



TITLE IX COORDINATOR & ADMINISTRATOR TRAINING & CERTIFICATION LEVEL ONE COURSE

COURSE MATERIALS

© ATIXA 2016.
All Rights Reserved.

This training manual is intended to provide assistance for achieving best practices with respect to campus sexual misconduct, but is not given and should not be taken as legal advice.

Before acting on any of the ideas, opinions or suggestions in this publication, participants should check first with a licensed attorney in their own jurisdiction.

TABLE OF CONTENTS

<u>SOME BEDROCK BELIEFS OF YOUR FACULTY</u>	3
<u>FOUNDATIONAL UNDERSTANDING OF TITLE IX</u>	4
<u>ATIXA MODEL POLICIES AND GRIEVANCE PROCEDURES</u>	8
CREATING A CAMPUS SEXUAL MISCONDUCT POLICY	9
ATIXA SEX/GENDER-BASED HARRASSMENT, DISCRIMINATION, AND SEXUAL MISCONDUCT MODEL POLICY	10
ATIXA SEX/GENDER-BASED HARRASSMENT, DISCRIMINATION, AND SEXUAL MISCONDUCT MODEL RESOLUTION PROCEDURES	36
<u>NCHERM GROUP/ATIXA WHITEPAPERS & WRITINGS</u>	56
2015 WHITEPAPER – VIOLENCE	57
2014 WHITEPAPER – EQUITY	72
2013 WHITEPAPER – TOP TEN	83
2010 WHITEPAPER – GAMECHANGERS	98
2011 WHITEPAPER – DELIBERATELY INDIFFERENT	119
2007 WHITEPAPER - THE CIVIL RIGHTS INVESTIGATION MODEL	133
CONSENT AND SEXUAL MISCONDUCT	141
THE RELUCTANT VICTIM	146
TRAINING HEARING PANELS	149
SEXUAL HARASSMENT AND THE 1 ST AMENDMENT	165
SANCTIONING FOR SEXUAL MISCONDUCT	168
MANDATORY REPORTERS: A POLICY FOR FACULTY, TRUSTEES AND PROFESSIONAL STAFF	171
<u>INVESTIGATION MATERIALS AND TEMPLATES</u>	176
TITLE IX GRIEVANCE PROCESS FLOWCHART: TRADITIONAL STUDENT CONDUCT/HEARING PANEL MODEL	177
TITLE IX GRIEVANCE PROCESS FLOWCHART: CIVIL RIGHTS INVESTIGATION MODEL	178
TITLE IX BEST PRACTICES CHECKLIST	179
ATIXA TIMELINE COMPLIANCE TEMPLATE	182
SAMPLE REPORT TEMPLATE 1: OUTLINE	183
SAMPLE REPORT TEMPLATE 2: OUTLINE	186

Some Bedrock Beliefs of Your Faculty...

- ✓ Effective sexual assault risk management practices will decrease the likelihood of sexual assault on college campuses, thereby protecting students and helping to insulate colleges from a potential source of litigation.
- ✓ Effective sexual assault risk management practices will decrease the likelihood of successful lawsuits against colleges by perpetrators, because college adjudications will be less likely to violate their rights.
- ✓ Effective sexual assault risk management practices will decrease the likelihood of successful lawsuits against colleges by survivors of sexual violence, because the college will be less likely to violate their rights.
- ✓ Effective risk management practices will increase the likelihood that colleges will prevail in lawsuits if they arise out of incidents of sexual assault.
- ✓ Effective sexual assault risk management practices will decrease the likelihood of lawsuits between survivors and perpetrators.
- ✓ Effective sexual assault risk management practices will help colleges to maintain a reputation for safety, and for dealing appropriately with campus crime when it occurs.
- ✓ Effective sexual assault risk management practices will decrease the likelihood of lawsuits against colleges by campus and local media seeking access to campus crime information.

**SOME FOUNDATIONAL CONCEPTS FOR
UNDERSTANDING HOW TITLE IX
IMPACTS ON CAMPUS SEXUAL HARASSMENT**

Title IX Mandates: What Does Recent Case Law Mean For Institutions In Cases of Student-On-Student Sexual Assault? Brett A. Sokolow, JD (2001)

The Supreme Court decision, *Davis v. Monroe County Bd. of Ed.*, 119 S.Ct. 1661 (1999) presented us with confirmation that colleges can be liable in monetary damages under Title IX, in cases of student-on-student sexual harassment. Today, we are gaining a clearer sense of how the principles of *Davis* will be evolved and applied from a string of sexual harassment cases against colleges and schools. Not all lessons from these cases may have general applicability, but there are emerging some sound strategies to proactively avoid Title IX liability. This White Paper focuses on suggestions for colleges, in practices, procedures, training and policies, that can be used to address the mandates of Title IX as it applies to sexual assault cases.

- Student-on-student sexual assault is sexual harassment. It is well settled that sexual assault is an extreme form of physical hostile environment sexual harassment. Standards that apply to other forms of sexual harassment are equally applicable to incidents of sexual assault, but given the severity of the conduct involved, it may no longer be a best practice to fold sexual assault within sexual harassment in terms of campus policies and procedures. While sexual assault can be a sexual harassment offense, it is different enough that there should also be a stand-alone policy.
- Regardless of policy format, conduct systems should be configured to allow charges of both offenses to be made against a respondent, arising from the same incident. Where grievances are handled separately by separate bodies, a coordination and referral system should be put in place. This would allow, for example, an ombudsperson who has investigated what was brought forward as a sexual harassment complaint, to refer that complaint and investigation to the college's conduct office, for more appropriate resolution as a sexual assault.
- Mediation remedies that are available to resolve some sexual harassment offenses are not likely to be adequate to addressing the more severe sexual assault cases.
- While threats and suits by respondents charged in campus sexual misconduct cases have become commonplace, we are now seeing a marked increase in complaints against colleges by alleged victims. Title IX is one cause of action that is being used to argue for college liability. A college may be required to pay monetary damages to a victim if a court finds that it was deliberately indifferent to the student's grievance. "Deliberate indifference" appears to be defined as a college's failure to act in the face of actual notice of an incident of sexual harassment or assault, where a court could conclude that the actions of the institution were clearly unreasonable in light of the known circumstances. In order for liability to arise, deliberate indifference must be accompanied by the following requirements:
 - The harassment is so severe, pervasive, and objectively offensive¹ that it can be said to deprive the victim of access to the educational opportunities or benefits provided by the institution;
 - The college had control over the context within which the harassment arose;
 - The college had control over the harasser;
 - The college had actual notice of and did not appropriately respond (usually by providing an investigation and adequate resolution) to the complaint of harassment or assault.
- Does the law require colleges to adjudicate every complaint, regardless of the victim's wishes? No, colleges are required to take appropriate steps to end the harassment and/or prevent its recurrence. They need not guarantee that it stops or never occurs again, but must take reasonable steps toward that result. In practice, this will require at minimum an investigation in all cases, to determine the extent of the harassment, the acuity of the threat it represents to students, and what might be necessary to put an end to it.

¹ This is *Davis* language, but it should be noted that OCR and this model use the arguably broader "severe, persistent or pervasive" standard. Your policy may want to track state anti-discrimination law language and/or the caselaw of your jurisdiction.

- In cases where a victim does not want a college to pursue a report, and the threat is deemed insufficient to require an adjudication, college officials would be well advised to fully document their conclusion, supported by an appropriate investigation, and ask the victim to acknowledge that he/she concurs with the college's conclusion, and asks that no further action be taken. A letter to the victim should indicate that his/her refusal to cooperate with investigators and campus conduct personnel may prevent the college from pursuing the complaint to resolution.
- The language of the *Davis* opinion made it clear that one administrator's failure to act might not bring liability on a college. The Supreme Court established a standard for liability only when it could be said that the college itself was deliberately indifferent, on a systemic level. Subsequent cases are starting to determine how much deliberate indifference is necessary, and by whom. Colleges would be well-advised not to expect notice to the board of trustees to be the determining factor. We advise our clients to adopt a liberal scope, anticipating, for example, that deliberate indifference by the key person charged with responsibility for handling these complaints will be enough to warrant liability.
- A college's potential for liability will be in those situations wherein the college has control of the context in which the harassment arises, as well as control over the harasser, and where the harassment is sufficiently severe, pervasive and objectively offensive as to deprive the victim of access to the educational opportunities or benefits provided by the institution. Administrators will want to take special note that this standard can require the college to take jurisdiction over some incidents that do not happen on campus. Therefore, policies that confine college jurisdiction solely to on-campus events should be redrafted.
- Colleges should not confine their conduct jurisdiction over these cases solely to students. Where a student acts on campus to sexually harass or assault a non-student, courts could find liability under the deliberate indifference standard. Therefore, college policies should be written to allow for complaints by non-students against students, and to recognize that Title IX will govern some complaints involving employees as well, depending on the context.
- College procedures should include designating specific "Responsible Employees" who have the responsibility to receive complaints, initiate an investigation, and move it into the appropriate process by which resolution of the complaint will occur. The more people who have authority to resolve cases, the broader the potential for one or more of them to act with deliberate indifference. Therefore, it may be beneficial to define and list who your institution's "Responsible Employees" are.
- The Supreme Court did not endorse the Office for Civil Rights (OCR) Guidance regarding constructive knowledge of a complaint. In fact, while the OCR Guidance suggests that colleges can be liable for incidents about which they should have known, the Court has made it clear that actual knowledge of the complaint is required before money damages will result. However, that Guidance still holds force, and was reinforced by OCR in 2001 as an administrative set of requirements that are enforced by the U.S. Department of Education independently of liability in civil lawsuits
- This dual enforcement possibility sets up a conundrum with respect to privacy and mandatory reporting. Complete confidentiality cannot be promised in severe sexual harassment and assault matters. Title IX creates confidentiality issues for colleges and students alleging victimization. Institutional authorities who have notice of alleged sexual assaults/harassment are not likely to be able to keep those incidents completely confidential, as a result of the institution's affirmative obligation to investigate and act to resolve the incident.
- But, many colleges, to comply with the Guidance, and to ensure that no incident slips through the cracks, have imposed a mandatory reporting requirement on all faculty, staff and employees. While such a practice might be used successfully to avoid the broader liability of Title VII, a debate needs to be held on whether this is also a

best practice under Title IX. For example, in the field, it is a frequent occurrence that certain groups, such as faculty members and resident advisors (RA's) may flout mandatory reporting requirements imposed by administrators, promising privacy or confidentiality to students who come to them for assistance. This has the potential to create liability issues that would not necessarily come to a head if these faculty members and employees were not mandated to pass along reports to institutional officials. Perhaps an effective compromise, which would also be likely to satisfy OCR standards as well, would be to require non-personally identifiable reports by non-supervisory employees like faculty and RAs of incidents, where in some cases it will be determined that an identity must be divulged and the institution should act to follow-up in a formal fashion?

- A present source of confusion stems from recent changes to the Clery Act, which provides mandatory reporting requirements that are separate and different from those needed to satisfy Title IX prescriptions. Under Clery, if an acquaintance rape victim comes forward, but wants to keep the report confidential, her report must be made to a counselor, clergy, medical provider, or other individual on campus who does not have significant responsibility for campus and student activities. For all other employees, (including student conduct, residence life, student affairs, student activities, affirmative action, coaches, many faculty members, etc.) the Clery Act requires mandatory reporting of this incident as a statistic. Therefore, privacy can be maintained under Clery, because no personally identifiable information need be disclosed. However, there is also a timely warning requirement, in addition to the mandatory statistical report, which would require that a warning go out to the community if an incident represents a substantial threat to other students. In these cases, the victim's would not be released, but other details might be, depending on what is necessary to protect the community.
- It should be noted that under Title IX actual knowledge need not be direct knowledge of an incident as reported by the alleged victim. Actual notice can be established by third party reports. For example, if a student goes to an RA for advice, and the RA then asks the Dean of Students about the incident, and happens to mention critical details, courts would be likely to find that actual notice existed, and would impose an obligation to investigate and provide an adequate resolution.
- Courts would be likely to frown upon any deliberate avoidance of actual notice. Don't tell a subordinate not to tell you something they know, to avoid actual notice. Don't advise a student not to tell you something that might lead to actual notice (this is different from explaining to them what would lead to actual notice and letting them decide how much to tell you).
- In addition to the importance clearly placed on policies and procedures, we believe that the investigation/conduct resolution is becoming an increasingly important aspect of Title IX compliance. Investigators/conduct officers should be trained in civil rights investigations and have experience with the uniqueness of a college community and its governance structure. Knowledgeable and neutral investigators/conduct officers ensure adequate, impartial and reliable resolutions. Remember that in the final analysis, the reasonableness of a college's handling of a sexual harassment/sexual assault complaint will ultimately determine the extent of monetary liability.
- Broad training of institutional constituents on these and related principles and practices is the best risk management.

ATIXA MODEL POLICIES AND GRIEVANCE PROCEDURES

CREATING A CAMPUS SEXUAL MISCONDUCT POLICY

A thorough approach to campus sexual misconduct policy takes more than a paragraph in the code of conduct, student handbook, or a panel in a pamphlet. Your policy should be placed in as many campus resources as possible, and the same policy should be included in each location. Frequently, colleges develop pamphlets, handbooks, and security reports at different times, and the policies listed in these resources reflect the stage of development of those policies and can be inconsistent. It is important to have centralized, quality controlled oversight of the policy development process. Consistency is essential to legal defensibility. A good lawyer could successfully shoot down a policy on the argument that his/her student client did not have clear notice of what was expected because of inconsistent or conflicting policy statements. If a later policy statement is meant to eclipse and replace an earlier policy, make sure this is clearly indicated to students so that they have notice of what rules apply to them.

As you formulate a policy, keep in mind at all times who the audience is. Your policy is directed at students, and, at times, employees. But who specifically is the audience for your policy? Who is going to open up your handbook and read it through? Those who open the handbook to look at the sexual misconduct section usually do so for three reasons. One, they want to know if what happened to them is covered by the code of conduct. They are the possible victims. Two, the students who want to know what to do when they have been accused of violating the sexual misconduct policy. They are the alleged violators. Three, those who are asked to enforce the policy (hearing officers, Conduct Board Members, and appeals officers/panelists) those who may be victims, those who may be policy violators, and those asked to interpret and enforce the policy are your audience. Write this policy for them.

The NCHERM Team recommends inclusion of the following elements in your sexual misconduct policy:

- Statement of intent;
- Statement of confidentiality limitations
- Statement of options for victims;
- Statement of options for alleged offenders;
- Statement of rights of the victim;
- Statement of the rights of the alleged offender;
- Statement of jurisdiction
- Campus statute of limitations
- Description of proscribed behaviors;
- Definitions of terms;
- Illustrative examples;
- Sanctions;
- Criteria for policy assessment and improvement;
- Policy dissemination standards;
- Statement regarding group infractions;
- Statement of limited immunity;
- Good Samaritan or bystander engagement provision.

ATIXA SEX/GENDER-BASED HARASSMENT, DISCRIMINATION AND SEXUAL MISCONDUCT MODEL POLICY

www.atixa.org

**AUTHORED BY
THE NCHERM GROUP, LLC PARTNERS:**

BRETT A. SOKOLOW, J.D.

W. SCOTT LEWIS, J.D.

SAUNDRA K. SCHUSTER, J.D.

DANIEL C. SWINTON, J.D., Ed.D.

www.ncherml.org

**2015. THE NCHERM GROUP/ATIXA.
Use with citation permitted without
compensation by ATIXA members**

This model is provided as an example, and not as any assurance of Title IX Compliance by ATIXA or NCHERM. Any use of the ideas included in this document should first be vetted with qualified legal counsel in your jurisdiction.

Editor’s Note: Welcome to our model policy and procedures. This publication is both guide and template, and we hope that sections of it, or its entirety, will help your campus or school to become compliant with Title IX, including the 2001 OCR Guidance on Sexual Harassment, 2011 Dear Colleague Letter, the SUNY and Montana OCR resolution templates, the 2014 OCR Q&A on Title IX, the April 2015 Dear Colleague Letter, the Violence Against Women Act Section 304 (March 2014), its implementing regulations finalized in October 2014, other relevant OCR Dear Colleague Letters, and the best practices emerging in the field.

There are a number of essential concepts that undergird this model, the foremost of which is the notion that we all have sexual sovereignty, the right not to be acted upon sexually by someone else unless and until we give clear permission. The law calls this autonomy. The field of student conduct uses the term equal dignity. Discrimination law calls it equity, but these are all lenses on the same fundamental concept, which we embrace fully and meaningfully.

Additionally, we use some terms of art intentionally. Gender-based misconduct is the umbrella for a wide range of behaviors that fall under that descriptor. We use the term sexual misconduct, too, when actions are gender-based, but manifest in sexual actions. We recommend that you use these terms, as they are the most-neutral and least fraught policy titles, when it comes to the need to avoid crime-laden language, terms that have their own connotations, such as abuse, and terms that could tend to minimize the severity of the actions they describe. We also use the term “victim” throughout this model, whereas many campuses prefer the term “survivor”. This is intentional on our part. Rather than assuming a victim is a survivor, we believe each victim needs to decide at their own pace, whether and how they will become survivors. It is not for us to presume it. It also denotes the difference between policy language and advocacy language. Other advocacy-based documents on your campus rightfully should use the survivor term. Once a victim enters the process, we refer to them as the “reporting party”. Reports brought by individuals other than the recipient of the unwelcome behavior are referred to as “third-party reports” and those bringing them are deemed “third-party reporters”. The person facing an accusation is referred to throughout as the “responding party”.

Where suggested language is an option a campus can elect for or omit, the language is set off by brackets [], which are also used to indicate areas where you will need to fill in campus-specific information, and we have left it blank to allow you to do so.

Finally, our definitions of sexual harassment may or may not reflect the standards of your state or the courts of your jurisdiction, and so we strongly encourage you to consult with legal counsel before adopting the terms below. There are many ways to define a hostile environment. OCR uses the standard “severe, persistent or pervasive.” .” The Davis² court predicated monetary damages on the basis of conduct that was “severe, pervasive and objectively offensive.” Many courts examining sexual harassment policies for 1st Amendment overbreadth use this standard as well, but it would not be as applicable to private colleges. The key here is not in these terms, but in the notion that our policies need to prohibit a discriminatory effect. When conduct changes

² *Davis v. Monroe County Bd. of Education*, 526 U.S. 629 (1999).

employment conditions or limits, denies or interferes with educational access, benefits or opportunities, our policies need to address it. Sometimes, state law or the courts of our jurisdiction may qualify the language, as in “substantially limits” or “unreasonably interferes”, or confuse persistence with pervasiveness. Whatever words we use, we will do well to keep in mind that the qualifiers of severity, reasonableness, etc., are secondary considerations to the primary question of the discriminatory impact.

Brett, Scott, Saunie and Daniel

POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT

INTRODUCTION

Members of the university³ community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The university believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and ATIXA's model procedures (available to members) establish a mechanism for determining when those expectations have been violated⁴.

The university's sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom [link to university definition of academic freedom here or insert something like this: Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern].

The university uses the preponderance of the evidence (also known as "more likely than not") as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but the university never assumes a responding party is in violation of university policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

TITLE IX COORDINATOR

The university's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports [directly] to the [President of the University], and is housed in the office of []. Questions about this policy

³ Rather than awkwardly inserting "college/university" every time an institution is referenced, this model policy uses the convention "university" with the understanding that "college" can be substituted by the end-user as necessary with a simple find-and-replace command.

⁴ The policy and procedure models offered by ATIXA have been, in part or in full, promulgated by the White House Task Force to Protect Students from Sexual Assault and/or accepted by OCR in resolutions of its investigations of campuses accused of Title IX violations.

should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to the university Title IX Coordinator:

[Name:

Title: Title IX Coordinator

Office of []

Location/Address:

(###) ###-###

Email:]

Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at [INSERT URL], or the reporting hotline at ~~###-###-####~~. Note that these anonymous reports may prompt a need for the institution to investigate.

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)

[Insert Regional Office – The DC office provided as an example]

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

[Public universities include this:]

U.S. Department of Justice Civil Rights Division

950 Pennsylvania Avenue, N.W.

Educational Opportunities Section, PHB

Washington, D.C. 20530

By e-mail to education@usdoj.gov

By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)

By facsimile at (202) 514-8337

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the [] [contact].

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT⁵

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing (or affirmative, conscious, if you wish to track the CA affirmative consent statute) and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.⁶

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

⁵ This section is often broken out of the policy or handbook, to be used as a separate brochure or handout, or on a website. It can also be included within policy for those seeking a preventive policy element.

⁶ For further guidance on coercion v. seduction (this is unlikely to be included in policy, but is of value for decision-makers): An unwelcome advance that results in a welcome encounter is seduction. An unwelcome advance that results in an unwelcome encounter is coercive. Often, the question revolves around how to determine after the fact if the encounter was unwelcome, and that will largely depend on what the contextual evidence shows. Society defines seduction as reasonable, and coercion as unreasonable. Both involve convincing someone to do something you want them to do, so how do they truly differ? The distinction is in whether the person who is the object of the pressure wants or does not want to be convinced or is okay with the convincing once it happens. In seduction, the sexual advances are ultimately welcome. You want to do some convincing, and the person who is the object of your sexual attention wants to be convinced. Twist my arm, I'll go along. Two people are playing the same game. Coercion is different because you want to convince someone, but they make it clear that they do not want to be convinced. They do not want to play along. They do not want to have their arm twisted. You are able to change your mind, both toward consent and away from it. The evaluation of coercion, however, has to focus on the actions of the person applying the pressure, as well as how that pressure is received.

Must consider the totality of the circumstances of the alleged coercion (consider all four factors together):

- *Frequency*: Asking to have sex 3 times in 30 minutes vs. 30 times in 30 minutes. The frequency of coercion can be enhanced easily via technology.
- *Intensity*: A person talking themselves up ("I'm the best there ever was") is obnoxious, not coercive. When the person turns on you and starts to attack your character, values and morals, there is a difference in intensity ("Do you want to be the last virgin on earth? No one will find out, I won't tell anyone...").
- *Isolation*: Making advances at a crowded bar is going to be less coercive than when the advances occur when two people are alone in someone's living room.
- *Duration*: Making advances for 30 minutes vs. making advances for 3 hours.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS⁷

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The university does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the university. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes Resident Advisors (RAs) and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee⁸.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.

⁷ This section is offered as an optional conclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations.

⁸ When a consensual relationship gives rise to *quid pro quo* harassment allegations, those allegations are to be resolved in accord with the university’s policies on Title IX. When an employee fails to timely notify their supervisor under this policy, but no allegations of harassment are present, the resolution falls under the policy on “Failure to comply” in the employee/faculty handbook, and should be resolved as such.

- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- [Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.]
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- [Do not share intimate content, pictures, images and videos that are shared with you.]
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

1. SEXUAL HARASSMENT

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.⁹

Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the university's educational [and/or employment], social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.¹⁰

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This

⁹ Purpose or intent is not an element of sexual harassment.

¹⁰ These offenses are referenced and incorporated within sexual harassment, but also broken-out as stand-alone offenses, below. They are both, so be sure to charge accordingly.

is harassment regardless of whether the student accedes to the request.

- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force¹¹.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

¹¹ The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force¹².

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

- Consent¹³:
 - Consent is
 - clear, and
 - knowing, and
 - voluntary [or affirmative, conscious and voluntary],

¹² *Id.*

¹³ The definition of "consent" provided here is model policy language from ATIXA. The state legal definition of consent may also be included here (if desired) as a footnote or an appendix. While the state definition is not required to be published here, many campuses refer to this policy in their Annual Security Reports (ASR), or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definition of consent will help to satisfy the policy disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal complaint. A listing of all state consent definitions is here: <http://atixa.org/resources/consent-statutes-by-state/>

- words or actions,
 - that give permission for specific sexual activity.
- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
- In order to give consent, one must be of legal age.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.¹⁴
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>].
- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

¹⁴ Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

- Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, 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.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
 - This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
 - For reference to the pertinent state statutes on sex offenses, please see [insert reference here, or place in Appendix].

Examples¹⁵

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a “hand job” (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at

¹⁵ OCR recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.

how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)¹⁶

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;

¹⁶ These offenses appear here, rather than along with the other offense definitions because we do not encourage their inclusion as stand-alone violations in this policy. They can be referenced, but we already should have policies in our Code addressing each of these violations. We expect that charges under the Code will bootstrap the procedural equity of this model when needed, without the need to make two versions of hazing, bullying, etc., based on the motivation of the violator.

3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
 - a. Repeated and/or severe
 - b. Aggressive behavior
 - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
 - d. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other¹⁷;
 - a. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
 - b. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
 - c. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
 - d. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
7. Stalking
 - e. Stalking 1:
 - i. A course of conduct
 - ii. Directed at a specific person
 - iii. On the basis of actual or perceived membership in a protected class
 - iv. That is unwelcome, AND
 - v. Would cause a reasonable person to feel fear
 - f. [Stalking 2:
 - i. Repetitive and Menacing
 - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another]

¹⁷ The definition provided here is model policy language from ATIXA. The state legal definitions of domestic violence and dating violence may also be included (if desired) as either a footnote or an appendix (find links to each state's definition [here](#)). While the state definitions are not required as policy by either Title IX or recent Clery Act amendments, they are required in the Clery Act ASR. Thus, many campuses refer to this policy in their Annual Security Reports (ASR), or will use a link to this policy to satisfy the ASR requirements on sexual assault disclosures. Incorporating the state definitions of domestic violence and dating violence will help to satisfy the ASR disclosure requirement, but it is important to note that nothing in the law requires schools to evaluate campus reports using state legal standards, and we recommend differentiating campus standards from state law as a best practice. The Clery requirement is just one of disclosure, so that victims may know what the state provisions are if they are considering making a criminal complaint.

- g. Examples of Stalking:
- i. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together. Stalking 1.
 - ii. A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together." Stalking 2.
8. Any other University policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity [subject to limitations imposed by the 1st Amendment and/or Academic Freedom]. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of university policy.

SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in [reference or link to Student Handbook, Faculty Handbook, Staff Handbook]. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

Student Sanctions (listed below and defined in [Student Handbook])

- Warning
- Probation
- Suspension

- Expulsion
- Withholding Diploma
- Revocation of Degree
- Transcript Notation
- Organizational Sanctions
- Other Actions

Employee Sanctions (listed below and defined in [Employee Handbook])

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).*
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.*

*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

MODEL CONFIDENTIALITY, PRIVACY AND REPORTING POLICY

Confidentiality and Reporting of Offenses Under This Policy

All university employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at university:

Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- [On-campus Victim Advocates]
- [On-campus members of the clergy/chaplains working within the scope of their licensure or ordination]
- [Athletic trainers] (if licensed, privileged under state statute and/or working under the supervision of a health professional)
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,
 - Local or state assistance agencies,
 - Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit [timely, quarterly, semesterly, yearly] anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client, patient or parishioner.

Formal Reporting Options

All university employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally

identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Employees must share all details of the reports they receive. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal university action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: [Office for Institutional Equity, Division of Student Affairs, Integrity and Compliance Office, University Police, and the Behavioral Intervention Team]. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. [Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at [insert URL], or the reporting hotline at ###-###-####. Note that these anonymous reports may prompt a need for the institution to investigate.]

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

[Title IX Coordinator

Office Address

Phone #

Email Address]

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of university policy and can be subject to disciplinary action for failure to comply with university policies.

[OPTIONAL ADDITIONAL INFORMATION]:

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will ensure that a victim'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 danger.

Additional Policy Provisions

a. Attempted violations

In most circumstances, university will treat attempts to commit any of the violations listed in the *Gender-Misconduct Policy* as if those attempts had been completed.

b. False Reports

University will not tolerate intentional false reporting of incidents. It is a violation of the *[Student Code of Conduct]* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The university community encourages the reporting of misconduct and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to university officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting,

university pursues a policy of offering victims of misconduct and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, as student who has been drinking underage might hesitate to help take a sexual misconduct victim to the Campus Police). The university pursues a policy of amnesty for students who offer help to others in need. [While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

d. Parental Notification

The university reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The university may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is non-dependent, the university will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The university also reserves the right to designate which university officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the university's sexual misconduct policy and procedures.

Does information about a report remain private?

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The university will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the university, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the university, Dean of Students, Director of Security). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities].¹⁸ The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

Will my parents be told?

¹⁸ If this is your policy. Felony reporting is required in some locales. This practice of automatic reporting without victim consent is to be avoided if possible, and likely would violate FERPA. Many campuses are negotiating Memoranda of Understanding (MOUs) with local law enforcement agencies to clarify reporting expectations. Often, anonymous reports will be enough to satisfy local law enforcement.

No, not unless you tell them. Whether you are the reporting party or the responding party, the University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an individual has signed the permission form at registration which allows such communication].

Will the responding party know my identity?

Yes, if the university determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party. If there is a hearing, the university does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

Do I have to name the responding party?

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

What do I do if I am accused of sexual misconduct?

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor [or advocate]; anyone may serve as your advisor [or advocate]. You may also contact the [Student Conduct Office], which can explain the university's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

Will I (as a victim) have to pay for counseling/or medical care?

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. [In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution].

What about legal advice?

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the

responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor [or advocate] during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [or advocates] in the process as described here [LINK].

How is a report of sexual misconduct decided?

The university investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a policy violation is "more likely than not." This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

What about changing residence hall rooms?

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator or deputy to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from university support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you

should go to the Hospital Emergency Room, before washing yourself or your clothing.¹⁹ The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to Hospital and law enforcement or Security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct. The university provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating

¹⁹ Specify here the nearest local hospital with an appropriate SANE program.

information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

What should I do if I am uncertain about what happened?

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Title IX Coordinator (not confidential) or counseling center [victim advocate's office] (confidential). [The institution also provides process advisors [or advocates] who can help you to define and clarify the event(s), and advise you of your options].

**ATIXA SEX/GENDER-BASED HARASSMENT,
DISCRIMINATION AND
SEXUAL MISCONDUCT
MODEL RESOLUTION PROCEDURES**

www.atixa.org

**AUTHORED BY
THE NCHERM GROUP, LLC PARTNERS:**

**BRETT A. SOKOLOW, J.D.
W. SCOTT LEWIS, J.D.
SAUNDRA K. SCHUSTER, J.D.
DANIEL C. SWINTON, J.D., Ed.D.**

www.ncherp.org

2015. THE NCHERM GROUP/ATIXA.

**Use with citation permitted without compensation by
ATIXA members**

This model is provided as an example, and not as any assurance of Title IX Compliance by ATIXA or NCHERM. Any use of the ideas included in this document should first be vetted with qualified legal counsel in your jurisdiction.

ATIXA Model Civil Rights Investigation and Resolution Process

This universal resolution policy, process and investigation protocol may be applied to all reports of civil rights violations and discrimination reports, especially those governed by Title IX, including sexual violence, sexual harassment, intimate partner violence, stalking, and/or gender-based bullying or hazing.

Campuses are welcome to adapt this resolution process to use when an employee is the responding party, and some optional language is offered in brackets [] to do so.

Reporting Party: In this process, the person alleging a violation of policy is referred to as the reporting party.

Responding Party: In this process, the person who is alleged to have violated campus policy is referred to as the responding party.

Overview of Reports Concerning Discrimination and/or Harassment

The university does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, sex, gender identity, gender expression, sexual orientation, disability, veteran status, predisposing genetic characteristic, age, religion, pregnancy status or any other characteristic protected by university policy or state, local, or federal law. Anyone who believes they have been subjected to discrimination or harassment in violation of this policy should follow the procedure outlined in this *Code* to report these concerns.

This process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the university will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the university nondiscrimination policy has been violated. If so, the university will promptly implement an effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

The university aims to bring all allegations to a resolution within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the [Title IX Coordinator] with notice to the parties. In overview, the timeline for resolution begins with notice to a mandated reporter. The Coordinator then engages in a preliminary inquiry that is typically 1-3 days in duration. From there, the allegation can lead to a formal investigation, which usually starts within days of the preliminary inquiry's conclusion. Investigations range from days to weeks, depending on the nature and complexity of allegations, with the university commonly aiming for a 10-14 window to completion. The parties are regularly apprised of the status of the investigation as it unfolds. The process may then end or continue. If it continues, barring necessary extensions, the investigation leads to formal and informal resolution options, which the university aims to complete

in 10-14 days from the end of the investigation. A failed informal resolution which triggers a formal resolution may require the university to extend this timeline accordingly. From there, appeals may be requested, with a three-day window to file appeal requests once a formal determination is reached, a three-day window to grant or deny the appeal request, and another 7-10 days for a final resolution to be reached. In rare cases where a remanded decision results in a new hearing, the results of that hearing can be appealed once, which would typically add another 10-14 days to final results.

Interim Remedies/Actions

The **Title IX/Equity/AA Coordinator** (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. The university will keep interim remedies and actions as private as possible.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of an the responding party (resident student or resident employee (or the alleged victim, if desired))
- Altering work arrangements for employees
- Providing campus escorts,
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The **university** may interim suspend a student, employee or organization pending the completion of ERP investigation and resolution, particularly in when in the judgment of the **Title IX/Equity/AA Coordinator**, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the **Title IX/Equity/AA Coordinator** prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The **Title IX/Equity/AA Coordinator** has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to **university housing and/or the university campus/facilities/events**. As determined by the **[appropriate administrative officer Title IX/Equity/AA Coordinator or designee]**, this restriction can

include classes and/or all other university activities or privileges for which the student might otherwise be eligible. At the discretion of the [appropriate administrative officer Title IX/Equity/AA Coordinator or designee], alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures.

Formal and Informal Resolution Procedure for Reports of Misconduct

This procedure applies to any member of the university community (faculty, student, staff, administration) who engages in discrimination or harassment. Any person can report alleged harassment or discrimination, including faculty, students, staff, administration, guests, visitors, etc. All allegations of misconduct not involving harassment or discrimination will be addressed through the procedures elaborated in the respective student, faculty and employee handbooks.

Informal Resolution

Before pursuing the Formal Resolution Process, every reasonable effort should be made to constructively resolve conflict with students, faculty, staff, or administrators. The person impacted should keep a written log that can aid in later investigation and resolution. Whenever possible and safe, the problematic behavior, conflict or misconduct should first be discussed by the impacted person and the person engaged in the problematic behavior, conflict or misconduct. The Office of the Title IX Coordinator [Supervisors, Ombuds, etc.] will facilitate such conversations, upon request, and monitor them for safety. [Various conflict resolution mechanisms are available, including mediation. Mediation is not used when violent behavior is involved, when the Coordinator determines a situation is not eligible, or the parties are reluctant to participate in good faith]. The university does not require an impacted party to contact the person involved or that person's supervisor if doing so is impracticable, or if the impacted party believes that the conduct cannot be effectively addressed through informal means. If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time prior to resolution.

Formal Resolution Process for Reports of Misconduct by Employees

The [Office of Human Resources] is designated to formally investigate reports or notice of discrimination and/or harassment by employees, to address inquiries and coordinate the university's compliance efforts regarding employee-related reports.

Any member of the community can give provide notice of discrimination and/or harassment in person, by phone, via email or in writing to [Human Resources]. The university strongly encourages submission of written reports to [Human Resources]..

The following are recommended elements of a report:

- Clear and concise description of the alleged incident(s) (e.g.: when and where it occurred);
- Any supporting documentation and evidence;
- Clear demonstration of all informal efforts, if any, to resolve the issue(s) with the person involved and the person's supervisor;
 - This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort;
 - If contacting the person involved and/or the supervisor is impracticable, the reporting party should state the reasons why;
- The desired remedy sought;
- Name and all contact information for the reporting party;
- Signed by the reporting party.

If the reporting party wishes to pursue a formal resolution or if university, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator appoints trained investigators (typically using a team of two investigators), to conduct the investigation, usually within two business days of determining that a resolution should proceed. Investigations are completed expeditiously, normally within 10-14 business days of the completion of the preliminary inquiry by the Title IX Coordinator. Investigations may take longer when, for example, initial reports fail to provide direct first-hand information or in complex situations.

The university's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the university may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and processes once notified by law enforcement that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigator will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), initiate any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party, and what policy violations should be alleged as part of the charge;

- If there is insufficient evidence to support reasonable cause, the report should be closed with no further action;
- Meet with the reporting party to finalize their statement, and
- Prepare the notice of charges on the basis of the initial inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of 10-14 business days;
- Provide regular updates to both the reporting and responding parties, as appropriate, throughout the investigation;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not)
- [Some campuses prefer an interim step of sharing a draft report with the parties and allowing them a period of comment before a report is finalized];
- Share the findings and sanctions with the responding and reporting parties.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Where the responding party is found not responsible for the alleged violation(s), the investigation will be closed. Where a violation is found, the university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community. All parties will receive written notification of the outcome, to the extent permitted by or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting responsive actions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications [and explains appeals options, if any [and procedures for appeal, if there is an appeal option], and any changes to the results that could occur before the decision is finalized, and when it is finalized, if it is not, such as when subject to grievance procedures, appeal, tenure revocation proceedings, mandatory arbitration, union proceedings, etc.].

Formal Resolution Process for Reports of Misconduct by Students

The [Office of Student Conduct] is designated to formally investigate reports of discrimination and/or harassment by students, to address inquiries and to coordinate the university's compliance efforts regarding reports of misconduct by students, regardless of the university role of the reporting party, who may be another student, faculty, staff, guest or visitor.

Notice of a formal report can be made in person, by phone, via email or in writing to [insert the Office of Student Conduct, Title IX Coordinator(s) and appropriate resolution officers here]. Upon receipt of a report, the [Office of Student Conduct] will confer with the Title IX Coordinator on interim action, accommodations for the reporting party (at no cost to the reporting party where possible), or other necessary remedial short-term actions.

If the reporting party wishes to pursue a formal resolution or if university, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator appoints trained investigators (typically using a team of two investigators), to conduct the investigation, usually within two business days of determining that a resolution should proceed. Investigations are completed expeditiously, normally within 10-14 business days of notice to the Title IX Coordinator. Investigations may take longer depending on their nature or complexity.

The university's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the university may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and processes once notified by law enforcement that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigators will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), initiate any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party, and what policy violations should be alleged as part of the report;
 - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement and
- Prepare the notice of charges on the basis of the initial inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;

- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of ten (10) business days;
- Provide regular updates to both the reporting and responding parties, as appropriate, throughout the investigation;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not)
- [Some campuses prefer an interim step of sharing a draft report with the parties and allowing them a period of comment before a report is finalized];
- Present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and the outcome.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Where the responding party is found not responsible for the alleged violation(s), the investigation will be closed. [OPTIONAL: The reporting party may request from the Title IX Coordinator an extraordinary decision re-open the investigation or to refer the matter to a hearing, which should only be granted by the Coordinator in exceptional circumstances].

Where the responding party accepts the finding of the investigation, the [Office of Student Conduct] will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator, when applicable. The university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community.

The parties will receive written notification of the outcome, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

In the event that the responding party rejects the findings in part or entirely, the [Office of Student Conduct] will convene a hearing under its respective procedures to determine whether the responding party is in violation of the contested aspects of the report. At the hearing, the findings of the investigation will [will not] be admitted, [but are not binding on the decider(s) of fact]. The investigator(s) may give evidence. The hearing will determine whether it is more likely than not that the responding party violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

[insert or link Title IX and VAWA Section 304/Clery-compliant hearing procedures from student handbook here, if desired].

The [Office of Student Conduct] has final decision-making authority with regard to formal reports, subject to appeal. Where the responding party is found in violation as the result of a hearing²⁰, the [Office of Student Conduct] will impose appropriate sanctions for the violation²¹, after consultation with the Title IX Coordinator, when applicable. The university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community. Appeal proceedings as described below apply to all parties to the report. The parties will receive written notification of the outcome of the hearing, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

Participation of Advisors [or Advocates] in the Resolution Process

All parties are entitled to an advisor [or advocate] of their choosing to guide and accompany them throughout the campus resolution process. The advisor [or advocate] may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors [or advocates]. The university maintains a pool of trained (non-attorney) advisors [or advocates] who are available to the parties. The parties may choose advisors [or advocates] from outside the pool, or outside the campus community, but those advisors may not have the same level of insight and training on the campus process as do those trained by the university. Outside advisors [or advocates] are not eligible to be trained by the university.

The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advisors [or advocates] should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The university cannot guarantee equal advisory rights, meaning that if one party selects an advisor [or advocate] who is an attorney, but the other party does not, or cannot afford an attorney, the university is not obligated to provide one. However, the university maintains a listing of local attorneys who may offer their services pro bono.

[Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>),

²⁰ Preferably in the form of a recommendation of finding and sanction to the Director of Student Conduct.

²¹ If your policies or procedures have not yet listed all available sanctions, we encourage you to do so in this section. Our listing of available sanctions is contained in the ATIXA model policy.

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]

All advisors [or advocates] are subject to the same campus rules, whether they are attorneys or not. Advisors [or advocates] may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if they wish to interact with campus officials. Advisors [or advocates] may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors [or advocates] will typically be given a timely opportunity to meet in advance of any interview or hearing with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors [or advocates] to clarify any questions they may have, and allows the university an opportunity to clarify the role the advisor is expected to take.

Advisors [or advocates] are expected to refrain from interference with the university investigation and resolution. Any advisor [or advocate] who steps out of their role in any meeting under the campus resolution process will be warned once and only once. If the advisor [or advocate] continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor [or advocate] will be asked to leave the meeting. When an advisor [or advocate] is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the [Title IX Coordinator or a deputy] will determine whether the advisor [or advocate] may be reinstated, may be replaced by a different advisor [or advocate], or whether the party will forfeit the right to an advisor [or advocate] for the remainder of the process.

The university expects that the parties will wish the university to share documentation related to the allegations with their advisors [or advocates]. The university provides a consent form that authorizes such sharing. The parties must complete this form before the university is able to share records with an advisor [or advocate]. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advisors [or advocates] are expected to maintain the privacy of the records shared with them by the university. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the university. The university may seek to restrict the role of any advisor [or advocate] who does not respect the sensitive nature of the process or who fails to abide by the university's privacy expectations.

The university expects an advisor [or advocate] to adjust their schedule to allow them to attend university meetings when scheduled. The university does not typically change scheduled meetings to accommodate an advisor's [or advocate's] inability to attend. The university will, however make provisions to allow an advisor [or advocate] who cannot attend in person to attend

a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor [or advocate] throughout.

Where an employee is a member of a union and entitled to a union representative in the process, that employee may be accompanied by the union representative as their advisor [or advocate] or may choose an advisor [or advocate] in addition to their union representative. In such cases, the other party may have two advisors [or advocates] as well.

The parties must advise the investigators of the identity of their advisor [or advocate] at least two (2) business days before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advisors [or advocates] at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

Requesting an Appeal

In the event that the responding party accepts the findings of the investigation, those findings cannot be appealed. Sanctions imposed by the [Office of Student Conduct] post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds described, below.

All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made to the [Director of Student Conduct] to delay implementation of the sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the university or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

The decision of the [Office of Student Conduct] may be appealed by petitioning [the designated appeals committee or officer]. Any party who files an appeal request must do so in writing to the [Office of Student Conduct (OSC)], within [3-5]²² business days²³ of receiving the written decision,

²² We recommend keeping the appeal window very short, as it does not take long to know if you want to appeal, and considerable anxiety for the parties results from a drawn-out appeals timeline.

²³ Business day is defined to mean normal operating hours, Monday through Friday, excluding recognized national holidays. In cases where additional time is needed in the investigation of a report, students will be notified accordingly. The university reserves the right to make changes and amendments to this policy and procedure as needed, with appropriate notice to the community.

for a review of the decision or the sanctions imposed. The written decision will be provided 1) in person and/or mailed to the local mailing address of the respective party as indicated in university records and emailed to the parties' university-issued email accounts. If there is no local address on file, mail will be sent to the parties' permanent address. Once received in person, mailed or emailed, the notice of decision will be deemed presumptively delivered.

The [OSC] will share the appeal request with the other party (e.g., if the responding party files an appeal, the appeal is shared with the reporting party, who may also wish to file a response and/or bring their own appeal on separate grounds; this response or appeal will be shared with the initial appealing party). Based on the written requests/responses or on interviews as necessary, the [appeals officer or panel] will send a letter of outcome for the appeal to all parties. The [appeals officer or panel] can take one of three possible actions. The appeal may dismiss an appeal request as untimely or ineligible, may grant an appeal and remand the finding and/or sanction for further investigation or reconsideration at the hearing level, or may modify a sanction.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The ONLY grounds for appeal are as follows:

1. A procedural [or substantive] error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)²⁴;
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the responding party.

If remanded to re-open the investigation, the results of a revised investigation can be subsequently forwarded for reconsideration at the hearing level, at the discretion of [OSC]. If the appeal remands to the hearing body for review, the reconsideration of the hearing body is not appealable.

²⁴ Consider whether you wish to permit appeals on substantive grounds. We believe you can and should avoid this need by formulating your process as one where the original hearing body makes the finding a recommendation to the [Office of Student Conduct]. In this formulation, the [Director of Student Conduct] will be able to correct manifestly wrong findings prior to appeal by changing the recommendation of the original hearing body, and appeals on the basis of finding should therefore be unnecessary. If you include an appeal on finding, our concern is that it opens the door for appeal in every case, for appeals of appeals, and for rehearing on appeal, all of which we hope to avoid. It is also possible to view a manifestly wrong finding as a procedural error, thus mooting the need for finding as an explicit basis for appeal.

In rare cases where a procedural [or substantive] error cannot be cured by the original hearing officers (as in cases of bias), the appeals [officer or panel] may order a new hearing with a new body of hearing officers. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal;
- Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions.
- Sanctions imposed are implemented immediately unless the [Director of Student Conduct] stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeals [officer or panel] will typically render a written decision on the appeal to all parties within five (5) business days from hearing of the appeal. The appeals [officer or panel's] decision to deny an appeal request is final.

Additional Notes

University students are responsible for knowing the information, policies and procedures outlined in this document.

The university reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online [insert URL] for the updated versions of all policies and procedures. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. Reports of misconduct made after the fact may raise issues of policy and procedure application, if policies and procedures have changed. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time of resolution.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

Revised xx-xx-xxxx.

Special Resolution Process Provisions

e. University-initiated proceedings

As necessary, university reserves the right to initiate a report and to initiate resolution proceedings without a formal report or participation by the victim of misconduct.

f. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the responding party, and is protected from release under a federal law, FERPA. However, the university observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and intimate partner violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party.
- The university may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the university will not release any information that could lead to the identification of the reporting party.

c. Alternative Testimony Options

For sexual misconduct reports, and other reports of a sensitive nature, whether the alleged victim is serving as the reporting party or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the responding party, such as by Skype or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

d. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Chair, [pertaining only to past or subsequent interactions between the parties that offer context²⁵]. All such

²⁵ [Note: a recent (spring 2015) OCR resolution agreement indicated that the institution’s procedures should “disallow...evidence of the Complainant’s past relationship with anyone other than the accused.” ATIXA has worked on a number of cases where the complainant’s sexual history with others was relevant to the allegation – largely because the reporting party raised the issue by claiming they would never engage in certain behaviors (when evidence indicates otherwise). These cases are certainly the exception, but we are concerned with the outright

information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance of the hearing by the [Director of Student Conduct]. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the [Director of Student Conduct] may supply previous reports of good faith allegations and/or findings to the investigators, the hearing officers, and [appeals officer or panel] to consider as evidence of pattern and/or predatory conduct.

e. Witness participation in an investigation

Witnesses are expected to cooperate with and participate in the university's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person. Parties who elect not to participate in the investigation will have the opportunity to offer evidence during the hearing and/or appeal stages of the process, though failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Any witness scheduled to participate in a hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing.

f. Training for those implementing these procedures

Personnel tasked with implementing these procedures, e.g.: Title IX Coordinator, investigators, hearing officers, appellate officers, etc.) will be trained at least annually. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to sexual harassment and discrimination allegations; the university's Sex/Gender-based Discrimination and Sexual Misconduct Policies and Procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

g. Conflicts of Interest and Bias

The university is committed to ensuring that its resolution processes (e.g.: investigation, hearing, appeal, etc.) are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition should include specifics as to the actual or perceived bias or conflict of interest, as why the petitioner believes the bias or conflict could materially impact the outcome. When the allegation involves a responding party who is an employee, petitions should be submitted promptly to the [Director of Human Resources]. When the allegation involves a responding party who is a student, petitions should be submitted promptly to the [Director of Student Conduct]. Such petitions may also be made to the Title IX Coordinator, or to the university president in the event that