitute Hostile Environment Sexual Harassment.

### **FORCE, COERCION, CONSENT, AND INCAPACITATION**

For purposes of this policy, the following definitions and understandings apply:

**Force:** The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not



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demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person’s words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other’s freedom of will and ability to choose whether or not to engage in sexual activity.

**Consent:** Consent is affirmative by definition. Consent is an *explicitly communicated* mutual agreement in which all parties make an *informed, voluntary, and active* decision to engage in specific sexual activity. Consent is words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. It is the responsibility of any person wishing to engage in sexual activity with another person to determine the capacity of that potential sexual partner to provide consent.

*Explicitly communicated:* Consent must be communicated clearly, either verbally or non-verbally, through an outward demonstration signifying a person has freely chosen to engage in specific sexual activity. Consent cannot be inferred from the absence of a “no” and may not be inferred from silence, passivity, lack of resistance, or lack of an active response (e.g. freezing or being physically unable to communicate).

*Informed:* This means that all individuals understand, are aware of, and agree to the “who” (same partners), “what” (same acts), “where” (same location), “when” (same time), and “how” (same way and under the same conditions) of the sexual activity. A person is not deemed to be informed if a sexual partner misrepresents or materially omits information about themselves or the situation to gain sexual access. Being informed includes, but is not limited to, an awareness of whether pictures and/or video are being taken and knowledge of a partner’s sexual health status (i.e. sexually transmitted infections). *See also* “sexual exploitation.”

*Voluntary:* This means that consent is freely given by all parties and cannot be the result of force, threats, intimidation, coercion, or fraud.

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*Active:* Consent must be present and ongoing throughout every sexual interaction. Consent to one activity does not imply consent to other acts, nor does a previous or ongoing intimate relationship indicate consent to other sexual acts. Consent can be revoked at any time. If there is confusion or ambiguity during a sexual interaction, it is essential that the participants stop the activity and clarify each party's willingness to continue.

**Incapacitation:** A state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature or circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include, but are not limited to, the following:

- Lack of control over physical movements; difficulty walking, stumbling, falling down; being unable to stand or walk without assistance
- Slurred speech or inability to communicate clearly

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- Inability to focus or confusion about the circumstances
- Vomiting
- Unconsciousness or periods of unconsciousness; blackouts.

## **REPORTING SEXUAL HARASSMENT**

Any person may report Sexual Harassment using any of the following options:

- Report to the Title IX Coordinator, a member of the Title IX staff, or an Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number, email address, office mailing address listed for the Title IX Coordinator here:

Allison Taylor, M.S.Ed.  
Title IX Coordinator  
Executive Director, Office of Title IX and Civil Rights  
Compliance  
2500 California Plaza  
Creighton Hall, Ste. 340  
Omaha, NE 68178  
(402) 280-4120  
[AllisonTaylor@creighton.edu](mailto:AllisonTaylor@creighton.edu)  
[www.creighton.edu/titleix](http://www.creighton.edu/titleix)

- Report Sexual Harassment online, using the reporting form posted at [www.creighton.edu/titleix](http://www.creighton.edu/titleix) or [www.creighton.edu/safety/tell-someone](http://www.creighton.edu/safety/tell-someone). Anonymous reports are accepted but can give rise to a need to investigate. Creighton University strives to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

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- Report using the external Ethicspoint reporting hotline and/or webform at 855-256-0478 or <https://secure.ethicspoint.com/domain/media/en/gui/43718/>

If notice is submitted in a form that does not meet the standard for a Formal Complaint, defined in the “Glossary”, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

The university will act on any report of violation of this policy that is received by the Title IX Coordinator or any other Official with Authority by applying the proper procedure.

Upon receipt of a report to the Title IX Coordinator or Official with Authority of an alleged violation of the policy, the Office of Title IX and Civil Rights Compliance will initiate a prompt initial assessment to determine the next steps which must be taken, including offering Supportive Measures and determining what process(es) may apply.

### **SPECIAL ADVICE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING**

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred – preserve for law enforcement

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- Preserve all forms of electronic communication that occurred before, during, or after the assault
- Contact law enforcement by calling 911.
- Get medical attention – all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member, for support.
- Talk with a professional licensed counselor, University chaplain, or health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator.
- Explore this policy and avenues for resolution under the Title IX Grievance Process.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)

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- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

The University’s Department of Public Safety can assist individuals in obtaining a personal protection order (“PPO”).

## **INITIAL ASSESSMENT**

Following receipt of report of an alleged violation of this policy, the Title IX Coordinator, or a trained designee, will engage in an initial assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of this policy (see “Scope of Policy”); and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title IX Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (FERPA). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”).

As part of the initial assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

In some cases, the Title IX Coordinator may determine that a threat assessment should be conducted by the Threatening Behaviors Committee (TBC) as a part of the initial assessment. *See*

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the Emergency Removal section above. A threat assessment is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

### **CONTACTING THE COMPLAINANT**

If a report is not closed as a result of the initial assessment (see “Initial Assessment”) and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see “Supportive Measures”); to discuss and consider the Complainant’s wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

When notice is given, either by the party impacted or by a third party, the Title IX Coordinator will seek to determine if the party impacted wishes to make a Formal Complaint. If so, the Title IX Coordinator will assist them to do so. If the party impacted does not wish to make a Formal Complaint, the Title IX Coordinator will work with the party to determine what if any Supportive Measures or other actions may be appropriate.

### **SUPPORTIVE MEASURES**

Creighton University will offer and make available appropriate and reasonable Supportive Measures to the parties upon notice of alleged harassment, discrimination, sexual misconduct, relationship misconduct, and/or retaliation.

Upon receiving notice or a complaint, the Title IX Coordinator (or their designee) will promptly make supportive measures available to the parties. When supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator will work with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are implemented.

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Creighton University will maintain the confidentiality of Supportive Measures, as implemented through the University's Office of Title IX and Civil Rights Compliance to the extent that maintaining such confidentiality does not impair the office's ability to provide the Supportive Measures. The Title IX Coordinator or their designee will notify Complainants before sharing personally identifying information that the University believes is necessary to provide a Supportive Measure, including what information will be shared, with whom, and for what reason.

The Title IX Coordinator will work with other University officials to implement Supportive Measures and will act to minimize the academic and/or occupational impact on the parties, to the extent possible. The Title IX Coordinator will implement measures in a way that does not unreasonably burden the other party.

The University will provide written notification to parties about options for, available assistance with, and how to request changes to academic, living, transportation, and working situations or other, similar Supportive Measures.

For examples of Supportive Measures, please see [www.creighton.edu/titleix](http://www.creighton.edu/titleix).

### **EMERGENCY REMOVAL**

Creighton University may act to remove a 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 conjunction with the Threatening Behaviors Committee (TBC) using its standard objective threat assessment procedures

In all cases in which the University removes a Respondent on an emergency basis, the Respondent(s) will be given notice of the action and will be provided the option to request a meeting with the Title IX Coordinator prior to removal or as soon thereafter as reasonably possible. At this meeting with the Title IX Coordinator, the Respondent may attempt to show cause as to why they should not be removed and/or why the terms of the removal should be modified. This meeting may be held in person or remotely through video conference.



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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 or is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

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

Creighton University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to minimize the academic impact on the Parties.

Where the Respondent is an employee, the University has the ability to utilize administrative leave in situation where an emergency removal is considered.

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### **CONFIDENTIALITY**

Creighton University will make every effort to preserve the privacy of reports. Creighton will not share the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation under this policy, including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation, including any Respondent, and the identity of any witness.

Creighton will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the University may reveal the identity of any person or the contents of any record if permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

While the University will maintain confidentiality specified in this Section, the University will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about or discuss a particular case may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to the processes specified in this policy.

Certain types of Sexual Harassment are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

Creighton University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

If a Complainant would like the details of an incident to be kept confidential, confidential resources are available.

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### **TIME LIMITS ON REPORTING**

There is no time limitation on reporting to the Title IX Coordinator. However, if the Respondent is no longer subject to Creighton's jurisdiction, it may not be possible to fully investigate, respond, and/or provide remedies. If significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on reports significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer Supportive Measures and/or remedies, and/or engage in informal or formal action, as appropriate.

### **ONLINE HARASSMENT AND MISCONDUCT**

The policies of Creighton University are written and interpreted broadly to include online expressions of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Creighton's Education Program and Activities.

While the University may not control websites, social media, or other online arenas in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the Creighton community are encouraged to be good digital citizens and to refrain from online misconduct, such as sharing inappropriate content via Snapchat or other social media, or otherwise using the ease of transmission and/or anonymity of the internet or other technology to harm another member of the Creighton community. For additional information, please see the Acceptable Use Policy.

When brought to the attention of the University, online harassment or misconduct rising to the level of Sexual Harassment will be addressed under this policy.

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## **SEXUAL HARASSMENT**

Human sexual expression has been understood to be one of the great gifts of God to bind persons together in a freely chosen, mutual, and permanent commitment of love, and to sustain the human race. In the Catholic Jesuit tradition at this University we most value sexual expression when it fulfills these purposes. We understand that contemporary Western culture has moved away from the exclusivity of sexual expression in relationships of permanent commitment. In spite of this cultural context, Creighton continues to teach and be witness to the Catholic values. At the same time, we respect the values and beliefs of all the members of our community trusting that each person has carefully reflected on their own values and commitments, considering the good of the whole community, as well as their own desires and welfare, as they make choices about their own sexual activity.

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the States of Nebraska and Arizona regard Sexual Harassment as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

For purposes of this policy, Sexual Harassment includes the offenses of Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, as defined herein:

**Quid Pro Quo Sexual Harassment:** An employee of Creighton University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.

**Hostile Environment Sexual Harassment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to Creighton's Education Programs or Activities.

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**Sexual Assault:** Includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>

- **Rape:** Carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. forcibly, and/or against that person’s will (without consent) or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Sexual Assault with an Object:** Using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Nebraska and/or Arizona law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent as defined by Nebraska and/or Arizona law. In Nebraska, the age of consent is 16 years of age. In Arizona, the age of consent is 18 years of age.

**Dating Violence:** Violence committed by a person –

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<sup>1</sup>The University’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See C.F.R. 106.30(a).

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- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship will be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Nebraska and/or Arizona, 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 Nebraska and/or Arizona.

**Stalking:** Engaging in a course of conduct 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.

In addition to the violations listed above, the University maintains the Romantic or Intimate Relationship Policy 2.2.5. This policy identifies relationships which are prohibited by the University (such as relationships between a faculty member and an undergraduate student or a manager and an employee within the same reporting line).

Creighton University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

### **RETALIATION**

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in any of the manners specified in "Reporting Sexual Harassment" and

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“Formal Complaint.” Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. Creighton retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

### **WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they 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 grievance process upon completion of an appropriate threat assessment.

Such a threat assessment would evaluate whether there is a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Creighton may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University’s ability to pursue a Formal Grievance Process fairly and effectively. The University’s ability to remedy and respond to a report may also be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The University seeks to provide the Complainant with as much control over the process as possible, while balancing the Creighton’s obligation to protect its community.

When the Title IX Coordinator executes a written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

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In the process of addressing a report of Sexual Harassment, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as a proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Creighton to honor that request, the Office of Equity and Inclusion will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

### **BAD FAITH COMPLAINTS AND FALSE INFORMATION**

It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Standards of Conduct in the case of students and other University policies and standards, as applicable, for other persons.

### **AMNESTY**

Creighton University encourages the reporting of harassment, discrimination, sexual misconduct, relationship misconduct, and retaliation. Creighton recognizes that students may be hesitant to report such conduct or to participate in resolution processes if they have consumed alcohol when



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they are not 21 years of age, used illegal drugs, or otherwise violated the University's alcohol or drug policies at a time relevant to the incident.

To encourage reporting and participation in the process, the University will not take disciplinary action under its alcohol or drug policies against a student who discloses illegal alcohol or drug use in the context of reporting sexual misconduct directed against them or another person or participating in any related investigation or proceedings. However, the University reserves the right to require counseling, education, or other preventative measures to help prevent alcohol or drug violations in the future.

This amnesty does not apply to more serious allegations or allegations that placed the health or safety of others at risk. This would include allegations such as physical abuse of another person or illicit drug distribution.

Amnesty under Creighton's policies does not preclude or prevent action by police or other legal authorities.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help an individual who has experienced sexual misconduct talk to their RA or residential life staff)

Creighton maintains a policy of amnesty for students who offer help to others in need. [While policy violations cannot be overlooked, Creighton may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.]

**Employees:** Sometimes, employees are hesitant to report incidents of discriminatory harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the Romantic or Intimate Relationships Policy and is then assaulted in the course of that relationship might hesitate to report the incident to Creighton officials.

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Creighton may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis].

### **RESOLUTION PROCESS**

#### **Overview**

The Resolution process applies to all qualifying incidents of Sexual Harassment as defined above. A set of dismissal requirements within the Title IX regulations may apply as described below. When an allegation may violate University Policy but has been dismissed under the Title IX Regulations, other University policies may apply, including the Non-Discrimination Policy 2.1.25. Notice will be provided to the Parties identifying the applicable policies.

If a party does not wish to file a Formal Complaint, the Title IX Coordinator will determine whether a violence risk assessment indicates a compelling threat to health and/or safety. If so, then the Title IX Coordinator will initiate a Formal Complaint independently. (*See* “When a Complainant Does Not Wish To Proceed.”)

#### **Formal Complaint**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with this policy. Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the University’s Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in “Reporting Sexual Harassment.” No person may submit a Formal Complaint on the Complainant’s behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable.

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If a Formal Complaint is received, the Title IX Coordinator will assess its sufficiency and work with the Complainant to ensure it is completed correctly.

- The Title IX Coordinator will offer Supportive Measures to the Complainant.
- The Title IX Coordinator will explain the right to have an Advisor of Choice, and if necessary, assist the Complainant in identifying an Advisor of Choice from the University.
- The Title IX Coordinator will determine whether the Complainant prefers to pursue an informal resolution or a formal resolution process. If the Complainant would prefer an informal resolution, the Title IX Coordinator will inform the Complainant that the Respondent would also have to agree to an informal resolution. The Title IX Coordinator will discuss what informal resolution options may be available.
- If the Complainant would prefer a formal process, the Title IX Coordinator will determine whether the conduct alleged falls within the scope of this policy.
  - If it does, the Title IX Coordinator will initiate the formal investigation and resolution process, directing the investigation to address:
    - An incident;
    - A pattern of alleged misconduct; and/or
    - A culture or climate issue based on the nature of the complaint.
  - If the Title IX Coordinator determines that Title IX does not apply, the Title IX Coordinator will dismiss that aspect of the Complaint (if relevant), assess which policies apply, determine which resolution process is applicable, and refer the matter accordingly.

Following receipt of notice or a complaint of an alleged violation of this policy, the Title IX Coordinator, or a trained designee, will engage in an initial assessment. The initial assessment may include the following:

### **Dismissal Prior to Commencement of Investigation**

In the event that the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint to determine if the alleged conduct falls within the scope of the Title IX Sexual Harassment Policy. If the conduct alleged does not fall within the scope of this policy, the Title IX Coordinator will “dismiss” the Formal Complaint under Title IX and advise the Complainant of the applicable policy and process for adjudication at the University. The

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University's Non-Discrimination Policy includes processes for reporting allegations of Sexual Harassment outside of the scope of Title IX.

### **COUNTER CLAIMS**

The University must ensure the grievance process is not abused for retaliatory purposes. Counterclaims are permitted. However, an initial assessment, as described above, will be conducted to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a respondent made in good faith, without retaliatory intent, in will be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

Counterclaims may be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. In some circumstances, investigations of the counterclaim may occur after the resolution of the underlying allegation, causing reasonable delays.

### **ADVISOR OF CHOICE**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent have the right to consult with an advisor of their choice throughout the investigative process and to be accompanied by that advisor to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney. Any person serving as an advisor should plan to make themselves available for all meetings, interviews, conferences, and hearings (if applicable). A party must notify the Investigators and/or Title IX Coordinator of the identify of their Advisor of Choice at least two (2) business days before the date of their first meeting with Investigators, or as soon as possible if a more expeditious meetings is necessary or desired.

A party may choose to change advisors or support person at any point in the process. Any change in advisor should be submitted to investigators in writing at least two (2) days prior to any meeting, interview, conference, or hearing.

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A party may be permitted to have more than one Advisor of Choice upon written request to the Title IX Coordinator. The decision to grant such a request is solely at the discretion of the Title IX Coordinator and will be granted equitably to the parties.

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

Parties may select whoever they wish to serve as their Advisor so long as the Advisor is eligible and available, with limited exception. A party cannot insist on an Advisor who does not have the time, inclination, or availability to serve. Additionally, Parties may not select an Advisor with an institutionally conflicting role, such as being a Title IX administrator with an active role in the matter or a supervisor who must monitor and implement sanctions.

Choosing an advisor who is also a witness creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the decision maker(s).

A party may choose a friend, mentor, family member, attorney, or any other individual to advise, support, and/or consult with them throughout the resolution process. The advisor may be from the University Community or may be from outside the University.

If a party does not have an advisor, the University will offer access to one from a pool of trained advisors identified by the University.

If a party chooses an advisor or support person from outside the university system or a person from within the University not identified as an advisor by the Office of Equity and Inclusion, the University can make no guarantee or assertion as to the level of training the advisor may possess to fulfill this role.

The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide an attorney. The University will, however, provide a party with an advisor trained by the University as outlined above. A University appointed advisor does not represent a

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party in a legal capacity and is not permitted to offer legal advice. However, University appointed advisors will act in the best interests of the party in this process.

The party may proceed through all portions of the process except the hearing, as explained in Procedure A, without an advisor if preferred. Requirements regarding Advisors in Hearings are outlined below.

### **Advisor's Role**

The University will provide reasonable notice for meetings, interviews, conferences, and hearings. Advisors should make every effort to be present for each scheduled meeting. An advisor may request to participate remotely in advance of a meeting. If an advisor is unable to attend a meeting, the Party will be offered the opportunity to reschedule for a time when the advisor is available. Investigators and/or the Decision Maker will coordinate with parties and Advisors when scheduling meetings. An Advisor may request a change to a scheduled meeting if doing so would not cause unreasonable delay. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Except for the questioning of witnesses during the hearing specified in "Hearing," the Advisor of Choice will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the Advisor of Choice, or communicate with the University about the matter without the party being included in the communication. If an advisor wishes to consult with or discuss an issue with their advisee/client, they may request a break during an interview or meeting to have that discussion. Advisors are permitted to pass notes to the party during an interview or meeting.

### **Pre-Interview Meetings**

After accepting the role of Advisor, an Advisor not trained by the University may request a meeting with Investigator(s) or the Title IX Coordinator to clarify and understand their role in the University's policies and procedures.

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### **Advisors in Hearings/University-Appointed Advisors**

Under the U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing but must be conducted by the parties' Advisors. In the event a party is not able to secure an advisor to attend the hearing specified in "Hearing," and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney. The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in "Hearing," and requests that the University provide an advisor.

### **Sharing Information with the Advisor**

Creighton expects that the parties may wish to have the University share documentation and evidence related to allegations directly with their advisor. Creighton will provide a release of information form authorizing the University to share this information directly. Parties must sign this form or provide similar documentation demonstrating consent before such information may be shared. Parties may choose to share this information directly with their advisor independently.

If a party shares or gives the University permission to share information with an Advisor, that Advisor is expected to maintain the privacy of the records shared with them. Records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Creighton University. Creighton may seek to restrict the role of an Advisor who does not respect the sensitive nature of the process or who fails to abide by these privacy expectations.

If a party chooses to change advisors at any point in time during the process, authorization to share information with the previous Advisor will be automatically terminated unless the party makes a written request to continue sharing that information. A separate release must be filed for the new advisor.

If a party requests that all communication be made through their attorney, the University will comply with that request.

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## **Advisor Violation of Creighton Policy**

All advisors are subject to the same Creighton policies and procedures, regardless of whether they are attorneys. Advisors are expected to advise their advisees without disrupting the proceedings. In the event a party's Advisor of Choice engages in material violation of the parameters specified in this Section and "Hearing," the University may preclude the Advisor of Choice from further participation, in which case the party may select a new Advisor of Choice. Any Advisor who oversteps their role as defined by this policy will be warned only once. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **Assistance in Securing an Advisor**

Individuals are guaranteed a right to an advisor provided by the University. As discussed above, a party may choose to secure an advisor outside of the University system. Resources are available [\[here\]](#).

## **INVESTIGATION**

### **Privacy of Investigation**

The investigation and resolution will be private to the greatest extent possible. Privacy of the investigation helps enhance the integrity of the investigation and resolution process, protects the interests of the parties, and protects participants from statements that could be interpreted as retaliatory or defamatory. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. However, no student or member of the University Community can be promised strict or absolute confidentiality. The parties have discretion to share their own knowledge with others if they so choose. However, Creighton encourages all parties to consult with their advisors before doing so. The University will protect the identity of persons involved in reports of misconduct under this policy to the best of its ability. Personally identifiable information will only be shared by the University with persons on a need to know basis, in order to investigate, respond to a report, or deliver resources or supportive measures.



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## **Preservation of Evidence**

Individuals involved in a report of harassment, discrimination, sexual or relationship misconduct should preserve evidence to the extent possible as it may assist the University or law enforcement in making factual determinations about the reported misconduct, or might be relevant to a court's determination regarding the issuance of a personal protection order.

## **Law Enforcement Investigations**

Under some circumstances, a Complainant may choose to report an incident to law enforcement as well as to the University. If a report is made to law enforcement, there may be reasonable delays in the grievance process if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate any reasonable delays to the parties in writing and provide status updates as necessary. The investigation will resume as soon as practicable. During such a delay, the University will implement supportive measures as deemed appropriate.

University actions are not typically altered or precluded on the grounds that civil or criminal actions involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **FORMAL RESOLUTION PROCESS (FRP) TEAM**

A team of faculty and staff (the "FRP Team") are responsible for carrying out the Formal Resolution Process. An up to date roster of team members is maintained on the website [www.creighton.edu/titleix](http://www.creighton.edu/titleix) to carry out the process.

## **Team Member Roles**

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

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- To act as an Advisor to the parties;
- To facilitate Informal Resolution
- To perform or assist with an initial assessment;
- To investigate complaints;
- To serve as a Hearing Facilitator (process administrator without a decision-making role);
- To serve as a Hearing Board member or Hearing Chair regarding the complaint; or
- To serve as an Appeal Officer.

## Appointment

The Title IX Coordinator in consultation with the President appoints the Team Members, which act with independence and impartiality. Members are appointed following an application process and interviews with the Title IX Coordinator and members of the Title IX Advisory Committee, unless their role is designated by their title or position. While members of the FRP team are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the Title IX Coordinator can also designate permanent roles for individuals in the team using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the FRP Team that make them best suited to particular roles.

## FRP Team Member Training

The team members receive annual training. This training includes, but is not limited to:

- The scope of Creighton’s Title IX Sexual Harassment Policy and Procedures;
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;
- Implicit Bias;
- Disparate Treatment and impact;
- Reporting, confidentiality, and privacy requirements;
- Applicable laws, regulations, and federal regulatory guidance;
- How to implement appropriate and situation specific remedies;
- How to investigate in a thorough, reliable, and impartial manner;
- How to uphold fairness, equity, and due process;

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- How to weigh evidence, conduct questioning, and assess credibility;
- Impartiality and objectivity;
- How to render findings and generate clear, concise, evidence-based rationales;
- How to apply definitions used by the recipient with respect to consent {or the absence or negation of consent) consistently, impartially, and

Specific training is also provided for Appeal Officers, Advisors (who are Creighton employees), and Chairs. All team members are required to attend these trainings annually. The materials used to train all members of the Team are posted on the website at [www.creighton.edu/titleix](http://www.creighton.edu/titleix).

### **Membership**

The FRP Team includes:

- 3 or more faculty members
- 3 or more staff members
- 3 or more students
- 2 or more staff members from the Division of Student Life
- 1 or more representatives from Public Safety
- 2 or more Representatives from Human Resources
- 1 or more Representatives from Athletics
- External, trained, third-party, neutral professionals may also be used

Members are typically appointed to three-year terms. Individuals who are interested in serving as team members are encouraged to contact the Title IX Coordinator regarding the application process. Members may be nominated to the Title IX Coordinator as well.

### **INVESTIGATION**

#### **Selection of Investigators**

The Title IX Coordinator will select at least one (1) but no more than two (2) investigators from the FRP Team. The Title IX Coordinator will screen for potential conflicts of interest and biases prior to selecting investigators.

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## Notice of Investigation

After receiving a Formal Complaint alleging conduct that, if proven, would constitute a violation of this policy, the Title IX Coordinator will issue a written Notice of Investigation to both the Complainant and Respondent. The Complainant will be given advance notice of when the Notice will be delivered to the Respondent. The Notice will include the following:

- The names of the assigned investigators along with a process for advising the Title IX Coordinator of any potential conflict of interest the investigator(s) may have;
- The specific policies implicated and a physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the involved parties (if known); The conduct allegedly constituting Sexual Harassment; and the date and location of the alleged incident(s) (if known);
- A statement that the Respondent is presumed “not responsible” for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notice that the Complainant and Respondent have the right to be accompanied by an Advisor of Choice, as specified in “Advisor of Choice”;
- Notice that the Complainant and Respondent have the right to inspect and review evidence as specified in “Access to Evidence;”
- Notice of the University’s prohibitions on retaliation and false statements reflected in Sections “Bad Faith Complaints and False Information” and “Retaliation;”
- Information about resources that are available on campus and in the community;
- Supportive Measures currently in place, if applicable, and the availability of Supportive Measures through the Title IX Coordinator;
- A statement of the potential sanctions/responsive actions that could result from a finding of responsibility;
- Parties will be given the opportunity to review and respond to all directly related and/or relevant evidence obtained prior to the completion final investigative report;
- Information regarding the privacy of the process
- Details on how to request disability accommodations during the interview process
- A link to the University VAWA brochure
- An instruction to preserve any evidence that is directly related to the allegations.

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This Notice may be delivered via postal mail to the Party’s address on record with the University, via email to the Party’s University issued email address, or in person. Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

### **Commencement and Timing of Investigation**

After the written Notice of Investigation is transmitted to the parties, the investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will result in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process.

Although the length of each investigation may vary depending on the totality of the circumstances, the Office of Title IX and Civil Rights Compliance strives to conclude the investigative process within a reasonable timeframe of 30-45 days following transmittal of the written Notice of Investigation]. This timeframe includes the investigator(s) conducting interviews, gathering evidence, affording the Complainant and Respondent the opportunity to respond to the evidence, completing the investigative report, and determination of responsibility by the appropriate process.

### **Ensuring Impartiality**

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

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

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source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Office of the General Counsel.

Respondents are presumed “not responsible” for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **Equal Opportunity**

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

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the particular allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning the sexual history of the Complainant, as specified in “Evidentiary Considerations.” The investigator will not restrict the ability of the parties to gather and present evidence on their own.

## **Gathering and Reviewing Evidence**

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

Parties may propose expert witnesses. The investigator(s) will not rely on any experts with an actual or apparent bias or conflict of interest for or against complainants or respondents generally

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or an individual complainant or respondent. Such an expert will be excluded from the process. Investigators will not seek information from expert witnesses which may be protected by privilege (medical or legal) unless that privilege has been waived voluntarily and in writing by the privilege holder.

Any party or witness to be interviewed during the course of an investigation will be provided reasonable notice of the date, time, and location of the interview. The parties and witnesses will be provided reasonable opportunity to review the transcript and/or a written summary of the meeting with the investigator(s), including an ability to offer corrections or clarifications to the record.

Parties will be granted the opportunity to review and respond to all evidence and statements gathered during the Investigative Process, prior to the completion of the Investigative Report. The parties will have not fewer than ten (10) business days to review and respond to evidence prior to the completion of the Investigative Report.

The investigator(s) may record the interviews. All parties will be informed prior to the beginning of the interview if it will be recorded. No unauthorized audio or video recording of any kind is permitted during investigations.

### **Witnesses**

The Complainant and Respondent are permitted to provide names of potential witnesses to the investigative team. The investigative team will determine which of those potential witnesses and/or other persons may have relevant information about the complaint. Witnesses may include individuals outside the Creighton community. Additionally, the investigator(s) may interview individuals with an expertise specific to elements of the reported incident, such as alcohol-drug interactions).

All members of the Creighton community are encouraged and expected to fully cooperate with any investigation and resolution under this policy. University faculty and staff who fail to cooperate and/or participate will face discipline, up to and including termination. In the event a complainant refuses to participate in an investigation, the University may proceed as a reporting party under the circumstances previously explained in “When a Complainant Does Not Wish to Proceed.”. In the event a respondent refuses to participate, the investigation will be completed despite the respondent’s lack of participation and

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will be forwarded to the Hearing Board for a determination of responsibility. All parties and witnesses in the investigation are expected to cooperate and provide complete and truth information.

In-person interviews of all parties and witnesses will be conducted when possible. However, circumstances may require individuals to be interviewed remotely via an appropriate technological medium.

## **Documentation of Investigation**

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

## **Evidentiary Considerations**

The Investigation does not consider the following:

- Incidents not directly related to the possible violation, unless they evidence a pattern;
- The character of the parties, including witnesses identified solely for the purpose of attesting to character;
- Questions and Evidence relating to the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence are offered to prove 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.

If prior sexual history is to be considered, such evidence will be included in the investigative report. The parties will have the opportunity to challenge relevance and whether it should be considered in the final analysis. Relevant evidence of prior sexual history must be based on direct information, not rumor, hearsay, speculation, or conjecture.



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### **Document Review and Investigative Report**

Upon conclusion of the evidence-gathering phase of the Investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory and exculpatory evidence, whether obtained from a party or some other source. Thereafter, the parties will have not fewer than ten (10) business days to review and respond to the evidence gathered during the course of the investigation.

### **Investigation Report**

After providing the Complainant and Respondent the opportunity to review the evidence gathered and to provide any written response as stated above, the investigator(s) will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. The Investigator(s) will gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report. The report will include relevant elements of the responses of the parties to the evidence.

Then the investigation report is complete, the investigator will transmit a copy to the Decision Maker(s) along with the evidence gathered. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

The parties may submit a response to the report to the Hearing Chair prior to the hearing.

### **TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION**

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, 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 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; or

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- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;
- unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

### **SELECTING AN ADJUDICATION PROCESS**

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes available. The notice will explain that the hearing process is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to informal resolution.

### **INFORMAL RESOLUTION**

At any time after the parties are provided written notice of the Formal Complaint and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-party).

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- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University. Notwithstanding the forgoing if the form of informal resolution is Administrative Adjudication as specified in "Administrative Adjudication," there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in "Administrative Adjudication," all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX

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Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

Informal resolution may take a range of forms, including any of the following:

- Collaborative Adaptable Resolution (“CAR”) as specified in “Collaborative Adaptable Resolution (Optional)”;
- Administrative Adjudication as specified in “Administrative Adjudication (Optional)”;
- Mediation, Facilitated Negotiation, or other Dispute Resolution; or
- Respondent Accepts Responsibility for Alleged Violations.

### **Collaborative Adaptable Resolution (Optional)**

Creighton University is founded on Ignatian values including *Cura Personalis*. We are men and women for and with others, focused on pursuing and promoting truth, justice, knowledge, and diversity. Creighton strives to provide meaningful paths to justice for those who have been harmed by a member of our community. In keeping with values and mission of Creighton, this policy recognizes that the path to justice is not uniform across all incidents of harm. The Collaborative Adaptable Resolution Process provides options for individuals who do not wish to proceed through the hearing process outlined below but would prefer an opportunity to explore alternative means of addressing incidents utilizing methods designed to foster a restorative culture on campus, including collaboration with other offices.

Collaborative Adaptable Resolution may be considered only after a Formal Complaint is filed as defined above. Either Party may request a CAR process. However, the process must be mutual, meaning, both parties must agree voluntarily, in writing, to utilize a CAR process. The decision to participate in this process is not binding, unless and until a final resolution has been reached and signed by all parties. The University will not pressure any Party to participate in a CAR process.

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At any point in the process prior to final resolution, a party may request to end the CAR process and resume the Formal Resolution Process.

Prior to implementing a CAR process, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in the CAR process, including information regarding any records that will be maintained or shared by the University.

Any information shared and discovered through a CAR process will be protected and safeguarded. Information shared in this process may not be used in a Formal Resolution Process should the Parties choose to return to that path. This information is protected by FERPA and only permitted to be used within this process. The information is private, but the University cannot guarantee confidentiality of information in this process. Parties should discuss privacy limits with their advisors as they make the decision regarding whether this process is right for them.

Not every case is appropriate for this type of resolution. The Title IX Coordinator will make a final determination as to whether a CAR process is an available and appropriate remedy. The Title IX Coordinator may look to the following factors to determine whether a CAR process may be utilized:

- The parties' desire to participate in CAR;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the CAR facilitator with this type of complaint;
- Complexity of case;
- Emotional state of the parties;
- Rationality of the parties;
- Goals; and/or
- Adequacy of resources to invest in the CAR Process

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The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. This result is not subject to appeal once all parties indicate in writing their assent to all agreed upon terms of resolution. Issues of bias and/or coercion within the process or on the part of a facilitator or party should be raised with the Title IX Coordinator as soon as possible. If the parties cannot agree on all terms of resolution, the Formal Resolution Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions will be implemented promptly in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the University Community. Failure to abide by the terms of an agreement reached through this process will be addressed in the same manner as failure to comply with sanctions and/or long-term remedies described.

There are a variety of processes which may be considered and/or implemented through CAR. Some examples include:

### **Administrative Adjudication (Optional)**

In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in “Selecting an Adjudication Process.” At any time prior to the issuance of the administrative officer’s determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in “Hearing Process.”

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

The administrative officer will promptly send written notice to the parties notifying the parties of the administrative officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the

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administrative officer separately. The administrative officer's meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in "Evidentiary Considerations," or for any other reason; \
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence;
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the parties' written responses, the administrative officer will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the administrative officer to ask questions concerning the party's written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each party, the administrative officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the parties in their respective written responses to the investigation report. The administrative officer will resolve disputed facts using a preponderance of the evidence (that is, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any University official and the Title IX Coordinator, in the manner specified in "Deliberation and Determination" and will prepare and transmit a written decision in the manner as specified in "Written Decision" which shall serve as a resolution for purposes of informal resolution.

Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal as specified in "Appeal."

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Although the length of each administrative adjudication will vary depending on the totality of the circumstances, the University strives to issue the administrative officer's written determination within twenty-one (21) days of the transmittal of the initiating written notice specified in this Section ("Administrative Adjudication").

Other language in this Section ("Administrative Adjudication") notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student

### **Mediation, Facilitated Negotiation, or Other Dispute Resolution (Optional)**

Mediation is a means by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of mediation.

### **Respondent Accepts Responsibility for Alleged Violations (Optional)**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above. If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on Responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University Policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s) as necessary.



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## **STANDARD OF EVIDENCE**

The University utilizes a preponderance of the evidence standard to determine if the Policy was violated. This standard means that the Decision Maker(s) will determine whether the evidence proves it is more likely than not that the alleged misconduct occurred. A Respondent is presumed not to be responsible for a violation of the policy unless a violation is proven by a preponderance of the evidence.

## **FORMAL RESOLUTION PROCESS**

The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Formal Resolution Process”). The hearing process will be used to adjudicate all Formal Complaints unless both parties timely consent to Informal Resolution as specified in “Selecting an Adjudication Process”

### **Selection of Hearing Board**

The Title IX Coordinator will assign a three-member panel from the Pool, including designating one of the three members as the Chair for the hearing. The Decision-Makers will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the Resolution Process in the event that a substitution is needed for any reason.

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

### **Notice of Hearing**

When the parties receive the Investigative Report, they will also be provided with a Notice of Hearing. Once mailed, emailed, and/or delivered in-person, notice will be presumptively delivered.

The Notice will contain the following:

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- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- A statement that a party may request a hearing be rescheduled for good cause. The hearing chair will have discretion to make that determination.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- Notification that the parties must have the assistance of an advisor of their choosing for the hearing. Should a party not select an advisor, the Hearing Chair will appoint an advisor to assist the party during the hearing.
- The names of the Hearing Chair and the members of the Hearing Board. If any party is or becomes aware of a conflict of interest with any member of the Hearing Board, they should notify the Title IX Coordinator in writing as soon as possible. Hearing Board members will only be removed if the Title IX Coordinator determines their bias or conflict of interest precludes an impartial hearing of the allegations.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-makers will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing at least seven (7) business days prior to the hearing.
- In hearings involving more than one respondent or in which two (2) or more complainants have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly. This will be communicated in the Notice Letter to parties. However, a respondent may request the hearings be separated for good cause. Such request must be submitted in writing to the hearing chair as soon as practicable after the Notice Letter is received. The Hearing Chair will review such request and notify all parties in writing of the decision.

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Witnesses expected to appear at the hearing will be sent Notices of Hearing communicating more limited information specific to witnesses.

If an investigation concludes near or after the end of term, the hearing will typically be held after the end of term including during a summer or holiday break so long as the University is open to ensure a timely resolution of the matter. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved, including any Appeal. A student facing charges under this Policy is not in good standing to graduate.

If the hearing is to be scheduled for a time when participants would not be on campus, the hearing *may* be held remotely. A request for remote hearing must be made in writing to the hearing chair at least two (2) days prior to a scheduled hearing. Should circumstances arise requiring a remote hearing, the hearing chair will notify the parties in advance with the modified procedures.

### **Alternate Hearing Participation Options**

The Title IX Coordinator or the Chair may arrange to use technology to allow remote testimony of witnesses without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made. The Title IX Coordinator has discretion to determine a hearing will be conducted and/or a witness should appear remotely and will provide notice to all affected witnesses and parties.

### **Pre-Hearing Preparation**

The parties will be given the list of the names of the Decision-Maker(s) at least five (5) business days in advance of the hearing. All Objections to any Decision-Maker must be raised in writing, detailing the rationale for the objection, and submitted to the Title IX Coordinator as soon as possible and no later than one-day prior to the hearing. Decision-Makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment should be shared with the Chair at the pre-hearing meeting. The Chair will distribute the parties' review and comment.

### **Pre-Hearing Conference**

Prior to the hearing, the Hearing Chair will convene a pre-hearing conference with each party (complainant and respondent) and/or their Advisor(s) of Choice to plan for the hearing. The Title IX Coordinator, General Counsel, and/or their designee may attend this conference and assist with determinations regarding relevance and admissibility. At the conference, the Hearing Chair will address the following items:

- The procedures to be followed at the hearing. A copy of the procedures is included with the Notice of Hearing letter as well.
- Matters raised in the parties' written responses to the investigation report, as the Hearing Chair deems appropriate;
- Identification of each party's Advisor of Choice, including their status as an attorney if applicable.
- Identification of witnesses who will appear at the hearing.
- Identification of any evidence and/or exhibits which will be presented at the hearing.
- Whether any stipulations may be made to expedite the hearing;
- Arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing. The Chair may consult with General Counsel and/or the Title IX Coordinator.

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- Any additional topics that may be relevant or have been raised by the parties for discussion, at the hearing officer's discretion.

The pre-hearing conference will be recorded.

### **Issuance of Notices of Attendance**

After the pre-hearing conference, the Hearing Chair will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The University will not issue a notice of attendance to any witness who is not an employee or a student.

### **Evidentiary Considerations in the Hearing**

Any evidence that the Decision-Maker(s) determine(s) to be relevant and credible may be considered. The Decision-Makers will not consider nor permit presentation of evidence relating to:

- Incidents not directly related to the possible violation unless they evidence a pattern
- The character of the parties
- Questions and evidence related to the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged misconduct, or if the questions and evidence concern specific incidents of the

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Complainant's prior sexual history with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility.

The parties may each submit a written impact statement prior to the hearing for consideration of the Decision-maker(s) at the sanction stage of the process if a determination of responsibility is reached.

### **Hearing**

After the pre-hearing conference, the Hearing Chair will convene and conduct a hearing pursuant to the University's Hearing Procedures not less than ten (10) business days after parties receive access to the investigation report. Any reasonable delay in scheduling a hearing will be communicated to the parties in writing. If possible, the hearing will be held on consecutive business days when it exceeds a full day.

At the hearing, the Decision Maker(s) have the authority to hear and make determinations on all allegations of harassment, discrimination, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliations, even though those collateral allegations may not specifically fall within this policy.

The role of the Hearing Board is to review all statements and evidence presented in the investigative report, to determine credibility of parties through a live hearing with direct and cross examination, to determine whether or not a respondent is in violation of this policy, and if so, to determine appropriate sanctioning.

The Hearing Board will receive the complete case file at least five (5) business days prior to the hearing for their review.

The Chair of the Hearing Board presides over the hearing as a voting member. The Chair is responsible for procedural matters and decisions leading up to the hearing, determinations about information that will be considered or not, appropriate and inappropriate lines of questioning, and

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the overall decorum and conduct of the proceedings. The hearing administrator will manage the hearing process. A hearing administrator may attend to the logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended.

The complainant and respondent will participate in the hearing remotely and/or from separate rooms, if the Parties are on campus, via video conference. The Chair will work with the Title IX Coordinator in facilitating such video conference.

Parties and/or witnesses who were contacted to participate in the investigative process but who declined to give statements or present evidence during the investigation will not be permitted to make statements or present evidence at that the hearing. All statements and evidence must be available to both the complainant and the respondent in advance of the hearing in order to adequately prepare for the hearing. A complainant or respondent who declined to participate in the investigative process will still be permitted to cross examine witnesses through an advisor at the hearing.

New evidence or witnesses will not be permitted at the hearing unless the party offering such evidence or witness can show:

- The new evidence or witness statement is relevant;
- And the evidence or witness was previously unknown or unavailable.

A party wishing to offer new information must make this known to the Hearing Chair at the pre-hearing conference or as soon as practicable thereafter. The hearing chair will make a determination whether to admit or disallow the evidence or witness. The hearing chair may choose to remand the matter back to the investigator(s) to gather information relevant to the witness or evidence and amend the investigative report.

Hearings are considered Private University Proceedings. As such, they will be closed to any individuals not actively involved in the proceeding. Witnesses will only be permitted to be present for their own testimony. The Complainant, Respondent, and their respective Advisors of Choice are permitted to be present for the entirety of the hearing.

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

The University is not a court of law. Formal rules of evidence will not be in effect. Evidence that the panel believes is relevant and credible may be considered, including an individual's prior misconduct history where such conduct establishes evidence of a pattern or predatory behavior. The Hearing Chair will make all determinations regarding admission of evidence and testimony. The Hearing Chair may ask the Hearing Board to disregard evidence that is irrelevant, immaterial, lacking in credibility, or that is improperly prejudicial. The Hearing Chair will determine all questions of procedure and evidence. The Chair may explore arguments regarding relevance with the Advisor, at the discretion of the Chair. The Chair will state the decision on the record.

The Hearing Chair may consult with legal counsel, when needed, to help assess the appropriateness of specific questions.

If a party or Advisor of Choice is disrespectful of or disruptive to the proceedings, the Hearing Chair will take actions they deem appropriate to impose decorum.

If a party raises an issue of bias or conflict of interest of an investigator or Decision-Maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigations and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.



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### **Testimony and Questioning**

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' Advisors of Choice, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, can be considered by the hearing officer in reaching a determination of responsibility.

Direct examination of the Investigator(s), Parties, and Witnesses will be conducted exclusively by the Hearing Board. The Parties' Advisors of Choice will conduct cross examination of Investigator(s), the other Party, and Witnesses, if any. The Hearing Chair may determine that questions asked are not appropriate and may direct a party to not answer. The Hearing Chair will provide an explanation as to any such exclusion. The Hearing Chair is responsible for ensuring questioning is not abusive or inappropriate. Advisors will not be permitted to respond to questions on behalf of their advisees. Anyone appearing at a hearing must answer questions for themselves.

The investigator(s) will present the report, including items which are contested, and be subject to questioning by the Hearing Board. Neither party nor the Decision-Maker should ask the Investigator(s) their opinion on credibility, recommended findings, or determinations. If such information is introduced, the Chair will instruct that it be disregarded. The Investigator(s) will be present for the entire hearing but not for deliberations.

After the Investigator(s) present the report and are questioned, the parties and witnesses will provide relevant evidence in turn. The Chair will determine the order in which the parties and witnesses will be questioned, typically beginning with the Complainant.

The Hearing Board will ask direct examination questions, then the Advisors will be permitted to ask cross-examination questions. Advisors will remain seated during questioning. Cross examination may be posed orally, or if circumstances require, the Advisor may submit their questions electronically, or in writing, to be read by the Chair. Oral questioning will be the default,

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but other means may be permitted by the Chair upon request of the questioning party or agreement of the Parties and Chair.

## **Refusal to Submit to Cross Examination**

Decision-maker(s) may not draw an inference solely from a party or witness' absence from the hearing or refusal to answer cross-examination or other questions. I

## **Deliberation and Decision-Making**

After the hearing is complete, the Hearing Board will meet in a closed session to determine whether the Standard of Evidence has been met. A majority vote of the Hearing Board is required to make a finding. Deliberations will not be recorded. In making this determination, the Hearing Board will objectively evaluate all relevant evidence received at the hearing and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness.

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If the Hearing Board determines that the respondent is responsible for one or more violations of University Policy, it will then deliberate as to appropriate sanctioning. The Hearing Board will be permitted to consider prior policy violations in determining an appropriate sanction. The Hearing Board will also be permitted, at their discretion, to consider previously submitted impact statements upon a finding of responsibility. Parties will have an opportunity to review any impact statements submitted by the other party.

The Hearing Chair generally retains the ability to inform the Hearing Board what evidence may be considered in the final decision-making process. Under certain circumstances, the Hearing Board may be required to exclude evidence, statements, and/or testimony. If the Hearing Board excludes any evidence the rationale for such exclusion will be included in the final determination letter. If a party or witness provided statements or evidence in the investigation but declined to do so in the hearing, the statements of that Party or witness will not be considered as a basis for decision. A party's decision not to participate in the hearing or the formal resolution process generally may not be the sole basis for the decision of the Hearing Board.

After deliberation, Hearing Chair will draft a final determination letter. This letter will be available within seven (7) business days and will be communicated to the Complainant and Respondent concurrently. If the Chair is unable to meet the seven day timeline, they may request an extension from the Title IX Coordinator. If granted, the extension will be communicated to the parties by the Title IX Coordinator.

The letter will provide a statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident; specify findings of fact that support the determination, conclusions regarding the application of the relevant policy to facts at issue; a statement of and rationale for the result of each allegation to the extent the University is permitted to share such information.

If there is a finding of responsibility, the letter will include any sanctions issued which the University is permitted to share and any remedies provided to the Complainant, designed to ensure access to the University's educational or employment program or activity, to the extent the institution is permitted to share. The notification will include information on when the results are considered final and the relevant procedures and bases for appeal.

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If a respondent is found responsible, any sanctions imposed as a result of the hearing will be stayed until the conclusion of the appeal period if no appeal is filed. If an appeal is filed, sanctions will be stayed until the conclusion of the appeal. Supportive Measures may be continued or restarted. Under limited circumstances, sanctions may be implemented immediately post-hearing. If there are sufficient grounds to justify immediate removal, the emergency removal procedures outlined above will be followed.

The University may place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of appeals when the original sanctions include separation.

### **Notice of Outcome**

The Title IX Coordinator will prepare a Notice of Outcome to accompany the Final Determination Letter prepared by the Chair. The Notice and Letter will be reviewed by a representative of the General Counsel's office. The Title IX Coordinator will then share the Notice of Outcome and Final Determination Letter, which include the findings, rationale, and any applicable sanctions with the parties and their Advisors within five (5) business days of receiving the Final Determination Letter.

Notice will be provided in writing and may be delivered in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties at the University-issued email or otherwise approved account. Once mailed, emailed, and/or delivered in person, the notice will be presumptively delivered.

The Notice of Outcome will include the following:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notices to parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and the date, location, and people who were present at or presented testimony at any hearings held.
- Whether the Complainant will receive any ongoing Support Measures or other remedies as determined by the Title IX Coordinator.

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- A statement regarding the rights of all parties to appeal, the process to initiate an appeal, and the grounds upon which an appeal will be considered.
- Notice regarding when the results will be considered final.

### **SANCTIONS**

If the Decision Maker(s) determine(s) that a Respondent is responsible for violating this policy, the University reserves the right to impose sanctions, depending on the severity and/or pervasiveness of the violation. Each incident will be reviewed on an individual basis. The Decision Maker(s) will, prior to issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and with the Title IX Coordinator, who will determine whether and to what extent ongoing Support Measures or other remedies will be provided to the Complainant.

In determining appropriate sanction(s), the Decision Maker(s) will consider the concerns and rights of both the Complainant and Respondent and must examine and consider a number of factors, including, but not limited to:

- level of risk or harm to the community;
- the nature and seriousness of the offense;
- the Respondent's disciplinary history;
- any apparent pattern of conduct, including previous violations of this policy;
- the motivation underlying the respondent's behavior;
- whether the respondent has accepted responsibility for the conduct;
- the need for sanctions/responsive actions to bring an end to or prevent future occurrences of the discrimination, harassment, and/or retaliation;
- the need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the Community.
- cooperation with the investigation; and
- any other mitigating, aggravating, or compelling circumstances known to the hearing board at the time of decision.

A sanction, or a combination of sanctions, listed below, may be imposed upon any member of the University community found to have violated this policy. The sanctions will be implemented as

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soon as feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

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

### **STUDENT SANCTIONS**

The following are sanctions that may be imposed upon students or organizations singly or in combination:

**Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.

**Behavioral Reprimand.** The student receives a written warning that their conduct was in violation of University rules and regulations and that continued misconduct may be treated more severely.

**Behavioral Probation.** A formal disciplinary status notifying a student that their behavior was in violation of the Harassment, Discrimination, Sexual and/or Relationship Misconduct Policy and/or the Student Standards of Conduct. The student may be barred from participation in all or designated extra-curricular activities and may be subject to other sanctions as a result of this status. The student will be notified that any continued violations of University rules and regulations will in all likelihood result in suspension or expulsion.

**Education and/or Training.** A student may be required to participate in specific education and/or training courses based upon the outcome of the proceeding.

**Suspension.** The separation of the student from the University for a specified period of time, measured in semesters. The student may not participate in or attend any University sponsored activity and may be barred from University premises. During the period of suspension from the University, a student normally may not advance toward a Creighton degree at another institution. Reinstatement after disciplinary suspension requires the approval of the Vice Provost for Student Life. Students who are suspended from Creighton University for non-academic misconduct will

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have "Disciplinary Suspension" appear as a notation on their permanent academic record, including the official transcripts of the University.

**Expulsion.** The permanent separation of the student from the University. The student will be banned and barred from University premises. Students who are expelled from Creighton University for non-academic misconduct will have "Disciplinary Expulsion" appear as a notation on their permanent academic record, including the official transcripts of the University.

**Disciplinary Removal from University Residence Halls.** The student will be required to leave University residence halls and may forfeit any prepaid housing fees. The student will be barred from residence halls and will be notified that any further violations of University rules and regulations may result in additional University action, including suspension or expulsion.

**Denial of Access or Restriction of Access to a University Building or Facility.** The student will be denied access or allowed only restricted access to a specific building or facility for a stated period of time.

**Restitution.** The student may be required to make payment to the University, other persons, groups, or organizations for damages that result from violations of conduct regulations.

**Service/Work Project.** The student may be assigned to complete a specified number of hours or community service, volunteer work, or outside employment. This sanction is typically associated with suspension and requires a suspended student to engage in ongoing work or volunteer activities during the time of their suspension.

**Fines.** The student will be required to pay a specified monetary fine to the University within a specified period of time.

**Organizational Sanctions.** When the Respondent is a student club or organization, sanctions may be imposed on the entire club or organization. Sanctions include the above listed items and additional sanctions specific to a student organization. For a complete list of additional organizational sanctions, please see the Creighton Student Handbook.

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**Other Actions.** Other sanctions which are intended to engage the student in a positive learning experience related to the student's behavior may be imposed by the Decision-Maker(s). These sanctions may include, but are not limited to, engaging in a campus or community service project, attending or presenting a program related to implications of the student's conduct, writing a paper, or engaging in some type of personal assessment or counseling.

### **FACULTY, STAFF, AND ADMINISTRATOR SANCTIONS**

**Verbal Warning.** A verbal warning is a written summary of the corrective action required by the Decision-Maker(s) and a copy of this warning will be shared with the employee and other relevant parties, including but not limited to Human Resources, Department Chair, Dean, and/ or the employee's supervisor.

**Formal Written Warning.** A written warning is used document corrective action when a verbal warning has not helped to remedy the actions of an employee or where a verbal warning is not sufficient. A copy of this written warning will be shared with the employee and other relevant parties, including but not limited to Human Resources, Department Chair, Dean, and/or the employee's supervisor.

**Performance Improvement Plan.** The Decision-Maker(s) may require an employee to participate in a Performance Improvement Plan (PIP) not to exceed 90 days. Within the PIP, the employee must demonstrate a willingness and ability to meet and maintain established work performance and/or conduct requirements. At the end of the PIP, the employee will either be returned to regular employment status or terminated. If at any time during the PIP, the employee does not demonstrate significant and consistent improvement, the employee may be terminated before the conclusion of the PIP at the discretion of the University.

**Enhanced Supervision.** The employee may be required to submit to additional supervisory requirements, observation, and/or performance reviews.

**Required Training or Education.** The employee may be required to complete trainings or participate in specific educational opportunities based on the findings of the resolution process. This includes in-person and online training and education.



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**Loss of Merit Pay Increase.** The employee may be deemed ineligible for a merit pay increase for a period of time, as determined by the findings of the resolution process.

**Loss of Supervisory Responsibilities.** The employee may lose the ability to supervise other employees or students based on the findings of the resolution process. Loss of supervisory responsibilities may have the effect of changing an employee's job classification status.

**Restriction of Resources.** The employee may lose access to stipends, research, funding for research programs, and/or professional development resources.

**Transfer.** The Employee may be transferred to a different department, reassigned to a different project or team, or placed under the supervision of a different supervisor.

**Demotion.** An employee may be demoted to a job classification status lower than their status at the start of the resolution process.

**Termination.** Termination is the permanent separation of the employee from the University.

**Other Actions.** Other sanctions which are intended to engage the employee in a positive learning experience related to the employee's behavior may be imposed by the Decision-Maker(s). These sanctions may include, but are not limited to, engaging in a campus or community service project, attending or presenting a program related to implications of the employee's conduct, or engaging in some type of personal assessment or counseling.

### **WITHDRAWAL OR RESIGNATION WHILE CHARGES ARE PENDING**

If a student has an allegation pending for a violation of this policy, the University may place a hold on the student's ability to graduate, receive an official transcript, or diploma.

Should a student decide not to participate in the resolution process, the process proceeds, absent their participation, to a reasonable resolution.

If a student Respondent withdraws permanently from the University, the resolution process ends, as Creighton no longer has disciplinary jurisdiction over the withdrawn student.

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However, Creighton will continue to address and remedy any systemic issues or variables that may have contributed to alleged violation(s), and any ongoing effects of the alleged Sexual Harassment and/or retaliation.

The student Respondent who permanently withdraws or leaves while the process is pending cannot return to Creighton University, and a hold will be placed on their ability to be readmitted. A student Respondent who permanently withdraws can be barred from University property and/or events, and such exclusion applies to all Creighton University campuses.

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

During the resolution process, the University may put a hold on a student Respondent's transcript and/or place a notation on the student Respondent's transcript that a disciplinary matter is pending. When a student Respondent permanently withdraws while the process is pending, the University will enter a transcript notation that the student withdrew while a disciplinary matter was pending.

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, Creighton will continue to address and remedy any systemic issues, variables that contributed to the alleged violations, and any ongoing effects of the alleged harassment or discrimination.

The employee Respondent who resigns with unresolved allegations pending is not eligible for rehire at Creighton University or any of its campuses. The records retained by the Title IX Coordinator and the Department of Human Resources will reflect that status.

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

### **APPEALS**

Either a Complainant or a Respondent may file an Appeal to any Final Determination made by the Hearing Board or to the dismissal of a Formal Complaint. An appeal must be made in writing to the Title IX Coordinator within seven (7) days of the date the party receives notice of the dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other

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party appealing, whichever is later. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

In cases where the responding party is a student or faculty member, the Appeal Officer is the Provost or their designee. In cases where the responding party is a staff member, the Appeal Officer is the Executive Vice President or their designee.

If there is any conflict of interest between the parties and the Appeal Officer, it should be raised as soon as possible so a new Appeal Officer may be assigned.

Appeals are limited to the following grounds:

- A procedural error or omission impacted the outcome (e.g. substantiated bias, material deviation from established procedures).
- New evidence has come to light that was previously unknown or not reasonably available at the time the determination or dismissal was made and has the potential to substantially impact the outcome. The appeal request must include a summary of the new evidence and its potential impact.
- The Title IX Coordinator, Investigator, and/or Decision-Maker (Hearing Chair or member of the Hearing Board) had a conflict of interest or bias affecting the outcome:
  - For or against complainants or respondents generally; or
  - For or against the Complainant or Respondent specifically.

No other grounds for appeal are permitted. The Appealing party is responsible for proving one or more of the grounds for appeal. Promptly upon receipt of an appeal, the Appeal Officer will conduct a preliminary review to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the Appeal Officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal as set forth in this Policy, the Appeal Officer will dismiss the appeal and provide written notice of the dismissal and their rationale to the parties and their advisors.

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If the Appeal Officer confirms that the appeal is timely and that it invokes at least one permitted ground for appeal, the Appeal Officer will provide written notice to the parties and their Advisors, the Title IX Coordinator, and when appropriate, the Investigators and/or original Decision-Makers.

Within three (3) days, the Appeal Officer must send the other party notice that an appeal has been filed. The notice will inform the party of their right to respond to the appeal. The other party will receive access to a copy of the appeal in order to respond to it. They will have up to seven (7) days to submit a response to the appeal. The non-appealing party may at that time choose to raise an additional ground for appeal, which will be subject to the same initial review process.

Upon Receipt of the Appeal response or at the conclusion of the seven (7) days, the Appeal Officer will promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal, which may include but are not limited to:

- The investigation report
- Attachments to the investigation report
- Transcripts of witness statements
- The Transcript of the Hearing
- The Final Determination Letter
- The Appeal
- The Response to the Appeal.

The parties will not meet with the Appeal Officer unless the Appeal Officer deems it necessary to gather relevant information. If the Appeal Officer calls for such meetings, they will meet with each party separately.

Upon receipt of any opposition to an appeal, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

If the Appeal Officer finds that at least one ground is met by at least one party, the following considerations will be weighed:

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- Appeal Officer will defer to the original decision unless there is clear error. Changes to the sanction or responsive action will only be made when there is compelling reason. An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgement for that of the original Decision-Maker merely because they disagree with the finding or the sanctions.
- Appeals are not intended to provide a full re-hearing of the allegations. Typically, appeals will only consider written documentation or records of the original Hearing and pertinent documentation regarding the grounds for appeal. An Appeal Officer should not merely substitute their own judgment for that of the original Decision-Maker(s).
- The Appeal Officer may consult with the Hearing Chair and/or Title IX Coordinator on procedure or rationale for clarifications. Documentation of all such consultation will be maintained.
- Appeals granted on the basis of substantive procedural error or new evidence should be remanded back to the original Investigators and/or Hearing Board for reconsideration and the Appeal Officer will transmit a written decision to the parties that explains the outcome of the appeal and the rationale. The Investigators and/or Decision-Maker(s) would resubmit their findings to the Appeal Officer as requested and the Appeal Officer would make a final determination.
- In rare cases where a procedural error cannot be cured by the original Decision-Maker (as in cases of bias) the Appeal Officer may order a new hearing with a new Decision-Maker. Decisions from a new hearing may be appealed on any of the available grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing some opportunities may be irreparable in the short term.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within twenty-one (21) days of an appeal being filed. If the Appeal Officer is unable to decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal within that timeframe, a request for extension will be submitted to the Title IX Coordinator. If granted, the parties will be notified of the expected timeframe.

Sanctions imposed as a result of the Final Determination of the Decision-Maker(s) are typically stayed during the appeal process. Supportive Measures may be reinstated, subject to the same

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Supportive Measure procedures above. Under limited circumstances, sanctions may be implemented immediately post hearing, and then emergency removal procedures (detailed above) [including a hearing on the justification for doing so] must occur within 48 hours.

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

No further review beyond the appeal is permitted.

### **LONG-TERM REMEDIES/OTHER ACTIONS**

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

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

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

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

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

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

### **FAILURE TO COMPLY WITH SANCTIONS, REMEDIES, AND/OR RESPONSIVE ACTIONS**

All Respondents are expected to comply with the assigned sanctions, responsive actions, informal resolutions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) including the Appeal Officer or Informal Process Facilitator.

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

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

### **RECORDKEEPING**

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

### **DISABILITY ACCOMODATIONS IN THE RESOLUTION PROCESS**

Creighton is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

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Anyone needing such accommodations or support should contact the Director of Disability Services (for students) or Human Resources (for faculty, staff, and non-Creighton affiliates), who will review the request and, in consultation with the person requesting accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **REVISION OF THIS POLICY AND PROCEDURES**

The Policy and Procedures supersede any previous policies addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated (as needed) annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary. As soon as any modifications to this Policy and Procedures are posted on the OEI website, they take effect.

During the resolution process, the Title IX Coordinator may make minor modifications to the procedures set forth in this Policy and Procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the University website with appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy.

In the event that any applicable laws, regulations, or court decisions change in a manner that impacts this Policy and Procedures, then this document will be construed to comply with the most recent laws, regulations, rules, and judicial authority.

Because allegations of violations of this policy can sometimes raise challenging or novel issues, the University reserves the discretion to take reasonable actions to address those issues in a manner compliant with applicable laws and regulations and consistent with the spirit of this policy, and which preserves fairness for both parties and maintains the integrity of the investigation and resolution processes.

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



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Creighton University reserves the right to modify, amend, or terminate this policy at any time.

### **FEDERAL TIMELY WARNING OBLIGATIONS (Clery Reporting)**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Creighton must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

In the event that Creighton must issue a timely warning with respect to any such incident, Creighton will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **INDEPENDENCE AND CONFLICT OF INTEREST**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator oversees resolutions under this policy and these procedures. All members of the Title IX Team will be free of any material conflicts of interest or material bias. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

Any party who believes that the Title IX Coordinator or any member of the Title IX Team has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in the section above, or otherwise.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Office of the General Counsel. Concerns of bias or potential conflict of interest by any other Title IX Team Member should be raised with the Title IX Coordinator.

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Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Office of the General Counsel or designee. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

### **SIGNATURES AND FORMS OF CONSENT**

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

### **DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL**

Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by the University where, in the University's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the University's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. The University officer resolving the request for extension may, but is not required to, give the other

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party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the University.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using University email addresses.

A party is deemed to have received notice upon transmittal of an email to their University email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the University, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted.

### **OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS**

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

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The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in the University's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

### **OBJECTIONS GENERALLY**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate.

### **FREEDOM OF EXPRESSION AND ACADEMIC FREEDOM**

Creighton University is committed to the principles of free expression and academic freedom. As a Jesuit University, Creighton is also committed to creating and maintaining an environment that is safe, healthy, and free of harassment and discrimination for all members of the campus community. Creighton affirms that these two legitimate interests can coexist. Creighton will construe and apply this policy consistent with the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the principles of academic freedom specified in the Faculty Handbook.

### **RELATIONSHIP WITH CRIMINAL PROCESS**

This policy sets forth the University's processes for responding to reports and Formal Complaints of Sexual Harassment. The University's processes are separate, distinct, and independent of any criminal processes. While the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

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## **RECORDINGS**

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

## **EDUCATION**

The University will broadly disseminate this policy and distribute a list of resources available to respond to concerns of harassment, discrimination, sexual and/or relationship misconduct based on race, color, religion, sex, marital status, national origin, age, disability, citizenship, sexual orientation, gender identity, gender expression, veteran status, and any other groups protected by federal, state or local statutes. Additionally, the VIP Center will develop and present appropriate educational programs for students, faculty, and staff. The University strives to ensure that such programming is developed to be culturally relevant; inclusive of diverse communities and identities; sustainable; responsive to community needs; is informed by research or assessed for value, effectiveness, or outcome; and considers environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

**Prevention and Awareness Programs.** The University offers ongoing prevention and awareness programming for the campus community. These programs focus on risk reduction, utilizing strategies that can decrease the likelihood that an incident of sexual and/or relationship misconduct can occur, and generally fall into two categories:

- Awareness programs and campaigns:
- Active and passive programs that aim to educate the campus community on warning signs of Sexual Harassment, including sexual assault, dating violence, domestic violence and stalking. These programs are offered throughout the academic year.
- Primary prevention programs: Educational programs that have a goal of preventing incidents of Sexual Harassment from occurring. This includes bystander intervention

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programming intended to reduce incidents of interpersonal violence through action on the part of someone who witnesses or has knowledge of these incidents.

### **TRAINING**

The University will ensure that University officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, University provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

### **DEFINITIONS**

Words used in this policy will have those meanings defined herein and if not defined herein will be construed according to their plain and ordinary meaning.

### **OTHER FORMS OF DISCRIMINATION**

This policy applies only to Sexual Harassment. Complaints of other forms of sex discrimination are governed by the University's Non-Discrimination Policy.

### **DISCRETION IN APPLICATION**

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract.

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Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

### **RESOURCES**

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance. A list of University identified resources is located at [www.creighton.edu/titleix](http://www.creighton.edu/titleix).

The Policy and Procedures are effective August 14, 2020.