

**TITLE IX SEXUAL HARASSMENT POLICY**

Revised May 2021

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## I. INTRODUCTION

### A. Policy Statement

New England Law | Boston (“New England Law” or “School”) is committed to maintaining a safe and healthy educational and work environment that is free from all forms of sexual misconduct, including sexual assault and sexual harassment, and in which no member of the School community is, on the basis of sex, sexual orientation, or gender (hereinafter understood to include both identity and expression),<sup>1</sup> excluded from participation in, denied the benefits of, or subjected to discrimination in any School program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual’s ability to participate in or benefit from School programs or activities.

This Interim Policy is designed to ensure a safe and non-discriminatory educational and work environment and to meet legal requirements, including Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in the School’s programs or activities. Title IX states:

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

The requirement not to discriminate extends to admission and employment. Anyone with questions about the application of Title IX may contact the individuals identified in Section IV. Additional legal requirements met by this Interim Policy include relevant sections of the Violence Against Women Reauthorization Act (“VAWA”); and, in part, Title VII of the Civil Rights Act of 1964 and Massachusetts law, which prohibit discrimination on the basis of sex, sexual orientation and gender in employment.

As described in more detail below, this Interim Policy prohibits sexual harassment, as that term is defined in Title IX regulations. Under the Title IX regulations, sexual harassment refers to a broad range of conduct focused on sex and/or gender that may or may not be sexual in nature. Such conduct may also be prohibited by the School’s Anti-Harassment Policy and by the Standards of Conduct and Discipline in the Student Handbook.

It is the policy of the School to provide educational, preventative and training programs regarding sexual or gender-based harassment; to encourage reporting of incidents; to prevent incidents of sexual and gender-based harassment from denying or limiting an individual’s ability to participate in or benefit from the School’s programs; to make available timely services for those who have been affected by discrimination; and to provide prompt and equitable methods of investigation and

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<sup>1</sup> Harassment that is not sexual in nature but is based on gender, sex- or gender- stereotyping, or sexual orientation is also prohibited by the School’s nondiscrimination policies if it denies or limits a person’s ability to participate in or benefit from educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether sexual harassment exists, the School may take into account acts of discrimination based on gender, sex- or gender-stereotyping, or sexual orientation.

resolution to stop discrimination, remedy any harm, and prevent its recurrence. Violations of this Interim Policy may result in the imposition of sanctions up to, and including, termination, dismissal, or expulsion, as determined by the appropriate officials at New England Law.

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.

Nothing in this Interim Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the School's educational mission.

## **B. Scope of Policy**

This policy updates the School's Sexual Misconduct Policy. This policy is designed to comply with regulations issued by the U.S. Department of Education in May 2020 and which went into effect on August 14, 2020.<sup>2</sup> The name of the policy is changed from "Sexual Misconduct Policy" to "Title IX Sexual Harassment Policy" in order to clarify that the policy applies to sexual harassment, as that term is defined in the revised Title IX regulations.

Overall, this Interim Policy covers prohibited conduct committed by students, employees (hereinafter understood to broadly include faculty and non-faculty, and full-time, part-time, and temporary employees), and volunteers. Independent contractors and vendors may also be subject to this Interim Policy. Students shall be responsible for their conduct from the time of matriculation through the awarding of a degree. Employees shall be responsible for their conduct from the time of hire until their employment ends.

This Interim Policy has several important limitations. It applies only to claims that fall within the narrowed scope of conduct that is considered sexual harassment under the revised Title IX regulations.<sup>3</sup> The alleged conduct must also have occurred in the School's programs or activities, which are limited to locations, events, or circumstances in the United States in which the School exercised substantial control over the person accused of engaging in harassing behaviors and the context in which the alleged violation occurred. In addition, this Interim Policy applies only to complaints that are based on conduct that is alleged to have occurred on or after August 14, 2020. Earlier claims are governed by the School's Sexual Misconduct Policy.

As a result of the narrowed definition of Title IX Sexual Harassment, some sexual harassment claims may not be covered by this Interim Policy. Those claims may fall within the scope of the School's Anti-Harassment Policy. When it applies, this Interim Policy takes precedence and supersedes any procedures set forth in the School's Anti-Harassment Policy or related policies.

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<sup>2</sup> In March 2021, President Biden ordered the U.S. Department of Education to review the revised Title IX regulations. In April 2021, the U.S. Department of Education's Office of Civil Rights asked for comments on the regulations. New England Law will update this policy to comply with any changes to the Title IX regulations.

<sup>3</sup> Under the 2020 regulations, hostile environment harassment under Title IX now requires conduct that is sufficiently severe *and* pervasive. Under Title VII, in contrast, conduct would be actionable if it is sufficiently severe *or* pervasive.

## **C. Distribution of Policy**

As part of the School's commitment to providing a working and learning environment free from gender discrimination and sexual harassment, this Interim Policy shall be distributed widely to the School community. The School will distribute this Interim Policy to the students and employees by appropriate channels of communications, including posting it on an internet or intranet web site and directly notifying all students and employees of how to access this Interim Policy by an exact URL address or link, and that they may request a paper copy.

The School will make preventive educational materials available to all members of the community and will provide incoming students with a copy of this Interim Policy at a scheduled Title IX informational session as part of their orientation.

## **II. NOTICE OF NON-DISCRIMINATION**

New England Law expressly prohibits discrimination on the basis of race, color, religion, national origin, ethnicity, age, gender, sexual orientation, disability, genetic information, military status, or status as a veteran, or any other basis prohibited by law. For students who have questions about discrimination on the basis of a disability or to file a Section 504 complaint alleging discrimination on the basis of a disability, contact the Director of Student Services at [TitleIXCoordinator@nesl.edu](mailto:TitleIXCoordinator@nesl.edu). Employees should consult the Employee Handbook for information about the disability-related protections that apply.

## **III. DEFINITIONS**

### **A. The School's Programs or Activities**

This Interim Policy applies to conduct prohibited by Title IX that occurs in the *School's programs or activities*. These are locations, events, or circumstances in the United States in which the School exercised substantial control over the person accused of engaging in harassing behaviors and the context in which the alleged violation occurred.

### **B. Title IX Sexual Harassment**

This policy prohibits sexual harassment, as that term is defined under Title IX regulations ("Title IX Sexual Harassment"). *Title IX Sexual Harassment* refers to conduct on the basis of sex, against a person in the United States, that is alleged to have occurred in a School program or activity, and that satisfies one or more of the following:

- *Quid Pro Quo Sexual Harassment*: A School employee conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct.
- *Hostile Environment Sexual Harassment*: Unwelcome conduct that a reasonable person would perceive as so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a School program or activity.

- *Sexual Assault*: This is an offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting System of the Federal Bureau of Investigation. In general, it is any sexual act directed against another person, without the consent of that person, including instances where the person is incapable of giving consent.
- *Dating Violence*: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- *Domestic Violence*: Violence, which includes felony or misdemeanor crimes of violence, committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- *Stalking*: A course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

Title IX Sexual Harassment can occur between strangers or acquaintances, or people who know each other well, including between people who are or have been involved in an intimate or sexual relationship. It can be committed by anyone, regardless of gender, and can occur between people of the same or different sex or gender.

While it is not possible to list all circumstances that may constitute Title IX Sexual Harassment, the following are some examples of conduct which may violate this policy. In any particular case, whether the conduct constitutes Title IX Sexual Harassment will depend upon the totality of the circumstances including the severity, frequency, and pervasiveness of the conduct:

- Unwelcome sexual advances or propositions, whether or not they involve physical touching or not;
- Sexual epithets, jokes, written or oral references or sexual conduct, or gossip regarding one's sex life;
- Comments about an individual's body, appearance, or clothing;
- Comments about an individual's sexual activity, deficiencies, or prowess;
- Displaying of sexually suggestive objects, pictures, cartoons;
- Actions such as leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into or discussions of one's sexual experiences;
- Observing, photographing, videotaping, posting, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties; or
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s).

Other verbal, nonverbal, graphic, or physical conduct may constitute Title IX Sexual Harassment if the conduct is sufficiently persistent, pervasive, and severe so as to deny a person equal access to the School's programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

Violations of School policy that do not constitute a violation of this Interim Policy, may, nevertheless, be prohibited by the Standards of Conduct and Discipline in the Student Handbook, and other policies, including the School's Anti-Harassment Policy. It is also a violation of School policy to retaliate against a person who reports sexual harassment, who assists someone with a report of sexual harassment, or who participates in any manner in an investigation or resolution of a sexual harassment complaint. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

### **C. Consent**

*Consent* must be informed and voluntary, and can be withdrawn at any time. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that he or she cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

Effect of drugs and alcohol on consent: Individuals should be aware of, and carefully consider, the potential consequences of the use of alcohol or drugs. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming drugs or alcohol, the School will examine the issue from the perspective of a reasonable person. Specifically, the School will consider whether the respondent reasonably should have known about the impact of alcohol and other drugs on the complainant's ability to give consent.

It is a violation of this Interim Policy and Massachusetts law to engage in sexual activity with a person who is incapacitated, regardless of whether the person appeared to be a willing

participant. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication and potential incapacitation.

The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact, and is prohibited. Force may include words, conduct, or appearance. Force includes causing another's intoxication or impairment through the use of drugs or alcohol. Under this Interim Policy, force includes the use of any of the following: physical force, violence, or use of a weapon; threats; intimidation and implied threats; and coercion (i.e., forcing one to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, or emotional intimidation).

#### **D. Parties**

A *complainant* is the person making the allegations of Title IX Sexual Harassment. A *respondent* is the individual who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment. Collectively, they are referred to as *parties*.

#### **E. Formal Complaint**

The grievance procedures set out in this Policy apply to formal complaints of Title IX Sexual Harassment ("Formal Complaint"). A *Formal Complaint* is a document filed by a complainant, or signed by the Title IX Coordinator, and alleging Title IX Sexual Harassment against a respondent and requesting that the School investigate those allegation. In situations where the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator is not considered the complainant or otherwise a party to the complaint.

#### **F. Title IX Grievance Process**

*Title IX Grievance Process* is the process required under Title IX regulations after a Formal Complaint of Title IX Sexual Harassment has been filed. Where a complaint of discrimination or harassment falls outside the scope of this policy, the School will follow the procedures set out in its Anti-Harassment Policy or any other applicable policy.

#### **G. Supportive Measures**

At any time, the School may put in place reasonable and appropriate supportive measures ("Supportive Measures"). *Supportive Measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the School's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School's educational environment, or deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in

work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The School will maintain as confidential any Supportive Measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

#### **IV. TITLE IX COORDINATORS AND RESOURCES**

##### **A. Title IX Coordinator and Deputy Title IX Coordinators**

The School has designated the Director of Student Services to serve as the School’s Title IX Coordinator (“Title IX Coordinator”). The Title IX Coordinator is responsible for implementing and monitoring Title IX compliance on behalf of New England Law. The Title IX Coordinator’s specific responsibilities include, but are not limited to, coordinating training, education, and communications; providing prompt and effective response to reports of Title IX Sexual Harassment in accordance with this Policy; initiating investigations of alleged Title IX Sexual Harassment; maintaining records of reports of Title IX Sexual Harassment, including records of investigations, voluntary resolutions, and disciplinary action, as appropriate; and identifying and addressing any patterns or systemic problems that arise during the review of Title IX Sexual Harassment complaints.

Deputy Title IX coordinators are responsible for assisting the Title IX Coordinator in implementing and monitoring Title IX compliance at New England Law and for notifying the Title IX Coordinator of any alleged or suspected violations of this Policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

The Title IX Coordinator and the Deputy Title IX Coordinators (collectively, the Coordinators”) also qualify as campus security authorities (“CSA”) under federal law. A CSA is “[a]n official of an institution who has significant responsibility for student and campus activities.” These Coordinators will be available to meet with students, employees, and others regarding issues relating to Title IX, VAWA, and this Policy.

Anyone with questions about this policy may contact the Title IX Coordinator or a Deputy Title IX Coordinators. Their contact information is as follows:

##### Title IX Coordinator

##### Director of Student Services

New England Law | Boston

46 Church Street

Boston, MA 02116

617-422-7401

[TitleIXCoordinator@nesl.edu](mailto:TitleIXCoordinator@nesl.edu)

## Deputy Coordinators

### For Complaints By/Or Against Students or Employees:

Associate Dean  
New England Law | Boston  
154 Stuart Street  
Boston, MA 02116  
617-422-7230

[DeputyCoordinator-Students@nesl.edu](mailto:DeputyCoordinator-Students@nesl.edu)

### For Complaints By/Or Against Employees

Human Resources Consultant  
New England Law | Boston  
46 Church Street  
Boston, MA 02116  
617-422-7285

[DeputyCoordinator-Employees@nesl.edu](mailto:DeputyCoordinator-Employees@nesl.edu)

Reports of Title IX Sexual Harassment should be brought to the Title IX Coordinator. Other complaints of harassment, discrimination, or retaliation should be brought as follows:

- *For claims by or against students:* Concerns should be brought to the Title IX Coordinator or to a Deputy Title IX Coordinator responsible for student complaints (i.e., the Director of Student Services or an Associate Dean).
- *For claims by or against employees:* Concerns should be brought to the Deputy Title IX Coordinators (i.e., an Associate Dean or the Human Resources Consultant).
- *For claims against the Dean:* Concerns should be brought to the Chairman of the Board of Trustees.
- *For claims against third parties:* Concerns should be brought to the Title IX Coordinator or a Deputy Title IX Coordinator.

## **B. Government Agencies**

Inquiries about the application of Title IX may also be directed to:

Boston Office for Civil Rights  
U.S. Department of Education  
8th Floor  
5 Post Office Square  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

In addition, the federal Equal Employment Opportunity Commission (“EEOC”) and the Massachusetts Commission Against Discrimination (“MCAD”) investigate complaints of unlawful harassment in employment. For more information, contact the nearest office of the EEOC or MCAD.

## **V. REPORTING SEXUAL HARASSMENT**

### **A. Duty to Report**

Faculty, managers, and department heads who have experienced, observed or otherwise been made aware of conduct that they believe is contrary to this Interim Policy, or any other comparable School policy, have an obligation to make a prompt report to the individuals designated in Section IV. All other members of the New England Law community are strongly encouraged to report any conduct in order to ensure that the School is free of harassment and discrimination.

Where appropriate, School community are strongly encouraged to report incidents to the local police department and campus security and are also encouraged to contact the local victim/survivor services office, counseling centers, and health care providers for appropriate action.

### **B. Initiation of a Formal Complaint of Title IX Sexual Harassment**

To initiate the Title IX Grievance Process, a complainant must submit a Formal Complaint, in paper or electronic format, to the Title IX Coordinator. The contact information for the Title IX Coordinator is listed in Section IV. The Formal Complaint must include the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the Formal Complaint. At the time of filing a Formal Complaint, the complainant must be participating in or attempting to participate in the education program or activity of the School.

To help ensure a prompt and thorough investigation, complainants are encouraged to provide as much of the following information as possible:

- The name, department, and position of the person or persons allegedly engaging in Title IX Sexual Harassment.
- A description of any relevant incident(s), including the date(s), location(s), and the presence and identities/names of any witnesses.
- Any evidence obtained or preserved that they have in their possession or knowledge.
- The alleged effect of the incident(s) on the complainant's academic standing, educational benefits or opportunities, position of employment, salary, employee benefits, promotional opportunities, or other terms or conditions of employment.
- The names of other students or employees whom the complainant knows to have been subject to the same or similar Title IX Sexual Harassment.
- Any issues or questions that the complainant wants to bring to the attention of the investigator.
- Any steps the complainant has taken to try to stop the Title IX Sexual Harassment.
- Any other information the complainant believes to be relevant to the alleged Title IX Sexual Harassment.

Formal Complaints of Title IX Sexual Harassment should be filed promptly so that the School can effectively address the issue. The School will accept and investigate untimely complaints,

but an undue delay in reporting may affect the quality or preservation of evidence or witness testimony that would have been available and might affect the School's ability to proceed with the investigation.

**C. Protections for Those Reluctant to Report Based on Potential Violations**

Students and employees may be reluctant to report incidents because of concerns that their own behavior may be a violation of School policies. The School's primary concern is student and employee safety. Any other rules violations will be addressed separately from the Title IX Sexual Harassment allegation. In appropriate circumstances, a student who is found to have engaged in excessive consumption of alcohol or drugs may be offered a chance to get medical or psychological help in lieu of disciplinary sanctions.

Although School policy violations cannot be overlooked, the School will consider the positive impact of reporting an incident involving the Title IX Sexual Harassment Policy when determining the appropriate response to other policy violations. In such cases, any possible negative consequences for the reporter of the problem should be evaluated against the possible negative consequences of not reporting the incident.

**D. Title IX Sexual Harassment Involving Bodily Harm**

In the event the School has received a report of Title IX Sexual Harassment involving bodily harm, the School must determine, consistent with state or local law, whether appropriate law enforcement or other authorities should be notified. The person reporting the Title IX Sexual Harassment may choose to file a criminal complaint against the respondent. Any pending criminal investigation or criminal proceeding may have some impact on the timing of the School's investigation, but the School will commence its own investigation as soon as is practicable under the circumstances. New England Law reserves the right to commence and/or complete its own investigation prior to the completion of any criminal investigation or criminal proceeding.

**VI. ASSISTANCE AVAILABLE OUTSIDE OF FORMAL COMPLAINT GRIEVANCE PROCESS**

Once the Title IX Coordinator has actual knowledge that a student or employee may be subject to Title IX Sexual Harassment, the Title IX Coordinator, or designee, will promptly contact the student or employee to discuss: (1) the availability of Supportive Measures, and (2) the process for filing a Formal Complaint. Supportive Measures are available even if the student or employee does not choose to file a Formal Complaint.

**VII. THE TITLE IX GRIEVANCE PROCESS**

**A. Assignment to an Officer**

After a Formal Complaint is filed, it will usually be assigned to an individual (the "Officer") who will be responsible for responding to the complaint. The Officer may be the Title IX

Coordinator, a Deputy Title IX Coordinator, or any other person designated by the Title IX Coordinator or Deputy Title IX Coordinator in consultation with the Office of the Dean.

## **B. Initial Assessment**

The Officer will review the Formal Complaint. If the Formal Complaint does not include sufficient information to permit the respondent to understand the allegations being brought and to respond, the Officer will request that the complainant provide additional information. The Officer will also evaluate whether the complaint alleges a violation of this Policy. Where there are no allegations that constitute Title IX Sexual Harassment, the Formal Complaint will be dismissed, and the Officer will evaluate whether the complaint should be investigated under the School's Anti-Harassment Policy or other policies. Where applicable, the Officer will reach out to the complainant to discuss Supportive Measures.

## **C. Notice of the Formal Complaint**

After receiving a Formal Complaint of Title IX Sexual Harassment and making the initial assessment, the School will provide written notice to the complainant and the respondent (if known). The written notice will include the following information:

- 1) Notice of the School's Title IX Grievance Process, including any informal resolution process.
- 2) Notice of the allegations of Title IX Sexual Harassment, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Harassment, and the date(s) and location(s) of the alleged incident(s), if known. This information will be provided to the respondent with sufficient time to prepare a response before any initial interview.
- 3) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process.
- 4) Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- 5) Notice of the range of Supportive Measures available to complainants and respondents.
- 6) Notice that the process prohibits knowingly making false statements or knowingly submitting false information during the Title IX Grievance Process.

If, in the course of an investigation, the School decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the School will provide notice of the additional allegations to the parties whose identities are known.

## **D. Consolidation of Formal Complaint**

The School may consolidate Formal Complaints for allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or

by one party against the other party, where the allegations arise out of the same facts or circumstances.

### **E. Dismissal of Formal Complaint**

The School is obligated to investigate Formal Complaints of Title IX Sexual Harassment. There may be times, however, when dismissal of the Formal Complaint is appropriate.

Dismissal is *required*: (1) if the alleged conduct would not constitute title IX Sexual Harassment even if proved, (2) if the conduct did not occur in the School's education programs or activities, or (3) if the conduct did not occur against a person in the United States.

Dismissal is allowed if: (a) the complainant provides notice of withdrawal of the Formal Complaint or of any allegations in the Formal Complaint; (b) the respondent is no longer enrolled or employed by the School, or (c) specific circumstances prevent the School from gathering evidence sufficient to reach a determination on the allegations in the Formal Complaint.

If a Formal Complaint is dismissed, the School will send written notice of the dismissal and reasons for dismissal to the parties. A party may appeal the dismissal.

### **F. Informal Resolution/Mediation**

In some cases, allegations may be resolved using an informal resolution process, such as mediation. The parties may choose to engage in an informal resolution of the Formal Complaint, so long as the following conditions are met:

- A Formal Complaint must first have been filed.
- Participation is voluntary.
- The parties must provide written consent to the informal resolution process.
- The Formal Complaint cannot be based on allegations that an employee sexually harassed a student.

The parties can withdraw their assent to the use of a voluntary resolution process at any time before an agreement over a resolution is reached. Once there is a resolution, in a written document signed by the parties, the matter will be considered to be finally and fully determined, with no appeal rights, and the complainant may be precluded from resuming a Formal Complaint arising from the same allegations.

### **G. Advisors**

Parties have the right to be assisted by an advisor of their choice, who may be, but is not required to be, an attorney. An advisor may accompany a party to any meeting in the Title IX Grievance Process and advise the party. The School will not limit the choice or presence of an advisor in any meeting or grievance proceeding, but the School may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply

equally to both parties. In general, advisors will be allowed to accompany and confer with a party, but may not speak for a party.

*Special rules for hearings:* A party must have an advisor to participate in a hearing. If a party does not have an advisor present at the hearing, the School will provide an advisor of the School's choice. There will be no fee or charge imposed on a party when the School provides an advisor. The advisor's role will be to conduct cross-examination of witnesses on behalf of the party that the advisor represents.

## **H. Standards for Investigations, Hearings, and Dispositions**

The following standards apply to the processing of Formal Complaints:

- 1) Where a party is invited to attend or expected to participate, the School will provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- 2) There will no restriction on the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- 3) The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School and not on the parties.
- 4) The School applies a preponderance of evidence standard to determine whether there has been a violation of this Interim Policy.
- 5) There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX Grievance Process.
- 6) There will be an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- 7) The parties will have equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 8) The School will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. This requirement includes treatment records made or maintained by a physician, psychiatrist, or psychologist or other recognized professional/paraprofessional. If a party holding the privilege affirmatively discloses the records or information, the investigator or decision-maker may consider the evidence

- 9) The School provides for remedies that are designed to restore or preserve equal access to the School's education programs or activities.
- 10) The School treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the respondent and by providing for procedures that comply with Title IX regulations before the imposition of any disciplinary sanctions against a respondent.

To comply with these standards, the School requires that the designated Title IX Coordinator and any investigator, decision-maker, or any person designated by the School to facilitate an informal resolution process satisfy the following requirements: (1) not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent; and (2) receive appropriate training.

### **I. Investigation and Investigative Report**

The Officer will designate an investigator ("Investigator") to conduct an investigation of a Formal Complaint of Title IX Sexual Harassment. The Investigator should keep the Officer informed of the progress of the investigation and confer with the Officer over the course of the investigation.

The Investigator will in most cases:

- Conduct a fact-finding inquiry or investigation into the complaint, including appropriate interviews and meetings with the complainant, the respondent, and with witnesses named by both the complainant and respondent.
- Create, gather and maintain investigative documentation, as appropriate.
- Handle all data in accordance with applicable federal and state privacy laws.

The Investigator will prepare an investigative report that fairly summarizes the relevant evidence, but reaches no conclusions on policy violations. Before the Investigator completes the investigative report, the Officer will ensure that each party and the party's advisor, if any, will have access to the evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source. The evidence may be provided in an electronic format or a hard copy. The parties will have ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report.

### **J. Hearings**

A hearing will be conducted to decide, based on a preponderance of the evidence standard, whether it is more likely than not that a policy violation or violations occurred. The School will appoint a decision-maker (or decision-makers), who will not be the same person(s) as the Title IX Coordinator or the investigator(s), to oversee the hearing process.

The Title IX Coordinator or designee will issue a Notice of Hearing to the complainant and the respondent. The Notice of Hearing will identify the date, time, and place of the hearing and provide the names of the decision-maker(s). The Notice of Hearing will be sent at least ten (10) days prior to the hearing date.

The School will also provide copies of the final investigative report to each party and the parties' advisors at least ten (10) days before the hearing for their review and written response. Written responses, which will be shared with the other party, must be filed within seven (7) days after receipt of the final investigation report.

The School will make all evidence obtained during the investigation that is directly related to the allegations raised in the Formal Complaint available at the hearing in order to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Hearings will be conducted by the decision-maker(s) and will follow these principles:

- (1) Cross-examination at the hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. The decision-maker(s) will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- (2) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- (3) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- (4) If a party or witness does not submit to cross-examination at the hearing, the decision-maker(s) will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.
- (5) Hearings may be conducted with all parties physically present in the same geographic location or, at the School's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (6) At the request of either party, the School will provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

- (7) The School will create an audio or audiovisual recording, or transcript, of any hearing and make it available to the parties for inspection and review.

After the hearing, the decision-maker(s) will evaluate all relevant evidence collected during the investigation and the testimony and non-testimony evidence received at the hearing and will determine if the respondent's acts violated this Interim Policy, applying a preponderance of the evidence standard.

If the respondent's acts are found to violate this Interim Policy, the decision-maker(s) will consult with the appropriate School personnel with disciplinary authority over the respondent and such personnel will determine the sanctions to be imposed. More information about disciplinary measures is set forth below.

After reaching a determination and consulting, as necessary with appropriate School personnel, the decision-maker(s) will issue a written determination, which will be provided to the parties simultaneously. The written determination will include:

- (1) Identification of the allegations potentially constituting Title IX Sexual Harassment;
- (2) A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (3) Findings of fact supporting the determination;
- (4) Conclusions regarding the application of the School's policies to the facts;
- (5) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
- (6) Any disciplinary sanctions imposed on the respondent;<sup>4</sup>
- (7) Whether remedies designed to restore or preserve equal access to the School's education programs or activities will be provided to the complainant; and
- (8) The School's procedures and permissible bases for the complainant and respondent to appeal.

The determination regarding responsibility becomes final either on the date that the School provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **K. Appeals**

Either party may appeal from a determination regarding responsibility, and from a School's dismissal of a Formal Complaint. To be timely, an appeal must be filed with the Title IX Coordinator within ten (10) calendar days of receiving the hearing decision or notice of the dismissal. An appeal may be brought on the following bases:

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<sup>4</sup> There may be confidentiality concerns that limit the amount of information that may be provided to a complainant about discipline imposed on a respondent.

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

If an appeal is filed, the School will notify the other party that an appeal has been filed. The School will ensure that the decision-maker for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. The decision-maker(s) for the appeal will comply with the principles that apply to the analysis of the evidence at hearing. The parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

In the event the appeal includes the appeal of a sanction, the appeal reviewer will, before issuing a final decision, consult with appropriate School personnel with disciplinary authority over the respondent, and the appropriate School personnel will evaluate any sanctions to be imposed.

The decision-maker(s) on the appeal will issue a written decision describing the result of the appeal and the rationale for the result. The School will provide this decision to the parties simultaneously.

#### **L. Timing Issues**

The School's goal is to resolve all complaints as efficiently and promptly as possible. The length of time it will take to complete the investigation, hearing, and, as necessary, any appeal will vary based on the complexity of the complaint and other factors such as witness or advisor availability, delay or uncooperative actions of any necessary party, number of witnesses, holidays and vacation periods, and any other unforeseeable events / circumstances. Any pending criminal investigation or criminal proceeding may also have some impact on the timing of the School's investigation, and will in some cases result in extending the time period needed to resolve the complaint. The timing could also be affected if the parties pursue informal resolution. As a result, all deadlines and time period are subject to modification by the School, where in the School's sole discretion, good cause exists. Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, decision-maker, appeal reviewer, Title IX Coordinator, or Officer, as the case may be, depending on the phase of the Title IX Grievance Process.

Subject to these limitations, the following time frames will generally apply to the processing of Formal Complaints: The School aims to complete the investigation of a Formal Complaint within sixty (60) days after the filing of the complaint. The School aims to complete the hearing and issue a hearing decision within ninety (90) days of the completion of the investigative phase. The parties will have ten (10) calendar days to request an appeal after receiving the hearing decision. They will then have an additional twenty (20) calendar days to prepare any written submissions in the appeal process. The appeal decision will be issued within thirty (30) days after the parties' submissions are received.

## **VIII. DISCIPLINARY ACTIONS FOR VIOLATIONS OF THIS POLICY**

*Students* who are found to have violated this Policy will be subject to disciplinary action, up to and including expulsion or dismissal. The Dean and/or Dean's designee(s), with input from the Title IX Coordinator, should determine the discipline to be imposed on the student.

*Non-tenured faculty members or staff members* who are found to have violated this Policy will be subject to disciplinary action, up to and including termination of employment. The Dean and/or the Dean's designee(s) will determine the appropriate level of discipline, which decision shall be final.

*Tenured faculty members* who are found to have violated this Policy will be subjected to disciplinary action, up to and including withdrawal of tenure and termination of employment. The Dean or Dean's designee(s) may unilaterally impose discipline at a level below the withdrawal of tenure, which decision shall be final. Where the discipline to be imposed rises to the level of withdrawal of tenure, the matter will be subject to Rule 4.8 of the Faculty Rules, which provides tenured faculty members with a right to an evidentiary hearing before the appropriate faculty committee, with any recommendation of that committee to withdraw tenure subject to a final decision by the Board of Trustees. Where withdrawal of tenure may be an option, any required hearing under the Title IX Grievance Process and the Faculty Rules may be consolidated to the extent feasible.

If the *Dean is* found to have violated this Policy, the Chairman of the Board of Trustees may impose discipline up to and including termination of employment, except that if the Dean is a tenured faculty member, tenure may not be withdrawn without following Rule 4.8 of the Faculty Rules.

*Third parties* who are found to have violated this Policy will be subject to corrective action deemed appropriate by the Dean, which may include removal from the campus and termination of any applicable contractual or other arrangements.

The School may take appropriate action for conduct that is inappropriate, even if it does not violate this Policy.

Discipline and/or corrective actions will also be appropriate if an investigation results in a finding that the complainant has knowingly made a false accusation.

## **IX. PRIVACY**

The School shall protect the privacy of individuals involved in a report of Title IX Sexual Harassment to the extent permitted by law and School policy. A report of Sexual Misconduct may result in the gathering of extremely sensitive information about individuals in the School community. While such information is considered confidential, School policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of Title IX Sexual Harassment.

## **X. RETENTION OF RECORDS**

The Title IX Coordinator is responsible for maintaining records relating to Title IX Sexual Harassment, investigations, and resolutions. The following records are to be maintained for seven (7) years:

- 1) All responses to matters when the School has actual knowledge of Title IX Sexual Harassment, including records of any Supportive Measures (including, as applicable, any justification for not providing Supportive Measures) and measures taken to restore or preserve equal access to the School's programs or activities.
- 2) Each Title IX Sexual Harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript of any hearings, any disciplinary sanctions imposed on a respondent, and any remedies provided to a complainant designed to restore or preserve equal access to the School's education program or activity of the Appeal;
- 3) Any informal resolution and the result of the informal resolution.
- 4) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Under the Title IX regulations, the School is to make these training materials publicly available on its website, or if the School does not maintain a website, the School is supposed to make these materials available upon request for inspection by members of the public