

Sonoran Desert Institute

Title IX Non-Discrimination & Grievance Process Policy

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QUICK REFERENCE GUIDE

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Tel.: (480) 378-6848
Email: TitleIX@sdi.edu
Web: www.sdi.edu

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

Title IX Non-Discrimination & Grievance Process Policy

I. Introduction

Title IX of the Education Amendments Act of 1972 (“Title IX”) prohibits discrimination on the basis of sex in any education program or activity operated by a recipient that receives federal financial assistance. As an educational institution subject to Title IX, SDI¹ has adopted this Title IX Non-Discrimination & Grievance Process Policy (the “Policy”).² As set forth in detail herein, SDI:

- Does not discriminate on the basis of sex, including in admissions and employment, and is committed to providing an educational and workplace environment that is free from sex-based discrimination, harassment, and retaliation;
- Prohibits discrimination on the basis of sex in its educational programs and activities, as required by law;
- Is committed to promoting fairness and equity in all aspects its operations; and
- Values and promotes the equal dignity of all community members and is committed to the pursuit of just resolutions with respect the rights of all parties involved.

This Policy is adopted to prevent discrimination prohibited under Title IX and provide a prompt, fair, and impartial process to address complaints of alleged discrimination based on sex.

Inquiries about this Policy or the application of Title IX may be referred to SDI’s Title IX Coordinator, the U.S. Assistant Secretary of Education for Civil Rights, or both.

II. Overview of Title IX Policy and Grievance Process: General Provisions

Responsibilities of the Title IX Coordinator

The Title IX Coordinator is responsible for overseeing SDI’s efforts to comply with SDI’s Title IX responsibilities. Specifically, the Title IX Coordinator oversees implementation and enforcement of this Policy, which includes primary responsibility for coordinating the School’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

¹ SDI may be referred to interchangeably as the “School” throughout this Policy.

² All capitalized terms not defined within this Policy are defined in Appendix A.

The School's Title IX Coordinator is identified below and may be contacted with questions about this Policy, to file a report or formal complaint, or to otherwise assist individuals in ensuring equal access to the School's educational programs or activities in compliance with Title IX.

Title IX Coordinator: Teresa Speicher
Tel.:480-378-6848
Email: TitleIX@sdi.edu
Web: www.sdi.edu

Individuals may also contact the U.S. Department of Education's Office for Civil Rights with Title IX questions. *(Please note that inquiries to OCR alone are not sufficient to allow appropriate responsive action by the School. To ensure your concern is appropriately addressed under this Policy, please file a report with the School's Title IX Coordinator).*

Office for Civil Rights (OCR)
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How to Make a Report or Formal Complaint of an Alleged Title IX Violation

Any person may report alleged sex discrimination, sexual harassment, or retaliation to the Title IX Coordinator, irrespective of whether the reporting person is the alleged victim of such conduct. Nothing in the Title IX Policy prohibits a student, employee, or third parties from filing a criminal and Title IX complaint simultaneously or from reporting a crime directly to law enforcement.

A report is differentiated from a Formal Complaint ("Complaint"), which is a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment and requesting that the School investigate the allegation(s) and implement the School's Grievance Process. A report or complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail at any time (including during non-business hours), using the contact information in the section immediately above or as described below:

Title IX Coordinator: Teresa Speicher
Tel.:480-378-6848
Email: TitleIX@sdi.edu
Web: www.sdi.edu

After Making a Report or Formal Complaint

Upon receipt of a report or Complaint, the Title IX Coordinator shall promptly contact the complainant confidentially to discuss the availability of supportive measures (as explained more fully below), consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. .

The Title IX Coordinator shall contact Complainant to discuss the availability of appropriate supportive measures that may be implemented with input from the Complainant irrespective of, and in addition to, any resolution process including the formal Grievance Process, and will notify Complainant about the right to have an advisor.

If the report has been made without filing a Complaint, the Title IX Coordinator will review the allegations and discuss options with the Complainant, including the option of proceeding with a Complaint. If the Complainant does not want to proceed with a Complaint, the Coordinator may initiate a Complaint if the Coordinator determines that a Complaint is warranted.

If the Complainant files a Complaint, or the Title IX Coordinator initiates a Complaint, the matter will proceed as described under the Grievance Process.

Informal Resolution

The notice of the informal resolution option will include a statement of the allegations, a description of the informal resolution process, and a statement that at any time prior to agreeing to an informal resolution any party has the right to withdraw from the informal resolution process and resume the formal resolution process with respect to the formal complaint. Each party has five calendar days to indicate in writing to the Title IX Coordinator if the party wishes to pursue the informal resolution option. If both parties give written, voluntary, and informed consent to the informal resolution option within five calendar days, Institution will begin the informal resolution process. Participation in the informal resolution process is completely voluntary. Institution does not require any party to participate in the informal resolution process. Each party has an unconditional right to withdraw from the informal resolution process and resume the formal resolution process. If the parties elect to pursue informal resolution, the Title IX Coordinator will designate a facilitator to administer the informal resolution process and will provide the facilitator with the final investigative report. If an investigation was not completed when the parties chose the informal resolution option, the Title IX Coordinator will give to the facilitator any available investigation information. The facilitator retains the discretion to meet with either or both of the parties individually prior to reaching a decision. The facilitator will issue an informal resolution decision simultaneously to all parties, including:

- The information from the formal complaint;
- Any information gathered during a previous investigation;
- Any new information the facilitator gathered from the parties;
- A preliminary analysis and finding of whether or not there was a violation of the Institution's policies and/or the Institution's Title IX Policy; and

- 5. If appropriate, sanction(s) with rationale(s) based on the severity of the case and any past related incidents

The parties have five calendar days to respond to the informal resolution decision. If neither party disagrees with the decision within five calendar days, the decision is finalized and the matter is considered resolved and closed through this informal resolution process. The Title IX Coordinator will send the parties a letter to inform them the matter has been resolved and the case is closed with regard to the Institution resolution process.

If either party disagrees with the facilitator's decision, the party may inform the Title IX Coordinator within five calendar days of receipt.

The matter will then proceed through the formal complaint process. In the event of any of the following developments:

- If either party declines the initial offer of an informal resolution option;
- If five calendar days pass from the initial notice of the informal resolution option with no response from a party;
- If any party gives written notice of withdrawal from the informal resolution process; or
- If any party gives written notice of disagreement within five calendar days of the facilitator's decision, if any party requests a formal hearing, the Title IX Coordinator will notify the parties and their advisors of the need to convene a formal hearing.

If an investigation previously was suspended when the parties chose the informal resolution process, the Investigator will complete the investigation and the parties will have five calendar days for preparation, from the time of receipt of the final investigative report to the time of the scheduled formal hearing. If the investigation was previously completed and the parties previously received the final investigative report, then from the time of the current formal hearing notice, the parties will have at least 10 calendar days for preparation prior to the time of the scheduled formal hearing

Emergency Removal of Respondent

The School reserves the right to remove a Respondent from its education program or activities on an emergency basis provided that the School undertakes a safety and risk analysis and determines that an immediate threat to the physical health or safety of a student or other individual justifies removal. The School will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. If an emergency removal is imposed, the Respondent will be given notice of the removal and the option to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the removal should not be implemented. Emergency removal decisions are not subject to Appeal.

Administrative Leave of Employee Respondent

Respondents that are School employees may be placed on administrative leave during the pendency of a grievance process as determined by the School and the Title IX Coordinator.

Complainant's Decision to Pursue a Complaint

If a Complainant does not wish to be identified, does not wish for an investigation to take place, or does not want a Complaint to be pursued, the Complainant may make such a request to the Title IX Coordinator, who will evaluate the request in light of the duty to ensure campus safety and compliance with state and federal law. The School will comply with Complainant's wishes unless the Coordinator determines that initiating a Complaint is warranted under the circumstances.

If the Coordinator independently initiates a Complaint, the Complainant may have as much or as little involvement in the process as the Complainant desires. The Complainant retains all rights of a Complainant under this Policy irrespective of participation level. Irrespective of whether a Complaint is filed, the School shall offer supportive measures to ensure Complainant's continued access to the School's educational program and activities. If the Complainant elects not to file a Complaint, the Complaint shall retain the right to file a Complaint later.

Complaint Dismissal

Mandatory Dismissal

The School must dismiss a Complaint if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Complaint does not constitute sexual harassment as defined in under Title IX; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the School (including buildings or property controlled by recognized student organizations); and/or
- 3) The School does not have jurisdiction over the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a Complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the School.

Discretionary Dismissal

The School may dismiss a formal complaint or any allegations therein if at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegation therein; or
- 2) The Respondent is no longer enrolled in or employed by the School; or
- 3) Circumstances prevent the School from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein.

Upon any dismissal, the School shall promptly send written notice of the dismissal and its rationale

simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal below.

Dismissed Complaints may include conduct that could be considered a potential violation of the School's Employee Handbook and may be addressed through other applicable, non-Title IX conduct policies and procedures accordingly.

Consolidated Complaints

If multiple Complaints involves one or more Complainant and/or Respondent and allegations arising out of the same set of circumstances, the School may elect to consolidate Complaints.

Time Limits on Reporting

There is no time limitation on making a report or Complaint. However, acting on reports or Complaints is significantly impacted by the passage of time and occurrence of other events (including, but not limited to, the rescission or any revision of this Policy), and is at the discretion of the Title IX Coordinator, who may, among other things, document allegations for future reference, offer supportive measures and/or Remedies, and/or engage in informal or formal action, as appropriate. Additionally, if the Respondent is no longer subject to the School's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide Remedies may be more limited or impossible.

Anonymous Report or Complaint

If a Complainant makes a report anonymously, it will be investigated by the School to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or Remedies can be provided. Anonymous reports typically limit the School's ability to investigate and respond, depending on what information is shared. In some situations, the Title IX Coordinator may proceed with the issuance of a Formal Complaint even when the Complainant's report has been made anonymously.

Confidentiality

The School shall undertake reasonable efforts to preserve the confidentiality of reports and Complaints. The School shall not disclose any report or Complaint except as provided herein and as necessary to effectuate this Policy, or as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99, or as required under applicable law.

Certain professionals have a legal and/or ethical responsibility to maintain communications made in the scope of their professional roles in strict confidence.³ Some of these roles include licensed professional counselors/mental health providers, licensed medical and health care providers,

³ In highly limited circumstances, such as when presenting an immediate threat or danger to another, or when subject to a court order, confidential communications may be revealed without the consent of a party.

victim advocates, ordained/licensed clergy, licensed attorneys and rape crisis or domestic violence resources. Complainants or Respondents wishing to speak to someone confidentially are encouraged to seek out such resources. Communications with such professionals are considered legally privileged and cannot be revealed without a party's express written consent.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the School's education program or activity, including measures designed to protect the safety of all parties or the School's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available upon receipt of a report or a complaint alleging possible sexual harassment. At the time that supportive measures are offered, the School will inform the Complainant, in writing, that they may file a formal complaint with the School either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The School shall maintain the confidentiality of the supportive measures to the greatest extent reasonably practicable, provided that confidentiality does not impair the School's ability to provide supportive measures or otherwise fulfill its obligations under this Policy. The School will implement measures in a way that does not unreasonably burden the other party.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, referral to medical or healthcare services, referral to community-based services, 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.

Right to an Advisor

The parties have the right to select an advisor of their choice to accompany them to any or all meetings and interviews during the resolution process. There are no limits on who can serve as an advisor; it may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. Under Title IX, cross-examination is required during the hearing, and must be conducted by the parties' advisors. If a party selects an advisor of their choice, this advisor must perform cross-examination on their behalf during the hearing, as the parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an advisor, or the advisor does not appear for a hearing, the School will provide one for the limited purpose of conducting cross-examination on behalf of the party.

An advisor who is also a witness to the allegations in the complaint creates potential for bias and

conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s) and may, but will not necessarily, impact the Final Determination.

The School cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not select or retain an attorney or cannot afford an attorney, the School is not obligated to provide the other party with an attorney.

Conflict-of-Interest & Bias

Title IX Personnel are trained to ensure they have no conflict of interest and are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise any concern involving bias, conflict of interest or other misconduct by any Title IX Personnel contact the Title IX Coordinator, Teresa Speicher (TitleIX@sdi.edu) to report your concern.

Resolution Timeline

The School will complete the investigation as quickly as possible, generally within 60 calendar days. The investigative process may be delayed or extended at the Investigators discretion for good cause, such as, the availability of the parties and witnesses, potential concurrent criminal investigations, and the School closures, among others.

The School will avoid all undue delays within its control and will grant reasonable extensions of time, upon written request and showing of good cause, by a party. The School shall provide the parties written notice of delays and/or extensions, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate,

Notifications to Parties

All notifications to the parties noted herein will be made by made by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed and/or received in-person, notice will be presumptively delivered.

Retaliation

The School prohibits retaliation under this Policy. Retaliation may include intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure. Alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The School will take appropriate action to protect individuals who fear that they may be subjected to retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation. Relatedly, a determination of responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

The School's Mandatory Response Obligations

SDI's mandatory response obligations under this Policy arise when SDI has Actual Knowledge of conduct that may constitute sexual discrimination, harassment, or retaliation, as defined herein. Actual Knowledge occurs when the Title IX Coordinator or a School official with authority to implement corrective measures ("OWA")⁴ becomes aware of the potential occurrence of such conduct. Actual notice received by any of these OWAs constitutes Actual Knowledge upon which the School's mandatory response obligations arise under this Policy. In these cases, the School must act to stop, remedy and prevent future recurrence of prohibited conduct through application of this Policy.

Notice, Dissemination and Publication of Policy

Title IX requires SDI to notify applicants for admission or employment as well as students, employees, and, if applicable, unions or professional organizations holding collective bargaining of collective agreements with the School, of this Policy. SDI complies with Title IX's notice requirements, including prominently publishing its Non-Discrimination & Grievance Process Policy and contact information for the Title IX Coordinator on its website and in other publications.

III. Sexual Harassment Defined, Jurisdiction & Scope of Policy

Sexual Harassment Defined

For purposes of this Policy and the grievance process, Sexual Harassment has the meaning set forth below. Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender and/or gender identity of those involved.

Sexual Harassment means:

Conduct on the basis of sex that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. A School employee,
 - b. conditions the provision of an aid, benefit, or service of the School,
 - c. on an individual's participation in unwelcome sexual conduct;
- 2) Sexual Harassment:

⁴ The following have been identified and designated as OWAs: Traci Lee, President; Chris Caraway, Chief Operating Officer, Jeff Lagasse, Chief Financial Officer; Jarred McNeely, Chief Academic Officer.

- a. unwelcome conduct, determined by a reasonable person,
- b. to be so severe, and
- c. pervasive, and,
- d. objectively offensive,
- e. that it effectively denies a person equal access to the School's education program or activities; or

Any instance of sexual assault (as defined in the Clery Act) or dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act).

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and meanings apply:

Rape

Definition: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Example: A female student reports to the campus police that she was raped in her car in a parking lot on her school's campus by students from another college.

Fondling

Definition: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age and/or because of his/her temporary or permanent mental incapacity.

Example: A male student reports that another male student fondled him in a campus building while telling him that he was glad they could finally be alone.

Statutory rape

Definition: Non-forcible sexual intercourse with a person who is under the statutory age of consent.

Example: A 21-year-old student has sex with a 15-year-old juvenile in the student's on-campus apartment. There is no use of force or threat of force.

Incest

Definition: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Example: A 20-year-old student has sex with her 25-year-old brother in her on-campus apartment. (article continues below)

Domestic Violence

Definition: A felony or misdemeanor crime 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 in which the crime of violence occurred; 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 in which the crime of violence occurred.

Example: A student's wife is waiting for her husband outside of his on-campus classroom building. She attacks her husband with a knife when he exits the building.

Dating Violence

Definition: 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 the reporting party's statement with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.

Example: A male student cuts his ex-girlfriend with a knife during an altercation in an on-campus dining hall.

Stalking

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. *Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.*

Example: A female student reports that she is being followed by a man she met at her job at a café off-campus. He began showing up at the café and would not leave her alone. Since then she has also noticed him following her around campus and she fears for her safety.

Scope of the School's Educational Program and Activities

This Policy applies to conduct or allegations of conduct that involve one or more of the School's students, employees, or third parties. To be covered by this Policy, the conduct or alleged conduct must have occurred either on campus or in a school -controlled program or activity, whether the program or activity is on-campus or off-campus. This Policy also applies to conduct in any building owned or controlled by the School or by a student organization that is officially recognized by Institution, as well as to online and electronic conduct. However, this Title IX Policy applies only to conduct occurring against a person who is in the United States

For allegations that fall outside of the scope of this Policy, School may address allegations of student or employee misconduct as potential violations of Student Code of Conduct or the Sexual Harassment Policy 1-4.

IV. Formal Grievance Process

If a Formal Complaint is filed, the matter will proceed through the Grievance Process as outlined

below and will include an objective investigation, live hearing with opportunity for cross-examination and the right to appeal. This process will treat complainants and Respondents equitably. Any provisions, rule or practice adopted by the School as part of the grievance process, other than those required under Title IX and its implementing regulations will apply equally to both parties. The process will include an objective evaluation of all relevant evidence (inculpatory and exculpatory), will be conducted by trained Title IX Personnel, free from any known conflict of interest or bias, and presumes Respondent's non-responsibility until and unless demonstrated otherwise by the evidence and after a Final Determination as been rendered. Disciplinary sanctions or punitive measures will not be imposed against a Respondent unless and until there has been a finding of responsibility after application of the process. If at any stage of the investigation it is determined that conditions exist warranting dismissal, the complaint will be dismissed. Complainant will continue to be entitled to appropriate supportive measures in such cases.

The School requires impartiality in the process by ensuring there are no actual or apparent conflicts of interest or disqualifying biases of any Title IX Personnel. The parties may, at any time during the resolution process, raise a concern regarding bias, conflict of interest, or any irregularity which may taint the impartiality of the process. Such concerns should be reported in writing to the Title IX Coordinator who will evaluate the concern and take appropriate corrective action to ensure integrity of the process.

Notice of Allegations

The Title IX Coordinator will provide written notice of the allegations to the Respondent and Complainant upon receipt of a Formal Complaint. The notice will be provided prior to any initial meeting or interview with the Respondent and their advisor, if applicable, allowing sufficient advanced notice to prepare.

The notice will include:

- A meaningful summary of all allegations,
- The identity of the parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies alleged to have been violated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Respondent is presumed not responsible for the reported misconduct unless and until a Final Determination has been rendered at the conclusion of the process,
- Notice that the parties will be given an opportunity to inspect and review all directly related and relevant evidence obtained during the investigation,
- The School's policy on retaliation,
- Information about the privacy of the process,
- The right to have an advisor of their choice, who may be, but is not required to be, an attorney,
- A statement informing the parties that the School's policy prohibits knowingly making

false statements, including knowingly submitting false information during the resolution process,

- Detail on how the party may request disability accommodations during the interview process,
- An instruction to preserve any evidence that is directly related to the allegations.

Investigation

Trained Investigators will be assigned to investigate allegations contained in a Formal Complaint and will do so objectively. The burden to collect all evidence related to the allegations, including both inculpatory and exculpatory, rests on the School, and not on the parties. Investigators must be free from bias and conflicts of interest. Depending on the complexity of the case, more than one Investigator may be assigned.

Investigation Timeline

The School will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. The School may undertake a reasonable delay in its investigation under appropriate circumstances. Such circumstances include, but are not limited to, a concurrent law enforcement investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The School will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates as warranted. The School will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the School will implement supportive measures as deemed appropriate.

Concurrent Law Enforcement Investigation or Criminal Proceedings

The School's grievance process is an administrative procedure required under Title IX to address sexual discrimination, and therefore is separate and independent of any law enforcement investigation or criminal proceedings. While a law enforcement investigation may necessitate a temporary delay in the School's grievance process, such law enforcement investigation does not replace the School's grievance process, as the School is legally obligated to address and remedy potential sexual harassment in its educational programs and activities as set forth in this Policy.

The Investigation Process

Investigators serve free from conflict of interest, objectively and without bias. All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses and obtaining available, relevant evidence. The School, not the parties, bears the burden of gathering evidence and burden of proof. Parties have equal opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Right to Inspection and Review of Evidence

Prior to the conclusion of the investigation, the parties will be provided with an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all inculpatory and exculpatory evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, (whether or not it will be used in reaching a determination). The parties will have a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence.

The Investigator will incorporate any relevant feedback provided by the parties during the review process, and the final report will be shared with all parties and their advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing.

Role and Participation of Witnesses in the Investigation

Witnesses who are School employees are expected to cooperate with and participate in the School's investigation and resolution process. Failure of employee witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a Policy violation and may warrant discipline.

Interviews may occur in-person or remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used. The School will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Gag Orders

The School may not restrict the ability of the parties to discuss the allegations or gather evidence.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings.

Evidentiary Considerations in the Investigation

The investigation includes collection of all evidence directly related to the allegations, which is not otherwise privileged. Only evidence which is also deemed relevant is summarized in the investigative report which is considered by the Decision-maker(s), in rendering a determination of responsibility. All parties are provided the opportunity to review all non-privileged evidence gathered during the investigation which is directly related to the allegations in the complaint, whether or not it is also included in the investigative report. All parties are also provided with a copy of the investigative report summarizing relevant evidence only.

Relevant evidence does not include evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such evidence is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent, and are offered to prove consent.

Privileged evidence is likewise excluded from both the investigation, investigative report and hearing unless a party expressly waives this privilege in writing and consents to the release of this information during the grievance process.

Preliminary Investigative Report

Upon conclusion of the investigation, the Title IX Investigator will provide the parties with an preliminary report,t which will include, as applicable, the Complainant’s statement, the Respondent’s statement, each witness statement, and either a copy or written summary of any other information the Investigator deems relevant. The preliminary report will be provided in an electronic format that restricts the parties from downloading or copying the evidence. Each party will have ten (10) calendar days to review the preliminary report and to provide written feedback. Each party’s written feedback, if any, will be attached to the final investigative report.

Final Investigative Report

After consideration of the parties’ final responses to the preliminary report, or after ten (10) calendar days have elapsed without comment, the Investigator will prepare and send to the parties and to their advisors a final investigative report that fairly summarizes relevant evidence and that includes the parties’ written feedback, if any. The report will be in electronic format or hard copy. The parties will have at least 10 calendar days after receipt of the final investigative report to prepare for the scheduled live hearing.

The Hearing

Upon conclusion of the investigation and distribution of the investigative report to the parties, the matter will proceed to the hearing stage of the Grievance Process. The hearing will be offered live, in real-time and will include cross-examination. A Decision-maker(s) will be appointed to preside over the hearing, evaluate the evidence and make a determination as to each allegation in the complaint. The Decision-maker[s] will be independent and neutral, and will not have had any previous involvement with the investigation. Investigators, Title IX Coordinator (or designee) or Advisors are prohibited from serving as the Decision-maker[s].

Hearings will be conducted no earlier than calendar 10 calendar days after the Final Investigative Report is provided to the parties. The hearing date is based on the availability of the parties, witnesses, and decision-maker. The parties, however, may request a temporary delay for good cause for circumstances including the unavailability of a party’s advisor, concurrent law enforcement investigation, the need for language assistance or accommodations for a disability, or a scheduled.

The School reserves the right to adopt any hearing protocols, which will be applied and be made available equally to both parties, to ensure the efficiency, order and decorum of the hearing process. Any such protocols will be provided in writing to the parties, witnesses and participating individuals at least ten (10) days prior to the scheduled hearing date.

The School may designate an administrative facilitator of the hearing, which may include the Title IX Coordinator, as long as they do not have a conflict of interest.

Live hearings may be conducted with all parties physically present in the same location or, at the

School's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. At the request of either party, the School will provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other. In advance of the live hearing, the Decision-maker(s) will receive training on any technology to be used at the hearing.

Parties, Advisors, witnesses, and all participating individuals are expected to behave respectfully during the hearing. Harassing, intimidating or disruptive behavior will not be tolerated, and the School reserves the right to exclude anyone from participation in the process that fails to comport themselves accordingly.

Record of the Live Hearing

An audio or audiovisual recording, or transcript will be made of the hearing, and will be made available to the parties for inspection and review. No other recording of the hearing will be allowed.

Evidentiary Considerations in the Hearing

Only Relevant Evidence Allowed

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. Only evidence which is directly related to the allegations, not subject to an enforceable legal privilege, and not otherwise excludable as described here is considered relevant.

The hearing does not consider the following which are deemed not relevant: incidents not directly related to the allegations, unless they evidence a pattern; or questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the 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.

Privileged Evidence Must be Excluded

Evidence subject to any recognized legal privilege will not be allowed in the hearing without the prior written voluntary waiver of the privilege and consent for its consideration during the Grievance Process.

When a Party/Witness Refuses to Submit to Cross-Examination

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

Final Determination as to Responsibility and Standard of Proof

Upon completion of the hearing, the Decision-maker will deliberate privately and will render a finding as to each allegation in the complaint by applying clear and convincing evidence; whether there is a high probability that the Respondent violated the Policy as alleged. The decision will be provided simultaneously to the parties through the issuance of a written determination letter, delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official the School records, or emailed to the parties' the School-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The determination letter will include:

1. Identification of the allegations potentially constituting sexual harassment as defined under this Policy;
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 evidence, and hearing held;
3. Findings of fact supporting the determination;
4. Conclusions regarding application of the School's code of conduct to the facts;
5. A statement, and rationale for, the results as to each allegation, including a determination regarding responsibility, and disciplinary sanctions the School imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Schools' education program or activity will be provided by the School to the Complainant; and
6. The School's permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final after expiration or exhaustion of any appeal rights.

Sanctions, Disciplinary Action & Remedies

The School may consider a number of factors when determining a sanction and/or remedy and will focus primarily on actions aimed at ending, and preventing the recurrence of, discrimination, harassment, and/or retaliation and the need to remedy the effects its effects on the Complainant and campus community. Sanctions will be imposed upon either expiration of the appeal window, or after Final Determination on any appeal filed.

Sanctions or actions may include, but are not limited to, those listed below. These may be applied individually or in combination and the School may assign sanctions not listed, as deemed appropriate.

Applicable Student Sanctions:

Warning
Required Counseling
Probation
Suspension
Dismissal

Applicable Employee Actions:

Counseling
Suspension
Termination

False Allegations and Evidence

Making deliberately false and/or malicious accusations, knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation are policy violations subject to discipline.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions imposed, the Title IX Coordinator may implement additional long-term Remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Alteration of work arrangements for employees
- Climate surveys
- Policy modification
- Training or awareness campaigns
- Implementation of long-term contact limitations between the parties
- Adjustments to academic deadlines, course schedules, etc.
- Modified campus security measures

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no Policy violation is found.

The School will maintain the privacy of any long-term Remedies, provided privacy does not impair the School's ability to provide these services.

Failure to Comply with Disciplinary Sanctions or other Remedies

Respondents are expected to comply with any disciplinary sanction or remedy as set forth in the Final Determination or in response to a final outcome (i.e. informal resolution, appeal). Failure to abide by the sanction(s)/action(s) whether by refusal, neglect, or any other reason, may result in additional disciplinary action, including suspension or expulsion.

Appeals

Any party may Appeal the Dismissal of a Formal Complaint, or the Final Determination of the Grievance Process on the following grounds. Appeals must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the notice of an appealable action. After expiration of the appeal window, all decisions will be considered final, and any applicable sanctions will be imposed.

Grounds for Appeal

Appeals may be made on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Any sanctions imposed as a result of the Final Determination are stayed during the appeal process.

Title IX personnel with prior involvement in the matter will not be permitted to serve as a Decision-maker in the appeal. Appeals will not include a hearing. A decision on the merits will be based on information provided in the appeal document. If an appeal is based on the availability of new evidence, this evidence must be described with specificity and must be available for review within a reasonably prompt timeframe for consideration by the Appeal Decision-maker.

The appeal outcome will specify the finding on each ground for Appeal, any specific instructions for remand or reconsideration, and the rationale supporting the findings. Appeal decisions will be made within seven (7) business days, barring exigent circumstances, including the review of new evidence not immediately available for submission with the appeal request. Decisions on appeal will be made by applying the clear and convincing and convincing standard.

Notification of the appeal outcome will be made in writing and will be delivered simultaneously to the Parties by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official School records, or emailed to the parties' School-issued email or otherwise approved account. Once mailed, e-mailed

and/or received in-person, notice will be presumptively delivered. Decisions on appeal are considered final.

Record Retention

The School shall maintain the following records related to the implementation of this Policy for at least seven years:

1. Reports or Formal Complaints alleging sexual discrimination, including harassment.
2. Records of any dismissal of a Formal Complaint.
3. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
4. Any disciplinary sanctions imposed on the Respondent;
5. Any Remedies implemented by the School designed to restore or preserve equal access to the School's education program or activity;
6. Any appeal and the result therefrom;
7. Any Informal Resolution and the result therefrom;
8. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The School will make these training materials publicly available on the School's website. (Note: If the School does not maintain a website, the School must make these materials available upon request for inspection by members of the public.); and
9. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the School's education program or activity; and
 - c. If no supportive measures were provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Revision of this Policy

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated subject to any relevant change in law or School policy, and on a recurring periodic basis, by the Title IX Coordinator. The School reserves the right to make changes to this Policy as necessary, which become effective when published.

This Policy will not restrict any rights guaranteed against government action by the U.S. Constitution and should be interpreted accordingly and should also be construed to comply with the most recent government regulations or applicable judicial decisions.

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

This Policy and procedures are effective March 2023.

V. Appendix A: Definitions

Actual Notice. Notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any official of the School who has the authority to institute corrective measures on behalf of the School. The School receives notice when an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge.

Complainant. An individual who is alleged to be the victim of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Consolidated Complaint. A formal complaint with more than one Complainant or Respondent arising when multiple parties submit formal complaints arising out of the same facts and circumstances and as deemed appropriate for consolidation by the Title IX Coordinator.

Deputy Title IX Coordinator. Any employee delegated with responsibility for compliance with Title IX and this Policy by the Title IX Coordinator, and acting within the scope of authority of a Title IX Coordinator as set forth herein.

Education Program or Activity. Locations, events, or circumstances where the School exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by the School or by a student organization that is officially recognized by the School.

Final Determination: A decision rendered and provided in writing to the parties of a Formal Complaint after application of the School's Grievance Process concluding whether or not Respondent is responsible for conduct alleged within a Formal Complaint in violation of this Policy.

Finding: A conclusion within the Final Determination as evaluated under the burden of proof that a specific allegation within a Formal Complaint did or did not occur.

Formal Complaint. A document filed and signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the School investigate the allegation(s).

Formal Grievance Process. The method of formal resolution designated by the School to address conduct that falls within the scope of this Policy, and which complies with the requirements of 34 CFR Part 106.45.

Decision-maker(s). A trained individual with responsibility for making a Final Determination as set forth in the School's Grievance Process. A Decision-maker must maintain neutrality and cannot perform the function of either the Title IX Coordinator or Investigator.

Investigator. A trained individual responsible for fulfilling the Schools burden of gathering and evaluating all evidence related to allegations within a Formal Complaint as required under the Schools Grievance Process.

Mandated Reporter. An employee of the School who is obligated by Policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

Official with Authority. An employee of the School explicitly vested with the responsibility to implement corrective measures for Title IX harassment, discrimination, and/or retaliation on behalf of the School.

Parties. The Complainant(s) and Respondent(s), collectively.

Remedies. Actions, which may or may not be directed to the Complainant and/or the campus community to address safety, prevent the recurrence of harassment, and ensure continued access to the School's educational program.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute harassment, discrimination or retaliation under Title IX.

Sanction. A disciplinary consequence imposed by the School on a Respondent who is found to have violated this Policy.

Sexual Harassment. Behavior or conduct as defined under Title IX and its implementing regulations at 34 CFR 106, and as more fully articulated in this Policy.

Title IX Coordinator. The School's employee responsible for ensuring compliance with Title IX.

Title IX Personnel. Those individuals collectively tasked with implementation of this Policy and Grievance Process including specifically, the Title IX Coordinator (including any designees as applicable), any Investigator or any Decision-maker.