



# Title IX Resolution Procedures

"Process A"

April, 2025

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## NEW MEXICO TECH TITLE IX PROCEDURE

***Effective August 14, 2020.***

### **I. PREAMBLE**

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106) sexual harassment is a form of prohibited sex discrimination. Title IX provides:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.*

New Mexico Tech the University is committed to fostering a campus environment that is free from unlawful discrimination on the basis of sex, including sexual harassment and sexual assault. In support of that commitment, New Mexico Tech takes steps to increase awareness of such sexual harassment and sexual assault, eliminate its occurrence on campus and in University programs and activities, encourage reporting, provide support for survivors, promptly respond to all reports of sexual harassment and sexual assault, deal fairly with accused Respondents,<sup>1</sup> and take appropriate action against those found responsible.

This Title IX Grievance Procedure is intended to ensure a safe and non-discriminatory educational and work environment and describe the process by which New Mexico Tech meets its obligations under Title IX and its implementing regulations.

### **II. SCOPE, APPLICABILITY, AND JURISDICTION**

All students, faculty, staff, postdoctoral scholars affiliates and others participating in University programs and activities in the United States are subject to the NMT Sexual Misconduct Policy, Title IX Prohibited Conduct and this Title IX Procedure (Here after referred to as “Resolution Procedures”). This Procedure applies to conduct occurring on or after August 14, 2020 to August 1, 2024, and re-implemented after January 9, 2025, when the 2024 Title IX regulations were vacated.

However, if there are alleged violations of the NMT Sexual Misconduct Policy (i.e., Prohibited Conduct) that do not fall under the jurisdiction of Title IX, the University has other grievance procedures to resolve those cases. The Title IX Coordinator, Dean of Students, EEOC/AA Director, or Director of Human Resources can help individuals navigate the correct grievance procedure.

The Title IX regulations define “sexual harassment” to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include: (1) any instance of quid pro quo harassment by a University employee; (2) any conduct based on sex that in the view of a reasonable person is so severe and pervasive **and** objectively offensive that it effectively denies a person equal access to a University education program or activity (i.e. Hostile Environment); and (3) any instance of sexual assault, dating violence, domestic violence, or stalking (collectively “Title IX Prohibited Conduct,”) defined in [NMT Sexual Misconduct Policy](#). To the extent that receipt of notice of Title IX

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Prohibited Conduct also triggers the University's responsibilities under New Mexico Human Rights Act NMSA 1978 sections 28-1-1 to 28-1-7.2 to 28-1-9 to 28-1-14, this Title IX Procedure is also designed to meet the University's concurrent obligations under those laws.<sup>2</sup>



To fall within the jurisdiction of Title IX, the alleged Title IX Prohibited Conduct must have taken place in a University Program or Activity, and against a person in the United States at the time the conduct occurred. A University Program or Activity includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and includes any building (including off-campus buildings) owned or controlled by a student organization that is officially recognized by the University. An off-campus event (in the United States) such as an academic or professional conference may constitute a University Program or Activity if, for example, it is a University-sponsored event or the University otherwise maintains substantial control over the event and Title IX Prohibited Conduct occurs within the context of such an event. Study-abroad programs are not covered by the Title IX regulations.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in this Title IX Procedure necessarily supersede any conflicting rights or obligations provided in Constitution and By Laws of the Student Government Association of New Mexico Institute of Mining and Technology, Guide to Conduct and Citizenship for Students (i.e., Student Code of Conduct) Employee Handbook, Regulations Governing Academic Freedom and Tenure or any other NMT policy, staff grievance procedures, and University policies. Conduct that falls outside the jurisdictional or definitional scope of Title IX, however, may still violate NMT's Sexual Misconduct Policy or other institutional policies, and may be addressed through other University processes.

### **III. REPORTING TITLE IX PROHIBITED CONDUCT**

#### **A. What to Report**

The types of sexual harassment and sexual assault covered by this Title IX Procedure (collectively "Title IX Prohibited Conduct") includes conduct on the basis of sex that satisfies one or more of the definitions below. Note that sexual misconduct or other discrimination based on sex that does not fall within these specific definitions may still violate University policy (e.g. NMT Sexual Misconduct Policy) and should be reported to the Title IX Office. It is also a violation of the NMT Sexual Misconduct Policy to attempt to commit any of the acts defined below or to knowingly aid or facilitate another person to commit any of the acts defined below, and such attempts or knowing facilitation is also conduct subject to this Title IX Procedure.

**Prohibited Conduct or NMT Sexual Misconduct violations that will be resolved under this Procedure include:**

##### **1. Prohibited Conduct**

Students and Employees are entitled to an education and employment environment that is free of Discrimination, Harassment, and Retaliation. The Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited Discrimination, Harassment, and Retaliation that are also prohibited under University policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted

All offense definitions encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity between incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, behavior similarity, or other factors. Where a pattern is found, it can be the basis to enhance sanctions accordingly.

Violation of any other University policies may constitute Discrimination or Harassment when motivated by actual or perceived Protected Characteristic(s), and the result is a limitation or denial of education or employment access, benefits, or opportunities.

## **2. Discrimination**

Discrimination is different treatment with respect to a person's employment or participation in an Education Program or Activity based, in whole or in part, upon the person's actual or perceived Protected Characteristic(s). Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

### **a. Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived Protected Characteristic(s) and that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

### **b. [Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.]

## **3. Discriminatory Harassment**

- Unwelcome conduct on the basis of actual or perceived Protected Characteristic(s),
- based on the totality of the circumstances,

- that is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's program or activity.

#### 4. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New Mexico regard Sexual Harassment, a specific form of Discriminatory Harassment, as an unlawful discriminatory practice.

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

The University has adopted the following definitions of Sexual Harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

- a. **Title VII/FHA Sexual Harassment** applies to situations where an Employee is subjected to workplace Sexual Harassment [or where a situation involves a residential Complainant in University-provided housing].
  - Unwelcome verbal, written, graphic, and/or physical conduct;
  - that is severe or pervasive and objectively offensive;
  - on the basis of Sex, that
  - unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.
- b. **Title IX Sexual Harassment**, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual Harassment includes:

Conduct on the basis of Sex, or that is sexual in nature, that satisfies one or more of the following:

- 1) **Quid Pro Quo:**
  - An Employee of the University,
  - conditions the provision of an aid, benefit, or service of the University,
  - on an individual's participation in unwelcome sexual conduct.
- 2) **Sexual Harassment (Hostile Environment):**
  - Unwelcome conduct,
  - determined by a Reasonable Person,
  - to be so severe, and
  - pervasive, and,
  - objectively offensive,
  - that it effectively denies a Complainant equal access to the University's program or activity.
- 3) **Sexual Assault:**
  - **Rape:**

- Penetration, no matter how slight,
    - of the vagina or anus of a person,
    - with any body part or object, or
    - oral penetration
      - of a sex organ of the Complainant, or
      - by the Respondent's sex organ,
    - without the consent of the Complainant,
    - including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
  - **Fondling:**
    - The touching of the private body parts (buttocks, groin, breasts) of the Complainant by the Respondent, or
    - the Respondent's private body parts touching the Complainant, or
    - the Respondent causing the Complainant to touch the Respondent's or their own private body parts,
      - for the purpose of sexual gratification,
      - without the consent of the Complainant,
      - including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
  - **Incest:**
    - Sexual intercourse,
    - between persons who are related to each other,
    - within the degrees wherein marriage is prohibited by New Mexico law.
  - **Statutory Rape:**
    - Sexual intercourse,
    - with a person who is under the statutory age of consent of 16 years old.
- 4) **Dating Violence:**
- Violence,
  - on the basis of Sex,
  - committed by a Respondent,
  - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant
    - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
      - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
      - Dating Violence does not include acts covered under the definition of Domestic Violence
- 5) **Domestic Violence:**
- Violence,

- on the basis of Sex,
- committed by a Respondent who is a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Mexico, or
- 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.

**6) Stalking:**

- A Respondent engaging in a course of conduct,
- on the basis of Sex,
- directed at the Complainant, that
  - would cause a Reasonable Person to fear for the person's safety, or the safety of others; or
  - Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

**5. Sexual Misconduct**

a. See [NMT Sexual Misconduct Policy](#)

**b. Sexual Exploitation:**

- Any person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above,
- for their own benefit or for the benefit of anyone other than the person being exploited.
- Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Electronically distributing (e.g., Airdropping, Snapchatting) nude or sexual photos or videos of another person without their consent
  - Invasion of sexual privacy (e.g., doxing)
  - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
  - Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable



expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deep fakes)

**6. Other Prohibited Conduct (when motivated by the Complainant's Protected Characteristic(s)/status)**

**a. Bullying:**

- Repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant,
- that is not speech or conduct that is otherwise protected by the First Amendment.

**b. Endangerment:**

- Threatening or causing physical harm;
- extreme verbal, emotional, or psychological abuse; or
- other conduct which threatens or endangers the health or safety of any person or damages their property.

**c. Hazing:**

- Any act or action
- which does or is likely to endanger the mental or physical health or safety of any person
- as it relates to a person's initiation, admission into, or affiliation with any University group or organization.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the student group or student organization, for an allegation of Hazing to be upheld
- It shall not constitute an excuse or defense to a Hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained
- The actions of alumni, active, new, and/or prospective members of a student group or student organization may be considered Hazing

**d. Retaliation**

- The University or any member of the University's community,
- taking or attempting to take materially adverse action,
- by intimidating, threatening, coercing, harassing, or discriminating against any individual,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy and associated procedures.

The exercise of rights protected under the First Amendment does not constitute Retaliation. It is also not Retaliation for the University to pursue disciplinary action against those who make materially false statements in bad faith in the course of a resolution process under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **B. Where to Report**

### **1. Title IX Coordinator**

The Title IX Coordinator is the individual designated by the University to coordinate its efforts to comply with Title IX responsibilities. All reports of Title IX Prohibited Sexual Conduct or other violations Sexual Harassment policy should be reported to the **New Mexico Tech Title IX Coordinator**.

Any person may report Title IX Prohibited Conduct (whether or not the individual reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

#### **Title IX Coordinator**

Peter Phaiah, Ph.D.  
238 Fidel Student Center  
Socorro, Nm 87801  
(575)835-5953  
[titleixcoordinator@nmt.edu](mailto:titleixcoordinator@nmt.edu)

### **2. Deputy Title IX Coordinator**

The Title IX Coordinator may delegate responsibility for handling a report to a Deputy Title IX Coordinator, as appropriate, or to another office or individual in the event the matter reported falls outside of the scope of this Title IX Procedure.

**Deputy Title IX Coordinator**

Randy Saavedra  
Affirmative Action/EEOC Director & ADA Compliance Officer  
Cramer Hall 115  
801 Leroy Place  
Socorro, NM, 87801  
(575) 835-5005  
[randy.saavedra@nmt.edu](mailto:randy.saavedra@nmt.edu)

**3. Other Senior University Officials**

Notice of allegations of Title IX Prohibited Conduct to the Title IX Coordinator, a Deputy Title IX Coordinator, or an official with authority to institute corrective measures on the University's behalf, triggers the University's response obligations under Title IX. At New Mexico Tech, such officials include the President, Deans, Directors, Vice Presidents of the University, and supervisors

**4. Online Reporting Form**

Reports of Title IX Prohibited Conduct or violations of the NMT Sexual Misconduct Policy can also be reported online utilizing [Title IX & Sexual Misconduct Report](#). This report is sent directly to the Title IX Coordinator and Deputy Title IX Coordinator. Reports may be sent anonymously, however, the University's ability to respond to the allegations and Investigate may therefore be limited.

**5. Reports to Law Enforcement**

If the individual is in immediate danger, or believes there could be an ongoing threat to the individual or the community, please call 911 or 9-911 from a campus phone or use a blue emergency phone tower on campus.

For conduct that could also constitute a crime under New Mexico law, a Complainant is encouraged—but not required—to contact the police by dialing 911 or the local police agency in the jurisdiction in which the alleged incident occurred. New Mexico also provides that individuals who experience sexual violence are encouraged to preserve evidence and to note the identity and location of Witnesses. Contacting law enforcement to make a report allows for forensic evidence to be collected, including a SANE exam if needed, which may be helpful if a decision is made to pursue criminal charges. For more information about how to obtain a SANE exam, see:

<http://abqsane.org>

University officials will assist students and employees in contacting local law enforcement authorities, if you request assistance. If you believe that there is an ongoing threat to your safety from a particular individual, you may request an emergency protective restraining order from NMT Police Department or Socorro Police Department. The Title IX Coordinator or Dean of Students also has the ability to issue **No Contact Orders** that are limited to the NMT campus and campus programs and activities. If the alleged incident occurred on the New Mexico Tech campus (and the alleged incident is not ongoing), individuals may contact the New Mexico Tech University campus police at its non-

emergency telephone number (575) 835-5011.

Additionally, Residence Life staff, Graduate Life Office Dean, and the Confidential Support Team staff, are available to assist students in making such a report.

Additionally, the Employee Assistance Program (EAP) staff is available to assist faculty, staff, and postdoctoral scholars in making such a report.

## **C. When to Report and Confidential Resources**

There is no specific timeframe for individuals who have experienced conduct that may constitute Title IX Prohibited Conduct to make an Initial Report pursuant to this Title IX Procedure. Individuals are, however, encouraged to make a report soon after the incident in question in order to maximize the University's ability to investigate and reach a finding.

At any time (whether or not an individual decides to make a report of Title IX Prohibited Conduct to the Title IX Coordinator, Deputy Title IX Coordinator or other Senior University Official), an individual may contact University Confidential Resources that can provide emotional support and counseling.

The University makes available Confidential Resources for consultation regarding reports of Title IX Prohibited Conduct or other offenses. Confidential Resources do not disclose information received by them with any other office or person, including the Title IX office, and therefore meeting with a Confidential Resource will never lead to a University response or Investigation. However, Confidentiality does not extend to reasonable belief that a minor (under age 18) has been harmed or is at risk of being harmed, which by law must be reported to law enforcement or child protective services.

Similarly, if a client, or a close relation of the client, makes a specific threat of planning to kill or seriously harm another person to a Confidential counselor, this also requires a report to law enforcement. In The University's Confidential Resources and Confidential community resources can be found at [counseling@nmt.edu](mailto:counseling@nmt.edu).

When the allegations described could be a crime under the Clery Act or New Mexico law, University staff members designated as [Campus Security Authorities](#) are also required by New Mexico law to notify the New Mexico Tech University campus police. Under New Mexico law, violent crimes, including sexual assault, and hate crimes must be reported immediately by calling 9-1-1 or 575-835-5555.

Except in the event the person who is the subject of the potential criminal act is a minor, the name of this individual should not be released to the New Mexico Tech Campus Police without the individual's consent.

## **D. How to Report**

Complainants who experience any type of sexual harassment or violence are encouraged to seek help as identified above. Any person may report Title IX Prohibited Conduct, whether or not the individual reporting is the person alleged to have experienced the

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conduct. To make an Initial Report of Title IX Prohibited Conduct, the Title IX Office will ask for the following information, if known:

1. Name of Complainant
2. Complainant's role, if any, within the University (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow, alumni, other [describe])
3. Name of Respondent
4. Respondent's role within the University (undergraduate student, graduate student, faculty, staff, postdoctoral scholar, fellow)
5. Date of the incident
6. Location of the incident
7. Time of the incident
8. Nature of the conduct (provide specific details of the report)
9. Date of previous report (if any)
10. To whom any previous report was made (if any)

#### **IV. PROCEDURE: REPORTS, INITIAL RESPONSE, INFORMAL RESOLUTION, FORMAL COMPLAINT, INVESTIGATION, HEARING, AND APPEAL**

##### **A. Receipt of an Initial Report or Complaint of Title IX Prohibited Conduct**

1. **Initial Assessment.** The Title IX Coordinator conducts an initial assessment, typically within five (5) business days of receiving Notice or a Formal Complaint. The initial assessment typically includes:
  - a. Assessing whether the reported conduct may reasonably constitute a Policy violation
  - b. Determining whether the University has jurisdiction over the reported conduct
  - c. Offering and coordinating supportive measures for the Parties
  - d. Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options
  - e. Determining whether the Complainant wishes to file a Formal Complaint
  - f. Notifying the Respondent of the available resolution options if a Formal Complaint is made
2. **Helping a Complainant Understand Resolution Options.** If the Complainant indicates they wish to file a Formal Complaint, the Title IX Coordinator will work with the Complainant to determine which resolution option they prefer. The Title IX Coordinator will seek to abide by the Complaint's wishes but may have to take another approach depending upon their assessment of the situation.

If the Formal Grievance Process is pursued, 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. Informal Resolution cannot be used to resolve a Formal Complaint of Title IX Sexual Harassment involving an Employee Respondent and a Student Complainant.

If the Complainant does not want any action taken, the Title IX Coordinator will consider that request. Typically, allegations of Student-on-Student and Employee-on-Employee misconduct will not prompt the Formal Grievance Process unless deemed necessary by the Title IX Coordinator, though the Complainant can elect to pursue the formal process in the future. The Title IX Coordinator may need to refer allegations of Employee-on-Student misconduct to the Formal

Grievance Process regardless of the Complainant's wishes, depending on the nature of the allegations.

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 sign a Formal Complaint.

3. **Offer of Supportive Measures.** Upon receipt of notice of an Initial Report of Title IX Prohibited Conduct (which may come from any individual), the Title IX Coordinator or Deputy Title IX Coordinator (or their designee) will promptly contact the Complainant and inform the Complainant:
  - a. of the availability of Supportive Measures, including that the Supportive Measures are available with or without filing a Formal Complaint;
  - b. of the availability of confidential counseling resources both on and off campus;
  - c. how to file a Formal Complaint;
  - d. that, if the reported conduct could be a crime, the Complainant has the right but not the obligation to file a police report, and that if there is a police investigation, the Title IX Coordinator will coordinate with law enforcement; and
  - e. explain the importance of preserving evidence and identification and location of Witnesses.

If on the face of the Initial Report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another University process. Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

Supportive Measures will be different for every matter and will be based on individualized review. New Tech Mexico offers confidential counseling to community members, through the New Mexico Counseling Center for students, and through the Employee Assistance Program (EAP) for others. Other 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 (e.g. No Contact Order, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University will maintain as Private any Supportive Measures) provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

The Title IX Coordinator or Deputy Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator or Deputy Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures.

4. **Privacy and Confidentiality.** Notice to the Title IX Coordinator, Deputy Title IX Coordinator, or other Senior University Official of conduct that could constitute Title IX Prohibited Conduct triggers the University's obligations under this Title IX Procedure. If the Title IX Coordinator, Deputy Title IX Coordinator, or other Senior University Official becomes aware that Title IX Prohibited Conduct is alleged to have occurred, the University has an obligation to review the available information and determine whether to proceed to an Investigation. In this context, Privacy and Confidentiality have distinct meanings.
  - a. **Privacy** means that information related to a complaint will be shared with only a

limited number of University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are responsible for the University’s response to Title IX Prohibited Conduct 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”), and the privacy of employee records will be protected in accordance with New Mexico law and University policy.

- b. **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. The University has designated individuals who have the ability to have privileged communications as Confidential Resources.

The University will make reasonable and appropriate efforts to preserve an individual’s Privacy and to protect the Confidentiality of information. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee Confidentiality relating to incidents of Title IX Prohibited Conduct except where those reports are privileged communications to Confidential Resources. Even then, there are exceptions to maintaining Confidentiality set by law; for example, physicians and nurses who treat any physical injury sustained during a sexual assault are required to report it to law enforcement. Also, physicians, nurses, psychologists, psychiatrists, teachers and social workers must report a sexual assault committed against a person under age 18.

Except for Confidential Resources, information shared with other individuals is not legally protected from being disclosed. However, the University takes requests for Privacy and Confidentiality seriously; to the extent it can do so while at the same time fulfilling its responsibility to provide a safe and nondiscriminatory environment for all students and the University community. The University in such circumstances will make sure the Complainant is aware they are protected from Retaliation.

Should a Complaint make a request that the University not disclose the Complainant’s identity to the Respondent, the Title IX Coordinator will inform the Complainant that the University’s ability to respond to the allegations and Investigate may therefore be limited if the request is granted. A Complainant who initially requests Confidentiality is not prohibited from later requesting that the University conduct a full Investigation.

Whether or not the Complainant Requests Confidentiality, the University will keep Private the identity of all Complainants, Respondents, and Witnesses, except as necessary to carry out this Procedure or as may be required by FERPA or other law.

## 5. **Emergency Removal/Interim Suspension/Administrative Leave**

### a. **Individualized Safety and Risk Analysis.**

Based on an Initial Report or Formal Complaint of Title IX Prohibited Conduct, the Title IX Coordinator, in consultation with the Behavior Intervention Team (BIT) or others as appropriate, may undertake an individualized safety and risk analysis to determine whether the allegations indicate the Respondent poses an immediate

threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Prohibited Conduct. If the University determines removal is appropriate, the Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

**b. Administrative Leave of a Non-Student Respondent.**

The University may place a non-student Respondent on administrative leave after notice of a report of Title IX Prohibited Conduct and during the pendency of resolution of the matter.

## **B. Filing a Formal Complaint**

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

1. **Complainant submits Formal Complaint.** A Complainant may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Respondent and requesting that the University Investigate the allegation of Title IX Prohibited Conduct.

At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the University's Programs or Activities. Attempting to participate includes circumstances where the Complainant has taken a leave of absence or has otherwise discontinued participation in University Programs or Activities, but intends to return to their University affiliation.

2. **Title IX Coordinator submits Formal Complaint.** The Title IX Coordinator may complete and sign a Formal Complaint.

A Complainant may request that the University not proceed with an Investigation or further resolution under this Procedure. A Complainant's wishes with respect to whether the University Investigates will be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances.

The Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the campus community some circumstances require the University to move forward with an Investigation, even if the Complainant requests otherwise. The University's decision is subject to a balancing test that requires the University to consider a range of factors, including:

- a. The status of the Respondent and whether the Respondent has authority over students and/or staff.
- b. Whether there have been multiple reports of Title IX Prohibited Conduct (or other violations of the Sexual Misconduct Policy relating to a single Respondent;
- c. The seriousness of the alleged Title IX Prohibited Conduct (e.g., whether the alleged conduct involved a weapon, physical restraints or battery);
- d. Whether there is a likelihood that the Respondent would be a danger to the Complainant or the New Mexico Tech community;
- e. The age of the Complainant;
- f. Whether the report of Title IX Prohibited Conduct can be effectively addressed



- through another type of intervention; and
- g. The ability of the University to obtain relevant evidence.

The Title IX Coordinator has ultimate discretion as to whether a Formal Complaint is made and may consult with appropriate University Employees, and/or conduct a violence risk assessment to aid their determination whether to sign a Formal Complaint on behalf of the Complainant.

If a Complainant is not participating or attempting to participate in the University's Education Program or Activity at the time of making a Formal Complaint, they can request that the Title IX Coordinator sign a Formal Complaint. When the Title IX Coordinator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Title IX Coordinator declines to sign a Formal Complaint, alternative processes may be available and can be explored with the Title IX Coordinator.

### **C. Receipt of a Formal Complaint of Title IX Prohibited Conduct**

1. **Initial Assessment of Formal Complaint.** The Title IX Coordinator shall make an initial assessment as to whether a Formal Complaint submitted by a Complainant contains sufficient allegations on its face to describe an act of Title IX Prohibited Conduct covered by this Title IX Procedure. If it does not, the University may seek new or additional information from the Complainant, and may inform the Complainant about other University procedures that may be more applicable to the alleged conduct.

If an assessment of a Formal Complaint submitted by a Complainant reveals that there are insufficient allegations in the Formal Complaint to determine whether a Title IX Investigation can go forward and/or issue a Notice of Formal Complaint (for example, the identity of the Respondent is not provided), the Title IX Coordinator can request additional information from the Complainant, and inform the Complainant that a Notice of Formal Complaint cannot be issued and an Investigation cannot go forward until more information is provided.

2. **Notice of Formal Complaint.** Upon receipt of a Formal Complaint, the University will provide a Notice of Formal Complaint to the Parties for whom the University knows their identity, including the following details:
  - a. A description of the University's Title IX Procedure, including any Informal Resolution process.
  - b. A description of the allegations including sufficient details known at the time such as:
    - the identities of the Parties involved in the incident;
    - the conduct allegedly constituting Title IX Prohibited Conduct; and
    - the date and location of the alleged incident.
  - c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of a Hearing.
  - d. A statement that the Parties may have an Advisor or Support Person of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described herein.
  - e. The Notice of Formal Complaint will be provided with sufficient time to respond

and prepare for any investigative interviews.

- f. Once a Notice of Formal Complaint is issued, a Respondent student's ability to receive a degree is placed on hold as well as a hold is placed on the student's account prohibiting official transcripts from being issued until the case has been resolved.
  - g. After receiving 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 Hearing. The Deputy Title IX Coordinator will consider this input in finalizing any Hearing Schedule.
3. **Ongoing Notice Requirement.** If, in the course of an Investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Formal Complaint provided, the University will provide notice of the additional allegations to the Parties whose identities are known.
4. **Dismissal (Mandatory and Discretionary)** The University must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
- a. The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proven
  - b. The Sex-based conduct did not occur in the University's Education Program or Activity (including buildings or property controlled by recognized student organizations) and/or the University does not have control of the Respondent
  - c. The Sex-based conduct did not occur against a person in the United States
  - d. The Complainant alleging Sex-based conduct is not participating in or attempting to participate in the University's Education Program or Activity at the time of filing the Formal Complaint, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of the University.

The University **may** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

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

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

Upon any dismissal, the University will promptly and simultaneously send the Parties written notice of the dismissal and the rationale for doing so.

This dismissal decision is appealable by any party. [The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.]

When the Title IX Coordinator has signed a Formal Complaint and later determines that the basis for signing is no longer compelling, the Title IX Coordinator may rescind the Formal Complaint and notify the Parties accordingly. This is not a dismissal, and there is no opportunity to appeal because the Complainant may still file a Formal Complaint if they wish to, in most circumstances.

5. **Appeal of Dismissal.** The Parties may appeal a decision to dismiss or not to dismiss their Formal Complaint. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal decision.

A dismissal may be appealed on the following grounds:

- a. A procedural irregularity affected the outcome of the matter
- b. New evidence that was not reasonably available at the time the Formal Complaint was submitted
- c. The Title IX Coordinator had a conflict of interest or bias for or against Complainants or Respondents
- d. The dismissal was erroneously granted or denied

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from the Complainant, the Title IX Coordinator will forward the request to the Dismissal Appeal Decision-maker for consideration.

If the appeal request does not provide information that meets the grounds in the Policy, the Dismissal Appeal Decision-maker will deny the request, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in the Policy, then the Dismissal Appeal Decision-maker will notify the Title IX Coordinator of their decision and rationale in writing. The effect will be to reinstate the Complaint.

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 Dismissal Appeal Decision-maker has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator's discretion, and the Complainant will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal 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.

6. **Emergency Removal/Interim Suspension of a Student.** The University may emergency remove a Student accused of Title IX Sexual Harassment upon receipt of a Formal Complaint or at any time during the Formal Grievance Process. Prior to an emergency removal, the University will conduct an individualized risk assessment and may remove the Student if that assessment determines that an immediate threat to the physical health or

safety of any Student or other individual justifies removal. Students accused of other forms of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct (not Sex-based) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or 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 emergency removal or 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 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 emergency removal or 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 emergency removal or interim suspension will be deemed waived. A Student can later request a meeting to show why they are no longer an immediate threat because conditions related to the threat have changed. A Complainant and their Support Person may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable 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 emergency removal or 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.

7. **Placing Employees on Leave.** When the Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, existing provisions of the [NMT 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.

## **D. Rights and Responsibilities of Parties and Witnesses**

During an Investigation and Hearing under this Title IX Procedure, the Parties and Witnesses have the following responsibilities and rights:

### **1. Responsibilities of the Parties and Witnesses**

- a. The responsibility to be truthful, to cooperate with the process, and to follow the directions of University staff and agents responsible for administering this process;
- b. The responsibility not to Retaliate against or Intimidate any individual who has reported Title IX Prohibited Conduct or who has participated as a Party or Witness in the process;
- c. The responsibility to keep private (by not disseminating beyond Support Persons) documents, materials, and information received from the University during this process; and,
- d. The responsibility to destroy, when so directed by the University, evidentiary materials and/or writings submitted by the other Party as party of the process.

**2. Rights of all Parties and Witnesses**

- a. The right to be protected from Retaliation and Intimidation where one has reported Title IX Prohibited Conduct or participated as a Party or Witness in the process;
- b. The right to exercise First Amendment rights and not be subject to Investigation for Retaliation for the exercise of such rights;
- c. The right to receive information regarding consequences for knowingly making false statements or knowingly submitting false information during the Title IX Procedure under the Student Code of Conduct, the Employee Handbook, and the Regulation Governing Academic Freedom and Tenure (RGAF);
- d. The right to take breaks during cross-examination at a Hearing, as needed and as permitted by the Hearing Officer.

3. **Rights of Student Parties and Student Witnesses.** The right not to be disciplined for drug and alcohol violations (relating to voluntary ingestion) or similar Student Code of Conduct offenses in connection with the reported incident that do not place the health or safety of any other person at risk.

**4. Rights of Student Parties**

- a. The right to be treated equitably and receive the same equitable access to Supportive Measures;
- b. The right to have each phase of the Title IX Procedure completed within a reasonably prompt timeframe (as set forth in Appendix C);
- c. The right to a Support Person/Support Person to support and/or advise the Party (as described in Section E.2.);
- d. The right to receive a Notice of Formal Complaint that provides sufficient detail about the allegations and the applicable University policies for the Respondent to be able to respond and for both Parties to understand the scope of the Investigation;
- e. The right to decline to give a statement about the allegations or attend a Hearing;
- f. The right to participate in the Investigation, including by identifying fact Witnesses and Expert Witnesses and identifying and/or providing inculpatory, exculpatory and other relevant information and evidence to the Investigator;
- g. The right to receive any Notice of Dismissal
- h. The right to appeal any Notice of Dismissal (as described in Section C.5.);
- i. The right to review all evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the Parties to inspect, review, and respond to the evidence.
- j. The right to receive an Investigative Report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the Parties to respond;
- k. The right to have the matter heard at a live Hearing by a neutral panel who will determine the matter using Preponderance of the Evidence standard and who will not prejudge the outcome of a case;
- l. The right to a Hearing Support Person (as described in Section K.7.d.) who will conduct oral cross-examination at the live Hearing on behalf of the Party;
- m. The right to jointly agree with the other Party to waive cross-examination through the Hearing Support Persons and instead submit written cross-examination questions to the Hearing Panel to conduct the examination. Parties will not be pressured to make this election or be penalized in any way for electing to conduct cross-examination

- through their Hearing Support Person;
- n. The right to receive a Written Determination Regarding Responsibility (if any) (as described in Section P.7.);
- o. The right to appeal the Written Determination Regarding Responsibility to a neutral Appeal Officer.
- p. The right to receive a Notice of Outcome of Appeal;
- q. Prompt and fair resolution of prohibited contact reports; and
- r. Information about applicable support advocacy resources.

**5. Responsibility of the Respondent**

- a. In accordance with University procedures, the Respondent must attend the initial meeting (e.g., physically, via video conferencing) with the designated University Official to hear the allegations and better understand the process. The Respondent has the right to not to say anything and bring a Support Person/Support Person with them, but they must attend the meeting.
- b. Haven been given adequate notice, failure to attend this initial meeting with adequate notice will result in an Interim Suspension until which time the Respondent does attend the meeting.

**6. Rights of the Respondent**

- a. The right not to have any disciplinary Sanctions imposed before a finding of responsibility in accordance with this Title IX Procedure; and
- b. The right to be presumed not responsible for the alleged Title IX Prohibited Conduct until a determination regarding responsibility is made at the conclusion of the Hearing.

**7. Right to Have Trained Resolution Process Team (RPT).** The University relies on a pool of trained RPT members to carry out the resolution options.

- a. RPT Member Roles. RPT 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 Formal Complaints
  - Perform or assist with initial assessment
  - Advocate to Parties
  - Informal Resolution Facilitator
  - Investigator
  - Hearing Facilitator
  - Decision-maker
  - Appeal of Dismissal Decision-maker
  - Appeal Decision-maker
- b. RPT Member Appointment. The Title IX Coordinator appoints the RPT, which acts 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 Formal Complaints, the University can also designate permanent roles for individuals in the RPT.

## E. Support During in the Formal Grievance Process

The Parties may each have a Support Person or Support Person of their choice present with them for all meetings, interviews, and hearings within the Formal Grievance Process, if they so choose.

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/Hearing Panel Chair.

1. **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, including intake. The Parties may select whomever they wish to serve as their Support Person as long as the Support Person is eligible and available. Parties have the right to choose not to have a Support Person in the initial stages of the Formal Grievance Process, prior to a hearing.

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 Resolution Process Team (RPT), the University will have trained Support Persons and familiarized them with the University's Formal Grievance 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. However, all institutionally appointed Support Persons will be provided with similar training.

If the Parties choose a Support Person from outside the RPT, the Support Person may not have been trained by the University and may not be familiar with University policies and procedures.

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.

The University may permit Parties to have more than one Support Person, or a Support Person and a 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 [comply with that request **OR** refuse that request at the discretion of the Title IX Coordinator **OR** agree to copy both the party and their Support Person on all communications.]

2. **Support Person's Role in the Formal Grievance Process.** Support Persons should help the Parties to prepare for each meeting or hearing 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 Formal Grievance Process. Although the Support Person generally may not speak on behalf of their

advisee, except for conducting cross-examination during a hearing, the Support Person may consult with their advisee, either privately as needed, or by conferring or passing notes during any 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.

Where applicable under state law or University policy, Support Persons or attorneys are permitted to fully represent their advisees or clients in Formal Grievance Process proceedings, including all meetings, interviews, and hearings. Although the University prefers to hear from Parties directly, in these cases, Parties are entitled to have evidence provided by their chosen representatives.

The Title IX Regulations require a form of indirect questioning during the hearing, which must be conducted by the Parties' Support Persons. The Parties are not permitted to directly question each other or any Witnesses. If a party does not have a Support Person for a hearing, the University will appoint a trained Support Person for the limited purpose of conducting any questioning of the Parties and Witnesses.

3. **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, as well as the Directly Related Evidence file. 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. The 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.

4. **Support Person Expectations.** The University generally expects a Support Person to adjust their schedule to allow them to attend University meetings/interviews/hearings when planned, but the University may change scheduled meetings/interviews/hearings 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/hearing 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.

5. **Support Person Policy Violations.** Any Support Person who oversteps their role as defined by the Policy and these Procedures, who shares information or evidence in a manner inconsistent with the Policy and Procedures, 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.



## **F. Notice of Investigation and Allegations (NOIA)**

1. The Title IX Coordinator will provide the Parties written Notice of the Investigation and **Allegations** (the “NOIA”) upon commencement of the Formal Grievance 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.
2. The NOIA will include:
  - a. A meaningful summary of all allegations
  - b. The names of the involved Parties (if known)
  - c. The precise misconduct being alleged
  - d. The date and location of the alleged incident(s) (if known)
  - e. The specific policies/offenses implicated
  - f. A description of, link to, or copy of the applicable procedures
  - g. 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
  - h. 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
  - i. 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 and Directly Related Evidence obtained
  - j. A statement of the potential sanctions/responsive actions that could result
  - k. A statement about the University’s policy on Retaliation
  - l. Information about process confidentiality
  - m. Information on the need for each party to have a Support Person of their choosing and suggestions for ways to identify a Support Person
  - n. A statement informing the Parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the Formal Grievance Process
  - o. Information about how a party may request disability accommodations or other support assistance during the Formal Grievance Process
  - p. An instruction to preserve any evidence that is directly related to the allegations
3. 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 via mail, email, and/or received in-person, notice is presumptively delivered.

## **G. Resolution Timeline**

The University will make a good faith effort to complete the Formal Grievance Process within sixty to one hundred and twenty (60-120) 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 Formal Grievance Process, as well as notification and a

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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 sixty (60) 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 Formal Grievance 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 Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

## **H. Ensuring Impartiality**

No individual materially involved in the administration of the Formal Grievance 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 Formal Grievance 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 Formal Grievance 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 may 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.

## **I. Resolution Options Overview**

The Formal Grievance 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 and these Procedures.

There is an expectation of privacy around what Investigators share with Parties during interviews and for any materials the institution shares with the Parties during the resolution process. The Parties have discretion to share their own knowledge and evidence with others if they choose, except for information the Parties agree not to disclose as part of an Informal Resolution. University encourages Parties to discuss any sharing of information with their Support Person before doing so.

1. **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. To engage in Informal Resolution, a Complaint must first submit a Formal Complaint.

Three approaches to Informal Resolution are detailed in this section.

- a. **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.
- b. **Accepted Responsibility.** When the Respondent accepts responsibility for violating Policy and accepts the recommended sanction(s), and the Complainant(s) and Title IX Coordinator are agreeable to the resolution terms.
- c. **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 a Formal Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time and initiate or resume the Formal Grievance 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 Formal Grievance Process should Informal Resolution not be successful.

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

Prior to engaging in 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 the University will maintain and under which circumstances they may be released.

#### Informal Resolution Approaches

- a. **Supportive Resolution.** Most commonly offered once a Formal Complaint is filed (whereas supportive measures, as described in 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 Formal 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.

- b. **Accepted Responsibility.** The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance 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 any other appropriate responses in coordination with other appropriate 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 Formal Grievance 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.
- c. **Alternative Resolution.** The University 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 between the Parties; 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 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 Formal Grievance 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 Formal Grievance Process to remedy the impact as required by law. The results of Formal Complaints 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 Formal Grievance Process to determine whether the Policy has been violated.

#### Matters Not Eligible for Informal Resolution

- a. No Informal Resolution process will be offered before a Formal Complaint is filed.
- b. No Informal Resolution process will be offered to resolve Formal Complaints involving a student as Complainant and a staff or faculty member as Respondent.

2. **Formal Resolution Process.** (This entire document minus Section I [Informal Resolution])
3. **Resolution Timeline.** The University will make a good faith effort to complete the Formal Grievance Process within sixty to ninety (60-90) 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 Formal Grievance 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 sixty (60) 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 Formal Grievance 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 Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

4. **Ensuring Impartiality.** No individual materially involved in the administration of the Formal Grievance 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 Formal Grievance 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 Formal Grievance 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 may 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.

## **J. Investigation**

For any allegations in any Formal Complaint not subject to dismissal under this Title IX Procedure, the matter will proceed to an Investigation. The formal Investigation phase is the period during which the Investigator gathers information about the allegations. This period of time is the Parties' opportunity to provide input regarding the collection of evidence, but the burden of gathering evidence and the burden of proof is on the University.

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 the recording, transcript, or 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 recording, transcript, or 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.

1. Investigations involve the following:
  - a. Determining the names of and contacting all involved Parties and potential Witnesses to participate in an investigation interview
  - b. 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
  - c. Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
  - d. Conducting any necessary follow-up interviews with Parties or Witnesses
  - e. Providing the Parties and Witnesses an opportunity to verify the accuracy of either a summary or transcript of their interview(s)
  - f. Soliciting the names of suggested Witnesses and questions each Party wishes to have asked of another Party or Witness
  - g. 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
  - h. Compiling a Directly Related Evidence File
  - i. Providing the Parties and their respective Support Person an electronic or hard copy of the Draft Investigation Report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, 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.
  - j. 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**
  - k. Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report
  - l. Sharing the Final Investigation Report with the Title IX Coordinator for their review and feedback
  - m. Providing the Title IX Coordinator with the Final Investigation Report and **Directly Related Evidence File**
2. **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 Formal Grievance 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 Formal Complaint.

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.

3. **Interview Recording.** It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance 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.

4. **Method of Information Gathering.** The Investigator may gather information in multiple ways. The Investigator may collect relevant documents and other information and may also interview Parties and/or Witnesses. In addition, a Complainant or Respondent may:
  - a. submit documentary information to the Investigator;
  - b. submit a list of Witnesses to be interviewed by the Investigator; and/or
  - c. request that the Investigator attempt to collect documents and other information that are not accessible to the requesting Party.
5. **Medical Records.** For purposes of this Title IX Procedure, the University will not access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to do so.
6. **Past Sexual History.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
7. **Disclosure of Information.** After the Investigator has concluded the collection of evidence, the Investigator will send the Parties and their Support Persons all evidence directly related to the allegations, in electronic format or hard copy, with at least ten (10) calendar days for the Parties to inspect, review, and respond to the evidence.

This is the opportunity for the Parties to identify New Evidence or Rebuttal Evidence. New Evidence is evidence that was not available earlier in the process, could not have been available based on reasonable and diligent inquiry, and is relevant to the matter. Rebuttal Evidence is evidence presented to contradict other evidence in the file, which could not have been reasonably anticipated by a Party to be relevant information at the time of the Investigation. New Evidence and Rebuttal Evidence may be included or excluded from the file, but in no event is this section intended to permit a Party who has declined to give a



statement about the incident during the Investigation to give such a statement for the first time after the Investigator has concluded the collection of all other evidence. This section is intended to be invoked in rare instances to allow for the inclusion of information that was not available during the Investigation or that could not have been reasonably anticipated to be relevant to rebut an issue that came to light.

8. **Investigative Report.** After the Investigator has received and considered the Parties' responses to the evidence, the Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the Parties and their Support Persons in electronic format or hard copy, with at least ten (10) calendar days for the Parties to respond in writing to the Investigative Report. After the Title IX Coordinator has reviewed the Parties' responses to the Investigative Report, the Title IX Coordinator will make the determination whether to dismiss the Formal Complaint or proceed to a Hearing.
9. **Evidentiary Considerations.** The Investigator(s) and the Decision-maker(s) will only consider Relevant or Directly Related Evidence.

Neither the investigation nor the hearing will consider:

- a. Questions or evidence about the Complainant's sexual predisposition
- b. Questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent
- c. Questions or evidence about a Party or Witness's records that are made or maintained by a physician, psychologist, or psychiatrist unless the party or Witness provides voluntary, written consent for the records to be considered

Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

## K. Post-Investigation Options

1. **Dismissal of Formal Complaint After Investigation**
  - a. **Mandatory Dismissal.** The University must dismiss the Formal Complaint if after the Investigation it is determined by the Title IX Coordinator that the conduct alleged in the Formal Complaint does not constitute Title IX Prohibited Conduct or did not occur against a person in the United States. Any conduct dismissed under this Title IX Procedure that could constitute a violation of NMT's Sexual Misconduct Policy or any other University policy may be referred to another applicable University process. If the Formal Complaint alleges multiple claims that

arise out of the same facts and circumstances, and the Title IX Coordinator determines that some conduct is covered under Title IX and some is not, all claims may proceed together to be resolved under this Title IX Procedure. If, however, the Title IX Coordinator determines some claims do not arise out of the same facts and circumstances, are not covered by Title IX, and could violate other University policy, that conduct will be dismissed and referred to another University process, and the Title IX Procedure will precede with respect to the covered conduct only.

- b. **Discretionary Dismissal.** The University may dismiss the Formal Complaint if:
- The Respondent is no longer enrolled or employed by the University;
  - Specific circumstances prevent the University from gathering sufficient evidence to reach a determination; or
  - The Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations therein.
  - A Complainant may notify the Title IX Coordinator at any time that the Complainant does not wish to proceed with the Investigation and/or Hearing process. If such a request is received, the Title IX Coordinator will inform the Complainant that the University's ability to respond to the allegation may be limited if the allegations are withdrawn.
  - The Title IX Coordinator will consider the factors in Section IV.B.2.b. in reaching a determination as to whether to terminate the Investigation and/or Hearing process. In the event that the Title IX Coordinator determines that the Investigation will continue, the Title IX Coordinator will notify the Complainant of that determination. The Title IX Coordinator will include in that notification a statement that the Complainant is not required to participate in the Investigation and/or Hearing process but that the process will continue. In the event that the Title IX Coordinator determines that the Investigation will be terminated, both Parties will be notified.
- c. **Referral.** In the event of dismissal after the Investigation (mandatory or discretionary), the Title IX Coordinator may refer some or all of the matter for consideration under another applicable University policy or procedure, if any.
- d. **Notice of Dismissal after Investigation.** Upon dismissal, the University shall promptly send a Notice of Dismissal (mandatory or discretionary) and reason(s) for the dismissal simultaneously to the Parties. If the matter is being referred to another University procedure because it does not constitute Title IX Prohibited Conduct, but could violate other University policy, that information will be included in the notice as well.
- e. **Right to Appeal Notice of Dismissal.** The Parties may appeal a Notice of Dismissal. Each Party may submit a written appeal of up to 6,000 words in length, which will be shared with the other Party. The Parties must submit the appeal by the date determined by the Title IX Office, generally ten (10) calendar days from the receipt of the Notice of Dismissal. The appeal is submitted to an Appellate Officer trained in Sexual Harassment/Assault Process Specialist and will be limited to the following grounds:
- Were there any procedural irregularities that substantially affected the outcome of the matter to the detriment of the Complainant?

- Was there any substantive new evidence that was not available at the time of the decision that could not have been available based on reasonable and diligent inquiry that would substantially affect the outcome of the decision?
- Is the decision one that a reasonable person might have made?

Upon receipt of a Party's appeal, the Hearing Coordinator will share it with the other Party. Each Party may submit a response to the other Party's appeal (no more than 3,000 words). Each Party must submit this response by the date determined by the Hearing Coordinator, generally seven (7) calendar days after the other Party's appeal has been shared. The appealing Party will have access to the other Party's response to the appeal, but no further responses will be permitted.

The Title IX Coordinator is permitted, but not required, to file a response to a Party's appeal to respond to concerns relating to procedural irregularities including the Investigation. The Title IX Coordinator may submit one response for each Party that files an appeal (that raises a procedural irregularity). Each response by the Title IX Coordinator should be no more than 1,500 words. The Parties will have access to the Title IX Coordinator response(s) to the appeal, but no further responses will be permitted.

The remedy is limited to directing the Title IX Coordinator to issue a Notice of Hearing and proceed to a Hearing.

2. **Informal Resolution.** As set forth in Section IV.I.1, the Title IX Coordinator may offer an Informal Resolution for eligible matters at any time after a Formal Complaint is filed, including after the Investigation has concluded.
3. **Notice of Hearing/Setting of Hearing.** For any Formal Complaints not subject to Dismissal or Informal Resolution after Investigation, the matter will proceed to a Hearing. The Title IX Coordinator will notify both the Complainant and the Respondent in writing that the matter has been charged and referred to a Hearing Panel—to decide the matter. The Hearing Coordinator will promptly set the Hearing based on the availability of the Parties, Witnesses, and Hearing Panel.

The Title IX Coordinator will send the Parties a notice of hearing letter no less than ten (10) business days prior to the hearing. Once delivered via mail, email, and/or received in-person, notice is presumptively delivered. The notice includes:

- a. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result
  - b. The time, date, and location of the hearing
  - c. A description of any technology that will be used to facilitate the hearing
  - d. Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and Witnesses participating in the hearing, the identity of the Decision-maker, details related to questioning, the role of Hearing Support Persons, impact/mitigation statements, and how to request disability accommodations or other assistance
4. **Creation of Hearing File.** The Hearing Coordinator (working with the Investigator) will create the initial Hearing File within seven (7) calendar days after the issuance of the Notice of Hearing. However, in more complex cases involving, for instance, multiple allegations and/or Witnesses, the creation of the Hearing File may take longer. The

Hearing File will be comprised of the Final Investigation Report, all relevant but not impermissible evidence, including the names of all Parties, Witnesses, and Support Persons, as well as the proposed Hearing Panelist (i.e., Decision-makers). Before the Hearing File is made available to the Parties, the Hearing Coordinator will redact personally identifying information from the Hearing File, such as phone numbers, addresses, and medical information. The Parties will receive electronic access (e.g., secured shared drive) to view the Hearing File. Parties will also receive a log describing gathered materials.

The Decision-makers will be provided electronic copies of the Hearing File at least ten (10) business days in advance of the hearing.

5. **Witness Participation.** Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. They may participate in-person or via video technology that allows the Decision-maker and the Parties to see and hear the Witness while that person is speaking. Witnesses are not permitted to be accompanied by a Support Person without the Title IX Coordinator's express permission. At the discretion of the Decision-maker, a Witness may participate by phone if no other reasonable alternative is available.

The Title IX Coordinator will notify all Witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule the hearing.

Any Witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- a. All Parties and the Hearing Panel Chair assent to the new Witness's participation in the hearing without remanding the Formal Complaint back to the Investigator,
- b. The Hearing Panel Chair deems the evidence presented by the new Witness to be relevant and not information already established in the record, and
- c. The Witness's late involvement was not the result of bad faith by the Witness, the Parties, or others.

If the above criteria are not met, but the Witness's evidence is deemed relevant and not duplicative, the Decision-maker (i.e., Hearing Panel Chair) may, at their discretion, engage in any of the following actions:

- a. Delay the hearing
- b. Provide the Parties with at least five (5) business days to review the relevant portions of the new Witness's statements, if such statements are submitted
- c. Remand the Formal Complaint back to the Investigator for further investigation or verification
- d. Allow the Parties to review and comment on the testimony of the new Witness

If the evidence is deemed not relevant, the Hearing Panel Chair may proceed with the

hearing absent the new Witness's participation.

6. **Hearing Decision-maker or Hearing Panel Chair.** The Hearing Panel Chair will not have had any previous involvement with the Formal Complaint. The Title IX Coordinator may elect to have an alternate from the ATP sit in throughout the hearing process if a substitute is needed for any reason.

Those who have served as Investigators will be Witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Support Persons for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator.

7. **Live Hearing Requirements.** The following provisions apply to a live hearing:
  - a. **Hearing Venue Options and Recordings.** The live hearing may occur in person or via video technology. The Hearing Panel and Parties must be able to simultaneously see and hear a party or Witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator's discretion.
    - The Parties may make a request to the Title IX Coordinator that the hearing be held in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Title IX Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
    - All hearings will be recorded, and Parties may request to listen to all or any part of the live hearing. Such requests will be submitted to Title IX Coordinator following the live hearing.
    - No unauthorized recordings are permitted.
  - b. **Scheduling.** Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the University's resolution timeline and ensure a prompt resolution. Employees, including Parties and Witnesses, who do not have 12-month contracts are still expected to participate in Formal Grievance Processes that occur during months between contracts.
  - c. **Hearing Participants.** Persons who may be present for a hearing include the Hearing Panel, hearing facilitator/secretary (e.g., Title IX Coordinator), Investigator(s), the Parties and their Hearing Support Person, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Hearing Panel Chair. Witnesses are present only during their portion of the testimony.
  - d. **Hearing Support Persons.** The Parties may have the assistance of a Support Person of their choice at the hearing or can request that the University appoint a trained Hearing Support Person for them. Appointed Support Persons are not attorneys. If a party wishes to have an attorney as their Support Person, they must locate and pay for that attorney themselves.

- During the pre-hearing conference and live hearing, Parties may only be accompanied by their Support Person. No other persons (e.g., additional support persons, Support Persons, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.
  - Parties and Support Persons are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a manner consistent with the Policy (e.g., not recording).
  - During the hearing, all questions that a party wishes to ask must be posed by the Support Person, not the Parties.
  - If the Party does not have a Support Person, the Title IX Coordinator will provide the Party with a Support Person for the purpose of Support Person-conducted questioning.
- e. **Impact Statements.** Each Party may submit an impact and/or mitigation statement to the Title IX Coordinator that the Hearing Panel Chair will review during any sanction determination.
- Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist.
  - The Title IX Coordinator will only provide the impact statements to the Decision-makers if the Decision-makers determines that the Policy has been violated. When the Title IX Coordinator shares the impact statements with the Decision-makers, they will also be shared with the Parties.
- f. **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- g. **Conflicts of Interest or Bias.** The Decision-makers must not have a bias for or against Complainants or Respondents generally or the individual Complainant or Respondent involved in the Formal Complaint.
- The Decision-makers must recuse themselves if such bias or conflict of interest exists.
  - If the Decision-makers believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
  - The Parties may raise challenges that a Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator within two (2) business days of receiving the hearing notice.
  - The Title IX Coordinator will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
  - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
  - The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.

## **L. Pre-Hearing Process**

1. **Expert Witnesses.** Expert Witnesses may be permitted only if:
  - a. the Hearing Panel needs special expertise in order to understand a technical matter, such as relevant forensic evidence;
  - b. an understanding of that technical matter is likely to affect the Hearing Panel's finding; and/or
  - c. there is not a more efficient method of obtaining the information necessary to resolve that technical matter.

If allowed, an Expert Witness may be retained by a Party or by the Title IX Office. If an Expert Witness is retained by a Party, that Party will be responsible for any costs incurred, and the other Party will be allowed to respond to that Expert's written or oral testimony. If an Expert Witness is consulted by the Title IX Office and the expert's opinion or testimony is included in the Hearing File or offered to the Hearing Panel Chair, the Parties will be allowed to respond to that Expert's written or oral testimony. A Party's Expert Witness must be identified in the Investigation phase, unless good cause is shown as to a late discovery of need for such testimony, and must be willing to submit to an interview with the Investigator, in part to determine whether the proposed testimony meets the standard set forth above.

2. **Evidentiary Review Process.** After reviewing the Hearing File, a Party is permitted to make a written request to have evidentiary concerns considered by the Hearing Panel, including any objections to proposed redactions in the Hearing File. Requests to review evidentiary concerns should include all evidentiary issues in one document, which should be no more than 1,500 words in length (including headers, footnotes, captions, charts, audio and/or video statements, and everything else except for the submission of proposed new or rebuttal evidence). The requests should be submitted to the Hearing Coordinator, who will forward all information from the Parties to the Hearing Panel Chair.

In order to consider evidentiary concerns to the Hearing File, the Hearing Panel Chair will have access to all materials gathered by the Investigator during the Investigation. The Parties must submit the written request by the date set in the Hearing Schedule, generally five (5) calendar days after the date the Hearing File is made available to the Parties. The Title IX Coordinator is permitted, but not required, to submit responses to the Parties' evidentiary objections to the Hearing Panel. The Hearing Panel Chair has the authority to make all evidentiary decisions relating to what information is relevant; that is, what information should be admitted at the Hearing. If the Hearing Panel proposes to add New or Rebuttal Evidence to the Hearing File that not all Parties have reviewed, the Hearing Panel Chair is permitted to grant Parties the opportunity to review and bring forward evidentiary issues, limited to the New or Rebuttal Evidence that was added.

During the Hearing, Parties, Support Persons, and Witnesses must comply with the evidentiary decisions that have been made by the Hearing Panel.

Objections to the inclusion or exclusion of evidence cannot be the basis for appeal unless they were made through the Evidentiary Review process before the Hearing. The standard for review of evidentiary decisions on appeal will be whether the evidentiary decision was clearly erroneous and substantially affected the Hearing

Panel's decision to the detriment of the appealing Party.

### 3. **Response Statement to Hearing File**

Each Party may submit a written statement of their position to the Hearing Coordinator that is no more than 1,500 words in length (including headers, footnotes, captions, charts, audio and/or video statements).

- a. This statement is each Party's opportunity to respond to the Hearing File and the charges made and to provide a statement to the Hearing Panel about what the Party believes the evidence shows.
- b. No attachments will be accepted; references to evidence should be made to material in the Hearing File.
- c. No New and/or Rebuttal Evidence may be submitted.
- d. No information may be submitted that goes beyond the scope of the matter that is charged.

The Parties must submit this statement by the date set in the Hearing Schedule, but generally five (5) calendar days from the date the Hearing File is made available to the Parties.

The Hearing Coordinator, in consultation with the Investigator, will remove information from a position statement that goes beyond the scope of the charge.

### 4. **Pre-Hearing Conference**

Approximately two (2) days prior to the scheduled Hearing, the Decision-make/Hearing Panel Chair and Title IX Coordinator will schedule a Pre-Hearing Conference with the Parties and their Hearing Support Persons to familiarize them with the hearing process. This is also the initial opportunity to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Hearing Panel Chair to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Hearing Support Persons from asking a question for the first time at the hearing or from asking for a reconsideration on a Hearing Panel Chair's pre-hearing decision based on any new information or testimony offered at the hearing. The Hearing Panel Chair will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Hearing Panel Chair will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Hearing Panel Chair will work with the Parties to finalize a Witness list for the hearing, and the Title IX Coordinator will notify any Witnesses of the hearing's logistics. The Hearing Panel Chair, **only** with the agreement of all Parties, may decide in advance of the hearing that certain Witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each Party/Hearing Support Person, and can be done remotely, or as a



written communication exchange. The Hearing Panel Chair will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Support Persons are aware.

The Title IX Coordinator who will be serving as the Hearing Coordinator/Secretary and will confirm the following at the Pre-hearing Conference:

- a. To review the complaint.
- b. To describe the procedures to be followed at the regular hearing (Appendix B).
- c. To review the date, time, and place for the hearing.
- d. To review the list of Hearing Panelist and determine if there are any conflicts. If any of the Panelist need to be replaced, the Title IX Coordinator and Panel Chair will render that decision. Each Party can only have one (1) Panelist removed.
- e. To identify and exchange the names of potential witnesses that may be scheduled to appear. It is the responsibility of the Parties to have their Witnesses present at the Hearing, otherwise they should at least try to obtain signed and dated statements. The Title IX Coordinator can assist if the Witnesses or the Parties need documentation for a class absence.
- f. To resolve special considerations, accommodations, answer other questions, or share information prior to the hearing.
- g. Confirm access to Secured Drive for Case Material/File and review confidentiality.

## **M. Hearing Schedule**

Within seven (7) days of when the Notice of Hearing is issued, the Hearing Coordinator will reach out to all Parties, Witnesses, and the Hearing Panel to schedule key dates for the matter (Hearing Schedule). It is the responsibility of the Party's to inform their Hearing Support Person of the Hearing Schedule. The Hearing Schedule will take into consideration the academic and other conflicts identified in response to the Written Notice of Formal Complaint. Unless an extension is granted based on a showing of good cause, the Parties are obligated to follow the Hearing Schedule. The Hearing Schedule will be case-specific but generally will follow the time frames set forth in Appendix D.

## **N. Formal Hearing Procedures**

1. **Hearing Process.** See Title IX Hearing Proceedings for a summary of the step-by-step or order of the proceedings. The Hearing Panel will convene for the Hearing for the purpose of making findings of fact. The Investigator will be available to answer any questions from the Hearing Panel or Hearing Support Persons about the Investigation. The Parties, Hearing Support Persons, and Witnesses may not speak to matters beyond the scope of the Hearing File (e.g. by raising potential misconduct allegations that go beyond the scope of the charged conduct). Parties, Hearing Support Persons, and Witnesses must not disclose or reference information to the Hearing Panel that was excluded from the Hearing File. The Hearing Panel and Hearing Support Persons may ask questions of the Investigator, Parties and/or Witnesses.

Parties and Hearing Support Persons are permitted to listen to Witnesses as they are speaking to the Hearing Panel. The Hearing Panel is not obligated to speak to all Witnesses.

The Hearing Panel Chair may ask the Parties to submit Sanctions statements at the conclusion of the Hearing. The Hearing Panel Chair may also consult with University personnel regarding any Sanctions and Remedies appropriate to the specific Respondent and Complainant using the guidelines provided in Appendix C.

**2. Format of Hearing.**

Hearings may be conducted with any or all Parties, Witnesses, and other participants appearing at the live, face-to-face Hearing unless circumstances such as a pandemic necessitate a live virtual Hearing. In the case of a live virtual Hearing, there will be appropriate technology enabling participants simultaneously to see and hear each other, or with all Parties physically present in the same geographic location. The presumption will be that the Hearing will take place in-person, unless either Party requests otherwise or the University otherwise determines that a virtual Hearing is appropriate. If the Hearing takes place with all Parties physically present, the University will provide for the option for the Hearing to occur with the Parties located in separate rooms with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the Witness answering questions. All hearings are closed.

**3. Parties Attendance.**

The Respondent and Complainant are not required to attend a scheduled Hearing. Advance notice prior to the Pre-Hearing Conference if there is a legitimate schedule conflict or if the Party does not plan to attend. A Party's failure to attend has no direct bearing on the determination of responsibility; however, their attendance may impact the panel's ability to ask needed questions. The scheduled Hearing will continue in absentia or that party unless the party notifies the Hearing Panel Chair at least two (2) hours prior to the hearing and the Hearing Panel Chair in consultation with the Title IX Coordinator agrees there are appropriate grounds for rescheduling the Hearing.

- 4. 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 the hearing absent the new evidence.

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

- a. All Parties and the Decision-maker assent to the new evidence being included in the hearing without remanding the Formal Complaint back to the Investigator,
- b. The evidence is not duplicative of evidence already in the record, and
- c. 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:

- a. Delay the hearing
- b. Provide the Parties with at least five (5) business days to review the Relevant Evidence
- c. Remand the Formal Complaint back to the Investigator for further investigation or analysis
- d. 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 the hearing without allowing the new evidence.

5. **Collateral Misconduct.** The Decision-maker has the authority to hear and make determinations on all allegations of Discrimination, Harassment, Retaliation, and Other Prohibited Conduct under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with the Discrimination, Harassment, Retaliation, or Other Prohibited Conduct, even though those collateral allegations may not specifically fall within the Policy.
6. **Joint Hearings.** In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or Formal Complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each Formal Complaint with respect to each alleged policy violation.

7. **Introductions and Hearing Procedure Explanation.** The Decision-maker will:
  - a. Explain the hearing procedures
  - b. Introduce the participants
  - c. Answer any procedural questions prior to and as they arise throughout the hearing
8. **Investigator Presentation of Final Investigation Report.** The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties through their Advocates. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.
9. **Testimony and Questioning.** The Parties and Witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and Witnesses first by the Decision-maker and then by the Parties through their Advocates.

All questions are subject to the Decision-maker's relevance determination. The Advocate will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted). The proceeding will pause to allow the Decision-maker to consider the question (and state it if it has not already been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and has the final say on all questions and relevance determinations. The Decision-maker may consult with legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for Investigator bias.

- 10. Refusal to Submit to Questioning and Inferences.** Any Party or Witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on the available Relevant Evidence in making a Final Determination. The Decision-maker may not draw any inference **solely** from a Party's or Witness's absence from the hearing or refusal to answer any or all questions. Typically, after brief opening statements, the order of questioning will be questions from the Decision-maker, questions from the Party's own Advocate, then questions from the other Parties' Advocates. The same order will be used for questioning of Witnesses, who do not typically make opening statements. The Parties then make brief closing statements, and then the hearing transitions into closed session for deliberation.

An Advocate may not be called as a Witness at a hearing to testify to what their advisee has told them during their role as an Advocate unless the Party being advised consents to that information being shared.

**11. Role of Hearing Support Persons.**

If a Party does not have a Hearing Support Person present at the Hearing, the University will provide a list of trained Support Persons. The Support Person can serve as the Party's Hearing Support Person and conduct cross-examination on behalf of that Party. The Hearing Support Persons must at all times follow the instructions of the Hearing Panel, including abiding by all relevance and evidentiary determinations made. The Hearing Support Persons must conduct themselves in a professional and courteous manner and may not badger or harass any Witness or Party.

**12. Role of the Hearing Panel.**

The Hearing Panel will be neutral decision-makers trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure and on trauma-informed decision-making, as required by New Mexico law. The Hearing Panel will preside over the Hearing and will issue the Written Determination Regarding Responsibility.

The Hearing Panel will be identified to the Parties before the Hearing at least three days prior to the Hearing or as early as the Pre-Hearing Conference. Additionally, no person who has a conflict of interest may serve on the Hearing Panel. A conflict of interest exists if there is prior involvement in or knowledge of the allegations at issue in the case, has a personal relationship with one of the Parties or Witnesses, or has some other source of bias.

Either Party may assert, in writing, that a Hearing Panelist has a conflict of interest. A request to recuse a Hearing Panelist based on a conflict must be submitted no later than the Pre-hearing Conference. The request is submitted to the Hearing Coordinator. A determination will be made whether a Hearing Panelists have a conflict of interest, and if so that Hearing Panelist will be replaced by an alternate.

**13. Role of the Hearing Panel Chair.**

- a. **Permit Cross-examination.** At the Hearing, the Hearing Panel Chair will permit each Party's Hearing Support Person to ask the other Party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the Hearing must be conducted directly, orally, and in real time by the Party's Hearing Support Person of choice and never by a Party personally. The Parties may, however, jointly agree in advance to waive oral cross-examination and instead submit written cross-examination to the Hearing Panel Chair to conduct the examination. Even if the Parties so agree, the Parties are still required to have a Hearing Support Person present at the Hearing. The University has discretion to otherwise restrict the extent to which a Hearing Support Person may participate in the proceedings. The Hearing Panel Chair will permit Parties and witnesses to take breaks, as needed, during cross-examination. The Hearing Panel Chair will also ensure the Hearing Support Persons are conducting any live cross-examination in a professional and courteous manner. The Hearing Panel Chair will not permit the Hearing Support Persons to badger or harass Witnesses or Parties.
- b. **Determine Relevance of Questions.** Only relevant cross-examination and other questions may be asked of a Party or Witness. Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Hearing Panel Chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- c. **Provide Rape Shield Protections for Complainants.** The Hearing Panel Chair will prohibit any questions and evidence about the Complainant's sexual predisposition or prior sexual behavior as not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- d. **Exclude Statement, as Relevant, in Reaching a Determination Regarding Responsibility.** If a Party or Witness does not submit to cross-examination at the live Hearing, the Hearing Panel must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility. The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live Hearing or refusal to answer cross-examination or other questions.

**14. Formal Hearing Panel Selection** (neutral decision-makers)

- a. Tech will create a pool of trained adjudicators to be selected when needed. The trained pool will allow for appropriate selection based on the status of the Respondent and Complainant, so as to provide adequate representation, and to avoid conflicts of interest. Both Parties will have the opportunity to recuse/disqualify one (1) panel member if they believe there is a conflict of interest. Selected panelists will also be told to recuse themselves if there is a possible conflict or if they cannot be impartial.

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- b. There will be a panel of five (5) adjudicators assigned based on the status (i.e. undergraduate student, graduate student, faculty, or staff) of the Respondent and Complainant.
- c. The Formal Hearing Panel will be assigned by the Title IX Coordinator based on the criteria established in this procedure section in consultation with the Chair of the Student & Faculty Conduct Committee (SFCC), Director of HR, EEOC Director, or the NMT President as needed.
  - The Title IX Coordinator will also select an employee panelist to serve as the Panel Chair.
  - Diversity and equity of the panel will also be considered in the panel selection.
- d. The Formal Hearing Panel will have the following composition:
  - 1 member of the same status as the Complainant (e.g., Undergraduate student)
  - 1 member of the same status as the Respondent
  - 3 members of any status
  - Students will not be included on Formal Hearing Panels involving employee-on-employee cases.
- e. Formal Hearing Pool-
  - Members of the Student & Faculty Conduct Committee
  - Each Vice President assigns two (2) staff members, eight (8) total
  - Administrative Adjudicators not already involved in the case.
  - Panelist must be adequately trained (e.g. annual training) prior to be adding to the pool.

## **O. Deliberation and Determination**

After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of evidence. A simple majority vote is required to determine the Finding. Deliberations are not recorded.

When there is a Finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted Party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Title IX Coordinator will ensure that each of the Parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker will also review any pertinent conduct history provided by the Dean of Students office via the Title IX Coordinator and will determine the appropriate sanction(s).

The Decision-maker will then prepare a written statement detailing all Findings and Final Determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

1. **Sanctions.** Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:
  - a. The nature, severity of, and circumstances surrounding the violation(s)
  - b. The Respondent's disciplinary history
  - c. The need for sanctions/responsive actions to bring an end to the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
  - d. The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
  - e. The need to remedy the effects of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the Complainant and the community
  - f. The impact on the Parties
  - g. The Respondent's acknowledgement of responsibility or contrition
  - h. 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.

2. **Student Sanctions.** The following are the common sanctions that may be imposed upon Students singly or in combination:
  - a. **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
  - b. **Required Counseling:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects
  - c. **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
  - d. **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.
  - e. **Suspension:** Separation from the University, or one or more of its facilities, for a defined period, 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.
- f. **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.
  - g. **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
  - h. **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
  - i. **Other Actions:** In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate
3. **Student Organization Sanctions.** The following are the common sanctions that may be imposed upon student groups organizations singly or in combination:
- a. **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
  - b. **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.
  - c. **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.
  - d. **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
  - e. **Loss of Privileges:** Restricted from accessing specific University privileges for a specified period of time
  - f. **Other Actions:** In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate
4. **Employee Sanctions/Responsive/Corrective Actions.** Responsive actions for an Employee who has engaged in Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct include:
- a. *Verbal or Written Warning*
  - b. *Performance Improvement Plan/Management Process*



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- c. *Enhanced Supervision, Observation, or Review*
- d. *Required Counseling*
- e. *Required Training or Education*
- f. *Probation*
- g. *Denial of Pay Increase/Pay Grade*
- h. *Loss of Oversight or Supervisory Responsibility*
- i. *Demotion*
- j. *Transfer*
- k. *Shift or schedule adjustments*
- l. *Reassignment*
- m. *Delay of (or referral for delay of) Tenure Track Progress*
- n. *Assignment to a New Supervisor*
- o. *Restriction of Stipends, Research, and/or Professional Development Resources*
- p. *Suspension/Administrative Leave with Pay*
- q. *Suspension/Administrative Leave without Pay*
- r. *Termination*
- s. *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*

## **5. Withdrawal or Resignation Before Complaint Resolution.**

### **a. Students**

Should a Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If a Student Respondent withdraws from the University, the Formal Grievance Process typically ends with a dismissal, as the University has lost primary disciplinary jurisdiction over the withdrawn Student. However, the University may continue the Formal Grievance 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 Formal Grievance 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 Formal Complaint is resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Formal Complaint 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 Formal Grievance 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 Formal Grievance 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 Formal Grievance Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the former Employee. However, the University may continue the Formal Grievance 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 Formal Grievance 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 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.

**P. Notice of Outcome**

The Title IX Coordinator will provide the Parties with a written outcome notification within ten (10) business days of the conclusion of the Formal Grievance Process. 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.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome 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 University records, or email to the Parties' University-issued email account. Once delivered via mail, email, and/or received in person, the outcome notification is presumptively delivered.

**1. Written Determination Regarding Responsibility.**

The Hearing Panel shall issue a Written Determination Regarding Responsibility, applying the Clear and Convincing evidence standard, which shall include:

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- a. Identification of the allegations potentially constituting Title IX Prohibited Conduct;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearings held;
- c. Findings of fact;
- d. Conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts;
- e. The rationale for the result as to each allegation;
- f. Any disciplinary Sanctions imposed on the Respondent;
- g. Whether Remedies or Supportive Measures will be provided to the Complainant;

The Hearing Panel Chair must explain decisions on responsibility, Sanctions (if applicable), and Remedies with enough specificity for the Parties to be able to file meaningful appeals.

The consideration of whether Remedies and Sanctions go into immediate effect or are held in abeyance pending appeal or some combination thereof will be determined on a case-by-case basis by the Title IX Coordinator.

The Sanction determination will be provided to the Title IX Coordinator who will be responsible for implementing the Supportive Measures and/or Remedies, including the continuation of any Supportive Measures and/or any additional or on-going accommodations for both Parties. The Title IX Coordinator will cause the Written Determination Regarding Responsibility to be sent to both Parties and their Hearing Support Persons simultaneously. The Title IX Coordinator will provide copies of the Written Determination Regarding Responsibility and Sanctions and/or Remedies (if any) for the purpose of maintaining records as follows:

- a. For students, to the Dean of Students
- b. For staff, to University Human Resources
- c. For faculty, to the Vice President for Academic Affairs
- d. For postdoctoral scholars and fellows, to the appropriate administrative manager (e.g., Dean of Graduate Studies)

**2. The Written Determination Regarding Responsibility becomes final:**

- a. if an appeal is not filed by the appeal deadline or
- b. If an appeal is filed on the date that University provides written determination of the result of the appeal.

**Q. Appeals of the Hearing Panel Decision**

The Title IX Coordinator will designate an Appeal Decision-maker from the RPT, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Formal Grievance Process for the Formal Complaint. If a panel is used, the Title IX Coordinator will designate a voting chair.

**1. Appeal Grounds** Appeals are limited to the following grounds:

- a. A procedural irregularity affected the outcome of the matter
- b. 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
- c. 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
- d. 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)
- e. 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)

## **2. 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 (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 Advocates 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 Advocates, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advocates, 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 Advocates 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.

## **3. Appeal Determination Process**

In most circumstances, appeals are confined to a review of the written documentation or record of

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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 of evidence.

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.

#### 4. **Notice of 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 RPT 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 or other approved account. Once delivered via mail, email, and/or received in person, the appeal outcome letter 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.

## **5. 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 emergency removal and 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.

## **R. Long-Term Remedies/Other Actions**

Following the conclusion of the Formal Grievance 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 recurrence.

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

1. Referral to counseling and health services
2. Referral to the Employee Assistance Program
3. Course and registration adjustments, such as retroactive withdrawals
4. Education to the individual and/or the community
5. Permanent alteration of housing assignments
6. Permanent alteration of work arrangements for Employees
7. Provision of campus safety escorts
8. Climate surveys
9. Policy modification and/or training
10. Provision of transportation assistance
11. Implementation of long-term contact limitations between the Parties
12. 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.

## **S. 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.

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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.

## **T. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Formal Grievance Process, the University will maintain records of:

1. Each Discrimination, Harassment, Retaliation, and Other Prohibited Conduct Formal Grievance Process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
2. Any disciplinary sanctions imposed on the Respondent
3. Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's Education Program or Activity
4. Any appeal and the result therefrom
5. Any Informal Resolution and the result therefrom
6. All materials used to train the Title IX Coordinator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the University's resolution processes. University will make these training materials publicly available on University's website
7. Any other actions taken in response to a report or Formal Complaint including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to the University's Education Program or Activity

University will also maintain any and all records in accordance with federal and state laws.

## **U. 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 processes.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with Student Access Services 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.

## **V. Other Support**

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

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

## V. 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.

**Expert Witness:** a Witness identified by a Party or the Title IX Office that has special expertise in a technical matter, such as forensic evidence.

**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.

**Formal Complaint:** a document filed and signed by a Complainant or filed and signed by the Title IX Coordinator alleging Title IX Prohibited Conduct against a Respondent and requesting that the University investigate the allegations.

**Hearing:** a live hearing conducted with all Parties physically present in the same geographic location or with participants appearing virtually with technology enabling participants simultaneously to see and hear each other. During the Hearing, the Hearing Panel permits

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each Party's Hearing Support Person to ask the other Party and Witnesses all relevant questions and follow-up questions, including those challenging credibility. A recording or transcript of the hearing will be made.

**Hearing Coordinator:** the person who manages Hearings under this Title IX Procedure.

**Hearing File:** the information collected during the Investigation that is deemed relevant to be considered by the Hearing Officer.

**Hearing Panel Chair/Panelist:** A professional neutral decision-maker (e.g. a retired judge or lawyer, a shared professional from another Institution of Higher Education) experienced and trained in adjudicating matters of civil rights, sexual harassment and/or sexual violence and trained on this Title IX Procedure who will preside over the Hearing and will issue the Written Determination Regarding Responsibility.

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

**Hearing Support Person:** the person who will attend the Hearing with a Party and conduct the oral cross-examination of the other Party and Witnesses. The Hearing Support Person may be the same as the Party's Process Support Person. This person is also referred to as a Support Person or advisor in Tech's non-Title IX procedures and Sexual Misconduct Policy.

**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 IV.H.

**Initial Report:** a report of conduct that may constitute Title IX Prohibited Conduct, which may be made by any individual, even if not the person alleged to have experienced the conduct. An Initial Report is made prior to a Formal Complaint, and triggers the Title IX Coordinator's obligation to contact the Complainant and inform the Complainant of Supportive Measures, as described in Section IV.A.1.

**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.

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**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 Title IX Procedure. The Investigator shall have been trained on all elements of an Investigation as required by federal and state law.

**Menace:** a threat, statement, or act showing intent to injure someone.

**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 Dismissal:** the formal notification issued by the Title IX Coordinator following a determination that the matter does not meet the definitional or jurisdictional standards of Title IX and stating the reasons for dismissal.

**Notice of Formal Complaint:** the formal notification issued by the Title IX Coordinator that a Formal Complaint has been filed and including the details set forth in Section IV.C.1.

**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.

**Privacy:** means that information related to a complaint will be shared with only a limited number of University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are responsible for the University’s response to Title IX Prohibited Conduct 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”), and the privacy of employee records will be protected in accordance with New Mexico law and University policy.

**Process Support Person:** an individual that serves as an advisor to the Party after a Notice of Formal Complaint is issued, at the Party’s choosing, and that is permitted to be, but need not be, an attorney.

**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, as described in Appendix B.

**Senior University Official:** employees of the University (other than the Title IX Coordinator and Deputy Title IX Coordinator) with authority to institute corrective measures on the University’s behalf, and for whom notice of a report of Title IX Prohibited Conduct constitutes actual knowledge of the University. At New Mexico Tech these individuals include: the President, the, Deans, the Director of the sports clubs, Vice Presidents.

**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.

**Title IX Prohibited Conduct:** the collective term used in this Title IX Procedure to refer to the conduct described in the definitions for Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking. This term also includes attempts to commit any such conduct or knowingly aiding or facilitating another person to commit any such conduct.

**Title IX Sexual Harassment:** conduct, on the basis of sex that satisfies one or more of the following:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive,

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**and** objectively offensive that it denies a person equal educational access (e.g., hostile environment)

- An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (i.e., Quid Pro Quo)

***University Directive:*** a directive issued by the University restricting activities of an individual in connection with an allegation or finding of violation under this Title IX 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.

***Written Determination Regarding Responsibility:*** the formal written notification issued by the Hearing Panel after a Hearing that includes: (i) identification of the allegations potentially constituting Title IX Prohibited Conduct; (ii) a description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and Hearing held; (iii) findings of fact; (iv) conclusions about whether the alleged Title IX Prohibited Conduct occurred, applying the definitions set forth in this Title IX Procedure to the facts; (v) the rationale for the result as to each allegation; (vi) any disciplinary Sanctions imposed on the Respondent; (vii) whether Remedies or Supportive Measures will be provided to the Complainant; and (viii) information about how to file an appeal.

## Appendix B: 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 Clergy Act. Other information may be shared as required by law.

## **Appendix C: 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.



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- 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 D: Timeframes for Title IX Procedure

The University will strive to complete this Title IX 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 the Title IX Procedure as set forth below.<sup>18</sup> 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 L.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 E: 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,<sup>1</sup> The Structured Interview for Violence Risk Assessment (SIVRA),<sup>2</sup> Violence Risk Assessment of the Written Word (VRAWW),<sup>3</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>4</sup> Historical Clinical Risk Management (HCR-20),<sup>5</sup> and MOSAIC.<sup>6</sup>

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

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

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

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

<sup>4</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>5</sup> <http://hcr-20.com>

<sup>6</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

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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.

## Appendix F: Retaliation and Intimidation

It is a violation of the Sexual Misconduct Policy, Student Code of Conduct, University Policy and Procedures, Employee Handbook, and the RGAFT 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 G: TITLE IX POLICY STATEMENT

The University adheres to all federal, state, and local civil rights laws prohibiting Discrimination, Harassment, and Retaliation in education and employment. The University does not discriminate in its admissions practices, employment practices, or Education Programs or Activities on the basis of Sex, except as permitted by law. As a University of federal financial assistance for education activities, the University is required by Title IX of the Education Amendments of 1972 to ensure that all of its Education Programs and Activities do not discriminate on the basis of Sex. Sex Discrimination is prohibited under Title IX and by the NMT Sexual Misconduct Policy, and it includes Sexual Harassment, Sexual Assault, Dating and Domestic Violence, Stalking, Disparate Treatment, and Disparate Impact.

The University also prohibits Retaliation against any person opposing Discrimination, Harassment, or Retaliation or participating in any internal or external investigation or complaint related to allegations thereof.

Any University Faculty member, Employee, or Student who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the University community on the basis of Sex is in violation of the NMT Sexual Misconduct Policy.

Any person may report Sex Discrimination (whether or not the person reporting is the person alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (see below). A report may be made at any time (including during non-business hours) by contacting the NMT Title IX Office. Reports can also be made online via the [Title IX & Sexual Misconduct Reporting Form](https://cm.maxient.com/reportingform.php?NewMexicoTech&layout_id=1) ([https://cm.maxient.com/reportingform.php?NewMexicoTech&layout\\_id=1](https://cm.maxient.com/reportingform.php?NewMexicoTech&layout_id=1)).

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the Policy, or for more information, please visit [NMT Sexual Misconduct Policy](https://www.nmt.edu/titleix/NMT%20Sexual%20Misconduct%20Policy%202023.pdf) (<https://www.nmt.edu/titleix/NMT%20Sexual%20Misconduct%20Policy%202023.pdf>) or contact the Title IX Coordinator.

***For Sex-based allegations:***

Peter Phaiah  
Title IX Coordinator  
238 Fidel Student Center  
801 Leroy Place  
Socorro, NM 87801  
575-835-5953/575-322-0001  
titleixcoordinator@nmt.edu  
<https://www.nmt.edu/titleix/index.php>

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, the Equal Employment Opportunity Commission, and/or another appropriate federal or state agency.

- **U.S. Department of Education Office for Civil Rights Regional Office:**  
Denver Office for Civil Rights  
U.S. Department of Education  
Cesar E. Chavez Memorial Building  
1244 Speer Boulevard, Suite 310  
Denver, CO 80204-3582

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Telephone: 303-844-5695

FAX: 303-844- 4303

TDD: 800-877-8339

Email: [OCR.Denver@ed.gov](mailto:OCR.Denver@ed.gov)

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

Within any resolution process related to the NMT Sexual Misconduct Policy, the University provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with federal and state law.

**Title IX Policy Statement (Short Format):**

New Mexico Tech does not discriminate in its employment practices or in its Education Programs or Activities on the basis of Sex. University also prohibits Retaliation against any person opposing Discrimination or participating in any internal or external Discrimination investigation or complaint process. Reports of misconduct, questions regarding Title IX, and concerns about noncompliance should be directed to the Title IX Coordinator. For a complete copy of the NMT Sexual Misconduct Policy, or for more information, please contact the Title IX Coordinator at 575-835-5953 or [titlteixcoordinator@nmt.edu](mailto:titlteixcoordinator@nmt.edu) or address any complaints to the Assistant Secretary of Education within the U.S. Department of Education Office for Civil Rights (OCR).



## 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.

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## **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](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.