

# ***Policies and Procedures***

<i>SECTION:</i> <b>Administration</b>	<i>NO.</i> <b>2.1.25.</b>					
<i>CHAPTER:</i> <b>General</b>	<i>ISSUED:</i> 3/31/04	<i>REV. A</i> 3/13/13	<i>REV. B</i> 7/23/14	<i>REV. C</i> 9/21/16	<i>REV. D</i> 8/14/17	<i>REV. E.</i> 8/14/2020
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## **PURPOSE**

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 harassment, discrimination, and/or retaliation is a violation of human dignity. The University condemns and prohibits these 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, 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 Harassment Discrimination, and/or retaliation.

Harassment, Discrimination, 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 Section VI, Sanctions in the Procedures.

The purpose of this policy is:

- a. To communicate processes for investigating complaints in a manner that is fair, equitable, and reasonably protects the privacy of individuals involved in situations of harassment, discrimination, and/or retaliation;
- b. To enable Creighton University in its efforts to provide a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination
- c. To enable Creighton University in its efforts to protect those individuals who report or provide information related to alleged violations of this policy and all of those individuals involved in the investigation or adjudication of this policy from retaliation of any kind;

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- d. To promote compliance with federal and state civil rights laws, fulfill all obligations as required by law, including but not limited to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *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.)and Section 504 of the Rehabilitation Act of 1973 (*see* 29 U.S.C. 701), and Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181 *et seq.*).
- e. To set forth guidance for preventing harassment, discrimination, and/or retaliation;
- f. To enable Creighton University in its efforts to take timely corrective action when harassment, discrimination, and/or retaliation is alleged to have occurred; and
- g. To establish a consistent process for resolving complaints of harassment, discrimination, and/or retaliation in a fair and just manner.

### **SCOPE OF POLICY**

This policy applies to all faculty, staff, and students of the University community. Individuals with a faculty appointment, vendors, independent contractors, and others subject to agreement with the University will be expected to comply with this policy as specified by the terms of any contract or agreement between the University and such third party.

This policy applies to all incidents of alleged Harassment, Discrimination, and/Retaliation, as defined by this policy, including incidents which occur off-campus or outside of normal work, class, or business hours. The policy also applies to incidents of Sexual Harassment, including sexual assault, dating violence, domestic violence, and stalking, which do not fall under the jurisdiction of Title IX of the Education Amendments of 1972 (“Title IX”) (*see* C.F.R. 106 *et seq.*). Creighton University may extend jurisdiction to off-campus and/or online conduct when the University determines the conduct affects a substantial University interest. This includes:

- 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;

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- 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.

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.

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.

### **TIME LIMITS ON REPORTING**

There is no time limitation on reporting incidents under this policy. 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.

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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 a policy violation will be addressed under this policy.

### **DISCRIMINATION AND DISCRIMINATORY HARASSMENT**

Because Creighton exists for students and learning, members of our community are challenged to reflect on transcendent values, including their relationship with God, in an atmosphere of freedom of inquiry, belief, and religious worship. The inalienable worth of each individual and appreciation of ethnic and cultural diversity are core values of Creighton. We seek to create and maintain an inclusive, welcoming environment by celebrating and protecting diversity.

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.

- **Definitions of Violations and Related Terms**
  - **Discrimination.** Any unfair distinction, treatment, or detriment to an individual compared to others that is based upon an individual’s actual or perceived status in a class protected by law or policy. The conduct must be severe or pervasive *and* objectively offensive so as to alter the conditions of the individual’s employment or educational experience.

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- **Discriminatory Harassment.** Unwelcome conduct based on an individual’s actual or perceived status in a class protected by law or policy which is severe or pervasive *and* objectively offensive, creating a Hostile Environment. Examples of actions which may constitute Discriminatory Harassment may be found at [www.creighton.edu/oei](http://www.creighton.edu/oei).
- Classes protected by law or policy include 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.
- A Hostile Environment exists when unwelcome conduct is determined by a reasonable person to be severe or pervasive *and* objectively offensive, limiting or effectively denying an individual’s ability to access or benefit from the educational or workplace environment.
  - In determining whether a reasonable person in the Complainant’s circumstances would find the work or educational environment to be hostile, the totality of the circumstances must be considered. A hostile environment is not determined solely on the number of offensive incidents. A single, isolated incident may create a hostile environment if the incident is sufficiently severe (e.g., a single but extremely targeted, individualized and derogatory discriminatory statement.)
- When harassment rises to the level of a Hostile Environment, the University may impose sanctions on the Respondent through application of the complaint resolution process set forth below.
- 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
- The University further reserves the right to address offensive conduct and/or harassment that does not rise to the level of a Hostile Environment 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

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or sensitive subject matters protected by academic freedom that do not constitute Discriminatory Harassment.

### **SEXUAL AND RELATIONSHIP MISCONDUCT**

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 sexual activity.

Creighton's values forbid any member of our community to act in ways that actively harm anyone else's ability to knowingly and freely choose to act on their own behalf. Thus, in keeping with the demands of our own Catholic Jesuit Mission, as well as laws and other societal structures, the University establishes specific policies, with clear consequences, regarding sexual behaviors that undermine another's freedom and knowledge. It is the University's intent here to outline these policies and commit the University community to implementing them with fairness and concern toward every person involved. Examples of actions which may constitute Sexual Harassment may be found [here]

**Sexual and Relationship Misconduct Violations:** The below policy violations are consistent with the definitions in the University's Sexual Harassment Policy. When a reported incident occurs outside of the scope of the Sexual Harassment Policy, which is the University's policy compliant with Title IX of the Education Amendments of 1972 ("Title IX") (*see C.F.R. 106 et seq.*), the Non-Discrimination Policy will be utilized.

**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.

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

**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.
- **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.

**Sexual Exploitation:** Taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples include, but are not limited to:

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- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography

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

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



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- 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.

<sup>11</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).

Investigations into sexual and/or relationship misconduct allegations will, where applicable, include an evaluation of consent, incapacitation, force and coercion. For the 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.

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- 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 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.”

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

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

### **ADDITIONAL POLICY STATEMENTS AND RELATED VIOLATIONS**

This section details additional policy statements and related violations that apply to all investigations under this policy.

**Standard of Proof.** The Title IX Coordinator will make a determination of responsibility using the preponderance of evidence standard. This standard evaluates whether it is more likely than not that a violation occurred based on the evidence gathered during the course of an investigation.

**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 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 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 a sexual

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assault talk to their RA or residential life staff). Creighton maintains a policy of amnesty for students who offer help to others in need. [While 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 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. 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].

**Mandatory Reporters.** The University requires all faculty and staff to report incidents of harassment, discrimination, sexual and/or relationship misconduct to the Office of Equity and Inclusion. Student employees, in the administration of their job duties, are also considered mandatory reporters. All individuals in the state of Nebraska are mandatory reporters of child abuse and neglect. Reports of suspected child abuse and neglect must be made to local authorities or the Nebraska child abuse hotline at 1-800-652-1999.

**Freedom of Expression and Academic Freedom.** Creighton University is firmly committed to the principles of free expression and academic freedom. As a Jesuit University, Creighton is equally committed to creating and maintaining an environment that is safe, healthy, harassment- and discrimination-free for all members of the campus community. Creighton affirms that these two legitimate interests can coexist. Discrimination, harassment, and retaliation against members of the University community are not protected expression or the proper exercise of academic freedom. The University will consider academic freedom in the investigation of reports of harassment, discrimination, sexual and/or relationship misconduct that involve an individual's statements or speech.

**Retaliation.** Retaliation is an intentional, adverse action taken against a person for making a report of alleged policy violations or for participating in any proceeding under this policy. Adverse action is any conduct that seeks to discourage, threaten, intimidate, harass, or coerce an individual from engaging in activity protected under this policy. Retaliation can be committed by or directed towards any individual or group, not just the reporting and responding parties.

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**Failure to Comply.** A failure to comply violation is committed by an individual who interferes with or fails to follow the directives of University officials acting in performance of their duties under this policy. Examples include but are not limited to failure to follow protective measures, failure to respond to emails or meeting requests from a University official, or failure to complete required sanctions.

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### **Investigative Procedures and Resolution Process**

Creighton University recognizes the importance of fair and just procedures for all members of the community involved in this process. Truth, integrity, and credibility are critical and distinctive principles of the University. Caring for the individual person can mean holding them accountable for their actions, if those actions are a violation of this policy. Adherence to these procedures is essential for the efficient progress and for the preservation of the trust of the community.

According to the Gospel, our goal is to work for the betterment of society as a whole. This is what “A Faith That Does Justice” actually means. We aim to form change agents – reflective practitioners who are able to take responsible action on moral and ethical issues and who will be change agents in society – “contemplatives in action.”

The following procedures apply to the policy violations outlined above. For allegations of policy violations explicitly addressed by Title IX of the Education Amendments of 1972 (C.F.R. 106 et seq.), please review the Title IX Sexual Harassment Policy available [[Here](#)].

### **Reporting Incidents:**

**Reporting Incidents to the University.** The University encourages the reporting of all incidents under the Non-Discrimination Policy. For someone who feels they have been the target of such behavior, deciding whether to report an incident is a personal and often difficult decision. There are options available in this decision process and individuals can choose any or all of the following options:

- **Confidential Advocacy.** The Violence Intervention and Prevention (VIP) Center provides free, confidential advocacy for students, faculty, and staff. Confidential advocacy gives individuals a safe space to learn about all their options and resources so they can make fully informed choices about what to do next. The Center is open Monday-Friday for appointments or walk-ins are welcome. To learn more, please call 402-280-3794 or email [vipcenter@creighton.edu](mailto:vipcenter@creighton.edu).
- **Reporting an Incident to the University.** The Office of Equity and Inclusion (OEI) oversees reports under this policy and the Title IX Sexual Harassment Policy at

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Creighton University. Individuals have informal or formal options for reporting as outlined in section III, Investigative Process and Procedures. To make a report to OEI, please call 402-280-4120, email [oei@creighton.edu](mailto:oei@creighton.edu), or make a report online at [www.creighton.edu/safety/tell-someone](http://www.creighton.edu/safety/tell-someone).

**Reporting Incidents Outside of the University.** The University encourages any member of the University community who feels they have been subjected to harassment, discrimination, sexual or relationship misconduct to use the complaint procedure outlined in this policy. Additionally, an individual has the right to file a complaint with outside enforcement agencies:

- **Reporting an Incident to Law Enforcement.** All individuals have the right to report an incident to law enforcement they feel may give rise to a crime and the University will assist in notifying law enforcement authorities if requested by a reporting party. A reporting party may also decline notifying law enforcement authorities if they so choose. Reporting an incident to law enforcement or filing a criminal complaint does not preclude an individual from filing a complaint with the Office of Equity and Inclusion and vice versa. Complaints can be filed simultaneously with the University and law enforcement. For assistance in filing a report with local authorities, please contact the VIP Center at 402-280-3794 or [vipcenter@creighton.edu](mailto:vipcenter@creighton.edu).
- **Filing a Complaint with an Outside Agency.** An individual has the right to file a complaint with outside enforcement agencies. Contact information for outside agencies and additional resources are available at [www.creighton.edu/oei](http://www.creighton.edu/oei).
- **Filing a Complaint in another State.** Please contact the Office of Equity and Inclusion at 402-280-3189 or [oei@creighton.edu](mailto:oei@creighton.edu) for assistance identifying resources in another state.
- For additional information on resolution options outside of the University an individual may contact the Violence Intervention and Prevention (VIP) Center at 402-280-3794 or [vipcenter@creighton.edu](mailto:vipcenter@creighton.edu).
- Additionally, individuals may file a civil lawsuit against the offending party.



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### **Glossary for the Investigative Process:**

**Advisor of Choice.** A person who may accompany a Complainant or Respondent to all meetings, and interviews that are part of the investigation, adjudication, and appeal process. This person may be chosen by a Complainant or Respondent or appointed by the University at the request of the Complainant or Respondent.

**Change in Status.** A change in employment or student status of either party involved in a formal investigation does not suspend, terminate, or otherwise affect the University's responsibility to investigate and determine if this policy was violated.

**Complainant.** An individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

**Complaint Resolution.** The results of the investigation of any complaint of misconduct defined under this policy used by the Title IX Coordinator in determining if this policy was violated. Additionally, the investigative report may address other serious issues disclosed during the course of the investigation and the Title IX Coordinator may make recommendations to the appropriate University department or official for resolution.

**False Information/Report.** The University encourages anyone who believes that they have been the victim of harassment, discrimination, sexual and/or relationship misconduct to report their concerns but will not tolerate intentional false reporting of incidents. Anyone interviewed (e.g. reporting party, responding party, witnesses) as part of an investigation into a possible violation of this policy who intentionally furnishes false information may be subject to corrective/disciplinary action.

**Investigative Team.** The investigative team is assigned by the Title IX Coordinator. Investigators utilized by the Office of Equity and Inclusion are trained to investigate incidents in a manner that protects the safety and rights of both reporting and responding parties and promotes accountability for individuals in the campus community.

**Pattern of Conduct.** A series of acts over a period of time, however short, evidencing a continuity of purpose.

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**Preservation of Evidence.** 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
- 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 the Title IX Sexual Harassment Policy for avenues of resolution under University Policy.
- 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 Harassment investigations.

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**Respondent.** An individual who has been reported to be the perpetrator of conduct that could constitute a violation of this policy.

**Witness.** An individual who may have information related to a complaint alleging violation of this policy. The reporting and responding parties are permitted to provide names of potential witnesses to the investigative team. The investigative team will determine which of those potential witnesses, or other persons, may have relevant information about the complaint. Witnesses may include individuals outside the Creighton community. Additionally, the investigative team may interview individuals with an expertise specific to elements of the reported incident (e.g. alcohol-drug interactions).

### **Key Protections for Parties:**

**Advisor of Choice.** Both the Complainant and Respondent have the right to consult with an advisor of choice throughout the investigative process. Any person may serve as an advisor, including but not limited to, a faculty or staff member, a friend, a family member, a mentor, or an attorney. The University maintains a pool of trained Advisors and may appoint an Advisor from this pool to a party at their request. The role of an Advisor is to provide a comforting and familiar presence for a reporting or responding party and to assist in their understanding of the investigative process. A party may not insist on an Advisor who does not have the time, inclination or availability to serve. Additionally, parties may not choose an Advisor with an institutionally conflicting role. The choice of whether to invite an Advisor is solely that of the individual(s) involved.

- If a party selects an Advisor who is not a member of the Pool, the University can make no guarantee as to that Advisor's experience and/or training.
- The role of the Advisor is limited. The Advisor may help a Complainant or Respondent prepare their position but may not present it or speak for or on behalf of the party during the investigative interview or process. The Advisor may consult with the Complainant or Respondent quietly or in writing, or outside the meeting during breaks. If the advisor is an attorney, a law student, or a Law School faculty member, this must be disclosed to the Office of Equity and Inclusion, and the University reserves the right to have its own legal counsel present for the meeting.

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- Advisors should make every effort to be present for each scheduled meeting. If an Advisor is unable to attend meeting, the Party will be offered the opportunity to reschedule for a time when the Advisor is available.
- If any Advisor conducts themselves in a manner inconsistent with these guidelines, or if the Advisor attempts to obstruct or otherwise interfere with the investigative process, then the Advisor will be warned by the investigative team and/or the Title IX Coordinator. If the Advisor's interfering behavior continues, the individual will no longer be considered an advisor and the investigative team may excuse the individual from the investigative process.

**Privacy of Investigations.** The investigation and resolution will be private to the greatest extent possible. Privacy of investigations helps enhance the integrity of the investigation and resolution process, protects the interest of the parties, and protects participants from statements that could be interpreted to be 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, and will only share personally identifiable information with persons with a need-to-know, in order to investigate and respond to a report, or to deliver resources or supportive measures.

**Conflict of Interest.** An individual materially involved in the administration of the resolution process (including the Title IX Coordinator, Investigator(s), and/or Decision-Maker) is deemed to have an actual or perceived conflict of interest, the individual may be asked to recuse themselves from the process, or may choose to recuse themselves from the process. The recused individual shall not have access to any of the case materials from which the individual is recused.

- The Title IX Coordinator will evaluate any actual or perceived conflicts of interest prior to the assignment of the Investigative Team. This will be communicated in the notice letter to both the reporting and responding parties. If either party believes a conflict of interest may exist, they will be asked to contact the Title IX Coordinator.

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- If a conflict of interest exists for the Title IX Coordinator, the Office of the General Counsel will evaluate the conflict and may engage a deputy Title IX Coordinator or another trained investigator to assist in overseeing the investigation.

**Supportive Measures.** The University will offer and make available appropriate and reasonable Supportive Measures to protect and to ensure the safety and well-being of the Complainant, Respondent, and the campus community upon receiving notices of alleged misconduct pursuant to this policy. These measures depend largely on the incident at issue and are determined by the University on a case-by-case basis. The Title IX Coordinator may work with other departments at the University to identify, coordinate, or implement Supportive Measures. This may include the Office of Community Standards and Wellbeing, Department of Residential Life, Department of Public Safety, Academic Deans' Offices, Human Resources, and/or other departments within the University.

- 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/oei](http://www.creighton.edu/oei)
- The Office of Equity and Inclusion reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus and community. This includes the right to take any action necessary with respect to a student, staff, or faculty member (including removal from campus) pending the outcome of a preliminary inquiry or formal investigative process. The Title IX Coordinator may consult with Human Resources, the Provost's Office, and the Academic Dean's office to implement any such interim measure impacting a faculty or staff member. The Title IX Coordinator may consult with the Vice Provost for Student Life to implement any such interim measure impacting a student.

The University will maintain the confidentiality of Supportive Measures, as implemented through the Office of Equity and Inclusion (OEI), to the extent that maintaining such confidentiality would not impair the ability of OEI to provide the Supportive Measures. The Title IX Coordinator will notify Complainants before sharing personally identifying information that the University believes is necessary to provide Supportive Measures, including what information will be shared, with whom, and for what purpose

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### **Initial Assessment:**

Upon receipt of a report, the Office of Equity and Inclusion will conduct an Initial Assessment to determine whether the report states allegations, that if substantiated, would violate this policy or whether a potential violation of federal and/or state laws has occurred. If the Initial Assessment determines the allegations, if substantiated, would constitute a violation, the inquiry will continue with the resolution process. If the Initial Assessment finds that the allegations are insufficient to rise to the level of a policy violation, the Office of Equity and Inclusion will notify the Complainant (and Respondent, if applicable) if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”) No further action will be taken at that time. In this case, the Complainant retains the ability to provide further information and/or evidence regarding their complaint to the Office of Equity and Inclusion in the future. Should new information/evidence be provided to the Office of Equity and Inclusion after the Initial Assessment process has been completed, the Office of Equity and Inclusion may revisit the original assessment to determine the impact the new information/evidence may have on the Title IX Coordinator’s original determination. An Initial Assessment will be completed as soon as possible; the time required to complete a preliminary inquiry will depend on the nature and scope of the complaint. The Office of Equity and Inclusion will communicate progress and delays with the preliminary inquiry to the reporting party.

If the Initial Assessment indicates that the allegations, if substantiated, would violate the policy, the Complainant has the right to request an informal or formal resolution process. A formal resolution may be required in situations where the Respondent’s behavior has an impact on individuals other than the Complainant or in situations where the complaint indicates an escalating pattern of misconduct.

### **Informal Resolution:**

Informal resolution is an alternative to the formal complaint resolution process. The Office of Equity and Inclusion will determine if informal resolution is appropriate, based on the nature of the alleged conduct and the desire of the parties to reach a mutually agreeable resolution. The specific manner of an informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Sanctions are generally not pursued as the result of an informal resolution process, although the parties may mutually agree to appropriate remedies (e.g. no contact restriction). The Office of Equity and Inclusion will keep records of any informal resolution that is reached, although the outcome of an informal resolution will not become part of

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a student, staff, or faculty member’s official disciplinary record with the University. The University reserves the right to cancel the informal resolution process if sufficient evidence suggests a formal investigation or other sanctions or remedies may be necessary and appropriate. It is not necessary to pursue an informal resolution in order to make a formal complaint.

Anyone participating in informal resolution can choose to discontinue that process at any time and request the formal process. 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 have 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. Informal Resolutions may not be appealed. If a party fails to abide by the terms of the Informal Resolution, the other Party should notify the Executive Director to discuss possible action

Examples of Processes which may be considered as part of an Informal Resolution are available at [www.creighton.edu/oei](http://www.creighton.edu/oei)

If the situation is not able to be resolved informally or if the individual seeking an informal resolution chooses not to engage in an informal resolution, the Complainant may initiate a formal complaint using the procedures below.

### **Formal Resolution:**

In situations alleging misconduct under this policy, the individual(s) making such allegations has the right to bypass the Informal Resolution process and file a formal complaint. Additionally, the Office of Equity and Inclusion has the authority to pursue a formal complaint with the Office serving as the reporting party (see *Administrative Review*, Section VI, General Procedures).

The complaint shall set forth in reasonably sufficient detail the nature of the alleged misconduct, the individual(s) against whom the complaint is made, the name(s) of any witnesses, and any available evidence or sources of evidence. Visit [www.creighton.edu/safety/tell-someone](http://www.creighton.edu/safety/tell-someone) to access the online reporting form or contact the office at [oei@creighton.edu](mailto:oei@creighton.edu) or 402-280-4120.

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If there is the potential of a violation of the Non-Discrimination Policy or violation of federal and state laws, the Title IX Coordinator will assign an investigative team consisting of one or more trained investigators to conduct a prompt, thorough, and impartial investigation. This process starts with a Preliminary Inquiry (see Investigative Procedures, letter e).

At the commencement of the formal investigation, the Complainant and Respondent will receive concurrent written notification of the formal resolution process. This notification will include information on the investigative process, including but not limited to the rights of both Parties and any protective measures that have been put into place.

If an Investigative Team is assigned, both the Complainant and Respondent have the right to consult with an Advisor of their choice throughout the investigative process (Advisor of Choice above.)

The Investigative Team will objectively gather and consider relevant facts. The Investigative Team will ensure that statements of the reporting party, the responding party, and all witnesses are documented, and that the Investigation is conducted in a thorough, objective, and timely manner and is respectful of all of the parties involved. The Investigative Team will also gather relevant evidence from the Complainant and Respondent, witnesses, and other sources as necessary.

Incidents reported to the Office of Equity and Inclusion under this policy that involve students may, at times, also involve allegations of Student Standards of Conduct violations. To the extent that these alleged violations directly relate to the allegations under the Non-Discrimination Policy, they may be evaluated as part of the Office of Equity and Inclusion investigation and addressed as a part of the investigation outcome. For more information on how Standards of Conduct violations will be addressed in this process, see the Creighton University Student Handbook.

All Investigations are thorough, reliable, impartial, and fair. Investigations involve the investigative team conducting interviews, gathering evidence, affording the reporting and responding parties the opportunity to respond to the evidence, and completing the investigative report. The Complainant and Respondent will be notified in writing of any reasonable delays during this process.

In consultation with the appropriate University authority, the Title IX Coordinator will make a decision on the action, if any, to be taken.



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- The appropriate University authority in matters involving complaints where the responding party is a student is the Vice Provost for Student Life or designee
- The appropriate University authority in matters involving complaints where the responding party is a member of the faculty is the Dean of the College or School of the responding party or designee.
- The appropriate University authority in matters involving complaints where the responding party is a member of the staff is the Associate Vice President for Human Resources or designee.
- Additionally, the Title IX Coordinator may also consult other University officials in order to make a determination.

In all cases of formal investigations into allegations of misconduct under this policy, an investigative report summarizing the evidence gathered and assessing the credibility of parties and witnesses shall be available for review by the Complainant, Respondent, and the appropriate University authorities. Copies of investigative reports are not provided to Parties but are available to view upon request to the Office of Equity and Inclusion.

The Title IX Coordinator will issue a decision based upon the evidence and credibility assessments documented in the investigative report and attachments using a preponderance of evidence standard.

The Title IX Coordinator will communicate notice of the Final Determination, including findings, recommendations, Sanctions (if any), and information regarding the Appeal Process, to the Complainant and Respondent at the same time. Under most circumstances any Sanctions identified in the Final Determination will not take effect until the Conclusion of Appeal or at the conclusion of the time to file an Appeal if no Appeal is filed. Under limited circumstances, the University may need to take immediate and corrective action.

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### **Sanctions:**

In the event the Title IX Coordinator determines that an individual has violated 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. In determining appropriate Sanction(s), the University will consider the concerns and rights of both the Complainant and the Respondent, and must examine a number of factors, including, but not limited to: 1) level of risk or harm to the community; 2) the nature and seriousness of the offense; 3) The Respondent's disciplinary history 4) apparent pattern of conduct including previous violations of this policy 4) motivation underlying the responding party's behavior; 5) Whether the Respondent has accepted Responsibility for the conduct; 6) The need for sanctions/responsive actions to bring an end to or prevent future occurrences of the misconduct; 7) the need to remedy the effects of the misconduct on the Complainant and the Community; 8) cooperation with the investigation; and 9) any other mitigating, aggravating, or compelling circumstances known to the Executive Director at the time of the 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.

#### **Sanctions for Respondent - Student:**

- **Disciplinary 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.
- **Disciplinary 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 Code 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 or training courses based upon the outcome of the proceeding.

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- 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 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 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 will, in all likelihood, result in 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 community service or work project as outlined in a community service/work agreement.
- Fines.** The student will be required to pay a specified monetary fine to the University within a specified period of time.

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- **Organizational Sanctions.** When the responding party 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.
- **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 Office of Equity and Inclusion. 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.

### **Sanctions for Respondent - Faculty/Staff:**

- **Verbal Warning.** A verbal warning is a written record of a discussion between the Office of Equity and Inclusion and an employee. A verbal warning includes a summary of the corrective action required by the Office of Equity and Inclusion 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 to 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 Office of Equity and Inclusion 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

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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.
- **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 Office of Equity and Inclusion. These sanctions may include, but are not limited to, engaging in a campus or community service project, attending or presenting a

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program related to implications of the employee’s conduct, or engaging in some type of personal assessment or counseling.

### **Appeal:**

The reporting party and the responding party have a right to appeal the decision made by the Title IX Coordinator. Appeals are not intended to be a full rehearing of the investigation. Appeals are limited to a review of relevant appeal materials based upon the grounds stated below. A party wishing to seek an appeal must submit their written appeal with the Appeal Officer within five (5) working days of the decision. The deadline by which an appeal must be filed will be communicated in the decision letter. Failure to file an appeal by the deadline means the decision of the Title IX Coordinator becomes final.

The party who submits the written appeal will be the “Appealing party.”

In cases where the responding party is a student or faculty member, the Appeal Officer is the Provost or designee. The email address and mailing address of the Provost or designee will be communicated in the decision letter.

In cases where the responding party is a staff member, the Appeal Officer is the Senior Vice President for Operations or their designee. The email address and mailing address of the Senior Vice President or their designee will be communicated in the decision letter.

The Appealing party’s written appeal must be based on one or more of the following three grounds:

- **Significant Procedural Error:** A procedural error occurred during the investigation that significantly impacted the outcome of the investigation as it applies to the Appealing party (e.g. , major deviation from established procedures). A description of the procedural error and its impact on the outcome of the case must be included in the written appeal.
- **New information:** New information that becomes known or available that was not available or known to the Appealing party during the investigation and that could significantly impact the Title IX Coordinator’s findings. Information that was known to the Appealing party during the investigation but which the Appealing party chose

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not to present to the investigative team is not considered to be new information. A summary of the alleged new evidence and its potential impact on the investigation findings must be included in the written appeal.

- **Bias or Conflict of Interest.** The Title IX Coordinator, Investigator, and/or Decision-Maker 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.

The Appealing party is responsible for demonstrating one or more of the three grounds for appeal.

Within three (3) business days, the Appeal Officer must send the other party notice that an appeal has been filed. This notice will inform the other party of their right to respond to the appeal.

The other party will have five (5) business days to submit a response to the appeal. The response is limited to addressing the appeal within the grounds stated above. The other party will receive access to a copy of the Appealing party's written appeal in order to prepare a response.

Upon receipt of the Appeal response or at the conclusion of the five (5) business day response period, the Appeal Officer will review all relevant documents related to the investigation, including but not limited to, the investigative report, attachments to the report, the written appeal, and appeal response.

The Appealing party and the other party do not meet with the Appeal Officer, except at the request of the Appeal Officer if deemed necessary to obtain relevant information. In which case both parties will be given the opportunity to have separate meetings with the Appeal Officer.

The Appeal Officer will determine whether any grounds for the appeal are substantiated.

- If the Appeal Officer determines that the Appeal does not meet the grounds as stated above, the Appeal Officer will notify both the Appealing party and the other party of that outcome within five (5) working days.
- If the Appeal Officer determines that the Appeal meets the grounds as stated above the Appeal Officer will choose from the following actions:

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- **Significant Procedural Error:** the Appeal Officer may return the complaint to the investigative team with instructions to correct the error, and to reconsider the findings as appropriate. The investigative team would resubmit their findings to the Title IX Coordinator and a final decision would be communicated to all parties. This decision is not subject to further appeal. In rare cases, where the procedural error cannot be corrected by the original investigative team, the Appeal Officer may order a new investigation with a new investigative team.
- **New Information:** The Appeal Officer may return the complaint to the investigative team with instructions to reconsider the complaint in light of the new information only and to reconsider the original findings as may be appropriate in light of the new evidence. The investigative team will prepare an Addendum to the investigative report and provide the reporting and responding parties with an opportunity to review and respond to the Addendum consistent with the opportunity to do so in the investigative process. The investigative team would resubmit their findings, including the Addendum, to the Executive Director for Equity and Inclusion. The Title IX Coordinator shall issue findings and a final decision would be communicated to all parties. This decision is not subject to further appeal.
- **Substantiated Bias or Conflict of Interest:** The Appeal Officer will consider what impact the Bias or Conflict had on the Outcome. The Appeal Officer may alter or reduce sanctions, or refer for additional fact finding.

The Appeal Officer will communicate notice of the appeal decision in writing to the Appealing party and the other party at the same time.

### **Office of Equity and Inclusion General Procedures:**

**Administrative Review:** In the absence of a complaint filed by a reporting party, the Office of Equity and Inclusion has the authority to initiate an administrative review of alleged violations at the request of a department, division, program, or area when requested by a manager, supervisor, director, department chair, dean, vice president, or provost or when in the judgment of the Office of Equity and Inclusion a review is necessary. This may occur, for instance, where the University determines a need to proceed with an investigation based on concern for the safety or well-being of the



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broader University community (e.g., risk of future acts of sexual violence or a pattern of sexual misconduct). As necessary, the University reserves the right to initiate an investigation without a formal complaint.

**Annual Report.** The Office of Equity and Inclusion shall maintain an annual report documenting the number of complaints received pursuant to this policy, the categories of those involved in the allegations, the number of violations found, and examples of sanctions/corrective actions imposed for policy violations.

**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 Violence Intervention and Prevention (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 harassment, discrimination, sexual and/or relationship misconduct. These programs are offered throughout the academic year.
- Primary prevention programs: Educational programs that have a goal of preventing incidents of sexual and/or relationship misconduct from occurring. This includes bystander intervention programming intended to reduce incidents of sexual and/or relationship misconduct through action on the part of someone who witnesses or has knowledge of these incidents.

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**Training for Office of Equity and Inclusion.** The University provides annual training to investigators, and investigators, appeal officers, and adjudicators are trained on issues related to sexual misconduct, investigation, and resolution.

**Retention of Records.** All records and investigations will be private and confidential to the greatest extent possible and will not be publicly disclosed except to the extent required by law. However, no member of the University’s staff or faculty, or any student is promised strict or absolute confidentiality. Additionally, all records will be retained for a minimum of seven years. When the responding party is a student, records will be retained according to the Retention of Disciplinary Record and Record Check Policy in The Creighton University Student Handbook.

**Inquiries.** For the purpose of obtaining information about reporting any instance of harassment, discrimination, sexual and/or relationship misconduct any individual may consult with the Office of Equity and Inclusion.

### **REVISION OF THIS POLICY AND PROCEDURE**

The Policy and Procedures supersede any previous policies addressing misconduct as identified in this Policy 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.

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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.

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