

APPENDIX A – Resolution Process for Title IX Sexual Misconduct (“Process A”)

I. Overview

The University will use the procedures outlined below to investigate and resolve, in a prompt and equitable process, only Formal Complaints of qualifying allegations of Title IX Sexual Misconduct, as defined in this Policy filed with or brought by the Title IX Coordinator.

Appendix A sets forth the Resolution Process (“Process A”) the University will follow in response to the submission of a Formal Complaint alleging Title IX Sexual Misconduct. Process A cannot be initiated without the submission of a Formal Complaint.

I. Formal Complaints for Title IX Sexual Misconduct

A. How to File a Formal Complaint

Making a Report is different from filing a Formal Complaint. A Formal Complaint is needed in order for the University to investigate an allegation of Title IX Sexual Misconduct. A Formal Complaint is a document or electronic submission Complainant that contains the Complainant’s physical or digital signature or otherwise indicates that the Complainant is the person filing the Formal Complaint. While it is preferable that a Complainant file a Formal Complaint by completing the Formal Complaint form provided by the University, a Complainant may also file a Formal Complaint by other means, such as by sending an email from the Complainant’s University email account to the Title IX Coordinator, by mail, or in person. A Formal Complaint must include a written description of the facts alleged, and the Complainant’s signature (a digital signature is permitted). The Title IX Coordinator or designee can provide assistance in initiating and submitting a Formal Complaint. As outlined below, in certain circumstances where a Complainant does not wish to or is unable to file a Formal Complaint, one may be filed by the Title IX Coordinator to address the safety of the broader campus community.

1. Deadline for Filing a Formal Complaint -- There is no time limit or deadline to file a Formal Complaint. However, individuals are encouraged to report soon

after the occurrence of the prohibited conduct to maximize the University's ability to provide resources, investigate, and respond.

2. Who Can File a Formal Complaint – Formal Complaints can be filed by a Complainant, a Title IX Coordinator, or a parent or guardian who has the legal right to act on Complainant's behalf. In instances where the Title IX Coordinator or a third party files a Formal Complaint, the Title IX Coordinator and/or the parent or guardian are not considered to be the Complainant but rather acting on behalf of the Complainant. If a parent or guardian of a student has a legal right to act on behalf of a student, the parent or guardian may do so throughout the Resolution Process.

In response to a Formal Complaint, an investigation will begin, and the parties will be provided with options of informal and formal resolution.

B. If a Complainant Chooses Not to File a Formal Complaint

If a Complainant chooses not to file a Formal Complaint, Supportive Measures will remain available to the Complainant. In such cases, the University's ability to meaningfully respond to and address the incident may be limited. The University will consider the Complainant's choice not to file a Formal Complaint; however, the University must weigh the Complainant's choice against the University's obligation to provide a safe, non-discriminatory environment for all community members, including the Complainant.

Based on the information gathered, the University may determine that it has a responsibility to move forward with Process A, (even without the participation of the Complainant). In such cases, the Title IX Coordinator will sign a Formal Complaint on behalf of the Complainant. The Title IX Coordinator does not become a Complainant, or otherwise a party, and retains the responsibilities otherwise associated with the Title IX Coordinator under this Policy.

In deciding whether to sign a Formal Complaint, the Title IX Coordinator will evaluate whether an investigation is required, even where a Complainant does not wish to file a Formal Complaint, and will consider such factors, including, but not limited to:

- The seriousness of the alleged prohibited conduct;
- The nature of the Complainant and the Respondent's affiliation with the University;
- Whether there has been a pattern of alleged prohibited conduct by a Respondent;

- Whether the Respondent allegedly threatened further prohibited conduct or other violence against the Complainant or others;
- Whether there is a risk and/or likelihood of ongoing harm to the Complainant if the University does not address the alleged prohibited conduct through a Resolution Process;
- Whether the alleged prohibited conduct was committed by Respondents;
- Whether the alleged prohibited conduct was perpetrated with a weapon or involved violence; and/or
- The extent of any threat to the University community.

The University will also consider a Complainant's wishes regarding the University's response to a Report, including requests for confidentiality and/or non-action. However, there may be times when, in order to provide a safe, non-discriminatory environment for all campus community members, the University may not be able to honor a Complainant's wishes not to proceed with an investigation. The presence of one or more of the factors above could obligate the University to move forward with Process A (even without the participation of the Complainant). In such cases, the University will inform the Complainant and will share the University's reasoning for proceeding with a Formal Complaint. The Complainant may still decide whether and how much they want to be involved with Process A.

In instances where the University moves forward with Process A without the participation of the Complainant, the Complainant will have the same rights as provided to a Complainant under this Policy, even if the individual did not sign the Formal Complaint.

C. Consolidation of Formal Complaints

The University may consolidate Formal Complaints alleging prohibited conduct under this Policy against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of prohibited conduct arise out of the same facts or circumstances.

If a Formal Complaint includes both an allegation of Title IX Sexual Misconduct and an allegation of non-Title IX Sexual Misconduct that does not meet the definition of Title IX Sexual Misconduct, the University may, in its discretion, consolidate the allegations into the same complaint in the Resolution Process (Process A), or to separate the allegations into separate complaint Resolution Processes.

D. Dismissal of Formal Complaints

1. **Mandatory Dismissals:** In cases involving allegations in a Formal Complaint of Title IX Sexual Misconduct, the Title IX Coordinator must dismiss a Formal Complaint brought under this Policy or any specific allegation(s) raised within that Formal Complaint, at any time during the investigation or hearing if the conduct alleged: (1), even if proved, would not meet this Policy's definition of Title IX Sexual Misconduct; (2) did not occur within the University's Education Program or Activity; or (3) did not occur against a person in the United States.
2. **Permissive Dismissals:** The Title IX Coordinator may dismiss a Formal Complaint brought under this Policy or any specific allegation(s) raised within that Formal Complaint, if at any time during the investigation or hearing: 1) the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint; 2) the Respondent is no longer enrolled at or employed by the University; or 3) specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

When a Formal Complaint is dismissed in whole or in part, the University will promptly and simultaneously notify both parties in writing and will include the reason(s) for the dismissal. Either party may appeal the dismissal on one or more of the grounds identified in the Appeals section in Appendix A – Resolution Process A for Title IX Sexual Misconduct. Appeals regarding dismissals of Formal Complaints or allegations therein will follow the Appeal process outlined in Appendix A – Resolution Process A for Title IX Sexual Misconduct.

Dismissal of some or all of the conduct alleged in a Formal Complaint does not prohibit the University from addressing the alleged prohibited conduct through another process. For example, alleged prohibited conduct that does not meet this Policy's definition of Title IX Sexual Misconduct may still constitute non-Title IX Sexual Misconduct under this Policy or a violation of other University policies, in which case, the University may proceed under those applicable policies and procedures, including the process outlined in Appendix B – Resolution Process B for Sexual Misconduct (Process B).

E. Timeframe for Resolution

After the filing of a Formal Complaint, Process A will be completed in a reasonably prompt manner. Where a timeframe is given in a number of days, the length of the

timeframe is calculated in business days. Days where the University is closed for breaks and/or holidays do not count as business days for the purposes of the timeframes contained in this Policy. Additionally, while the University remains open during summer months (between the end of the Spring Term and prior to the start of the Fall Term), the timeframe of a Resolution Process may be impacted due to the availability of the parties and/or Witnesses.

Following the filing of a Formal Complaint, the goal is for a Hearing to occur within 60-90 days. However, the University will not compromise a thorough and fair process to meet the 60-90 day completion goal. This timeframe may be extended if the Parties elect to participate in Informal Resolution, which will typically extend the process by an additional 30 days. Additionally, these timeframes for completion may be subject to limited extension or temporary delay for good cause as determined by the Title IX Coordinator in consultation with appropriate University administrators. Good cause may include, but is not limited to: considerations such as the absence of a party, a party's Advisor, or a Witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

In addition to a Formal Complaint, a Complainant may have the option to pursue legal action through civil litigation or by pressing criminal charges. A concurrent criminal legal matter may result in a temporary delay of the Resolution Process.

Parties will receive ongoing written communication regarding the progress of the Resolution Process, including written notice of any delay or extension and the reason for the action.

F. Official Method of Communication

For all process participants who are a part of the University community, their University email account is the official method of communication for communications related to the Resolution Process. Parties and University-affiliated Witnesses and Advisors should regularly check their University email account for time critical notices or administrative notices requiring a timely response. Failure to check a University email account does not excuse or exempt a party or participant from any actions required by the University, including meeting deadlines. Party and participant communications regarding the Resolution Process should be generated from their Duquesne University email account and not their personal accounts.

III. Response to a Formal Complaint of Title IX Sexual Misconduct

When the University receives a Formal Complaint of alleged Title IX Sexual Misconduct, the University will provide the following written notice and information to both the Complainant and the Respondent, if their identities are known:

- Notice of the University's Resolution Process A;
- Notice of the allegations of Title IX Sexual Misconduct, including sufficient details known at the time, and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, if known; the conduct allegedly constituting Title IX Sexual Misconduct; and the date and location of the alleged Title IX Sexual Misconduct, if known;
- Information about the Informal Resolution process;
- Information about Policy Presumptions as outlined in Section VIII (B) of the Policy;
- Notice that parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
- Notice that parties may inspect and review evidence as applicable under this Policy; and
- Notice that parties are prohibited from knowingly making materially false statements in bad faith and that such action is prohibited by the Student Code of Conduct and TAP No. 55: Ethical, Respectful, and Professional Conduct.

To the extent the University investigates additional allegations of Title IX Sexual Misconduct not included in the initial notice to the parties, the University will provide written notice of the additional allegations to the parties whose identities are known.

IV. Informal Resolution

A. Eligibility of Informal Resolution

For Formal Complaints alleging violations of Title IX Sexual Misconduct, Informal Resolution is only available after the filing of a Formal Complaint and at any time prior to reaching a determination regarding responsibility. Whether a matter is eligible for Informal Resolution is subject to the process and limitations outlined in Section VII (B) of the Policy.

B. Type of Informal Resolution

Mediation is the Informal Resolution process offered by the University, as an alternative to a full investigation and adjudication of the Formal Complaint of Title IX Sexual Misconduct. Mediation is facilitated by a Deputy Title IX Coordinator or other trained designee by the University, who is not involved in the Resolution Process (the “Mediator”).

Mediation is a process by which a Mediator helps the parties discuss and try to resolve the Formal Complaint. Each party will separately meet with the Mediator to share information and their perspective on the matter; discuss their understanding of the facts in dispute; describe their desired outcome; and explore mutually acceptable ideas for the resolution of the Formal Complaint. The Mediator will not be an advocate for either the Complainant or the Respondent, but rather aid in the resolution of a Formal Complaint in a non-adversarial manner.

C. Requesting Informal Resolution

To request Informal Resolution, either the Complainant or Respondent may provide a written request to participate in Informal Resolution to the Title IX Coordinator in lieu of the formal resolution of allegations of Title IX Sexual Misconduct.

D. Requirements of Participating in Informal Resolution

Mediation will proceed only upon the voluntary, informed, and written Consent of both the Complainant and the Respondent.

E. Notice and Consent to Proceed with Informal Resolution

If one or both parties indicates to the Title IX Coordinator a desire to resolve the Formal Complaint through Mediation, the Title IX Coordinator will provide both

parties with a written notice disclosing: the allegations; the requirements and consequences of participating in Mediation; a reminder that both parties have the right to withdraw from Mediation at any time prior to agreeing to a resolution and resume Process A; and information regarding confidentiality and records retention.

After receipt of this notice, the parties will be given five (5) days to review the information, after which a signed Consent to Proceed with Mediation form is required to be returned to the Title IX Coordinator.

If the Title IX Coordinator receives a signed Consent to Proceed with Mediation form from both parties by the date that it is due to be returned, the Title IX Coordinator will refer the matter to a Mediator.

If one or both parties do not sign the Consent to Proceed with Mediation form, Mediation will not proceed, and the matter will be returned to the Formal Grievance Process. Both parties will be notified in writing. At the discretion of the Title IX Coordinator, a party may submit a subsequent request for Mediation, where a prior request for mediation was not agreed to or responded to by the other party.

F. Informal Resolution (Mediation) Process

The Mediator will schedule individual meetings with the parties or schedule a specific date and time to hold the Mediation. In either scenario, parties will not be present in the same virtual or physical space, at the same time. Mediation does not involve any Witnesses, and the Mediator will only conduct such fact-gathering as is useful to resolve the Formal Complaint, and as is necessary to protect the interests of the parties, the University, and the University community. The Mediator may find it necessary to consult with one or more University officials during the course of Mediation to ensure possible resolutions are feasible.

G. Timeframes for Informal Resolution

The timeframe for Mediation is generally 30 days. This timeframe may be extended by the Mediator with notice to the Title IX Coordinator and both parties.

H. Resolving a Matter through Informal Resolution

Mediation will resolve as follows: after sufficient discussion(s) with each party as determined by the Mediator, the Mediator will develop a draft Mediation Agreement. The draft will be shared with both parties. If the terms are agreeable, both parties will sign the agreement. Once signed, the Mediation Agreement becomes binding on its terms and both parties are obligated to comply with the terms of the Mediation Agreement. The signed Mediation Agreement will be shared with the Title IX Coordinator who oversees compliance with the agreement.

I. Right to Withdraw/Failure of Informal Resolution

Either party can withdraw from mediation at any time prior to signing the Mediation Agreement by notifying the Title IX Coordinator.

Neither party is obligated to sign the Mediation Agreement.

At any point during Mediation, the Mediator may determine that the Formal Complaint is unlikely to be resolved through Mediation.

If one or both parties withdraw from Mediation; if the Mediation Agreement is not signed by one or both parties; or if the Mediator refers the matter back to the Resolution Process because it is unlikely to resolve through Mediation, Mediation will have failed. The Mediator will notify both parties and the Title IX Coordinator of the failure of Mediation, which will refer the matter back to the Resolution Process. Notice of a failure of Mediation will simply note that Mediation failed.

J. Informal Resolution Records Retention and Confidentiality

Mediation is confidential, and the Mediator will not disclose what the parties say during Mediation. There are a few exceptions that include: 1) when disclosure is required by law, 2) when a party shares threats or thoughts of self-harm or harm to others, and/or 3) when a party discloses serious criminal conduct.

The Mediator may take notes or make draft Mediation Agreements throughout the Mediation. Such notes and drafts are not retained after the parties sign the Mediation Agreement or Mediation fails.

The only records maintained related to Mediation are 1) the Consent to Proceed with Mediation form and 2) the Mediation Agreement or the written notice that Mediation has failed. Such records are maintained by the Title IX Coordinator. To

the extent one is created, the Mediation Agreement will be maintained for the purposes of ensuring compliance with its terms and may be shared with University officials who have a need to know.

If Mediation fails, the Mediator cannot be called as a Witness during the Resolution Process. Because Mediator notes and draft Mediation Agreements, as applicable, are not maintained, such items cannot be used as evidence during the Resolution Process.

Future reports of conduct that would violate this Policy will be independently addressed, regardless of prior Mediation Agreements. However, the Title IX Coordinator may consider the fact that a Formal Complaint was filed, even if it resolves through mediation, as evidence of a Respondent's pattern of behavior in the event there are future reports or complaints made about the Respondent.

K. Consequences and Possible Outcomes of Informal Resolution

Mediation may result in many possible outcomes, as long as such outcomes are mutually agreeable to both parties. In some cases, mutual no contact directives and/or mutual confidentiality agreements may be a piece of the Mediation Agreement. Additionally, although a Mediation Agreement may be reached without a Respondent admitting responsibility, sanctions or other adverse consequences may still be assigned as part of the resolution.

Parties are obligated to comply with the terms of the Mediation Agreement. Failure to comply may subject a party to sanctions up to and including expulsion or termination of employment without the right to a Resolution Process. Violations of a Mediation Agreement should be reported to the Title IX Coordinator to determine the appropriate University policy to address the alleged violation.

V. Investigations

A. General Information

A Formal Complaint, that has not been dismissed, will be investigated by the Title IX Coordinator and typically one or more Deputy Title IX Coordinator(s) (an "Investigator" or collectively, the "Investigators"). The Investigators, not the parties,

are responsible for gathering evidence sufficient to reach a determination of whether a policy violation occurred.

B. During the Investigation

1. The Investigators will request to meet with the Complainant, the Respondent, and Witnesses discovered during the investigation or suggested by the parties, if relevant as determined by the Investigators.
2. The Investigators may request follow-up meetings with the parties and/or any Witnesses.
3. Both parties have equal opportunity to present Witnesses and submit evidence as part of the process.
4. The parties, and the Investigators, do not have the right to question other parties or Witnesses or to require parties or Witnesses to participate in Process A.
5. The Investigators will take meeting notes and will endeavor to gather evidence directly related to the allegations raised in the Formal Complaint from the Complainant, Respondent, and any Witnesses, including, but not limited to: texts, phone call logs, voicemails, screenshots, photographs, taxi/Uber/Lyft receipts, and social media posts.
6. The Investigators may also gather other available evidence related to the allegations raised in the Formal Complaint, such as: Residence Hall guest sign-in logs, University ID card swipe logs, video surveillance footage, and publicly available information.
7. Any party whose participation is invited or expected as part of the investigation shall be provided with written notice of the date, time, location, participants, and purpose of all meetings or investigative interviews, with sufficient time given to prepare to participate.
8. Near the end of the investigation, the parties will be informed of a deadline to share evidence. The parties are required to submit any and all evidence

they would like considered as part of the investigation by such deadline. After the deadline, the parties will not be permitted to submit new or additional evidence that existed prior to the deadline, without approval from the Investigator(s).

9. The Investigators will create an Investigative Report at the conclusion of the Investigation.

C. Evidence Subject to Inspection and Review and Written Response

1. Prior to the conclusion of the Investigation and the completion of the Investigative Report, both parties have an equal opportunity to inspect, review, and respond to all evidence obtained as part of the Investigation that is directly related to the allegation(s) raised in the Formal Complaint. Each party and their Advisor, if any, will be sent such evidence, and the parties will have ten (10) days to submit a written response ("Evidence Response"), which the Investigator(s) will consider prior to completion of the Investigative Report.
 - a. Evidence subject to inspection and review includes evidence whether obtained from a party or from another source. At the inspection and review stage of Process A, the Investigator(s) will not screen out irrelevant evidence. Determinations regarding relevance will be made when finalizing the Investigative Report.
 - b. The University is not obligated to share a copy of any evidence that was illegally or unlawfully obtained or evidence that is protected by a legally recognized privilege or prohibited by law.
2. The written Evidence Response by a party may include additional comments or feedback on the facts as gathered, clarify information previously shared, suggest additional Witnesses, provide corrections or appropriate context, point out any evidence that appears to be missing, and/or submit additional evidence. Any such additional evidence that is or could have been submitted will not qualify as "new evidence" for purpose of an Appeal.
3. Each party's Evidence Response will be shared with the other party.

- a. Parties may use their own or the other party's Evidence Response to help them prepare for the Hearing.
- b. All evidence subject to the parties' inspection and review will be available at the Hearing. Participants may refer to such evidence during the Hearing.

D. Investigative Report and Written Response

1. The Investigator(s) will consider the parties' Evidence Responses following the inspection and review period and take additional investigative steps, as needed; close the investigation; determine what evidence is relevant; and fairly (by objective evaluation free of bias) summarize the relevant evidence in an Investigative Report.
2. Where Process A involves multiple Complainants, multiple Respondents, or both, the Investigator(s) may issue a single Investigative Report.
3. The Investigative Report will be sent to each party and the party's Advisor, if any, at least fifteen (15) days prior to the Hearing.
4. Parties will have five (5) days to review the Investigative Report and prepare any written response ("Investigative Report Response") to the Investigative Report. The written Investigative Report Response must be submitted to the Title IX Coordinator by the provided deadline.
 - a. If a party disagrees with an Investigator's determination regarding relevance, the party may, in addition to making the argument in their Investigative Report Response, express their disagreement to the Decision-maker at the Hearing.
5. Parties are expected to submit any evidence they would like the Investigators to consider prior to finalization of the Investigative Report. However, a party may provide additional evidence as part of their response to the Investigative Report. To the extent a party provides or could have provided additional evidence in response to the Investigative Report, such evidence will not qualify as "new evidence" for the purpose of an Appeal.
6. Each party's Investigative Report Response, including additional evidence as applicable, will be shared with the other party.

7. A party has the opportunity to respond only to any additional evidence submitted by the other party, no fewer than 5 business days prior to the hearing.
8. The Investigators will summarize any relevant, additional evidence as an addendum to the Investigative Report, and parties and their Advisors will receive copies of this Addendum no fewer than 3 business days prior to the Hearing.
9. Any Investigative Report Responses received from the parties will be provided with the final Investigative Report to the Decision-maker.

VI. Hearing Process

Once the Investigative Report is finalized, a Hearing will occur to make a determination of whether there was a policy violation.

A. Hearing Decision-maker Rights and Responsibilities

Hearings will be administered by a Decision-maker who is a different person than the Title IX Coordinator/Investigator(s).

Prior to the Hearing, the Decision-maker will receive the Investigative Report. At the Hearing, the Decision-maker has the right to ask relevant questions and elicit relevant testimony from parties and Witnesses. Following the Hearing, the Decision-maker will objectively evaluate relevant evidence and will independently reach a determination regarding responsibility.

B. Location of Hearing

A Hearing may be conducted with all parties present in the same geographic location or, alternatively, some or all parties, Witnesses, and other participants may appear at the Hearing virtually but in different geographic locations, by using videoconferencing, or similar technology that allows the parties to simultaneously see and hear each other.

At the request of either party and/or in the University's discretion, the University will provide for the Hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker and each party to see and hear the other party or the Witness who is speaking and/or answering questions.

C. Pre-Hearing Procedures

Prior to the Hearing date, the Decision-maker will schedule individual pre-hearing meetings with each of the parties and their respective Advisors and the Title IX Coordinator or Deputy Title IX Coordinator. At the meeting, the Decision-maker will review the Hearing procedures and answer questions the parties may have about the Hearing process.

D. Attendance at Hearing

If the Complainant or the Respondent fails to appear at the scheduled Hearing, the Decision-maker, through consultation with the Title IX Coordinator, may determine whether to postpone the Hearing or to direct that the Hearing proceed as scheduled, provided that the absent party was properly notified of the scheduled Hearing date.

A Complainant, Respondent, and/or Witness may decline to participate in the Resolution Process, including the Hearing.

E. Hearing Participants

At least three (3) business days prior to the Hearing, each party must provide notice to the Title IX Coordinator of the identity of any Witnesses who will participate and also the identity of their Advisor for the Hearing. If a party has indicated that they will not have an Advisor present for the Hearing, the University will provide an Advisor, chosen by the University, without fee or charge, for the purpose of asking the other party and Witnesses questions during the Hearing.

If a party anticipates that they will not have an Advisor for the Hearing, they are strongly encouraged to notify the Title IX Coordinator as soon as possible to avoid the potential need to delay the Hearing to ensure the University can identify and provide an Advisor.

F. Conduct of Hearing

The Decision-maker will administer the Hearing and make relevancy determinations with respect to each question asked during the Hearing, and other such decisions they deem necessary for the orderly conduct of the Hearing. No

one other than the Decision-maker, the Complainant, the Respondent, their respective Advisors, Witnesses (when called), the Title IX Coordinator and other necessary University personnel may be present during the Hearing.

G. Questioning During the Hearing

Before a Complainant, Respondent, or witness answers any question at the Hearing, the Decision-maker will first determine whether the question is relevant and provide an explanation for any decision to exclude a question on the grounds that it is not relevant. The Decision-maker may deem a question irrelevant because the question asks about a detail that is not probative of any material fact concerning the allegations. Additionally, where evidence or questions are duplicative, the Decision-maker may deem the evidence or question to be irrelevant.

Neither party nor their Advisor has the right to challenge a Decision-maker's determination of relevance during the hearing.

The Decision-maker is permitted to ask questions of any party or Witness participating in the Hearing. A party's Advisor is permitted to ask relevant questions of the other party and any Witnesses, but not their own party that they are advising. The Decision-maker may disallow or reframe any questions that are redundant, irrelevant, abusive, disrespectful, or unduly harassing.

During a Hearing, an Advisor may not otherwise speak for or on behalf of a party, including, but not limited to, by presenting opening or closing statements and/or by objecting to questions asked by the Decision-maker or the other party's Advisor, and Advisors and all parties will be expected to follow all Hearing rules established by the University.

Neither party may ask questions of the other party or any Witness during the Hearing. Only the party's Advisor may ask questions of the other party or Witnesses. The Advisor's questions must be asked directly, orally, and in real time, and must be relevant.

Both parties shall have the right not to answer questions during the Hearing; however, the exercise of that right shall not preclude the Decision-maker from proceeding and evaluating the Formal Complaint on the basis of the final Investigative Report and other relevant evidence submitted during the Hearing, subject to the following:

- The Decision-maker has the discretion to decide how much weight to give to statements made or information provided by any party or Witness who did not submit to questioning at the Hearing. The Decision-maker can consider the reliability of the statements or information, the reason the individual did not participate in questioning, and any other factors the Decision-maker considers relevant.
- The University may still proceed with a Hearing in the absence of a party and may reach a determination of responsibility in their absence.
- The Decision-maker is not permitted to draw an inference about responsibility for a policy violation based solely on a party's or Witness's absence from the Hearing or refusal to answer questions during the Hearing.

H. Evidence Considered at Hearing

The concept of relevance will guide the Decision-maker in determining what evidence to consider, and the Decision-maker has discretion regarding the weight or credibility to assign to any particular piece of relevant evidence.

The Decision-maker will not consider the following types of evidence:

- Prior sexual behavior or sexual predisposition of the Complainant, 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.
- Either party's medical, psychological, counseling, and other similar records without the written Consent of the party whose records are being offered.
- Any information protected under a legally recognized privilege, unless the person holding that privilege has waived the privilege.

In the event that relevant evidence was destroyed by a party, the Decision-maker can take that into account when assessing the credibility of parties, and the weight of evidence in the matter.

I. Recording

The University will create an audio recording of the Hearing that may also include video. Parties have the right to inspect and review the recording. Parties and their Advisors are not permitted to make their own recordings.

VII. Determination of Policy Violation

Within a reasonably prompt timeframe following the Hearing, the Decision-maker will issue a final written determination regarding the Respondent's responsibility for the alleged Title IX Sexual Misconduct Policy violation applying the preponderance of the evidence standard.

The final written determination will include:

- Identification of the allegations potentially constituting Title IX Sexual Misconduct;
- 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;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The final written determination will be provided to both parties simultaneously. The determination regarding responsibility becomes final either on the date that the parties are provided with the final written determination of the result of any appeal, or if an appeal is not timely filed, the date on which an appeal would no longer be considered timely.

A. Remedies and Sanctions

Where the determination shows Respondent to be responsible for violating this Policy, the Complainant will be provided with remedies as noted in the Decision-maker's determination of responsibility. Remedies will be designed to restore or preserve equal access to the University's Education Program and Activities. Such remedies may include the same individualized services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for coordinating the effective implementation of any remedies. Thus, where a final written determination states that remedies will be provided, the Complainant should contact the Title IX Coordinator to discuss the nature and implementation of such remedies.

Similarly, after a determination of responsibility for a policy violation has been made, the Respondent will be subject to the sanctions set forth in the Decision-maker's determination of responsibility. Previous conduct violations by a Respondent may be considered when assigning sanctions. The Decision-maker may consult with the Office of Human Resources for an employee Respondent and/or the Office of Student Conduct and the Title IX Coordinator for a student Respondent regarding the Respondent's prior disciplinary record. The Respondent's prior disciplinary record will be shared with the Respondent in advance, prior to it being shared with the Decision-maker.

Sanctions will be assigned which are adequate to protect the safety of the campus community, which are reflective of the seriousness of the Title IX Sexual Misconduct and/or other prohibitions contained within this Policy, and which consider the surrounding circumstances of the Title IX Sexual Misconduct.

- **Range of Potential Sanctions against Students:** Students are subject to the non-exhaustive list of disciplinary sanctions as defined in the Code of Student Rights, Responsibilities, and Conduct for violations of the Code. These may include one or more of the following measures: a written

apology, disciplinary probation, educational projects/classes, fees, intervention, loss of privileges, no-contact order, restitution, written reprimand, suspension, and/or expulsion. As set forth in the Code of Student Rights, Responsibilities, and Conduct, the University reserves the right to impose other sanctions in response to the specific circumstances of a violation of this Policy.

- Range of Potential Sanctions against Employees: Disciplinary sanctions for employee violations of this Policy may range from a disciplinary warning to termination from the University. Disciplinary sanctions may include one or more of the following measures: termination from the University, unpaid suspension, change in working facility, mandated enrollment in an Employee Assistance Program, written reprimand in personnel file, demotion, and/or withholding of salary increase. The University reserves the right to impose other sanctions in addition to those listed above in response to the specific circumstances of a violation of this Policy.

VIII. Appeals

Within five (5) days of receipt of the final written determination, both parties have an equal right to submit an appeal to the Title IX Coordinator on the following three (3) bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome; and/or
- 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 individual Complainant or Respondent that affected the outcome of the matter.

Dissatisfaction with the hearing outcome and/or disagreement with the severity of a sanction are not grounds for appeal.

Once the appeal deadline has passed without an appeal made by either party, the Decision-maker's written determination and sanctions, if any, are final.

When an appeal is filed, the Title IX Coordinator will notify the other party of the appeal in writing. Both parties will be given an equal opportunity to submit a written statement in support of, or challenging, the outcome. Parties will be provided with information regarding the timelines for submission of such statements.

- Appeals will be administered by an Appeal Decision-maker, who is not the same person as the Hearing Decision-maker that reached the determination regarding responsibility, the Investigator(s), or the Title IX Coordinator.
- Appeals will generally proceed on written materials only; parties and Witnesses will not be interviewed by the Appeal Decision-maker. The Appeal file will include the written determination, the Investigative Report, the recording of the underlying hearing, new evidence as applicable, and any written statement submitted by the parties in connection with the Appeal. In rare instances, and only as necessary to reach a determination, an Appeal Decision-maker may require additional information, outside of the written materials, to reach a decision. One such example may include where an Appeal Decision-maker needs additional information to determine whether a conflict of interest existed.
- Following review of the file, the Appeal Decision-maker will issue a written decision describing the result of the appeal and the rationale for the result. The Appeal Decision-maker may: 1) deny the appeal; or 2) grant the appeal and determine the appropriate remedy, which may include revising the original determination and sanctions, if any; or 3) remanding the matter back to the Title IX Coordinator or original Decision-maker with directions on resolving the appeal.
- The written Appeal decision will include the rationale for the decision and will be provided simultaneously to both parties.