



ADMINISTRATIVE RESOLUTION PROCEDURE FOR ALLEGED VIOLATIONS OF THE NMT SEXUAL MISCONDUCT POLICY

(KNOWN AS PROCESS “B” or NON-TITLE IX GRIEVANCE PROCEDURES)

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1. **Initial Assessment**

When a report or complaint is made, involving alleged sex discrimination, sex-based harassment, or sexual misconduct, the NMT Title IX Coordinator will conduct a jurisdiction review to determine the appropriate office to resolve the complaint. If it is determined the case does not fall under Title IX jurisdiction, the Sexual Misconduct Administrative Procedures (i.e., Process B) below will be utilized to resolve the case or it will be referred for adjudication/resolution to the appropriate office.

The Title IX Coordinator conducts an initial assessment, typically within five (5) business days of receiving Notice. The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation
- Determining whether the University has jurisdiction over the reported conduct
- Offering and coordinating supportive measures for the Parties
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options
- Determining whether the Complainant wishes to file a Formal Complaint
- Notifying the Respondent of the available resolution option if a Formal Complaint is made

Helping a Complainant to Understand Resolution Options

If the case does not fall under Title IX jurisdiction, and if the Complainant indicates they wish to initiate the Administrative Resolution Process, the Title IX Coordinator will work with the Complainant to determine which resolution option they want to pursue. The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

Upon receiving a complaint that falls under the Administrative Resolution Process, the Title IX Coordinator will initiate an Investigation.

If any Party indicates that they want to pursue an Informal Resolution option, the Title IX Coordinator will refer the matter to the appropriate individuals(s) if the Title IX Coordinator determines Informal Resolution is available and the other Parties consent to participate.

If the Complainant does not want any action taken, the Title IX Coordinator will consider that request, and in most circumstances no resolution process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

The Title IX Coordinator may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to initiate a resolution process.

Authority to Initiate the Administrative Resolution Process

The Title IX Coordinator has ultimate discretion as to whether to pursue an Administrative Resolution Process and may consult with appropriate University Employees, and/or have a violence risk assessment conducted to aid their determination whether to initiate a complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Title IX Coordinator declines to initiate a complaint, alternative processes may be available and can be explored with the Title IX Coordinator.

The process followed, considers the Parties' preference but is ultimately determined at the Title IX Coordinator's discretion. If at any point during the initial assessment or Investigation, the Title IX Coordinator determines that reasonable cause does not support the conclusion that Respondent violated the Policy, the process will end, and the Parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

2. Interim Suspension

The University may interim suspend a student accused of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct upon receipt of Notice or at any time during the Administrative Resolution Process.

When an interim suspension is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advocate/Support Person, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the interim suspension is appropriate, should be modified, or should be lifted. When this meeting is not requested within two (2) business days, objections to the interim suspension will be deemed waived. A student can later request a meeting to show why they no longer pose a safety concern because the related conditions have changed. A Complainant and their Support Person may be permitted to participate in this meeting if the Title IX Coordinator determines it is fair for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

3. Placing an Employee on Leave

When the Respondent is an Employee, or a Student-Employee (e.g., Teaching Assistant, Resident Assistant, tutor, etc.) accused of misconduct in the course of their employment, existing provisions in the [Employee Handbook](https://www.nmt.edu/hr/NMT%20Handbook%20with%20approved%20MVV12-4.pdf) (<https://www.nmt.edu/hr/NMT%20Handbook%20with%20approved%20MVV12-4.pdf>) for interim action are typically applicable instead of the above emergency removal process.

4. Counter-Complaints

The University is obligated to ensure that the Administrative Resolution Process is not abused for retaliatory purposes. Although the University permits the filing of counter-complaints, the Title IX Coordinator will use an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation.

Counter-complaints determined to have been reported in good faith will be processed using the Administrative Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial allegations.

5. Support Person in the Administrative Resolution Process

The Parties may each have a Support Person of their choice present with them for all meetings and interviews within the Administrative Resolution Process.

Choosing a Support Person who is also a witness in the process creates potential for bias and conflict of interest. A Party who chooses a Support Person who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker.

A Party may elect to change Support Persons during the process and is not obligated to use the same Support Person throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Support Persons. If a Party changes Support Persons, consent to share information with the previous Support Person is assumed to be terminated, and a release for the new Support Person must be submitted.

A. Who Can Serve as a Support Person?

The Parties may each have a Support Person (friend, mentor, family member, attorney, or any other individual a Party chooses) present with them for all meetings, interviews,

and hearings within the resolution process. The University recommends that Witnesses involved in the case not serve as a Support Person to a Party. The Parties may select whomever they wish to serve as their Support Person as long as the Support Person is eligible and available.

The Title IX Coordinator will offer to assign a trained Support Person to any Party. If the Parties choose a Support Person from the University's Support Person Pool, the University will have trained the Support Person and familiarized them with the University's Administrative Resolution Process.

The University cannot guarantee equal Advocacy rights, meaning that if one Party selects a Support Person who is an attorney, but the other Party does not, or cannot afford an attorney, the University is not obligated to provide an attorney to advise that Party.

A Party may elect to change Support Persons during the process and is not obligated to use the same Support Person throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Support Persons. If a Party changes a Support Person, consent to share information with the previous Support Person is assumed to be terminated, and a release for the new Support Person must be submitted.

The University may permit Parties to have more than one Support Person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

If a Party requests that all communication be made through their attorney Support Person instead of to the Party, the University will agree to copy both the Party and their Support Person on all communications.

B. Support Person's Role in the Administrative Resolution Process

Support Persons should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Support Persons may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to respond to questions on their own behalf throughout the Administrative Resolution Process. Although the Support Person generally may not speak on behalf of their advisee, the Support Person may consult with their advisee, either privately as needed, or by conferring or passing notes during any Administrative Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Support Persons should ask for breaks to allow for private consultation.

C. Records Shared with Support Persons

Support Persons are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports. Parties will be asked to sign releases for the University to share materials with a Support Person.

Support Persons are expected to maintain the confidentiality of the records the University shares with them. Accordingly, Support Persons will be asked to sign Non-Disclosure Agreements (NDAs). The University may decline to share materials with any Support Person who has not executed the NDA. University may restrict the role of any Support Person who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

D. Support Person Expectations

The University generally expects a Support Person to adjust their schedule to allow them to attend University meetings/interviews when planned, but the University may change scheduled meetings to accommodate a Support Person's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow a Support Person who cannot be present in person to attend a meeting/interview by telephone, video conferencing, or other similar technologies as may be convenient and available.

All Support Persons are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a Party or appointed by the University. Support Persons are expected to advise without disrupting proceedings.

E. Support Person Policy Violations

Any Support Person who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the University's established rules of decorum will be warned. If the Support Person continues to disrupt or otherwise fails to respect the limits of the Support Person role, the meeting/ interview/hearing may be ended, or other appropriate measures implemented, including the University requiring the Party to use a different Support Person [or providing a different University-appointed Support Person]. Subsequently, the Title IX Coordinator will determine how to address the Support Person's non-compliance and future role.

6. Resolution Options Overview

The Administrative Resolution Process is the University's primary resolution approach unless all Parties and the University agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are private. All persons present at any time during a resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

A. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a Final Determination, or the Title IX Coordinator may offer the option to the Parties. The University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Three approaches to Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation. Supportive Resolution involves only the Party who opts for it.
- 2) **Accepted Responsibility.** When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and University are agreeable to the resolution terms.
- 3) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Process. Any Party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution Process should the Informal Resolution not be successful.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the University will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of

Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

Informal Resolution Approaches

(1) Supportive Resolution

Most commonly offered once a complaint is filed (whereas supportive measures, as described in of the NMT Sexual Misconduct Policy, are offered in response to Notice). The Title IX Coordinator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the Complainant's access to the University's education program and activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not believe there is a need to sign a complaint. At the discretion of the Title IX Coordinator, this resolution option can result in an agreement between the Complainant and the University that does not require assent from any other Party, as long as it does not unduly burden any other Party or function punitively with respect to them.

(2) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Administrative Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and the University are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with the Title IX Coordinator(s), as necessary. This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Administrative Resolution Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the Discrimination or Harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

(3) Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their

Support Persons, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Administrative Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Title IX Coordinator must consider whether to dissolve the agreement and reinstate the Administrative Resolution Process to remedy the impact as required by law. The results of reports resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the University will initiate or continue an investigation and subsequent Administrative Resolution Process to determine whether the Policy has been violated.

B. Administrative Resolution Process

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the NMT [Sexual Misconduct Policy](#) if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the Parties at an appropriate time during the investigation. Typically, notice is given at least two (2) business days in advance of an interview. Advanced notice facilitates the Parties' ability to identify and choose a Support Person, if any, to accompany them to the interview.

Written notification will include a meaningful summary of the allegations and the policies alleged to have been violated and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official University records, or emailed to the Parties' University-issued email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The University aims to complete all investigations within a sixty (60)-business-day time period, which can be extended by the Title IX Coordinator as necessary for appropriate cause. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may will be properly trained Investigator, whether internal or external to the University community.

The University will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The University will promptly resume its Resolution Process as soon as feasible. During such a delay, the University will implement and maintain supportive measures for the Parties as deemed appropriate.

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

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

7. Resolution Process Team

The University relies on a trained Resolution Process Team (RPT) to carry out the resolution options.

A. RPT Member Roles

Resolution Process Team members are trained annually, and can serve in any of the following roles, at the Title IX Coordinator's discretion:

- Appropriate intake of and initial guidance pertaining to Notice
- Perform or assist with initial assessment
- Advocate to Parties
- Informal Resolution Facilitator
- Investigator
- Decision-maker(s)

- Appeal Decision-maker

B. RPT Member Appointment

The Title IX Coordinator appoints the RPT members, who act with independence and impartiality. Although members of the RPT are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, the University can also designate permanent roles for individuals in the RPT.

C. RPT Member Training (See training materials posted online)

8. Notice of Investigation and Allegations

The Title IX Coordinator will provide the Parties written **Notice of the Investigation and Allegations** (the “NOIA”) upon commencement of the Administrative Resolution Process. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all allegations
- The names of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a Final Determination that the Policy has been violated
- The name(s) of the Investigator(s), along with a process to notify the Title IX Coordinator of any conflict of interest that the Investigator(s) may have in advance of the interview process
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all Relevant Evidence obtained
- A statement of the potential sanctions/responsive actions that could result
- A statement about the University’s policy on Retaliation
- Information about process confidentiality
- Information on the need for each Party to have a Support Person of their choosing and suggestions for ways to identify a Support Person
- A statement informing the Parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the Administrative Resolution Process
- Information about how a Party may request disability accommodations or other support assistance during the Administrative Resolution Process

- [A link to the University's VAWA Brochure, if applicable]
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official University records,] or emailed to the Parties' University-issued email accounts. Once delivered, mailed, emailed, and/or received in-person, notice is presumptively delivered.

9. Resolution Timeline

The University will make a good faith effort to complete the Administrative Resolution Process within thirty to sixty (30-60) business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Administrative Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The University will promptly resume its Administrative Resolution Process as soon as feasible. During such a delay, the University will implement and maintain supportive measures for the Parties as deemed appropriate.

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

The University will make a good faith effort to complete the Administrative Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

10. Ensuring Impartiality

No individual materially involved in the administration of the Administrative Resolution Process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may have or demonstrate a conflict of interest or bias for a Party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may raise a concern regarding bias or conflict of interest at any time during the Administrative Resolution Process, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another RPT member, or other trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President for Student Affairs.

The Administrative Resolution Process involves an objective evaluation of all Relevant Evidence obtained, including evidence that supports that the Respondent violated the Policy and evidence that supports that the Respondent did not violate the Policy. Credibility determinations will not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

11. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of a summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the summary will be deemed to have been waived, and no changes will be permitted.

The University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Investigations involve the following:

- Determining the identity of and contacting all involved Parties and potential witnesses to participate in an investigation interview
- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
- Conducting any necessary follow-up interviews with Parties or witnesses

- Providing the Parties and witnesses an opportunity to verify the accuracy of either a summary of their interview(s)
- Soliciting the names of suggested witnesses and questions each Party wishes to have asked of another Party or witness
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and Party and witness interviews, and provides all **Relevant Evidence**
- Providing the Parties and their respective Support Persons an electronic or hard copy of the Draft Investigation Report for a ten (10) business-day review and comment period so that each Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report
Sharing the Final Investigation Report with the Title IX Coordinator for their review and feedback
- Providing the Title IX Coordinator with the Final Investigation Report, including assessment and synthesis of the Relevant Evidence without making any recommendations or reaching any conclusions

12. Investigation Process Details

A. Witness Role and Participation in the Investigation

Witnesses who are University Employees are strongly encouraged to cooperate with and participate in the University's investigation and Administrative Resolution Process. Student witnesses and witnesses from outside the University community are encouraged to cooperate with University investigations and to share what they know about a complaint.

Party and/or witness interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The University will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

B. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Administrative Resolution Process, by recording, transcript, or written summary. The

Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may suggest additional questions to be asked of another Party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.

C. Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant, the Parties and Decision-maker must agree to admit it into the record. If the evidence is deemed not relevant, the Decision-maker may proceed with making Findings and a Final Determination absent the new evidence.

The new Relevant Evidence will be admitted to the record if:

- All Parties and the Decision-maker assent to the new evidence being considered without remanding the matter back to the Investigator,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Provide the Parties with at least five (5) business days to review the Relevant Evidence
- Remand the matter back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Decision-maker may proceed with making Findings and a Final Determination without allowing the new evidence.

Any evidence that is relevant and credible may be considered, including a Respondent's prior disciplinary history as well as evidence indicating a pattern of misconduct, subject to the limitation in (D) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

D. Evidentiary Exclusions

Unless the Decision-maker determines it is appropriate, the investigation and the Finding do not consider: (1) incidents not directly related to the possible violation(s),

unless they evidence a pattern; (2) the irrelevant sexual behavior of the Parties (though there may be a limited exception made with regard to the sexual behavior between the Parties); (3) irrelevant character evidence.

Although the Respondent's previous conduct violations (if any) are not generally admissible as information supporting the current allegation(s), the Investigator(s) may supply the Decision-maker with information about previous good faith allegations and/or findings when that information suggests potential pattern and/or predatory conduct.

The University uses a progressive discipline system, thus previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

Character witnesses or evidence may be offered. The Decision-maker will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

A Party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist are inadmissible unless the Party or witness provides voluntary, written consent for the records to be considered.

13. Respondent Admits Responsibility

If a Respondent elects to admit to the charged violations and waive further process at any point in the Administrative Resolution Process, the Decision-maker is authorized to accept that admission, adopt it as their Finding/Final Determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the Finding/Final Determination/sanctions, or does not admit to all charged violations, the Administrative Resolution Process continues to its conclusion. The Complainant retains their right to appeal a Final Determination when a Respondent admits responsibility.

14. Determination

Within two to three (2-3) business days of receiving the Investigator's Final Investigation Report, the Title IX Coordinator **OR** a Decision-maker reviews the report and all responses, and then makes the Final Determination by applying the standard of evidence.

If the record is incomplete, the Decision-maker may direct the Investigator(s) to re-open the investigation, or may direct or conduct any additional inquiry necessary, including meeting informally with the Parties or any witnesses if needed.

The Decision-maker may invite and consider impact and/or mitigation statements from the Parties when determining appropriate sanction(s), if any.

15. Notice of Outcome

The Title IX Coordinator will provide the Parties a written outcome notification within three (3) business days of the Resolution. The outcome notification will specify the Finding for each alleged Policy violation, any sanction(s) that may result, which the University is permitted to share pursuant to federal or state law, and a detailed rationale, written by the Decision-maker, supporting the Findings to the extent the University is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no Party appeals. Unless based on the Respondent's admission of responsibility, the Determination may be appealed by any Party.

The Title IX Coordinator will provide the Parties with the outcome notification, or without significant time delay between notifications. Notice may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official University records, or emailed to the Parties' University-issued or other approved email account. Once delivered, via mail, email, and/or received in-person, notice is presumptively delivered.

16. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive action include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need to remedy the effects of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- The Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Decision-maker

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

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

A. Student Sanctions

The following are the common sanctions that may be imposed upon Students singly or in combination:

- **Reprimand:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions
- **Required Counseling:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects
- **Restrictions:** A Student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations
- **Probation:** An official sanction for violation of University policy, providing for more severe disciplinary sanctions if the Student is found in violation of any University policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Separation from the University, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the Student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the Student is eligible to return if the University determines it is appropriate to re-enroll/readmit the Student. The Student is typically required to vacate University property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During a University-wide suspension, the Student is banned from University property, functions, events, and activities unless they receive prior written approval from an appropriate University official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the Student's official academic transcript, per University policy and/or state law.
- **Expulsion:** Permanent separation from the University. The Student is banned from University property, and the Student's presence at any University-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the Student's official academic transcript, per University policy and/or state law.
- **Withholding Diploma:** The University may withhold a Student's diploma for a specified period of time and/or deny a Student participation in commencement activities as a sanction if the Student is found responsible for violating the Policy
- **Revocation of Degree:** While very rarely exercised, the University reserves the right to revoke a degree previously awarded by the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or

directives in obtaining the degree, or for other serious violations committed by a Student prior to graduation

- **Other Actions:** In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate

B. Student Organization Sanctions

The following are the common sanctions that may be imposed upon student groups organizations singly or in combination:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions
- **Probation:** An official sanction for violation of University policy, providing for more severe disciplinary sanctions if the group or organization is found in violation of any University policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of University funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student group or organization recognition and/or University support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in University-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the University.
- **Expulsion:** Permanent termination of student group or organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason
- **Loss of Privileges:** Restricted from accessing specific University privileges for a specified period of time
- **Other Actions:** In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate

C. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an Employee who has engaged in Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*

- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to a New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions: In addition to, or in place of, the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate*

17. Withdrawal or Resignation Before Complaint Resolution

A. Students

Student Respondents with pending allegations of Sexual Misconduct Policy violations are not permitted to withdraw from the institution without the Title IX Coordinator's permission. The University may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the Administrative Resolution Process to be completed.

OR

Should a Respondent decide not to participate in the Administrative Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent withdraws from the University, the Administrative Resolution Process typically ends with a dismissal, as the University has lost primary disciplinary jurisdiction over the withdrawn Student. However, the University may continue the Administrative Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Administrative Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When a Student withdraws or takes a leave of absence while the process is pending, the Student may not return to the University in any capacity until the allegations are

resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the Title IX Coordinator has discretion to dismiss the allegations and bar the Student from returning. The Registrar, Office of Admissions, and HR may be notified accordingly.

If the Student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the Administrative Resolution Process may continue remotely. If found in violation, that Student is not permitted to return to University unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an Employee Respondent decide not to participate in the Administrative Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with the University with unresolved allegations pending, the Administrative Resolution Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the former Employee. However, the University may continue the Administrative Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the allegations are dismissed or pursued to completion of the Administrative Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When an Employee resigns and the allegations are dismissed, the Employee may not return to the University in any capacity unless the President of the University or designee has reviewed the case file and waived the policy to allow the person to be considered for a position at the University. The Registrar, Office of Admissions, and HR will be notified accordingly. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the University. The records retained by the Title IX Coordinator will reflect that status.

18. Appeals

The Title IX Coordinator will designate an Appeal Decision-maker (e.g., Student and Faculty Conduct Committee) to hear the appeal. No Appeal Decision-maker will have been previously involved in the Administrative Resolution Process for the matter. The Title IX Coordinator will designate a voting chair if a panel is used.

A. Appeal Grounds

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) There is new evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter
- 4) The Decision-maker's Final Determination is substantially contrary to the weight of the evidence in the record (applicable to suspension, expulsion, or termination-level offenses only)
- 5) The sanctions fall outside the range of sanctions designated for this offense, considering the Respondent's cumulative conduct/disciplinary record (applicable to suspension, expulsion, or termination-level offenses only)

B. Appeal Request

Any Party may submit a written appeal request to the Title IX Coordinator within five (5) business days of the delivery of the notice of outcome.

The appeal request will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the appeal grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the appeal request does not provide information that meets the grounds in the procedures, the request will be denied by the Appeal Decision-maker, and the Parties and their Support Persons will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the appeal request meets the grounds in the Procedures, then the Appeal Decision-maker will notify all Parties and their Support Persons, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Support Persons, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the appeal request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them.

The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing Party (if any) may also choose to appeal at this time. If so, that appeal request will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in the Procedures and will either be approved or denied. If approved, it will be forwarded to the Party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Support Persons will be notified in writing.

No Party may submit any new appeal request after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

C. Appeal Determination Process

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/ responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction(s).

The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new APT members serving in the Investigator and Decision-maker roles.

A notice of appeal outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the University is permitted to share according to federal or state law, and the rationale supporting the essential Findings to the extent the University is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official institutional records, or emailed to the Parties' University-issued email account. Once delivered via mail, email, and/or received in person, the appeal outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

E. Sanction Status During the Appeal

Any sanctions imposed as a result of the Final Determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the interim suspension procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within two (2) business days of implementation.

19. Long-Term Remedies/Actions

Following the conclusion of the Administrative Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the University community that are intended to stop the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct, remedy the effects, and prevent its recurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Community education
- 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 assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the Title IX Coordinator's discretion, the Parties may be provided certain long-term support or measures even if no Policy violation is found.

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

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

20. Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the Informal Resolution agreement. 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.

Supervisors are expected to enforce completion of sanctions/responsive actions for their Employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

21. Recordkeeping

In implementing the Policy and Procedures, the Title IX Coordinator will maintain records of all allegations, investigations, and Resolutions, indefinitely, or as required by federal or state law or institutional policy.

22. Statement of the Rights of the Parties (See Appendix B)

23. Disability Accommodations

University 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.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with Student Access Services (SAS) as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

24. Other Support

The University will address other reasonable requests for support for the Parties and Witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

25. APPENDICES

Appendix A: Definitions

Affirmative Consent: affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the Affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean Affirmative Consent, nor does silence mean Affirmative Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. Affirmative Consent may be based on a condition(s), *e.g.*, the use of a condom, and that condition(s) must continue to be met throughout an activity, unless there is mutual agreement to forego or change the condition. When there is no Affirmative Consent present during sexual

activity, the activity at issue necessarily occurred “against the person’s will.”

- The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of Affirmative Consent.
- In evaluating Affirmative Consent, it cannot be a defense that a Respondent’s belief that the complainant consented to the sexual activity arose under either of the following circumstances:
 - The Respondent’s belief in Affirmative Consent arose from the intoxication or recklessness of the Respondent.
 - The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant gave Affirmative Consent.

Appeal Officer: a professional neutral decision-maker experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure, who will review the Parties’ appeals and issue the Notice of Outcome of Appeal.

Complainant: the Party to the process who is reported to have experienced Title IX Prohibited Conduct.

Confidential Resource: a person who by law is exempted from the obligation to report an allegation of conduct that could constitute Title IX Prohibited Conduct to any entity, including the University’s Title IX Coordinator or law enforcement in circumstances in which the reported conduct could be a crime (except, as to law enforcement, if the Complainant is a minor or if there is a belief that there is an imminent threat of harm to self or others).

Confidentiality: exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.

Court Order: any formal order issued by a state or federal court or authorized police officer that restricts a person’s access to another New Mexico Tech community member, such as an emergency, temporary or permanent restraining order.

Dating Violence: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant, including sexual or physical abuse or the threat of such abuse, but excluding acts covered under the definition of Domestic Violence.

Deputy Title IX Coordinator: a person designated by the Title IX Coordinator to handle a report of Title IX Prohibited Conduct.

Domestic Violence: an act that could be classified as a felony or misdemeanor crime of violence committed: (i) by a current or former spouse or intimate partner of the Complainant; (ii) by a person with whom the Complainant shares a child in common; (iii) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico; (v) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of New Mexico. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

Duress: a direct or implied threat of force, violence, danger, hardship, or retribution that is enough to cause a reasonable person of ordinary sensitivity to do or submit to something that they would not otherwise do or submit to. When deciding whether the act was accomplished by duress, all the circumstances, including the age of the Complainant and their relationship to the Respondent, are relevant factors.

Force: an act is accomplished by force if a person overcomes the other person's will by use of physical force or induces reasonable fear of immediate bodily injury.

Hearing Schedule: a time-table specific to each matter that schedules key dates for the matter after it has been charged.

Incapacitation: a person lacks the ability to voluntarily agree (that is, to give Affirmative Consent) to sexual activity because the person is asleep, unconscious, under the influence of an anesthetizing or intoxicating substance such that the person does not have control over their body, is otherwise unaware that sexual activity is occurring, or is unable to appreciate the nature and quality of the act. Incapacitation is not necessarily the same as legal intoxication.

- A party who engages in sexual conduct with a person who is incapacitated, under circumstances in which a reasonable sober person in similar circumstances would have known the person to be incapacitated is responsible for Title IX Prohibited Conduct. Except for sanction considerations, it is not a defense that the Respondent's belief in Affirmative Consent arose from their own intoxication.

Informal Resolution: a voluntary process that the Parties may consent to participate in, as described in Section 6.A.

Intimidation: can be a form of Retaliation, and includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the Title IX Procedure.

Investigation: the phase of the Title IX Procedure when the Parties are invited to provide

evidence and identify Witnesses to the Investigator related to the allegations in the Notice of Formal Complaint.

Investigative Report: a formal written document that fairly summarizes the relevant evidence gathered during the Investigation and that is provided to the Parties with at least 10 days to respond.

Investigator: the person assigned by the Title IX Coordinator to investigate Formal Complaints under this Procedure. The Investigator shall have been trained on all elements of an Investigation as required by federal and state law.

New Evidence: evidence that was not available at the time of the charge decision, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter.

Non-forcible Sexual Violations: Any of the following acts:

- ***Incest.*** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New Mexico law.
- ***Statutory Rape.*** Non-forcible sexual intercourse with a person who is under the statutory age of consent of New Mexico. The age of consent in New Mexico is 18.

Notice of Hearing: the formal notification issued by the Title IX Coordinator following an Investigation that the matter will proceed to a Hearing.

Notice of Outcome of Appeal: a written determination describing the Appeal Officer's final decision of a matter brought forward on appeal.

Party/Parties: the generic or collective term used to refer to Complainant(s) and Respondent(s).

Pre-hearing Conference: A scheduled meeting usually 2-day before the Hearing where Hearing-related details are reviewed.

Preponderance of Evidence Standard: is the degree of certainty or the amount of evidence required to establish a violation has occurred. New Mexico Tech utilizes the Preponderance of the Evidence for resolving complaints under this policy. In the Preponderance of Evidence Standard, the University would need to determine it was more likely than not that violation (e.g., sexual misconduct, harassment, abuse) occurred to find the Respondent to be in violation of this policy. This standard is not as stringent as the Clear and Convincing Standard or Beyond a Reasonable Doubt Standard.

Rebuttal Evidence: evidence presented to contradict other evidence in the Hearing File, which could not have been reasonably anticipated by a Party to be relevant

information at the time of the Investigation.

Remedies: individualized measures implemented after a Hearing or as part of an Informal Resolution that are designed to restore or preserve equal access to University Programs or Activities, and may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Respondent: the person alleged to have engaged in Title IX Prohibited Conduct.

Retaliation: includes, but is not limited to, adverse action related to employment, academic opportunities, participation in University programs or activities, or similar punitive action taken against an individual because that person has made an Initial Report or Formal Complaint, responded to a Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation, proceeding, or Hearing.

Sanctions: individualized measures implemented after a Hearing that may be disciplinary in nature.

Sexual Assault: Any sexual act directed against a Complainant without the Affirmative Consent of the Complainant, including instances in which the Complainant is incapable of giving consent, including because of Incapacitation. The following sexual acts covered by this definition are required to be included by federal regulations and are derived from the FBI's Summary Reporting System and National Incident-Based Reporting System User Manual definitions:

- **Rape.** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Affirmative Consent of the Complainant.
- **Sodomy.** Oral or anal sexual intercourse with another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Sexual Assault with an Object.** To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the Affirmative Consent of the Complainant, including instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.
- **Fondling.** The touching of the private body parts of another person for the purpose of sexual gratification without the Affirmative Consent of the Complainant, including in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical Incapacitation.

Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (i) fear for the person's safety or the safety of others; or (ii)

suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. If an individual is notified that their behavior or actions are unwanted and requests a cease and desist.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to University Programs or Activities without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University educational environment, or deter sexual harassment. Supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Title IX Coordinator: the individual at New Mexico Tech responsible for overseeing the University's compliance with Title IX, the Clery Act, and New Mexico Education Code section 6.13.

University Directive: a directive issued by the University restricting activities of an individual in connection with an allegation or finding of violation under this Procedure (e.g., No Contact Order).

University Program or Activity: locations, events, or circumstances over which the University exercised substantial control over both the alleged Respondent and the context in which the Title IX Prohibited Conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Violence: the use of physical force to cause harm or injury.

Witness: a person asked to give information or a statement under this Title IX Procedure.

Appendix B: Statement of the Parties' Rights

Under the Policy and Procedures, the Parties have the right to:

- An equitable investigation and Resolution of all credible allegations of prohibited Discrimination, Harassment, Retaliation, and Other Prohibited Conduct, when reported in good faith to University officials
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional reports or Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations
- Be informed in advance of any University public release of information regarding the allegation(s) or underlying incident(s), whenever possible
- Have all personally identifiable information protected from the University's release to the public without consent, except to the extent permitted by law
- Be treated with respect by University officials
- Have University Policy and Procedures followed without material deviation.
- Voluntarily agree to resolve allegations under the Policy through Informal Resolution without University pressure, if Informal Resolution is approved by the Title IX Coordinator
- Not be discouraged by University officials from reporting Discrimination, Harassment, Retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) for the University to assist in notifying such authorities, if the party chooses. This also includes the right not to be pressured to report.
- Have University law enforcement and/or other University officials respond promptly to alleged Policy violations
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, and/or other services, both on campus and in the community
- A University-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No report or Formal

Complaint, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- Relocating a residential Student's housing to a different on-campus location
- Assistance from University staff in completing the relocation
- Changing an Employee's work environment (e.g., reporting structure, office/workspace relocation)
- Transportation assistance
- Visa/immigration assistance, if available
- Arranging to dissolve a housing contract and provide a pro-rated refund
- Rescheduling or adjusting an exam, paper, and/or assignment
- Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
- Transferring class sections
- Temporary withdrawal/leave of absence (may be retroactive)
- Campus safety escorts
- Alternative course completion options
- Have the University maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the University's ability to provide the supportive measures or comply with the law
- Receive sufficiently advanced written notice of any University meetings or interviews involving another party, when possible
- Identify and have the Investigator(s), Advisors, and/or Decision-maker question relevant available witnesses, including expert witnesses
- Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual predisposition/prior sexual behavior or any party's irrelevant character evidence excluded by the Decision-maker
- Review the Relevant and Directly Related Evidence (if applicable) obtained and respond to that evidence
- A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record
- Receive a copy of all Relevant and Directly Related Evidence (if applicable) obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10) business-day period to review and comment on the evidence
- Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to a hearing
- Be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant
- Regular status updates on the investigation and/or resolution process
- Have reports of alleged Policy violations addressed by RPT members, or others, who have received relevant annual training as required
- A Decision-making panel that is not single Sex in its composition, if a panel is used

- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public
- Petition that any University representative in the process be recused on the basis of disqualifying bias and/or a conflict of interest
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process
- Apply the appropriate standard of evidence, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all Relevant Evidence
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing
- Have an impact and/or mitigation statement considered by the Decision-maker following a Final Determination of responsibility for any allegation, but prior to sanctioning
- Be promptly informed of the resolution process Finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay)
- Be informed in writing of when a University decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery
- Be informed of the opportunity to appeal the Finding(s) and sanction(s) and the procedures for doing so in accordance with the University's appeal grounds
- A fundamentally fair resolution as defined in the Procedures

Appendix C: Privacy and Confidentiality

For the purpose of the Policy, privacy and confidentiality have distinct meanings.

Privacy means that information related to Notice or a Formal Complaint will be shared with a limited number of University Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the Formal Complaint. All Employees who are involved in the University’s response to Notice under the Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in the University’s Student Records Policy. The privacy of Employee records will be protected in accordance with Human Resources policies.

Confidentiality exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who can have privileged communications as Confidential Resources. See the NMT Sexual Misconduct Policy for more information about Confidential Resources.

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

Appendix D: Remedy Guidelines

Following a determination of responsibility under this Title IX Grievance Procedure that the Respondent engaged in Title IX Prohibited Conduct directed at the Complainant, Remedies are provided to a Complainant. Remedies must be designed to restore or preserve access to the

University's educational Program or Activity. Remedies may include disciplinary Sanctions or other actions against a Respondent. They may include the same individualized services as those offered as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

The Hearing Panel may consult with the Title IX Coordinator or other appropriate University office in crafting Remedies. The Hearing Panel will decide on the Remedies as the Hearing Panel deems appropriate for the particular case.

The Hearing Panel should provide remedies that will remediate a hostile environment for the Complainant and/or provide safety protections for the Complainant or for New Mexico Tech community members.

1. Remedies Relating to the Respondent

Remedies relating to all Respondents could include the following restrictions:

- a. Directive not to contact (directly or indirectly) the Complainant e.g. no contact order
- b. Limiting or denying access to all or parts of campus
- c. Limiting or denying participation in campus programs or activities
- d. Limiting or denying the opportunity to hold leadership positions Additionally, for student Respondents, remedies could include the following restrictions:
- e. Limiting or denying housing on campus or part of campus (e.g., not permitting Respondent to live near the Complainant)
- f. Requiring that the Respondent not enroll in a course that the Complainant is enrolled in or teaching
- g. Limiting or prohibiting attendance at campus parties or social events

Additionally, for faculty or teaching Respondents, remedies could include the following restrictions:

- a. Limiting or denying certain advising activities
- b. Limiting or denying certain teaching activities
- c. Limiting access to students in private spaces

Remedies for all Respondents could include the affirmative requirement for personalized education or coaching.

2. Additional Remedies for the Complainant

Additional Remedies for the Complainant will be directed by the Hearing panel and/or Title IX Coordinator. Unless one of these Remedies affects the Respondent, these should remain confidential and should only be included in the Written Determination Regarding Responsibility for the Complainant.

- a. Academic or workplace accommodations
- b. Safety accommodations
- c. Other reasonable and appropriate accommodations

3. Timeframe for Remedies

The Hearing Panel should indicate a timeframe for the Remedies (noting that it might be appropriate for some Remedies to have different timeframes; e.g., no leadership position for two years and no housing for three years.) Restrictions should be put in place for a certain amount of time, to achieve the appropriate remedy. Generally, the remedy may be achieved in a number of months up to five years.

4. Implementation

The Title IX Coordinator is responsible for effective implementation of any Remedies under this Title IX Grievance Procedure. Remedies may be modified by the Title IX Coordinator as circumstances change over the course of a Complainant's or Respondent's student or work career at New Mexico Tech. The request for reconsideration may be submitted to the Title IX Coordinator, and the basis for such reconsideration will be limited to whether, given the changed circumstances, the Remedies are ones that could have been issued by reasonable persons. Upon request by a Party to reconsider a remedy, which if granted would impact the other Party; the Title IX Coordinator will provide notice and an opportunity to respond to the other Party. The Title IX Coordinator's decision on reconsideration will be provided in writing and maintains jurisdiction over the Remedies as the Parties move through the University.

Appendix E: Timeframes for Administrative Procedure

The University will strive to complete this Administrative Procedure as expeditiously as possible. Generally, the University will seek to complete a Hearing within approximately 120 days from the filing of a Formal Complaint. This 120-day guideline is based on the specific timeframes for each phase of this Procedure as set forth below. The Title IX regulations require that the Parties have two 10-day periods to review the evidence and respond to the Investigative Report, which necessarily extend the total time for resolution of a matter under this Title IX Procedure beyond the 60-day guideline adopted under previous Title IX guidance. In addition, the 120-day timeframe builds in time to account for unavoidable and reasonable delays, such as University breaks (when Parties and/or Witnesses may be unavailable) and extensions to the Parties granted for good cause, which may extend the total time for resolution. In any event, the University will not compromise a thorough and fair process in order to meet the 120-day guideline from the filing of a Formal Complaint to a Hearing outcome. If any Party chooses to appeal the Hearing outcome, the timeframes below provide for an additional 30-day period to submit, respond to, and decide the appeal. If any deadline under the guidelines set forth below falls on a weekend or holiday, there will be an automatic extension to the next business day.

After receiving a Written Notice of Formal Complaint, both the Complainant and the Respondent will be asked to identify any academic, employment, or other significant conflicts that would affect the timing of the Investigation and potential. The Hearing Coordinator will consider this input in finalizing any Hearing Schedule.

If the Parties elect to engage in an Informal Resolution, the timeframes below will be suspended during the pendency of that process.

Extensions are only granted for good cause. A request for an extension must be made, in writing and with reasons provided, to the Hearing Coordinator. The Hearing Coordinator will endeavor to respond to an extension request promptly, in writing, ideally within 24 hours.

The timeframe guidelines for each phase of the Title IX Procedure after the filing of a Formal Complaint are as follows:

1. The Title IX Coordinator will endeavor to determine whether to proceed with a Written Notice of Formal Complaint within **5 calendar days** of receiving a Formal Complaint signed by the Complainant. In the situation where the Complainant declines to file a Formal Complaint, and the Title IX Coordinator determines that proceeding over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances, the Title IX Coordinator will sign the Formal Complaint and issue the Written Notice of Formal Complaint within **5 calendar days** of that determination.
2. The Investigator will endeavor to complete the Investigation within **1 calendar month** of the date the Written Notice of Formal Complaint is sent to the Parties. Both Parties have the opportunity to present evidence and identify Witnesses during this timeframe. This timeframe may be extended in complex matters or

matters with multiple Witnesses to give the Investigator enough time to gather relevant evidence and schedule Witness interviews.

3. As required by the Title IX regulations, after the Investigator has concluded the collection of evidence, the Parties will be given **10 calendar days** to review the evidence and provide a response.
4. After the Investigator has received the Parties' response to the evidence, the Title IX Coordinator will endeavor to send the Investigative Report to the Parties within **14 calendar days**. This timeframe may be extended, however, if the Parties' responses identify new sources of evidence that require additional Investigation.
5. As required by the Title IX regulations, the Parties will be given **10 calendar days** to review and provide a response to the Investigative Report.
6. The Title IX Coordinator will endeavor to issue either a Notice of Dismissal or Notice of Hearing within **5 calendar days** of receipt of the Parties' responses to the Investigative Report.
7. Within **7 calendar days** of the issuance of a Notice of Hearing, the Hearing Coordinator will:
 - a. Make the Initial Hearing File available to the Parties;
 - b. Identify the Hearing Panel to the Parties and give the Parties the opportunity to object to the Hearing Panel on the basis of a conflict of interest, as set forth in Section IV.J.4. If either Party objects to the Hearing Panel, the timeframe for the Hearing Schedule will be delayed until the alleged conflict of interest can be reviewed and a new Hearing Panel identified and agreed to, if necessary; and
 - c. Reach out to all Parties, Witnesses, and the Hearing Officer to coordinate the Hearing Schedule. The scheduling of the Hearing will be determined by the availability of the Parties, Witnesses, the Parties' Hearing Support Persons, and the Hearing Panel.
8. Within **5 calendar days** of the creation of the Hearing File, the Parties may submit a response to the Hearing File and any objections to the Hearing file. Any objections to the Hearing File will be resolved by the Hearing Panel at the outset of the Hearing.
9. At the conclusion of the Hearing, the Hearing Panel may ask the Parties to submit additional materials or Sanctions statements. The Hearing Panel will

endeavor to issue the Written Determination Regarding Responsibility within **10 calendar days** of receipt of those materials by the Parties or within **10 calendar days** of the conclusion of the Hearing if no additional materials are requested.

- 10.** Any Party wishing to appeal the Written Determination Regarding Responsibility must do so within **10 calendar days** of the issuance of the Written Determination Regarding Responsibility. The other Party will have **10 calendar days** to respond to an appeal.
- 11.** The Appeal Officer will endeavor to issue an Appeal Outcome within **10 calendar days** after any response to an appeal is received.

Appendix F: Violence Risk Assessment (VRA)

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to describe assessment of any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

- 1) An appraisal of **risk factors** that escalate the potential for violence
- 2) A determination of stabilizing influences, or **protective factors**, that reduce the risk of violence
- 3) A contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on the target; grievance collection; and action and time imperative for violence
- 4) The application of **intervention and management** approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the VRA process through the BIT. The BIT will assign a trained person(s) to perform the assessment, according to the specific nature of the allegations.

The assessor(s) will follow the process for conducting a VRA as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,¹ The Structured Interview for Violence Risk Assessment (SIVRA),² Violence Risk Assessment of the Written Word (VRAWW),³ Workplace Assessment of Violence Risk (WAVR-21),⁴ Historical Clinical Risk Management (HCR-20),⁵ and MOSAIC.⁶

The VRA is conducted independently from a resolution process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

In some circumstances, the Title IX Coordinator may determine that a VRA should be conducted by the BIT as part of the initial assessment of Notice or a Formal Complaint under the Policy. A VRA can aid in critical and/or required determinations, including:

- 1) Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of Discrimination or Harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a Formal Complaint through Informal Resolution, and if so, what approach may be most successful
- 7) [Whether to impose transcript notation or communicate with a transfer institution about a Respondent]
- 8) Assessment of appropriate sanctions/remedies (to be applied post-determination)
- 9) Whether a Clery Act Timely Warning/Trespass order/Persona Non Grata is needed

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. Institutions may be compelled to act on alleged Employee misconduct irrespective of a Complainant's wishes.

¹ <https://www.nabita.org/training/nabita-risk-rubric/>

² <https://www.nabita.org/training/structured-interview-for-violence-risk-assessment-sivra/>

³ <https://www.nabita.org/training/vraww/>

⁴ www.wavr21.com

⁵ <http://hcr-20.com>

⁶ www.mosaicmethod.com

Appendix G: Retaliation and Intimidation

It is a violation of the Sexual Misconduct Policy, Student Code of Conduct, University Policy and Procedures, Employee Handbook, and the RGAF to Intimidate or Retaliate against any person making a complaint or responding to a complaint under this Title IX Procedure or against any person participating in the Investigation of any such allegation under this Title IX Procedure (including being the Respondent or testifying as a Witness). No person may threaten, coerce, or discriminate against any individual for pursuing or exercising any right or privilege secured by Title IX, or because the individual has made a report or complaint, responded to a complaint, testified, assisted, or participated or refused to participate in any manner in an Investigation, proceeding, or Hearing related to this Title IX Procedure.

Retaliation/Intimidation includes, but is not limited to, adverse action related to employment, academic opportunities, participation in University programs or activities, or similar punitive action. Retaliation can be direct such as changing an employee's work location, pay or schedule, or for students, changing a grade or denying access to a program, or it can be indirect such as Intimidating, threatening, or harassing an employee or student who has raised a claim or participated as a witness in an investigation. Intimidation can be a form of Retaliation, and includes any threatening statement or conduct made with the intent to prevent or dissuade any Party or Witness from reporting or participating in the process.

All Parties to a concern and all persons participating in the Investigation of a concern are prohibited from engaging in actions intended to retaliate or intimidate directly or through Support Persons.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of an Investigation does not constitute Retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation.

Reports of alleged violations of University Directives (e.g. No Contact Order) or Court Orders prior to a finding of responsibility either will be incorporated into the pending matter or referred separately to another University process. After a Respondent has been found responsible for Title IX Prohibited Conduct, if there is a new allegation that the Respondent has engaged in Retaliation, Intimidation, or violated a Court Order or University Directive relating to the matter, the Title IX Office will investigate the allegation and determine whether to refer the matter to be handled through another University process.

Appendix H: Record Maintenance and Access

Policy Scope

This policy covers records maintained in any medium that are created pursuant to the University's NMT Sexual Misconduct Policy and/or the regular business of the University's NMT Title IX Office. All such records are considered private or confidential by the NMT Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Discrimination, Harassment, and Retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the Parties to a resolution process under applicable federal and/or state law. The NMT Title IX Office controls the dissemination and sharing of any records under its control.

Types of Records Covered Under this Policy

Records Pertaining to the NMT Sexual Misconduct Policy include, but are not limited to:

- Formal Complaints
- NOIAs
- Documentation of Notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known Parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation and appeals
- Documentation related to Emergency Removals, leaves, and interim actions and challenges
- Documentation related to a resolution process
- The Final Investigation Report and Directly Related Evidence file
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal Resolution records
- Outcome Notices
- Records documenting that the University's response was not deliberately indifferent
- Any other records typically maintained by the University as part of the complaint file

Drafts and Working Files: Preliminary drafts and "working files" are not considered records that the University must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the resolution process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the Title IX

Coordinator. An example of a “working file” would be the Investigator’s notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of Investigation Reports shared with the Parties are maintained.

Attorney Work-Product: Communications from the NMT Title IX Office or its designees with the University’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the NMT Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

Record Storage

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the NMT Title IX Office, as defined above, must be stored in digital format and maintained by the NMT Title IX Office. The complete file must be transferred to the NMT Title IX Office, typically within fourteen (14) business days of the Resolution (including any appeal), if the file is not already maintained within the NMT Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the NMT Title IX Office during the pendency of an investigation.

The NMT Title IX Office will store all records created pursuant to the Policy, regardless of the identities of the Parties. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act/Violence Against Women Act (VAWA) requirements will be maintained along with the complaint filed in the NMT Title IX Office.

Title IX Training Materials

The University will also maintain copies of the slides or other materials from all Title IX training for the RPT members, Students, and Employees. Trainings are posted online at [NMT Title IX Office website](https://www.nmt.edu/titleix/index.php) (<https://www.nmt.edu/titleix/index.php>).

Record Retention

All records created and maintained pursuant to the NMT Sexual Misconduct Policy will be retained by the NMT Title IX Office for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the Title IX Coordinator may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

Record Access

Access to records created pursuant to the NMT Sexual Misconduct Policy or housed in the NMT Title IX Office is strictly limited to the Title IX Coordinator and any person they authorize in writing, at their discretion, or via permission levels within the database. Those who are granted broad access to the NMT Title IX Office records are expected to access only those records pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant University policies and procedures.

Student Parties may request access to their complaint file. The University will provide access or a copy within 45 calendar days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the Parties using secure file transmission software. The NMT Title IX Office will watermark any such file with the watermark identifying the role of the person in the process (e.g., Complainant, Respondent, Hearing Decision-maker, Complainant's Advisor) before sharing.

University will maintain an access log of each case file, showing when and by whom it was accessed and for what purpose.

Record Security

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from floods, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the NMT Title IX Office or another appropriate secure location. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the complaint file.

Appendix I: Reporting Findings to National Science Foundation (NSF):

1. If an Administrative Adjudicator or Adjudicative Panel finds an employee to be in violation of a Prohibitive Conduct (e.g. Title IX, harassment), that decision will be sent to Human Resources and placed in the employee's personnel file.
2. If that decision meets the threshold of an NSF or agency reportable offense, the Director of Human Resources will contact Sponsored Projects for a list of current NSF PIs and Co-PIs. The Director of Affirmative Action will serve as backup/designee to the Director of Human Resources.
3. If the person is an NSF PI or Co-PI, Human Resources will report the finding to NSF using the NSF form: https://www.nsf.gov/od/oecr/notification_form.jsp
4. Human Resources will notify the Vice President of Research that a report has been submitted to NSF.