



**Title:** Sexual Misconduct Policy and Prohibited Conduct (Including Title IX Misconduct) Procedures  
**Effective Date:** August 15, 2023  
**Issuing Authority:** Senior Vice President for Administration and Finance  
**Policy Contact:** Associate Vice President/ Director of Title IX,  
478-301-2788, 678-547-6598

## Purpose

Mercer University (University) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from all forms of sexual harassment and sexual misconduct. To ensure compliance with federal and state laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational and employment programs or activities, the University has developed internal policy and procedures that provide a prompt, fair, and impartial process.

## Scope

This policy applies to all University students and employees, visitors, and individuals doing business with the University on all campus locations.

## Exclusions

None

## Definitions

As used in this policy, the following term(s) have the meaning specified below:

**Appeal Decision Maker:** University official charged with reviewing and deciding appeals. For purposes of this policy, the Vice President for Student Affairs and Dean of Students, or their designee, serves as the Appeal Decision Maker for students. For purposes of this policy, the Executive Vice President for Administration and Finance, or their designee, serves as the Appeal Decision Maker for employees.

**Complainant:** a student, employee, or third-party who experienced Prohibited Conduct (including Title IX Misconduct) as defined by this policy.

**Employee:** any faculty (including, but not limited to, regular, visiting, or adjunct), any individual who has an appointment at the University, and all regular and temporary staff, including student employees.

**Formal Complaint:** a report become a Formal Complaint if the Complainant files a signed, written statement, alleging a Respondent engaged in Prohibited Conduct (including Title IX Misconduct), describing the incident(s) and requesting a University Investigation. The University maintains discretion to convert a report to a Formal Complaint, if the University determines that, in order to meet its Title IX obligation to provide a safe and nondiscriminatory environment for the University community, it must take further steps to address and resolve the matter. In such cases, the Formal Complaint will be signed by the Title IX Coordinator.

**Formal Process:** a method of formal process designated by the University to address conduct that falls within this policy and complies with the requirements of the Title IX Regulations (34 CFR Part 106.45).

**Hearing Official:** University official charged with holding hearing procedures during a Formal Hearing.

For purpose of this policy, the Associate Vice President for Student Affairs, or designee, serves as the Hearing Official for students.

For purpose of this policy, the Associate Vice President for Human Resources, or designee, serves as the Hearing Official for employees.

**Informal Resolution:** a method of resolution agreed to by Parties involved and approved by the University that is designated by the University to address conduct that falls within this policy.

**Investigator:** person(s) charged by the University with gathering facts about an alleged violation of this policy, assessing relevance, synthesizing the relevant evidence, and compiling this information into an investigation report.

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

**Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct (including Title IX Misconduct) under this policy.

**Standard of Proof:** preponderance of the evidence threshold that is measured to determine if it is more likely than not a violation occurred.

**Student:** any person pursuing academic studies at the University, including, but not limited to, any person currently enrolled, previously enrolled, or who is reasonably anticipated to seek enrollment at a future date, or a person who has applied to or been accepted for admission.

**Title IX Coordinator:** official designated by the University to ensure compliance with Title IX and this policy. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks.

## **Policy Statement**

All members of the University community are expected to conduct themselves in a manner that does not negatively affect an individual's education or work experience or the overall environment, whether on University premises or at any off-campus location. All University community members, including students and employees, are expected to affirm and respect the dignity and sacred worth of every person and celebrate both our commonalities and our differences.

The core purpose of this policy is the prohibition of all forms of sexual harassment and sexual misconduct. When a complaint of an alleged violation of Prohibited Conduct (including Title IX Misconduct), as defined by this policy, is received the allegations are subject to resolution using the process detailed within this policy.

The University's Title IX Coordinator oversees implementation of the University's Sexual Misconduct policy. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, investigation, process, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and sexual misconduct in all forms prohibited under this policy.

The University encourages everyone affected by sexual misconduct, and everyone who suspects or witnesses such conduct, to report it and to seek support from available resources. All inquiries, reports or formal complaints of sexual misconduct or sexual harassment as prohibited by this policy, including, questions or concerns, may be made to:

Sharon L. Stellato  
Associate Vice President and Director of Title IX  
Title IX Coordinator  
Stellato\_sl@mercer.edu  
TitleIX@mercer.edu  
315 Newton Chapel  
478-301-2788

## **Reporting and Jurisdiction**

### **Mandated Reporting**

All University employees (faculty, staff, student employees, and administrators) on all Mercer University campuses are expected to immediately report actual or suspected sexual harassment or misconduct defined by this policy, to the Title IX Coordinator. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not directly reported to them. Failure to report an incident, defined by this policy, of which they become aware, is a violation of University policy and can be subject to disciplinary action for failure to comply.

In addition, all individuals, groups or organizations associated with the operations, employment, education initiatives or involved in any form of business or opportunity with the University are expected to immediately report actual or suspected sexual harassment or misconduct as defined by this policy, to the Title IX Coordinator. This includes, but is not limited to: contractors, volunteers, security, FSP advisors or any individual associated with a University FSP or student organization, etc.

### **Confidential Employees**

Clinical staff at the University Counseling & Psychological Services, medical professionals and staff at the University On-Campus Health, and the University Minister are confidential employees only when acting in the capacity of their role as a counselor or health care provider. A Complainant may talk in confidence, as provided by law, to these individuals. Exceptions to confidentiality exist where the conduct involves suspected abuse of a minor or otherwise provided by law, such as imminent threat of serious harm.

### **Reporting to Title IX Office**

Reports of Prohibited Conduct (including Title IX Misconduct) may be made by contacting the Title IX Coordinator. Upon receiving a report, the Title IX Coordinator has full discretion to conduct inquiries into reports. The Title IX Coordinator may implement any necessary reasonable restrictions to address reported concerns.

Every effort will be made by the University to preserve the privacy of reports. Privacy means that information related to a report will only be shared with a limited number of University employees who need to know. 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 FERPA policy. The privacy of employee records will be protected in accordance with Human Resources practices and policies. The University reserves the right to designate which University officials have a legitimate educational interest in being informed about incidents that fall within this policy.

### **Reporting Bias or Conflict of the Title IX Office**

The Title IX Coordinator (and all employees associated with the Title IX Office) act with independence and authority free from bias and conflicts of interest. Employees are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. Concerns of bias or a potential conflict of interest by any employee associated with the Title IX Office should be raised with the Title IX Coordinator.

To raise a concern involving bias or conflict of interest by the Title IX Coordinator, or to report misconduct or discrimination by the Title IX Coordinator, contact the Vice President for Audit and Compliance, James Calhoun at [calhoun\\_j@mercer.edu](mailto:calhoun_j@mercer.edu).

### **Reporting to Law Enforcement**

When Sexual Misconduct may constitute criminal activity, a Complainant also has the option, should the Complainant so choose, of filing a report with campus or local police.

### **Reporting an Unknown or Non-University Community Respondent**

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate resources and support options. If criminal conduct is alleged, the University may also assist in contacting law enforcement, if the Complainant would like to file a police report.

If the Respondent is enrolled in or employed by another institution, the Title IX Coordinator may assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policy.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring or trespassing individuals from University property and/or events.

### **Filing a Formal Complaint**

When a Complainant has experienced Prohibited Conduct (including Title IX Misconduct), the Complainant may file a Formal Complaint with the Title IX Coordinator in person or by email. The Formal Complaint must be a written statement or electronic submission, signed by a Complainant or by the Title IX Coordinator<sup>6</sup>, alleging a Respondent engaged in Prohibited Conduct (including Title IX Misconduct), describing the incident(s), and requesting initiation of a University Investigation.

The Title IX Coordinator has discretion to file a Formal Complaint of reported Prohibited Conduct, even if the Complainant chooses not to participate in the process and/or does not wish to file a Formal Complaint, when the Title IX Coordinator determines that the report includes conduct that poses a threat to the health, safety and well-being of the community. The Title IX Coordinator may consider the following factors: the seriousness of the alleged conduct, the Complainant's age and/or whether there have been other complaints of Prohibited Conduct against the same Respondent.

After a Formal Complaint has been filed by a Complainant or signed by the Title IX Coordinator, the University will commence the Investigation process.

Although there is no time limitation on filing a Formal Complaint to the Title IX Coordinator, if a significant amount of time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Therefore, if an investigation has been significantly impacted by the passage of time, the Title IX Coordinator may use discretion, to document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

All Formal Complaints shall be acted upon promptly by the University once received. Formal Complaint Investigations and subsequent adjudication can take up to 120 business days to resolve. Exceptions and extenuating circumstances can cause the process and resolution to take longer, but the University will avoid all undue delays within its control. If the general time frames will be delayed, the University will provide written notice to the parties of the delay, the cause of a delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **Office of Civil Rights Reporting**

Individuals also have the right to file an external grievance with:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: OCR@ed.gov  
Website Address: <http://www.ed.gov/ocr>

### **Federal Timely Warning Obligations**

The University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report the following for federal statistical reporting purposes of the Clery Act<sup>7</sup>:

- a. All "primary crimes," which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c. VAWA-based crimes,<sup>8</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor- related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared

regarding the type of incident and its general location for publication in the Annual Security Report and daily campus crime log.

### **Jurisdiction**

This policy applies to the employment or educational program and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University recognized student organizations.

This policy may also be applicable to the effects of off-campus prohibited conduct defined by this policy that effectively deprive someone of access to the University's educational program or work experience. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest. All vendors serving the University through third-party contracts are subject to these policies and procedures.

Regardless of the location of conduct, the University will address notice and/or complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

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

Study-abroad programs and off-campus locations that are not within the University's education program or activity are not covered by the Title IX regulations but may constitute Prohibited Conduct under this policy.

### **Withdrawal or Resignation During an Investigation or while Charges are Pending**

Should a student withdraw following allegations of a violation under this policy, the University may, in its' discretion, dismiss the Formal Complaint. However, should a Respondent withdraw

without reaching a resolution of the Formal Complaint, the University may prohibit the individual from returning to the University without a formal review.

Should an employee resign following allegations of a violation of this policy, the University may, in its' discretion, dismiss the Formal Complaint. However, should a Respondent withdraw without reaching a resolution, the individual will not be eligible for rehire. In addition, the University's records will reflect that the Respondent terminated employment with an unresolved status.

### **Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered by the University as appropriate, as reasonably available, without fees, to restore or preserve access to the University's employment or education program or activity, including measures designed to protect the safety of all parties and/or the University's environment, and/or deter any Prohibited Conduct under this policy.

The University will offer and implement appropriate and reasonable supportive measures to the parties. These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers and/or resources
- Visa and immigration assistance
- Student financial aid assistance
- Education
- Altering campus housing assignment(s)
- Work accommodations, including altering work arrangements for employees
- Safety planning
- Providing campus safety escorts
- Providing specific transportation assistance
- Implementing No Contact Directives between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments that are considered reasonable accommodations
- Trespass from campus
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

### **Right to an Advisor/Advisor Role**

The Complainant and the Respondent may be accompanied to any meeting or hearing by an Advisor of their choice through the course of the process. An Advisor may be a friend, family member, attorney or any other individual. The parties may select whoever they wish to serve as their Advisor, so long as the Advisor is eligible and available. Available means the party cannot insist on an Advisor who simply doesn't have the inclination, time or availability. The Advisor cannot have University conflicting roles, such as a party's supervisor. Choosing an Advisor who



is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of bias or conflict will be explored during the process.

All Advisors are subject to University policies and procedures. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in communications, meetings, or interviews. The Advisor may not make a presentation or represent their advisee during any communication, meeting or proceeding and may not speak on behalf of the advisee, except during a hearing proceeding, specifically during cross-examination. The University is not obligated to communicate with or through Advisors, and will only communicate directly with the parties throughout the process. The parties are expected to ask and respond to all questions on their own behalf throughout the process and any written submissions must be written by and received directly from the Complainant or Respondent. The Advisor may consult with their advisee during any process meeting or interview, including consulting on written submissions.

Each party has a responsibility to notify their Advisor of the time, date, and location of any meeting or disciplinary proceeding. Proceedings will not be unduly delayed to accommodate an Advisor and it is the responsibility of each party to select an Advisor that is available for meetings and disciplinary proceedings.

Parties also have the right to choose not to have an Advisor in the initial stages of the process; however, the Department of Education Title IX Regulations permit cross-examination during the hearing, and this must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor only for the limited purpose of conducting any cross-examination. The University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney. If the party does not wish to conduct cross examination, the party may waive their right to cross-examination; in which the University would not be required to appoint an Advisor.

Parties may share information directly with their Advisors, but Advisors are expected to maintain the privacy of the records. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the duties and limits of the Advisor role, the communication, meeting or proceeding will stop and appropriate measures will be implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible). The parties are expected to provide immediate notice to the University if they change Advisors at any time.

### **Assistance**

The following resources are available to the parties:

- National Sexual Assault Hotline (800) 656-4673
- National Domestic Violence Hotline (800) 799-7233
- Georgia Crisis & Access Line (800) 715-4225
- Financial Planning Assistance, AVP of Financial Planning (478) 301-2226
- Immigration and Visa Assistance, Director of International Programs (678) 547-6151
- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

A complete list of all services and resources is maintained on the University Title IX website: <https://titleix.mercer.edu/>

### **Emergency Removal**

The University may act to remove a Respondent entirely or partially from its education program, employment or activities on an emergency interim basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any other individual(s), or the University Community, justifies removal. This risk analysis examination is at the discretion of the Title IX Coordinator and is evaluated, in conjunction with other selective University departments to best examine the scope of the possible risk.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator, in conjunction with the Vice President for Student Affairs and Dean of Students or Associate Vice President of Human Resources, prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal 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 is appropriate. A Respondent may be accompanied by an Advisor at a meeting to show cause as to why the removal is not warranted.

The University has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

**Administrative Leave**

If the Respondent is an employee, the University may place the employee on administrative leave, with or without pay, to provide time to investigate and evaluate the circumstances regarding the complaint.

**Online Harassment and Misconduct**

The policies of the University are written and interpreted broadly to include online and cyber manifestations of any of the prohibited conduct in this policy, when those behaviors or conduct occur in or have an effect on the University's education program and activities, work experience or use of the University's networks, technology, or equipment.

Members of the University community should refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sex or sex-based messaging, distributing or threatening to distribute revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

**False Allegations and Evidence**

Conclusively and deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official who is investigating, can be subject to discipline. This includes informing witnesses of allegations and attempting to coerce, instruct, conceal or intervene with witnesses' statements and/or recollections, or persuading witnesses to recall or alter specific details or recollection.

**Counterclaims**

The University is obligated to ensure that the reporting and complaint process under this policy is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims made with retaliatory intent will not be permitted. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

**Amnesty**

The University encourages the reporting of all forms of Prohibited Conduct as defined by this policy. It is in the best interests of the University community that Complainants choose to report, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University may offer parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

### **Recording**

No unauthorized audio or video recording of any kind is permitted during communications (including phone calls), meetings, interviews, or hearings with any member of the Title IX Office.

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Hearing Panel, the Parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Hearing Official. No individual will be given or be allowed to make a copy of the recording without permission.

### **Disability Accommodations**

The 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 process.

- Students needing accommodations should contact Katie Johnson, Director and ADA Coordinator ([johnson\\_kc@mercer.edu](mailto:johnson_kc@mercer.edu)).
- Employees needing accommodations should contact Candace Whaley, Associate Vice President for Human Resources ([whaley\\_ce@mercer.edu](mailto:whaley_ce@mercer.edu))

### **Retention of Records**

The University will create and maintain for a period of seven (7) years records of any actions, including any supportive measures, taken in response to a report or formal complaint of Prohibited Conduct.

## **Process and Procedure**

### **Allegations of Prohibited Conduct (including Title IX) Misconduct**

#### **Initial Assessment of Report**

The Title IX Coordinator shall make an initial assessment as to whether a report alleges an act of Prohibited Conduct and whether the conduct is covered by this policy.

The Title IX Coordinator shall make an initial assessment as to whether a report alleges an act of Title IX Misconduct and whether the conduct is covered by this policy.

If the Title IX Coordinator determines in their assessment that the allegations would not constitute Prohibited Conduct or Title IX Misconduct, the University will dismiss the matter.

## **Dismissals**

**Mandatory Dismissal**<sup>9</sup> will occur for allegations of Title IX Misconduct if the Title IX Coordinator determines at any time during the process, that:

- The conduct alleged in the formal complaint would not constitute Title IX Misconduct as defined above, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the recipient.<sup>10</sup>

**Discretionary Dismissal**<sup>11</sup> may occur for allegations of Prohibited Conduct (including Title IX Misconduct) in the Title IX Coordinator's discretion, if, at any time during the process:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein<sup>12</sup>; or
- The Respondent is no longer enrolled in or employed at the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Dismissal of a Formal Complaint does not preclude action under another applicable policy. In the event of a Mandatory Dismissal, the Title IX Coordinator may consider if the allegations fall under Prohibited Conduct, and, if so, continue the process. The Title IX Coordinator may also refer the matter to any other appropriate department within the University. Upon any dismissal, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

## **Appeals for Dismissals**

Appeals to dismissals must be submitted in writing to the Appeal Decision Maker within seven (7) business days from the day the parties are notified of the dismissal. The Appeal Decision Maker will review the materials within five (5) business days of receipt of the appeal and may affirm or deny the original decision. The Appeal Decision Maker's determinations on dismissals are final and not appealable. Both parties shall receive written notice of the outcome of the appeal.

## **Intake Meeting with Complainant and Respondent**

The Title IX Coordinator (or designee) will conduct an intake meeting to inform the Complainant and the Respondent of their rights, options and responsibilities, the prohibition against retaliation, further provide information about supportive measures, discuss the allegations and information about the investigative and adjudication processes. If either party refuses to respond or participate in an intake meeting, or, if the information may be properly and effectively relayed in writing without meeting, it is within the Title IX Coordinator's discretion to provide the information listed above via Mercer University email in lieu of an Intake Meeting.

### **Formal Complaint**

Upon the receipt or filing of a Formal Complaint, the Title IX Coordinator will provide written Notice of the Investigation and Allegations (the "NOIA") to the Respondent upon commencement of the Formal Process.

The NOIA will include:

- A meaningful summary of all allegations as provided by the Complainant,
- The identity of the involved parties,
- The precise misconduct being alleged,
- The date and location of the alleged incident(s),
- The specific policies implicated,
- University policy on applicable procedures, including potential sanctions/responsive actions that could result, retaliation, confidentiality/privacy of the process, right to an Advisor and Advisor role, false statements and information, details on how to address any conflicts of interest, and disability accommodations,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained following issuance of a Draft Investigation Report,
- The name(s) of the Investigator(s), and
- An instruction to preserve any evidence that is directly related to the allegations.

The NOIA will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The NOIA may be amended during the investigation process with any additional or dismissed allegations.

### **Resolution Options**

Prohibited Conduct, including Title IX Misconduct, may be resolved by using an informal or a formal process. The Title IX Coordinator will discuss these two options for resolution with the Complainant and Respondent. Either party may request one of these forms of resolution, but the University must approve that such a process is appropriate under the circumstances.

### **Informal Resolution Process<sup>13</sup>**

Parties have the option of informally resolving complaints of alleged Prohibited Conduct, including Title IX Misconduct. The University has the discretion to determine whether an Informal Resolution Process is appropriate.

Participation by both the Complainant and the Respondent is voluntary and either party can request to end the informal resolution process. Information gathered and utilized in the Informal Resolution Process may be used in any other University process, including an Investigation, under the Formal Process.

If the parties request and agree to an Informal Resolution and an Investigation is not already in process, the Title IX Office may conduct a short investigation of the matter; including meeting with the parties and collecting information relevant to the matter.

When the parties mutually agree to resolve the matter, the University will determine if the Informal Resolution is appropriate. This review will be conducted by the Title IX Coordinator, in conjunction with either the Vice President for Student Affairs and Dean of Students or Associate Vice President of Human Resources.

The University may consider the following factors to assess whether the Informal Resolution is appropriate:

- The parties' amenability to the resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Safety of the University Community.

The Title IX Coordinator will draft an Informal Resolution Agreement and the agreement shall be signed by all parties, including the University. Both parties retain the right to

end the Informal Resolution Process at any time prior to signing the Informal Resolution and to initiate the Formal Resolution Process.

Either party's failure to abide by the terms of the Information Resolution may result in appropriate responsive/disciplinary actions, including sanctions. Informal Resolutions are not appealable.

### **Formal Process**

The Formal Process commences when a Complainant or Title IX Coordinator files a Formal Complaint and an Investigation proceeds. During the Formal Process, an Informal Resolution may still be considered and implemented as described above.

### **Investigation Process**

The Title IX Coordinator will assign two (2) Investigators and the Investigators will commence a thorough, reliable, and impartial investigation.<sup>14</sup>

The Investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of information, as necessary. All parties have a full and fair opportunity, through the Investigation Process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence.

The Investigators, in their discretion, will provide a party or witness with notice of the date, time, and location of any interviews or meetings. The Investigators will interview all available, relevant witnesses and conduct follow-up interviews as necessary, including, allowing each party the opportunity to suggest relevant witnesses and relevant questions.

Upon completion of the Investigation, the Investigators will write a comprehensive Draft Investigation Report fully summarizing the investigation, witness interviews, and addressing relevant evidence, which they will provide to the Title IX Coordinator. After reviewing the Draft Investigation Report, the Title IX Coordinator may direct Investigators to ask clarifying questions or conduct additional investigation.

The Title IX Coordinator will then send to the parties the Draft Investigation Report. The Parties will have a ten (10) business days review and comment period so that each party may meaningfully respond, in writing, to the report. The parties may elect, in writing, to waive the full ten days. The parties may also indicate, in writing, that they do not wish to provide further or additional information.

At the completion of the review and comment period, the Investigators will incorporate the parties' written responses into the report, including any additional relevant evidence, make any necessary revisions, and finalize the report.<sup>15</sup> The Final Investigation Report will then be shared



with the parties through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. If any changes or additions are made to pertinent documentary evidence and/or the Final Investigation Report, it will be provided to the parties at least ten (10) business days prior to the hearing.

### **Witnesses**

University Members, including students and employees, are encouraged to participate and cooperate in an Investigation. Investigators will make reasonable efforts to interview relevant witnesses. Witnesses must be available and cooperative. If the Investigators determine that timeliness or efficiency dictate a need for remote interviewing, they may conduct interviews remotely. If deemed appropriate by the Investigators, Witnesses may be asked to provide written statements in lieu of interviews or respond to written questions, provided this does not delay or impede the Investigation.

### **Formal Hearings**

Once the Final Investigation Report is shared with the parties, the Title IX Coordinator will refer the matter to the Hearing Official. The hearing cannot be less than ten (10) business days from the conclusion of the investigation.

The University will designate a three-member panel, at the discretion of the Hearing Official. Upon referral, the Hearing Official will select an appropriate hearing board depending on whether the Respondent is an employee or a student. One of the three members will be appointed as Chair.

The Hearing Official will give the panel members a list of the names of all involved individuals (parties, witnesses, and advisors) confirming that the panel members have not had any previous involvement with the Investigation. Any panel member who cannot make an objective determination must recuse themselves from the proceedings. As needed, the Hearing Official may update the list of involved individuals.

The Hearing Official, after any necessary consultation, will prepare a list of individuals who will be participating in the hearing and provide this list to the parties as part of the Notice of Hearing.<sup>16</sup>

### **Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Hearing Official will send a Notice of Hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing will contain:

- A description of the alleged incident(s), a list of all policies allegedly violated, a description of the applicable procedures, including the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance supersedes all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology. Such a request must be raised at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any panel members on the basis of demonstrated bias. Any objection must be raised at least five (5) business days prior to the hearing. Panel members will only be removed if the Hearing Official concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).
- Information on how the hearing will be recorded and how parties may access the recording after the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any cross-examination questions they may desire to ask.
- An invitation to each party to submit an impact statement prior to the hearing.
- An invitation to contact the Hearing Official to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

### **Alternative Hearing Participation Options**

If there are special circumstances in which a party or parties cannot attend the hearing in person, the party may request alternative arrangements from the Hearing Official at least five (5) business days prior to the hearing. The Hearing Official will review the special circumstances surrounding the request and has ultimate discretion in granting or denying alternative hearing options and over how the hearing will be conducted.

The University, at the discretion of the Hearing Official, may consider requests for remote testimony by the parties, only if allowing remote testimony will not compromise the fairness of the hearing. Remote options may also be considered for witnesses who cannot appear in person, at the discretion of the Hearing Official. Any party or witness requesting to appear remotely, should make this request to the Hearing Official, in writing, at least five (5) business days prior to the hearing so that appropriate arrangements can be considered and arranged. The Hearing Official has ultimate discretion to consider granting or denying requests for remote testimony, based on a totality of the circumstances, including the Hearing Panel's preference.

### **Hearing Procedures**

The hearing, recording, witness and party logistics, curation of documents, separation of the parties, decorum, and other required elements of the hearing process will be managed by the Hearing Official and any designee(s).<sup>17</sup>

The Hearing Official shall:

- Call the hearing to order and state the date and time.
- Ask the parties attending the hearing to identify themselves for the record.
- State the conditions of the hearing including:
  - a. There shall be a single verbatim record, such as a tape recording, of the hearing (not including deliberations). The recording shall be the property of the University.
  - b. Documentation of the proceedings, including the written decision and any audio recordings, are maintained in accordance with the applicable University document retention records.
  - c. Reasonable care will be taken to create a quality audio recording and minimize technical problems; however, technical problems that result in recording (including inaudible portions) cannot, by itself, serve as a basis to overturn an outcome upon appeal by a party.
  - d. Rules of evidence applicable to courts of law will not apply.
  - e. The hearing shall be non-adversarial in nature and the Hearing Official shall be empowered to take all steps as necessary to preserve the non-adversarial nature of the proceeding.
  - f. The level of proof required to determine whether or not a Respondent is responsible for the allegations shall be by a preponderance of the evidence, i.e., it is more likely than not that Prohibited Conduct or Title IX Misconduct occurred.
  - g. The hearing and its final outcome shall be considered part of the Respondent's educational record or employment record as applicable, and will be kept confidential, except as provided under federal and state law.
  - h. Ask the parties if there are any objections to proceeding with the hearing. The Hearing Official, after any necessary consultation, shall be responsible for deciding if such objections are reasonable and/or what measures should be taken to address them.

### **Joint Hearings**

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

### **Testimony and Questioning**

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigators, or have proffered a written statement or answered written questions. The admissibility of any evidence known which were not submitted during the investigation, shall be determined by the Chair, taking into consideration the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence.

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 Hearing Panel can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Hearing Panel may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

Advisors, who will remain seated during questioning, shall provide proposed cross-examination questions (either orally or in writing), and the proceeding will pause to allow the Chair to consider the relevancy of the question(s) and if the question(s) is permitted, disallowed, or rephrased. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors once the Chair has ruled on a question. The Chair may consult with other members of the hearing panel at any time.

Questions and/or evidence about the Complainant's sexual predisposition or prior sexual behavior will be deemed irrelevant and not considered, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct or are being offered to prove consent.

### **Deliberation and Standard of Proof**

The Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The determination shall be based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the policy as alleged.

When there is a finding of responsibility on one or more of the allegations, the Hearing Panel may then consider any previously submitted party impact statements in determining appropriate sanction(s). While the Hearing Panel, in their discretion, may consider the impact statements, the statements are not binding.

When there is a finding of responsibility on one or more of the allegations, the Hearing Panel may then consider any conduct history, as well as read any submitted impact statements.

The Hearing Panel shall issue a written determination regarding responsibility within five (5) business days of the conclusion of the hearing, applying the preponderance of the evidence standard of evidence. The written determination shall detail the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions. The Chair will deliver the written deliberation statement to the Hearing Official.

If a finding of responsibility is reached, factors considered when determining sanctions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s),
- History of the Respondent's prior conduct,
- The University's prior response to similar conduct,
- The University's need to bring an end to the sexual harassment, prevent the future recurrence of sexual harassment, and remedy the effects of the sexual harassment on the Complainant and the community,
- The impact on the parties,
- Any other information deemed relevant by the Hearing Panel

### **Student Sanctions**

The broad range of sanctions for students includes, but is not limited to, the following:

- **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.
- **Required Training or Participation:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects or to required participation in sensitivity training, sexual misconduct training, volunteering, community service, etc.
- **Probation:** A written reprimand for violation of institutional policy. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time and/or until specific criteria are met, or both.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events.
- **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.

- **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded from the University for violations of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Revocation of alumni privileges**
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.
- **Other Actions:** Including, but not limited to:
  - Removal from student housing;
  - Restriction from University premises;
  - Temporary or permanent separation of the parties (by way of example only: change in classes, reassignment of residence, no contact orders, limiting geography where parties may go on campus) with additional sanctions for violating orders;
  - Counseling or mentoring;
  - Removal from leadership/supervisory positions within the University community;
  - Revocation of honors or awards;
  - Loss of University privileges (i.e., using University athletic facilities, parking on campus, using the campus library, utilizing the dining hall);
  - Community service;
  - Any other discretionary sanctions that are directly related to the violation or conduct and that are aimed at eliminating Prohibited Conduct and Title IX Misconduct, preventing its recurrence, and addressing its effects on the Complainant and, if applicable, the University community.

### **Employee Sanctions**

The broad range of sanctions for employees includes, but is not limited to, the following:

- Warning or Reprimand: Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Workplace Restrictions
- Denial of a merit pay increase or other benefit;
- Denial of promotion
- Reassignment
- Suspension
- Termination
- Other Actions: Including, but not limited to:
  - Restriction from University premises;
  - Temporary or permanent separation of the parties (limiting geography where

- parties may go on campus) with additional sanctions for violating orders;
- Counseling or mentoring;
- Removal from leadership/supervisory positions within the University community;
- Revocation of honors or awards;
- Loss of University privileges (i.e., using University athletic facilities, parking on campus, using the campus library, utilizing the dining hall);
- Community service;
- Any other discretionary sanctions that are directly related to the violation or conduct and that are aimed at eliminating Prohibited Conduct and Title IX Misconduct, preventing its recurrence, and addressing its effects on the Complainant and, if applicable, the University community.

### **Notice of the Outcome**

Using the deliberation statement, the Hearing Official will prepare a Notice of Outcome.<sup>18</sup> The Notice of Outcome shall include:

- Identification of the allegations potentially constituting the violation(s);
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- Findings of fact supporting determination;
- Conclusions regarding application of the University's policy to the facts;
- The rationale for the result as to each allegation;
- Any disciplinary sanctions imposed on the Respondent;
- Whether remedies were or will be provided to the Complainant in order to ensure access to the University's educational or employment program or activity;
- Information about how to file an appeal.

The Hearing Official will provide the Notice of Outcome to the parties within seven (7) business days of receiving the deliberation statement. Notification will be made in writing and may be delivered in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

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

### **Formal Appeals Process**

Both the Complainant and the Respondent have the right to request an appeal ("Request for Appeal"), and all requests must be submitted in writing to the Appeal Decision Maker within seven (7) business days of the delivery of the Notice of Outcome.

### **Grounds for Appeal**

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Hearing Panel Members 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.

### **Appeal Guidelines**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full rehearing (de novo) of the allegation(s).  
In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Decision Makers to substitute their judgment for that of the original Hearing Panel merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Panel for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Hearing Panel (as in cases of bias), the appeal may order a new hearing with a new Hearing Panel.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Initial Review of the Appeal**

The Appeal Decision Maker shall conduct an initial review of the appeal request. This initial review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

- If the Request for Appeal does not meet the grounds in this policy, that request will be denied and the parties will be notified in writing of the denial and the rationale.



- If any of the grounds in the Request for Appeal meet the grounds in this policy, then the Appeal Decision Maker will notify both parties, the Title IX Coordinator, the Hearing Official, and any additional individuals named in the appeal. The non-appealing party (if any) will be provided one opportunity to submit a written statement challenging the appeal within five (5) days of this notification. Neither party may submit any new requests for appeal after this time period.

### **Appeal Review**

The Appeal Decision Maker shall conduct the appeal review. This appeal review will primarily entail a review of the file and prior proceedings, but can entail contacting either party, witnesses, hearing panel members, investigators, or any other individual for additional information needed to evaluate the merits of the appeal.

### **Notice of Appeal Outcome**

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved or denied ground and rationale for each decision. The Notice of Appeal Outcome will provide any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

All decisions will apply the preponderance of the evidence standard. Any sanctions imposed as a result of the hearing are stayed during the appeal process. The Appeal result is final and not appealable.

### **Revision of this Policy and Procedures**

This policy supersedes any previous policy addressing Prohibited Conduct (including Title IX Misconduct) as defined in this document. This policy, including Procedures, will be reviewed and updated as needed. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulations require policy or procedural alterations.

If government laws, regulations change, or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

Mercer University's Sexual Misconduct Policy contains some information from:  
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## **Misconduct Definitions**

### **Prohibited Conduct**

"Prohibited Conduct" encompasses all unwelcome conduct based on sex or gender that is so severe and/or pervasive that it has the purpose or effect of unreasonably interfering with a person's University employment, academic performance or participation in University programs or activities, or creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

"Prohibited Conduct" includes Non-Consensual Sexual Intercourse, Non-Consensual Sexual Contact; Sexual Assault; Sexual Exploitation; Sexual Harassment; Dating/Domestic Violence; Gender Discrimination/Harassment; Retaliation; and Title IX Misconduct.

Some Prohibited Conduct, that is so sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity and conduct that conditions an aid or benefit of unwelcome sexual activity, may also constitute Title IX Misconduct.

### **Title IX Misconduct**

"Title IX Misconduct" is a subset of Prohibited Conduct that rises to a level of severe, pervasive and objectively offensive such that it is prohibited expressly by Title IX Regulations. Conduct that does not meet this strict definition for Title IX Misconduct is still prohibited by this policy if it otherwise constitutes Prohibited Conduct.

Alleged conduct is Title IX Misconduct (though it may still be Prohibited Conduct) only if:

- The alleged conduct was perpetrated against a person in the United States; and
- The conduct took place within the University's Programs or Activities; and
- At the time a Formal Complaint is filed, the Complainant is participating in or attempting to participate in the University's programs or activities.

## **Types of Prohibited Conduct**

### **Non-Consensual Sexual Contact (Prohibited Conduct)**

Any intentional sexual touching, directly or indirectly, without a person's affirmative consent. Intentional sexual touching includes deliberate contact, under or over clothing, with the breasts, buttocks, groin, or genitals, or conscious and willful touching another with any of these body parts; making another person touch any of these body parts under or over clothing; and the emission of ejaculate on the clothing or body of another person.

### **Non-Consensual Sexual Intercourse (Prohibited Conduct)**

Any sexual intercourse, however slight, that is without consent and/or by force. Intercourse includes, but is not limited to, any anal, oral or vaginal penetration by a penis, object, tongue or finger and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

### **Sexual Exploitation (Prohibited Conduct)**

Any non-consensual or abusive sexual advantage of another for an individual's own advantage or benefit, or the benefit of another. This includes acts for the purpose of sexual gratification, financial gain, or any other purpose. Examples include, but are not limited to:

- Invasion of sexual privacy
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent, including the making or posting of revenge pornography
  - Taking non-consensual pictures, video, or audio recordings of another individual who is partly undressed, or naked, and transmitting, distributing, or posting those photographs without an individual's consent
  - Observing unsuspecting individuals who are partly undressed, naked, or engaged in sexual acts
- Prostituting another person
- Knowingly transmitting a sexually transmitted disease (STD)
- Exposing one's breasts, buttocks, or genitals without affirmative consent or inducing another to do the same
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues

designed for dating or sexual connections

- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity (including for financial gain and/or blackmail)
- Knowingly soliciting a minor for sexual activity or engaging in sex trafficking
- Any creation, possession, or dissemination of child pornography
- Intentionally disclosing or threatening to disclose the sexual orientation, gender identity, and/or gender expression of another if the person has kept, or sought to keep, their status private from the person(s) to whom it is disclosed.

### **Sexual Harassment (Prohibited Conduct)**

Unwelcome sexual advances, requests for sexual contact or favors, conduct based on gender stereotypes, or other verbal, non-verbal, physical, or visual conduct of a sexual nature constitutes sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's academic, co-curricular, or campus life activities or of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for academic or student life or employment decisions affecting that individual;
- The conduct is so severe and/or pervasive that it unreasonably interferes with a person's University employment, academic performance, or participation in University programs or activities; or
- The conduct is so severe and/or pervasive that it creates an intimidating, hostile, demeaning, or offensive campus or living environment or employment setting. Depending upon the severity and/or pervasiveness of the conduct, sexual harassment may include, for example, subjecting a person to unwelcome sexual attention, physical or verbal advances, sexual flirtations or propositions, vulgar talk or jokes, touching one's self for others to view (including electronic exposure), degrading graphic materials, objects or verbal comments of a sexual nature about an individual's appearance. Sexual harassment can occur regardless of the relationship, job title or respective sex, sexual orientation and/or gender identity of the parties.

### **Dating Violence (Prohibited Conduct)**

Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. For the purposes of this definition, Dating Violence includes, but is not limited to, emotional, mental, verbal, sexual or physical abuse or the threat of such abuse.

### **Gender Harassment (Prohibited Conduct)**

Gender Harassment includes harassment based on actual or perceived sex, sexual orientation,

sex-stereotyping, gender identity, gender expression, or pregnancy. Such harassment may include acts of aggression, intimidation, or hostility, whether verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the behavior:

- Effectively denies access to a University program or activity;
- Is used as a basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity; and/or
- Creates a hostile environment for that individual's participation in a University program or activity.

Examples of conduct that may constitute Gender Harassment include, but are not limited to:

- Written, verbal, or electronic statements that disparage a person based on their actual or perceived sex, gender identity, gender expression, sexual orientation, or pregnancy;
- Disparagement of a person based on an individual's actual or perceived sex, sexual orientation, sex-stereotyping, gender identity, gender expression, pregnancy (including pregnancy related conditions), or lack of stereotypical masculinity or femininity;
- Threats of violence toward an individual based on their actual or perceived identity; within a protected class, or toward an entire sex, gender identity, gender expression, sexual orientation, or pregnancy (including pregnancy related conditions) status as a group; and/or
- Defacing University property, or another individual's property, with symbols or language intended or understood by a reasonable person to disparage or threaten a person or group based on sex, gender identity, gender expression, sexual orientation, or pregnancy (including pregnancy related conditions).

### **Types of Title IX Misconduct**

Federal law requires the University to define Title IX Sexual Harassment as including Sexual Assault (as defined in 20 U.S.C. 1092(f)(6)(A)(v)), Dating Violence (as defined in 34 U.S.C. 12291(a)(10)), Domestic Violence (as defined in 34 U.S.C. 12291(a)(8)), and Stalking (as defined in 34 U.S.C. 12291(a)(30)). The statutory definitions are the definitions that the University must and will use to decide whether reported conduct falls within the scope of Title IX Misconduct for purposes of this policy.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking as defined by Title IX Regulations.

Conduct on the basis of sex<sup>1</sup> or that is sexual in nature that satisfies one or more of the following:

**a. Quid Pro Quo (Title IX)**

An employee of the University, conditions<sup>2</sup> the provision of an aid, benefit, or service of the University, on an individual's participation in unwelcome sexual conduct.

**b. Sexual Harassment (Title IX)**

Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to the University's education program or activity.<sup>3</sup>

**c. Sexual Assault (Title IX)**

Any sexual act<sup>4</sup> directed against another person,<sup>5</sup> without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

This definition includes:

- Sexual intercourse with another person, including oral or anal sexual intercourse, or the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without consent of the complainant, including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- Touching of the private body parts of another person 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 their temporary or permanent mental or physical incapacity;
- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- Sexual intercourse with a person who is under the statutory age of consent.

**d. Dating Violence (Title IX)**

Violence, on the basis of sex, committed by a person, 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.

**e. Domestic Violence (Title IX)**

Violence, on the basis of sex, committed by

- a current or former spouse or intimate partner of the Complainant,
- a person with whom the Complainant shares a child in common, or
- a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Georgia, or
- 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 Georgia.

To categorize an incident as Domestic Violence under this policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates.

#### **f. Stalking (Title IX)**

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that

- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- suffer substantial emotional distress.

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.
- 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.

## **Additional Resources**

### **Appendix A: Additional Definitions**

As used in Prohibited Conduct and Title IX above, the following definitions apply:

#### **Force**

The use of physical violence and/or physical imposition to gain sexual access.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

#### **Coercion**

- The unreasonable pressure for sexual activity.
- When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- Coercion can include manipulation, intimidation, unwanted contact, or express or implied threats of harm.
- Sexual activity that is coerced is non-consensual.

#### **Consent**

- Knowing, voluntary, and clear permission, by words or actions, to engage in sexual activity.
- Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.
- There is no requirement for a person to resist, physically or otherwise, in order to demonstrate a lack of effective consent. Effective consent means communicating “yes” by word or action; the absence of saying or indicating “no” does not equate to effective consent.
- When “no” to a form of sexual activity is communicated by word or action, that sexual activity must cease immediately.
- Consent to some sexual contact (such as kissing) cannot be presumed to be consent for other sexual activity (such as intercourse).
- A current or previous intimate relationship does not constitute consent.
- Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated.
- The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns



that may be evidenced.

- Additional example situations without consent include, but are not limited to, incompetence, impairment from alcohol and/or other drugs, fear, unconsciousness, intimidation, coercion, confinement, isolation, or mental or physical impairment.

### **Incapacitation**

- A state in which an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs.
- That the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated may be raised as a defense.
- “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.
- Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

### **Retaliation**

- Any conduct that would discourage a reasonable person from reporting or participating in a process provided for in this policy, including conduct, personally or through a third party, in response to an individual who has filed a report or complaint, an individual who is the Respondent in any report or complaint, or any other individual who has assisted, engaged or participated in any manner in connection with a report, complaint or inquiry in this policy.
- Retaliation includes intimidation, coercion, threats, harassment, discrimination or any type of adverse action taken against any individual.
- In addition, the University reserves the right to take disciplinary action against any University student or employee who intervenes, interferes or intrudes on the University process. This includes directly or indirectly contacting parties or witnesses and attempting to coerce, correct, change, deter, sway, or alter the memories, statements or testimony of any individual.

## **Appendix B – Federal Regulations Sexual Act Definitions**

A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

**Forcible 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 consent of the Complainant.

**Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:**

The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Forcible Fondling:**

The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Incest:**

Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Georgia law. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent.

## Appendix C: Notes

<sup>1</sup> Including sexual orientation and sex stereotypes.

<sup>2</sup> Implicitly or explicitly.

<sup>3</sup> Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>4</sup> Appendix A

<sup>5</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

<sup>6</sup> A Formal Complaint should contain the Complainant’s (or Title IX Coordinator’s) physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

<sup>7</sup> The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, enacted in 1990 codified at 20 U.S.C. § 1092(f) with implementing regulations at 34 C.F.R. § 668.46.

<sup>8</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

<sup>9</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>10</sup> Such a Complainant is still entitled to supportive measures, but the formal process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

<sup>11</sup> The University retains discretion on a case-by-case basis to dismiss a Formal Complaint based on any of the above reasons.

Just because one or all of the conditions above are satisfied, does not mean the University will automatically dismiss the Formal Complaint. Instead, the University will determine if such a decision is appropriate under the circumstances.

<sup>12</sup> A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

<sup>13</sup> Informal Resolution is not available to resolve Title IX Misconduct allegations by a Student against an Employee.

<sup>14</sup> The Title IX Coordinator may consolidate multiple reports against a single Respondent or group of Respondents into one investigation if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident(s).

<sup>15</sup> The Investigators may also share their report with the Title IX Coordinator for review and revision.

<sup>16</sup> Participants at the hearing may include the Hearing Panel, the Hearing Official(s), the Coordinator of Student Conduct, Investigators, Parties, Advisors to the parties, Witnesses, the Title IX Coordinator, anyone providing authorized accommodations or assistive services, and anyone deemed to be necessary at the hearing.

<sup>17</sup>This may include, but is not limited to, overseeing the logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, ensuring necessary breaks, addressing hearing concerns and questions, etc.

<sup>18</sup> In preparing the Notice of Outcome, the Hearing Official may consult with the Title IX Coordinator, Legal Counsel, the Hearing Panel, and other administration officials, as needed.