Salisbury University Policy and Procedures Prohibiting Sexual Misconduct and Other Sex and Gender-Based Discrimination

(Approved April 11, 2001; Amended December 22, 2008; Amended February 23, 2009; Amended May 23, 2012; Amended October 14, 2013; Amended December 19, 2014; Amended November 24, 2015; Amended September 20, 2018; Amended and approved on an interim basis by the President August 14, 2020) [1]

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[1] This amendment is effective August 14, 2020 and replaces and supersedes all previous versions of the "Salisbury University Policy Prohibiting Sexual Misconduct and Other Sex and Gender-Based Discrimination." On May 6, 2020, the United States Department of Education released new Title IX regulations, effective August 14, 2020 (the "2020 Title IX Regulations"). The 2020 Title IX Regulations require some modifications to this Policy. Several plaintiffs have filed lawsuits seeking to block some of the provisions in the 2020 Title IX Regulations. Should a court strike down, either temporarily or permanently, any portion of the 2020 Title IX Regulations, Salisbury University shall make any necessary modifications to this Policy, which will become effective immediately. Salisbury University may also revert back to the September 20, 2018, version of this Policy and Procedures.

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Salisbury University Policy for Investigating and Adjudicating Prohibited Conduct

I. Purpose[2]

Salisbury University ("SU" or "University") is committed to providing and maintaining a working and learning environment free from all forms of Sexual Misconduct,[3] Other Sex and Gender-Based Discrimination, and Retaliation through training, education, prevention programs, and policies and procedures that promote prompt reporting and response, provide timely and appropriate support to Parties, prohibit Retaliation, and promote timely, fair, and impartial investigation and resolution in a manner that eliminates the Sexual Misconduct and Other Sex and Gender-Based discrimination, prevents its recurrence, and addresses its effects. Sexual Misconduct, Other Sex and Gender-Based Discrimination, and Retaliation will not be tolerated in any form by SU.

The purpose of this Policy and Procedures is to define what constitutes Prohibited Conduct under the Policy, describe how to file a complaint, articulate the procedures for investigating and resolving complaints, and identify the available resources and educational training programs.

The University ensures due process protections to Complainants and Respondents and effectively implements Supportive Measures for Parties. Sexual Misconduct, Other Sex and Gender-Based Discrimination, and Retaliation will not be tolerated in any form by SU. This Prohibited Conduct corrupts the integrity of the educational process and work environment and violates the core mission and values of SU. Creating an environment free from this Prohibited Conduct is the responsibility of all members of the University community.

This Policy and Procedures shall not be interpreted to curtail freedom of speech or academic freedom.[4] The University fully supports the principles of academic freedom and is committed to protecting the free expression of ideas, choice of teaching methods, and course content in the academic setting.

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[2] This Policy satisfies the University's obligations under Maryland law and University System of Maryland Policy VI-1.60. To the extent any provision of this Policy conflicts with any other University policy, this Policy controls. Prohibited Conduct under this Policy may also be sex discrimination in violation of University System of Maryland ("USM") Board of Regents ("BOR") - VI-1.00 – Policy on Non-Discrimination and Equal Opportunity. However, this Policy and Procedures supersede USM BOR VI-1.00 Policy on Non-Discrimination and Equal Opportunity with respect to allegations of Prohibited Conduct addressed by this Policy. The University will respond to complaints of Prohibited Conduct in accordance with this Policy and Procedures.

[3] Capitalized terms are defined in this Policy.

[4] More information about Salisbury University's Academic Freedom Resolution can be found at the following link: https://www.salisbury.edu/administration/academic-affairs/_files/Academic%20Freedom%20Resolution2015.pdf

II. Applicability

This Policy prohibits Sexual Misconduct, Other Sex and Gender-Based Discrimination, and Retaliation. This Prohibited Conduct may be a form of sex discrimination prohibited by federal and state discrimination laws, including Title IX of the Education Amendments of 1972 ("Title IX") and Title VII of the Civil Rights Act.[5] Title IX provides, "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." Federal regulations implementing Title IX require that SU establish certain procedures when SU obtains Actual Knowledge of Sexual Misconduct in its Education Program or Activity against a person in the United States.

This Policy also addresses allegations of Sexual Misconduct and Other Sex and Gender-Based Discrimination beyond Title IX, which includes Sexual Harassment against a person outside of the United States, but within SU's Education Program or Activity; Non-Consensual Sexual Contact; Sexual Coercion; Sexual Exploitation; Sexual Intimidation; Attempted Sexual Assault; and Other Sex-based Offenses.

Any retaliatory action or interference with any person participating in any stage of the process, including, but not limited to, reporting, investigating, resolution and appeal, is strictly prohibited and will be subject to appropriate disciplinary action. Likewise, this Policy shall not be used to bring baseless, frivolous or malicious complaints and disciplinary action may also be taken against any person who files a complaint under this Policy in bad faith or without justification.

This Policy and its Procedures apply to all members of the University community, including students and employees (faculty and staff). It also applies to contractors and other third parties who are engaged in any Education Program or Activity, or who are otherwise interacting with the University, including, but not limited to volunteers, vendors, guests, and visitors within the University's jurisdiction.

This Policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this Policy.

III. Jurisdiction

This Policy and its Procedures apply to reported acts of Prohibited Conduct committed by or against students, faculty, staff, and third parties when the conduct:

- occurs on University premises, in any University facility, or on property owned or controlled by the University;

[5] More information about Salisbury University's Equal Opportunity and Affirmative Action Statement can be found at the following link: https://www.salisbury.edu/administration/institutional-equity/_files/document-library/EEO_Affirmative_Action2014.pdf

- occurs in the context of a University Education Program or Activity (including employment), including, but not limited to, University-sponsored academic, athletic, extracurricular, study abroad, research, online, or internship programs or activities;
- occurs outside the context of a University Education Program or Activity (including employment), but has continuing adverse effects on or creates a hostile environment for students, employees, or third parties while on University premises or other property owned or controlled by the University or in any University Education Program or Activity (including employment); or
- otherwise threatens the health and/or safety of a member of the University community.

The University does not have jurisdiction to investigate reported incidents involving members of the University community that occurred prior to the individual being enrolled at or employed by the University, when the incident did not occur on campus or in connection with a University program, activity, or employment.

If a member of the University community (student, faculty, or staff) is subjected to Prohibited Conduct by a third party not affiliated with the University, on University premises or during University sponsored activities, the matter should be reported to the Title IX Coordinator. The University will take available and reasonable steps to address the Prohibited Conduct, prevent its recurrence, and address its effects at the University. The University will provide resources and assistance to support the academic or employment success of any individual reporting Prohibited Conduct regardless of the University's jurisdiction to investigate.

IV. Definitions

For purposes of this Policy and Procedures, the following definitions apply:

A. **Actual Knowledge** means notice of Sexual Misconduct or allegations of Sexual Misconduct to SU's Title IX Coordinator or any Official with Authority ("OWA") to institute corrective measures on behalf of the University.

B. **Advisor** means a person chosen by a Party to provide advice and consultation to that Party, in accordance with this Policy and Procedures. An Advisor may be, but is not required to be, an attorney. A Party's Advisor also conducts all questioning on behalf of that Party at a Hearing, if applicable, in accordance with this Policy and Procedures. If a Party does not have an Advisor for a Hearing, the University will provide one without fee or charge. Notice of the identity of any Advisor and must be given to the OIE at least 24 hours prior to any meeting or proceeding that the Advisor will attend.

C. **Appeal Officer** means an individual designated to review decisions concerning responsibility and sanctions, based on the Respondent's status as a student, staff member, or faculty member. Appeal Officers shall have had no previous involvement with the substance of the Formal Complaint.

D. **Attempted Sexual Assault** means an attempted sexual assault.

E. **Complainant** means the individual who is alleged to be the victim of Prohibited Conduct that could constitute a violation of this Policy.

F. **Consent** means a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Consent can only be given by a person with the ability or capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed by words and/or actions, as long as those words and/or actions create a mutually understandable permission regarding the conditions of sexual activity.

- Silence, lack of protest or resistance is not, in and of itself, Consent.
- Previous sexual activity with a person does not imply Consent for future sexual acts with that person or any other person.
- Consent to one form of sexual activity does not automatically imply Consent to other forms of sexual activity.
- Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is Consent or whether prior Consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
- Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation or through the use of one's mental or physical helplessness or Incapacity.
- An individual who is Incapacitated is unable to give Consent. The relevant standard is whether a reasonable person in the same position should have known that the other party was Incapacitated and, therefore, unable to Consent.

G. **Dating Violence** means violence[6] committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

H. **Day** means a business day when the University is not closed.

I. **Education Program or Activity** means all of the University's operations (including employment); locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the

[6] Violence is the use of physical force so as to injure, abuse, damage, or destroy.

context in which the Prohibited Conduct occurs, and any building owned or controlled by a student organization that is officially recognized by the University.

J. **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the institution investigate the allegation. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail, or any additional method designated by the institution.

i. **Document filed by a Complainant** means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

K. **Hearing** means a live, formal proceeding attended by the Parties in which evidence is presented, witnesses are heard, and direct and cross-examination occurs, prior to the Hearing Panel's decision concerning responsibility and Sanctions, if applicable. The Hearing is conducted by a Hearing Panel which is comprised of three (3) trained University administrators selected from a pool by the Title IX Coordinator and in which one of them serves as the Chair.

L. **Hearing Officer(s)** means member(s) of the hearing panel designated to preside over the Hearing who has decision-making and sanctioning authority within the adjudication process.

M. **Hearing Panel** means a group of three (3) trained administrators, selected by the Title IX Coordinator, who have decision-making and sanctioning authority in the adjudication process. One (1) member of this Hearing Panel will be designated as the Chair by the Title IX Coordinator.

N. **Incapacitation** means an individual's decision-making abilities are impaired such that the individual lacks the ability to understand the "who, what, where, why, or how" of the activity. Incapacitation may result from sleep, unconsciousness, intermittent consciousness, physical restraint, or any other state where the individual is unaware that sexual contact is occurring. Incapacitation may also exist because of a temporary or permanent mental or developmental disability that impairs the ability to Consent to sexual contact. Alcohol or drug use is one of the primary causes of Incapacitation. Where alcohol or drug use is involved, Incapacitation is a state beyond intoxication, impairment in judgment, or "drunkenness." Because the impact of alcohol or

other drugs varies from person to person, evaluating whether an individual is Incapacitated, and therefore unable to give Consent, requires an assessment of whether the consumption of alcohol or other drugs has rendered the individual physically helpless or substantially incapable of:

- making decisions about the potential consequences of sexual contact;
- appraising the nature of one's own conduct;
- communicating Consent to sexual contact; or
- communicating unwillingness to engage in sexual contact.

O. **Investigator** means a professionally trained University staff member or third-party contractor designated to conduct an impartial, fair, and unbiased investigation into an alleged violation of this Policy.

P. **Non-Consensual Sexual Contact** means any intentional sexual touching without Consent.

Q. **Official with Authority ("OWA")** means a University administrator with authority to institute corrective measures. OWAs include the President of the University, any member of the President's Executive Staff, any academic Dean of the University, the Dean of Students, the Associate Vice President of Human Resources, the Title IX Coordinator, and the Deputy Fair Practices Officer, and Assistant Director of Complaint Resolution and Compliance.

R. **Party** means the Complainant or the Respondent (collectively, the "Parties").

S. **Prohibited Conduct** in the context of this Policy and Procedures means behavior that constitutes Sexual Misconduct, Other Sex and Gender-Based Discrimination, or Retaliation.

T. **Remedies** means actions designed to restore or preserve the Complainant's equal access to the University's Education Program or Activity. Remedies are similar to Supportive Measures but may be punitive and burden the Respondent.

U. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct.

V. **Responsible Employee** means all institution supervisors and administrators with supervisory responsibilities, all non-confidential employees in their supervisory roles, all faculty members (including adjunct faculty), all teaching assistants, all athletic coaches, all institutional law enforcement, all resident assistants, all resident directors, all area directors and all other non-confidential first responders.

W. **Sexual Misconduct** is an umbrella term that includes Sexual Harassment under Title IX and all additional Prohibited Conduct including Sexual Coercion; Sexual Exploitation; Sexual Intimidation; Attempted Sexual Assault; Non-Consensual Sexual Contact and Other Sex-based Offenses.

X. **Support Person** means a person chosen by the Complainant or Respondent to provide emotional, logistical, or other kinds of assistance. The Support Person is a non-participant who is present to assist a Complainant or Respondent by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the Party in a way that does not disrupt or cause any delay.

Y. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties before or after the filing of a Formal Complaint. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other Party, including measures designed to protect the safety of all parties or the institution's educational environment, or deter Prohibited Conduct. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or course 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.

Z. **Witness** means an individual who possesses information about a matter under investigation. This generally applies to anyone who has witnessed or provides factual information and/or observations regarding Prohibited Conduct.

V. Prohibited Conduct

A. **Sexual Harassment**[7] means conduct on the basis of sex that satisfies one or more of the following:

(1) Quid Pro Quo: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

(2) Hostile Environment: Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity.

(3) Sexual Assault: An offense classified as a sex offense under the uniform

[7] *See* 34 C.F.R. § 106.30 (defining "Sexual Harassment" under Title IX). However, this policy also applies to Prohibited Conduct.

crime reporting system of the Federal Bureau of Investigation. Sex Offenses are any sexual act including Rape, Sodomy, Sexual Assault with An Object, or Fondling directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent; also, unlawful sexual intercourse (Incest or Statutory Rape).

(a) Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(b) Sodomy: Oral or anal sexual intercourse with another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(c) Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(d) Fondling: 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 their age or because of their temporary or permanent mental or physical incapacity.

(e) Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(f) Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.[8]

(4) Dating Violence: Violence[9] committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

(5) Domestic Violence: Includes felony or misdemeanor crimes of violence[10] committed by a current or former spouse or Intimate Partner of the Complainant, by a person with whom the Complainant shares a child in

[8] The statutory age of consent in Maryland is 16. *See* Md. Code Ann., Crim. Law §§ 3-301 to -307.

[9] Violence is the use of physical force so as to injure, abuse, damage, or destroy.

[10] Complainants need not file criminal charges or obtain a criminal conviction prior to reporting Domestic Violence.

common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant, or by any other person against an adult or youth Complainant protected from those acts by domestic or family violence laws of Maryland.

(6) Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for their own safety or the safety of others; or (2) suffer substantial emotional distress.

B. **<u>Other Sex and Gender-Based Discrimination</u>** means the following conduct:

(1) Discrimination: The unequal treatment of a person based on that person's sex, gender, or gender identity. It also includes any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual's Protected Status and that is sufficiently serious to unreasonably interfere with or limit:

i. An employee or applicant's access to employment or conditions and benefits of employment;
ii. A student or admission applicant's ability to participate in, access, or benefit from educational programs, services, or activities;
iii. An authorized volunteer's ability to participate in a volunteer activity; or
iv. A guest or visitor's ability to participate in, access, or benefit from the University's programs.

(2) Non-Consensual Sexual Contact: Any intentional sexual touching without Consent.

(3) Sexual Harassment: Prohibited Conduct outlined in section V.A. to include conduct that occurred against a person outside of the United States, but within an Education Program or Activity.

(4) Sexual Coercion: The use of unreasonable pressure in an effort to compel another individual to initiate or continue sexual activity against the individual's will. A person's words or conduct are sufficient to constitute Sexual Coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Sexual Coercion includes but is not limited to intimidation, manipulation, expressed or implied threats of emotional or physical harm, and/or blackmail. Examples of Sexual Coercion include but are not limited to causing the deliberate Incapacitation of another person; conditioning an academic benefit or employment advantage on submission to the sexual contact; threatening to harm oneself if the other party does not engage in sexual contact; or threatening to disclose an individual's sexual orientation, gender identity, gender expression, or other personal sensitive information if the other party does not engage in the sexual contact.

(5) Sexual Exploitation: Taking non-consensual or abusive sexual advantage

of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited. This includes, but is not limited to, utilizing any image or threatening to use any image, video or recording device for the purpose of capturing images of a sexual act or nude intimate body parts without the Consent or knowledge of the involved parties; threatening to or intentionally publishing, recreating, or reproducing images of a sexual act or nude intimate body parts without the knowledge or Consent of the parties involved; voyeurism; inducing Incapacitation for the purpose of having sex with the Incapacitated person regardless of whether or not sexual activity actually takes place; and knowing transmission of HIV or a sexually-transmitted infection.

(6) Sexual Intimidation: Threatening behavior of a sexual nature directed at another person, such as threatening to sexually assault another person or engaging in indecent exposure.

(7) Attempted Sexual Assault: An attempt to commit Sexual Assault.

(8) Other Sex-Based Offenses: (a) Unwelcome sexual advances; (b) unwelcome requests for sexual favors; or (c) other behavior of a sexual or gender-based nature where: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, evaluation of academic work, or participation in a University-sponsored educational program or activity; (ii) submission to or rejection of such conduct by an individual is used as the basis for an academic, employment, or activity or program participation decision affecting that individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment.

C. **Retaliation** means intimidating, threatening, coercing, or discriminating against, or otherwise taking an adverse action against an individual for the purpose of interfering with any right or privilege secured by law or University policy relating to Prohibited Conduct, or because an individual has made a report, filed a complaint, testified, assisted, participated or refused to participate in any manner in an investigation, proceeding, or Hearing related to Prohibited Conduct. Adverse actions include but are not limited to impeding an individual's academic advancement; terminating, refusing to hire, or refusing to promote an individual; or transferring or assigning an individual to a lesser position in terms of wages, hours, job classification, or job security. Retaliation includes retaliatory harassment. Retaliation includes making charges against an individual for violations of other University policies that do not involve Prohibited Conduct, but arise out of the same facts or circumstances, for the purpose of interfering with any right or privilege secured by law. However, charging an individual with a violation of other University policies for making a materially false statement in bad faith in the course of a proceeding does not constitute Retaliation, provided that a

determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith. The exercise of rights protected under the First Amendment does not constitute Retaliation. The University will keep confidential, to the extent permitted by FERPA, the identity of any individual who has made a report of Prohibited Conduct.

VI. Sanctions

As further explained in the Procedures, Sanctions for Respondents determined to have violated this Policy include, but are not limited to, the following:

A. **Employees:** Sanctions range from a written reprimand up to and including termination of employment, depending on the circumstances and nature of the violation. Any disciplinary action will be consistent with other procedures or protections that individuals may be subject to and/or entitled to on the basis of their employment status.

B. **Students:** Status sanctions range from a Warning up to and including separation from the University (suspension or dismissal), and are usually accompanied by educational sanctions, interventions, restorative sanctions, bans, restrictions, deactivations and loss of privileges, and previously published fines, depending on the nature and severity of the incident, institutional sanctioning guidelines, the student's previous disciplinary history, the impact of the student's behavior, and mitigating and/or aggravating circumstances.

VII. Reporting Prohibited Conduct

Individuals are encouraged to report Prohibited Conduct promptly in order to maximize the University's ability to obtain evidence, identify potential Witnesses and conduct a thorough, prompt, and impartial investigation. While there are no time limits to reporting Prohibited Conduct, if too much time has passed since the incident occurred, the delay may result in loss of relevant evidence and/or an inability on the part of the University to remedy the situation.

A. **Title IX Coordinator**

Any person may report Prohibited Conduct at any time by contacting the Title IX Coordinator, regardless of whether the reporting person is the Complainant.

Humberto Aristizábal
Title IX Coordinator, Fair Practices Officer, and Associate Vice President for Institutional Equity
Office of Institutional Equity
1101 Camden Avenue Salisbury, MD 21801
Holloway Hall Suite 100

(410) 543-6426
hxaristizabal@salisbury.edu

If there is a complaint about the OIE or any staff member that is part of the OIE, or if any staff member that is part of the OIE has a complaint, that complaint should be filed with the President of the University. The President may appoint another trained individual to take the place of the OIE for purposes of the complaint.

The Title IX Coordinator is responsible for:

- overseeing SU's response to Prohibited Conduct reports and complaints, and identifying and addressing any patterns or systemic problems revealed by such reports or complaints;
- investigating Prohibited Conduct;
- overseeing, reviewing content, and in collaboration with other SU offices, conducting training for students, faculty and staff about Prohibited Conduct;
- ensuring that appropriate policies and procedures are in place for responding to complaints of Prohibited Conduct against students, faculty, and staff;
- working with local law enforcement to ensure coordinated responses to Prohibited Conduct cases; and
- coordinating the effective implementation of Remedies, including Supportive Measures.

Any concern involving bias or conflict of interest by the Title IX Coordinator, should be reported to the President of the University. Concerns of bias or a potential conflict of interest by any other member involved in the resolution process should be reported to the Title IX Coordinator.

B. Reporting to Responsible Employees

Any person may report Prohibited Conduct to Responsible Employees. Upon receiving a report of Prohibited Conduct, the Responsible employee must do the following:

- Advise the reporting party of the existence of the Policy, as well as these Procedures, and where to find the same;
- Advise the reporting party of the existence of the OIE and its role in the complaint resolution process;
- Advise the reporting party of the Responsible Employee's duty to report the Complainant's allegations to the OIE within twenty-four (24) hours, or as soon as reasonably possible, of receiving such

information to ensure the Complainant is fully informed of their rights and responsibilities under University Policy;
- Make written notes of the allegations and submit these to the OIE;
- Notify the OIE of the complaint within twenty-four (24) hours, or as soon as reasonably possible, of receiving the report, and consult with OIE, as needed, during the OIE's initial assessment;
- Failure for Responsible Employees to comply with these requirements and obligations, as defined in the Policy, may result in disciplinary sanctions, up to and including termination of employment.

No employees, other than employees of the Salisbury University Police Department ("SUPD"), are authorized to investigate or resolve reports of Prohibited Conduct without the involvement of the Title IX Coordinator.

C. Office of Institutional Equity (OIE)

1101 Camden Avenue
Salisbury, MD 21801
Holloway Hall (HH) 100
Office: 410-543-6426
Fax: 410-677-5352
https://www.salisbury.edu/administration/institutional-equity/
equity@salisbury.edu

Any person may report Prohibited Conduct to the University's Office of Institutional Equity ("OIE"). The OIE is responsible for overseeing the University's compliance training, in person training, prevention programming, and educational programs related to Prohibited Conduct. To learn more about various resources, on-going training initiatives, and education programs for students, faculty, and staff, please consult the office's website at https://www.salisbury.edu/administration/institutional-equity/.

There are several ways to contact the OIE:

- Call 410-543-6426 and leave a private voice message;
- Submit an OIE Report A Concern' Complaint Form online: https://webapps.salisbury.edu/equity/complaint/
- An online reporting form is accessible on the OIE website 24 hours/7 days a week unless there is scheduled maintenance. https://www.salisbury.edu/administration/institutional-equity/report-a-concern.aspx
- File a complaint or report on the Fair Practices Complaint Intake Form, which is also available on the following link:

  http://www.salisbury.edu/equity/library/docs/Fair%20Practices%20Complaint%20Intake%20Form.pdf;
- Send a private email to the OIE at equity@salisbury.edu;

- Mail a letter to the OIE office; or
- Visit the OIE (it is best to make an appointment first to ensure availability).

D. Reporting to the Police

To report to SUPD, please call 410-543-6222 or 911.
Callers may dial mobile phone #787.
Regardless of where the incident occurred, call 911 in an emergency.

Prohibited Conduct, particularly Sexual Assault, may be a crime. In addition to the OIE reporting set forth above, the University strongly encourages any victim of a potential crime to report it to the appropriate law enforcement agency, even if you are uncertain whether the particular conduct is a crime. Calling local law enforcement can help you: obtain emergency and nonemergency medical care; get immediate law enforcement response for your protection; understand how to provide assistance in a situation that may escalate to more severe criminal behavior; arrange a meeting with a victim advocate service; find counseling and support; initiate a criminal investigation and help to secure valuable evidence; and answer questions about the criminal process.

The University will assist Complainants who wish to report Prohibited Conduct to law enforcement authorities, including the Salisbury University Police Department ("SUPD") 24 hours a day/7days a week. Representatives of the OIE are available to assist students in reporting to SUPD.

SUPD employees are Responsible Employees under this Policy, and are required to notify the Title IX Coordinator of any report of Prohibited Conduct. SUPD will also assist Complainants in notifying other law enforcement authorities in other jurisdictions, as appropriate.

VIII. Co-Occurring Criminal Action

Because the standards for violations of criminal laws are different from the standards for a violation of this Policy, criminal investigations and proceedings are not determinative of whether a violation of this Policy has occurred. In other words, conduct may violate this Policy even if law enforcement agencies decline to charge or local prosecutors decline to prosecute.

Proceeding with a University investigation and adjudication of Prohibited Conduct under this Policy and Procedures is independent of any criminal investigation or proceeding. Reporting to law enforcement does not preclude a person from proceeding with a report or Formal Complaint of Prohibited Conduct under this Policy. In most cases, the University will not wait until a criminal investigation or proceeding is concluded before conducting its own investigation, implementing Supportive Measures, and taking appropriate action. However, at the request of law enforcement, the Title IX Coordinator may delay its investigation until the initial stages of a criminal investigation

are complete. If such a request is made by SUPD or any other law enforcement agency, the agency will submit the request in writing to the OIE and the Complainant will be notified. In addition, when possible, in cases where there is a co-occurring criminal investigation by SUPD or other local law enforcement agencies, they will work collaboratively and supportively within the parameters outlined above. The OIE will communicate any necessary delays in the University's investigative process to both Parties in the event of a deferral.

IX. Investigation and Adjudication

A. Allegations against Students and Employees

Allegations against students and employees will be investigated and adjudicated in accordance with the Procedures.

B. Allegations against Third Parties Not Affiliated With SU

If any individual makes allegations against someone who is not affiliated with the University, the Title IX Coordinator will take reasonable steps to convey the allegation to the proper individual for investigation, and will take any available and reasonable steps at the University to address the Prohibited Conduct and limit its discriminatory effects. The matter may be referred to law enforcement with a request that a formal letter be issued to the third-party denying access to University buildings and grounds. See Md. Code Ann., Educ., §§ 26-101 – 26-102.

C. Standard of Proof

The standard of proof for determinations of violations of this Policy is the preponderance of the evidence (i.e., more likely than not).

X. Amnesty for Students Who Report or Participate in a Prohibited Conduct Process

The University recognizes that a student who is under the influence of alcohol and/or drugs when an incident of Prohibited Conduct occurs, may be reluctant to report the Prohibited Conduct out of concern they may face disciplinary actions for engaging in prohibited alcohol or drug use. As such, a student who reports or participates in a Prohibited Conduct process with the University or law enforcement, or who participates in an investigation either as a Complainant, Respondent or Witness, will not face disciplinary action for violating University drug and alcohol policies. This amnesty provision applies only when the University determines that: (1) the drug/alcohol violation occurred during or near the time of the reported Prohibited Conduct; (2) the student acted in good faith in reporting or participating as a Complainant, Respondent, or Witness; and (3) the violation was not an act that was reasonably likely to place the health or safety of another individual at risk. See the Responsible Action Protocol, for more information.

The use of alcohol or drugs will never function as a defense for committing any violation of this Policy.

XI. Confidential Resources

Confidential resources on and off campus assist Parties in navigating potential advocacy, therapy, counseling, and emotional support services.

Disclosures or reports made to individuals or entities other than confidential resources are not confidential. For instance, Responsible Employees like University administrators, supervisors, faculty members, SUPD officers, athletic coaches, athletic trainers, and resident assistants, are obligated pursuant to this Policy to report Prohibited Conduct to the Title IX Coordinator.

Unless there is a lawful basis for disclosure, such as reported child abuse/neglect or an imminent risk to health or safety, confidentiality applies when persons seek services from the following resources:

A. On-Campus Confidential Resources for Students

1. **Salisbury University Counseling Center Guerrieri**
   University Center Room 263
   (410) 543-6070
   counseling@salisbury.edu

2. **Salisbury University Student Health Services**
   Holloway Hall Room 180
   (410) 543-6262
   StudentHealth@salisbury.edu

B. Off-Campus Confidential Resources for Students and Employees

Individuals may also seek assistance from off-campus Confidential Resources, and they should inquire about the parameters of confidentiality prior to disclosing any information that the individual desires to keep confidential. Off-campus confidential resources include, but are not limited to:

1. **Life Crisis Center**
   Services are available at no charge to all individuals who are victims of Domestic Violence, rape, Sexual Assault, and child abuse. The toll-free hotline operates 24/7 for anyone in the community needing crisis assistance or referral information.
   www.lifecrisiscenter.org
   #211 or (410) 749-HELP (4357)

2. **Maryland Coalition Against Sexual Assault (MCASA)**
   Statewide Sexual Assault Information and Referral Helpline 1-800-983-RAPE (7273)

https://mcasa.org/

MCASA is a statewide coalition of 17 rape crisis and recovery centers that serve all Maryland jurisdictions. MCASA works to help prevent Sexual Assault, advocate for accessible, compassionate care for survivors of Sexual Violence, and works to hold offenders accountable.

3. **Maryland Network against Domestic Violence (MNADV)**
   4601 Presidents Drive, Suite 300
   Lanham, MD 20706
   Statewide Helpline: 1-800-MD-HELPS (43577) (Mon-Fri, 9am-5pm)
   MNADV Office: 301-429-3601
   Email**:** info@mnadv.org
   https://mnadv.org/

   The Maryland Network Against Domestic Violence (MNADV) is the state Domestic Violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence. The Network accomplishes this goal by providing education, training resources, and advocacy to advance victim safety and abuser accountability.

4. **RAINN National Sexual Assault Crisis Hotline**
   800-656-HOPE (4673)
   https://www.rainn.org/

   RAINN (Rape, Abuse & Incest National Network) is the nation's largest anti-sexual violence organization.

C. Off-Campus Resources for Employees

1. **Employee Assistance Program (EAP) – USM**
   The University System of Maryland has contracted with ComPsych ("GuidanceResources") for the Employee Assistance Program. First-time users, follow these simple instructions:
   - Go to guidanceresources.com to reach the website.
   - Once on the guidanceresources.com home page, click the "Register" tab.
   - Enter the Organization Web ID USMEAP and then click the "Register" button.
   - Enter a User Name and Password, and submit.

2. **Employee Assistance Program (EAP) – State of Maryland**
   This confidential service is provided to State employees who face personal matters that adversely affect their job performance. Supervisors are encouraged to refer employees when an employee's personal matters

negatively impact work performance. The goal of the Program is to provide assistance to the employee and maintain satisfactory job performance. Participation in the program is completely voluntary, and is available only to employees.
To access this service, visit the following link:
https://dbm.maryland.gov/employees/Pages/EAP.aspx

XII. Rights of Parties

Parties will be treated with dignity, respect, and sensitivity by University officials during all phases of the process. The accompanying Procedures are designed to allow for a fair and impartial investigation, as well as prompt and equitable proceedings and resolutions that provide an opportunity for Parties to be heard.

Parties will be given timely written notice of:

- The reported violation, including the date, time and location, if known, of the alleged violation, and the range of potential Sanctions associated with the alleged violation;
- Their rights and responsibilities under this Policy, its Procedures and information regarding other civil and criminal options;
- The date, time, and location of each meeting, interview, or Hearing that the Party is required or permitted to attend;
- The final determination made by the Hearing Panel regarding whether a Policy violation occurred and the basis for the determination;
- Any Sanction imposed, as permitted by law; and
- The rights to appeal and a description of the appeal process.

Parties will be entitled to participate in the investigation and adjudication of the Formal Complaint in accordance with the Procedures. Parties will be provided with:

- Notice before the start of the resolution process, of:
  - The Party's right to the assistance of an Advisor, who may be an attorney or advocate;
  - The legal service organizations and referral services available to the Party; and
  - The Party's right to have a Support Person of the Party's choice at any meeting, interview or Hearing;
- Access to the case file and evidence regarding the incident obtained by the University during the investigation or considered by the Hearing Panel, with personally identifiable or other information redacted as required by applicable law;
- An opportunity to be heard through the process;
- An opportunity to offer testimony at a Hearing;
- An opportunity to submit evidence, witness lists, and suggest specific questions to be posed to the other Party during the investigation, or to the other Party at a Hearing through the Party's Advisor;
- An opportunity to review and provide testimony in a way in which the Parties are not

required to be in the physical presence of one another (i.e., through appropriate technology);
- An opportunity to review and provide written responses to the proposed and final investigation reports;
- An opportunity to participate at a Hearing without being required to be in the physical presence of the other Party; and
- An opportunity to appeal a determination and/or Sanction.

XIII. Legal Representation Fund for Title IX Proceedings (Students Only)

Student Complainants and Respondents may elect to retain an attorney to serve as their Advisor, though assistance by an attorney is not required. The Maryland Higher Education Commission (MHEC) has developed resources to assist students in retaining an attorney to serve as an Advisor at no or low cost to the student. MHEC provides a list of licensed attorneys who have indicated that they may represent students in Title IX proceedings on a pro bono basis or for reduced legal fees. A student's attorney may seek reimbursement of certain legal costs and fees from MHEC's Legal Representation Fund for Title IX Proceedings, subject to the availability of funding. More information is available on MHEC's website.

Student Parties shall be provided notice of their right to assistance by an attorney as an Advisor at the beginning of the investigation and adjudication process, and shall be informed of the legal service organizations and referral services available to the student. Student parties may select and retain an attorney as an Advisor at any point before the conclusion of the process.

XIV. Emergency Removals

A. Student Respondents

An emergency removal (including an interim suspension) is for the purpose of addressing imminent threats posed to any person's physical health or safety, which might arise out of reported Prohibited Conduct. The University may undertake emergency removal of a student Respondent for reasons arising from the alleged Prohibited Conduct when the University: 1) undertakes an individualized safety and risk analysis; 2) concludes that there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged Prohibited Conduct; and 3) provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The University will not remove a student from the University based solely on an accusation. The student will be offered an opportunity to meet with a representative of the Office of Student Affairs to review the reliability of the information within five (5) Days from the effective date of the emergency removal. However, there is no guarantee that the student will be permitted to return to campus.

B. Staff and Faculty Respondents

The University in consultation with the Title IX Coordinator, SUPD, the employee's supervisor, and the Office of Human Resources may take interim measures such as changing a Respondent's work responsibilities or work location or placing the Respondent on paid leave during the resolution process. Such action may be appropriate when there is a legitimate concern that without such measures: 1) the Respondent will engage in Prohibited Conduct while the investigation is ongoing, or 2) the Respondent would be unduly disruptive to University members or University activities or programs.

C. Third-Party Respondents

University members who are neither students nor employees may be removed from their University role or a University program as an interim measure during the adjudication process at the discretion of the University and in consultation with the Title IX Coordinator.

XV. Other University Resources

A. SUPD Escort

An escort service is provided by the SUPD for anyone who feels uncomfortable walking alone on campus or to nearby off campus locations during the hours of darkness.
https://www.salisbury.edu/police/crime-prevention/campus-security-escort-service.aspx

B. Saferide

As a Registered Student Organization, Saferide provides free and safe transportation to SU students to prevent tragedy for students and the surrounding community that can often be associated with seeking unsafe means of getting home. To use this service please call 410-677-5000.
http://saferide4.wixsite.com/salisbury?fbclid=IwAR1SRtQBNvi6TYNb6IQFJn8NXiEU4cyyJyHET6QZ5NsdMejbwLIu_s9qoG8

XVI. Steps to Take Following an Act of Sexual Violence

A. Stay Warm

Persons who experience Sexual Violence may be in a state of shock. It is important to stay warm by wrapping up in a blanket or coat. This will help recovery from shock and make it less likely that physical evidence is disturbed.

B. Get to a Safe Place and Seek Emotional Support

If you are in physical danger or in need of immediate medical attention, call 911. When you get to a safe place, talking with a trusted friend or relative or someone who is professionally trained to deal with Sexual Violence, such as a confidential mental health professional of the University, can help you make decisions about what to do. Whether you decide to go to law enforcement or not, it is important to take care of your own emotional needs. Professional counseling may be beneficial.

C. Preserve Evidence

If possible, preserve physical evidence - on the body and at the location of an assault. It is important not to shower or bathe, eat or drink, brush teeth or gargle, change clothes, urinate or defecate, brush or comb hair, or smoke. Clothing worn at the time of an assault should not be washed but placed in a paper bag "as is" and brought to the hospital. In order to avoid forgetting important details, write down the facts about the accused and the assault.

D. Seek Medical Attention

It is important to seek medical attention as soon as possible. A medical examination will ensure appropriate medical treatment, including testing for pregnancy or sexually transmitted infections. You may also want to obtain a Sexual Assault Forensic Exam (SAFE). A SAFE exam allows for the collection of evidence and can ensure any physical evidence is preserved in the event of a report to law enforcement. A SAFE exam may be obtained within 120 hours after an assault at:

Peninsula Regional Medical Center
100 E Carroll St
Salisbury, MD 21801
(410) 546-6400

Campus personnel will cooperate to assist a victim of Sexual Misconduct to obtain appropriate medical attention, including providing assistance to summon emergency personnel for transportation to the nearest designated hospital offering a SAFE exam.

XVII. Consensual Relationships & Professional Conduct

In its commitment to foster an educational or work environment free from all forms of harassment and discriminatory behavior, SU strongly discourages any romantic or sexual relationships between faculty and student, supervisor and subordinate employee, and any other relationship where a power differential exists between the parties. Even if consensual, these

relationships are always a cause for concern for the following reasons:

- They may involve one person's exerting power over another;
- Conflict of interest issues may arise in evaluating a student or employee;
- There is a strong potential for Retaliation when a relationship ends;
- A third party may allege favoritism; and/or
- They undermine the professional interaction upon which faculty-student and supervisor–subordinate relationships should be based.

Because of the potential conflicts of interest, persons involved in consensual sexual or romantic relationships with anyone over whom they have supervisory and/or evaluative responsibilities must inform their supervisor(s) of the relationship(s). Supervisory or evaluative responsibilities may be reassigned, as appropriate. While no relationships are expressly prohibited by this Policy, failure to self-report such relationships in a timely manner to the parties' direct supervisor and the Office of Human Resources, as required by this Policy, may result in disciplinary action.

XVIII. Training Programs, Educational Initiatives, & Cooperative Efforts

Creating an environment free of Prohibited Conduct is the responsibility of all members of the University community. In addition to the investigation and adjudicative procedures at SU, SU is committed to fostering a campus climate that is free from Prohibited Conduct through education and prevention programs.

A. Training and Education

1. Prevention and Awareness Education

SU shall develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Prohibited Conduct. At a minimum, educational initiatives for incoming students and employees must include the following:

- the Policy and Procedures, including the definitions of Consent and Prohibited Conduct;
- description of safe and positive options for bystander intervention;
- information on risk reduction; and
- the definitions of "Dating Violence," "Domestic Violence," "Sexual Assault," and "Stalking" in Maryland.

SU must also develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information regarding Prohibited Conduct. Educational initiatives for employees shall comply with Md. Code Ann., State Pers. & Pens. § 2-203.1.

2. Training for Personnel Involved in Investigations and Resolutions

All persons involved in any way in responding to, investigating, or adjudicating reports of Prohibited Conduct must have annual training on issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking; and how to investigate and conduct a Hearing that protects the Parties and promotes accountability.

The University will ensure that the Title IX Coordinator, Investigators, Hearing Officers, Appeal Officers, and any person who facilitates an Informal Resolution process, receive training on the following:

- the definition of Prohibited Conduct;
- the scope of the University's Education Program or Activity;
- how to conduct an investigation and adjudication process including Hearings, appeals, and Informal Resolution processes, as applicable;
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and
- issues of relevance.

The University will ensure that Hearing Officers will receive additional training on:

- technology to be used at a live Hearing; and
- issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints under this Policy.

The University will make its training materials publicly available on its website.

3. Community Trainings

The Life Crisis Center, which is not affiliated with SU, offers various trainings. More information about their educational programs can be obtained from their web site at:
http://www.lifecrisiscenter.org/#!services/c21kz.

B. Agreements with Local Law Enforcement and Rape Crisis Programs

SU will review any existing, and if necessary pursue new, Memoranda of Understanding ("MOU") with local police forces and a State designated rape crisis program and/or federally recognized sexual assault coalition. SU will ensure that any MOU with any law enforcement agency complies with Title IX and clearly states when an institution will refer a matter to a local law enforcement agency.

Any SU MOU with rape crisis or sexual assault programs will formalize a commitment to provide trauma-informed services to victims of sexual assault and to improve the institution's overall response to sexual assault.

C. Campus Sexual Assault Climate Survey

On or before March 1, 2016, and at least every two (2) years thereafter, SU shall: (1) develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and (2) administer the Sexual Assault campus climate survey to students in accordance with the procedures set by the Maryland Higher Education Commission (MHEC) and in accordance with USM requirements and requirements set forth in Md. Code Ann., Educ., § 11-601(g).

XIX. Record Keeping

SU will keep records for seven (7) years of the following:

- **A. Investigations and Determinations.** Each investigation, including any determination regarding responsibility;
- **B. Recordings and Transcripts.** Any audio or audiovisual recording or transcript;
- **C. Sanctions.** Any Sanctions imposed on a Respondent;
- **D. Remedies.** Any Remedies provided to the Complainant designed to restore or preserve equal access to the Education Program or Activity;
- **E. Appeals.** Any appeal and the result thereof;
- **F. Informal Resolutions.** Any Informal Resolution and the result therefrom;
- **G. Training Materials.** All materials used to train Title IX Coordinators, Investigators, Hearing Officers, and any person who facilitates an Informal Resolution process; and
- **H. Supportive Measures.** Any Supportive Measures, taken in response to a report or Formal Complaint of Prohibited Conduct. In each instance, the University must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its Education Program or Activity. If the University does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future.

XX. External Reporting Options & Obligations

The Title IX Coordinator shall ensure that each Complainant is informed of their right to file the complaint with the appropriate State and Federal agencies. In the event a Complainant files an external complaint with a State or Federal agency, the Complainant is responsible for contacting that agency to determine and comply with any filing requirements or time limitations.

A. Criminal Reporting

SU encourages persons to report crimes to the SUPD or other appropriate law enforcement agencies. SU will comply with its legal and policy obligations to report criminal Sexual Misconduct and child abuse and neglect. See Board of Regents Policy on the Reporting of Suspected Child Abuse and Neglect, V-1.50.

B. Clery Act

SU will continue to report crimes in accordance with the Crime Awareness and Campus Security Act of 1990 ("Clery Act") and its amendments.

If a report of Prohibited Conduct discloses a serious and on-going threat to the University community, SUPD may issue a timely warning of the conduct in compliance with the Clery Act in the interest of the health and safety of the University community. This notice will not contain any personally identifying information related to the Parties.

C. Employees who wish to file a formal complaint with an external agency may contact any of the following offices:

Equal Employment Opportunity Commission (EEOC)
Baltimore Field Office
GH Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201
Phone: 1-800-669-4000
Fax: 410-209-2221
TTY: 1-800-669-6820
Website: https://www.eeoc.gov

Maryland Commission on Civil Rights (MCCR)
William Donald Schaefer Tower
6 Saint Paul Street, Suite 900
Baltimore, MD 21202-1631Phone: 410-767-8600
Toll free: 1.800.637.6247
Fax: 410-333-1841
TTY: 410-333-1737
Website: http://mccr.maryland.gov/
E-mail: mccr@maryland.gov

D. Student or employee complaints relating to Prohibited Conduct may be directed to:

Office for Civil Rights (OCR)
U.S. Department of Education

The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Phone: 215-656-8541
Fax: 215-656-8605
TDD: 800-877-8339
Website: http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html
E-mail: OCR.Philadelphia@ed.gov

To direct an inquiry to the Assistant Secretary for Civil Rights, contact:
Office for Civil Rights
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue SW,
Washington, DC 20202-1100
Phone: 800-421-3481
Fax: 202-453-6012
TDD: 800-877-8339
Website: https://www2.ed.gov/about/offices/list/ocr/complaintintro.html
Email: OCR@ed.gov

Salisbury University Procedures for Investigating and Adjudicating Prohibited Conduct

I. Confidentiality

A. Confidentiality of Complaints, Reports and Outcomes

The University understands that the Complainant, Respondent, Witnesses involved in any Prohibited Conduct desire confidentiality during the investigation and adjudication of such matters. While the University will keep these matters confidential to the extent possible and as required by law, the University cannot ensure complete confidentiality, or even the confidentiality requested by Parties, in all cases. The OIE will, to the best of its ability, keep confidential information provided by the Complainant, Respondent, or Witnesses, and will disclose this information only to any individual who needs to know and/or is allowed to know by law. For example, the OIE will need to disclose the basis of the allegations to the Respondent and allow the parties similar and timely access to information to be used during the process. In addition, the OIE may need to disclose information to law enforcement consistent with state and federal law; to other University officials as necessary for coordinating Supportive Measures, for health, welfare, safety, and other appropriate reasons, as well as to government agencies who review the University's compliance with federal and state law.

B. Reporter or Complainant Requests No Investigation/Adjudication

If a reporter or Complainant requests that an investigation not be conducted, or that a specific adjudication process or part thereof not take place, the OIE will consider the reasons for the request, including concerns about continued safety of the person reportedly harmed and members of the University community. This request must be submitted in writing to the University's Title IX Coordinator. The OIE must also balance considerations about the continued health and safety of members of the community, or for any other expedient reason, against a reporter's or Complainant's desire not to have the report investigated. In cases when a reporter or Complainant does not want to have a report investigated, but the OIE has concerns that not taking formal or informal action might endanger the health or safety of any individual, the OIE will initiate confidential consultation with appropriate individuals to analyze the situation and assist in determining appropriate measures to take. Consultation may occur with appropriate and relevant University officials, including, but not limited to, the Office of Student Affairs, the Provost, the Chief of SU Police or designee, the chair(s) of the Behavioral Assessment Team (BAT), members of the Critical Response Team (CRT), psychological health professional(s), the Associate Vice President of Human Resources, and legal counsel. The OIE will make the ultimate decision about whether to investigate or respond to the report in another manner, including taking informal actions, such as those described herein.

II. Immediate Actions, Resources and Supportive Measures

Any participant in the investigation process may request, and the University, on its own or at a Party's request, may take Supportive Measures, as appropriate, to assist or protect the Parties during any investigation and adjudication process. Such measures for Parties may

include, but are not limited to, assistance in obtaining no-contact or protective orders, enforcing existing and lawful no-contact or protective orders, and changing academic, transportation, residential, and working situations, if such accommodation is reasonably available. More information on obtaining Supportive Measures can be found later in these Procedures.

OIE will also advise the participants in the investigation of existing options for counseling, health, mental health, victim advocacy, and other services available on and off campus for the parties during any investigation of Prohibited Sex Discrimination. A list of available resources is located at:
https://www.salisbury.edu/administration/institutional-equity/_files/document-library/ResourceDocumentList.pdf

III. Anticipated Timelines

The University's goals are to provide equal educational opportunities, promote campus safety, and remedy the effects of Prohibited Conduct. The OIE strives to resolve all complaints within reasonably prompt time frames depending on the nature, extent, and complexity of the allegations and resolution. Good faith efforts will be made to complete Informal Resolutions and investigations in a timely manner, typically within 120 Days, by balancing principles of thoroughness and fundamental fairness. OIE will communicate regularly with the Parties to update them on the progress and timing of the resolution processes, including any temporary delays and/or extensions for good cause. The Title IX Coordinator and/or designee(s) may grant good cause extensions and/or delays throughout the resolution processes, and the Parties will be notified in writing and given the reason(s) for the extensions and/or delays. Factors considered in granting or denying an extension may include considerations such as, but not limited to, the following: the absence of a Party, a Party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodations of disabilities.

IV. Right to Support Person and Advisor

A Party may be accompanied to any meeting held by the Title IX Coordinator or designee under these Procedures by up to two (2) people, including one (1) Support Person, and one (1) Advisor. When a Party wishes to be accompanied by a Support Person or Advisor to a meeting, the Party must notify the OIE at least 24 hours in advance.

Throughout the process, the Title IX Coordinator or designee will communicate and correspond directly with the Parties, not indirectly through a Support Person or Advisor, except during questioning at a Hearing.

Prior to meetings and Hearings, all Support Persons and Advisors must review non-Party participation requirements, which define their respective roles, appropriate decorum, and confidentiality obligations relative to the proceedings. These requirements can be obtained from the OIE. They are also available online at the OIE website, https://www.salisbury.edu/administration/institutional-equity//. Parties must ensure that their Support Persons and Advisors follow these non-Party participation requirements.

V. Report Intake and Formal Complaint

A. Receipt of Report of Prohibited Conduct

Upon receipt of a report alleging Prohibited Conduct from a Complainant, the OIE will provide written acknowledgement of receipt of the report to the Complainant, if known, which includes a copy of this Policy, options for resolution processes of the report, and rights and responsibilities. The Complainant will be informed of available community and campus resources and services; Supportive Measures; their right to a Support Person and the Support Person's role; their right to an Advisor and the Advisor's role; their right to file a report with law enforcement; and the University's prohibition against retaliation.

If the report is received from a third party, meaning someone who is not the Complainant or the Respondent, the OIE will provide written acknowledgement of receipt of the report and take appropriate action as the information provided allows.

Receipt of a report alleging Prohibited Conduct shall not constitute the filing of a Formal Complaint under this Policy.

B. Intake and Initial Assessment of Report

The OIE will contact the Complainant to schedule an Intake. During the Intake, the Complainant will have an opportunity to ask questions about options and resources and seek additional information. The OIE will attempt to gather information that, in consultation with other appropriate University offices, will enable the OIE to:

a. Assess the nature and circumstances reported;
b. Assess jurisdictional concerns regarding each Party;
c. Assess the safety of the Complainant and of the University community;
d. Implement any appropriate Supportive Measures;
e. Assess the Complainant's expressed preference regarding resolution, including any request that no further action be taken;
f. Assess any request by the Complainant for confidentiality or anonymity; and
g. Assess the reported conduct for possible referral to SUPD or other applicable law enforcement agency for a timely warning under the Clery Act.

Following the Intake, the OIE will conduct an Initial Assessment to determine whether the reported conduct constitutes a potential violation of this Policy.

The Complainant can choose whether or not to participate with the Intake and Initial Assessment process. If the Complainant opts not to participate, the OIE may be limited in its ability to assess the report.

When the Initial Assessment determines the alleged conduct does not constitute a potential violation under the Policy but may violate other University policies, the report may be referred to another University process and/or office, as appropriate.

C. Supportive Measures

The Title IX Coordinator is responsible for coordinating the effective implementation of remedies, including Supportive Measures. OIE will maintain the reasonable confidentiality of the Supportive Measures, provided that this does not impair the ability to provide the Supportive Measures.

Supportive Measures may include, but are not limited to:

a. *No Contact Orders* (this is an official University directive that serves as notice to an individual that they must not have verbal, electronic, written, or third-party communications with another individual).
b. *Academic accommodations*
    i. Assistance in transferring to another section of a lecture or laboratory
    ii. Assistance in arranging for incompletes
    iii. Assistance with leave of absence
    iv. Assistance with withdrawal from coursework
    v. Assistance with withdrawal from campus
    vi. Rearranging course schedules
    vii. Re-scheduling exams
    viii. Extensions of deadlines
    ix. Re-taking a course
    x. Dropping a course
    xi. Academic support; tutoring
        i. Facilitating adjustments so Complainants and Respondents do not share courses
        ii. Assisting a person in communicating with faculty
c. *Housing accommodations*
    i. Facilitating changes in on-campus housing locations
    ii. Assistance in exploring alternative housing off-campus

d. *Employment accommodations*
    i. Alternate University employment
    ii. Different work shifts
    iii. Temporary assignment, if appropriate, to other work duties and responsibilities, or other work locations, or other work groups/teams or alternative supervision/management
    iv. Arranging to take a leave from employment

e. *Safety*
    i. Transportation and parking arrangements or accommodations
    ii. Safety planning, including use of campus escort services
    iii. Increased security and monitoring of certain areas of campus
    iv. Assistance in making a report to law enforcement or obtaining a protective order

f. *Other*

i. Assistance with exploring changes in dining options
ii. Assistance in arranging appointments with University resources
iii. Assisting a person in requesting that directory information be removed from public sources
iv. Facilitating assistance for an individual to obtain medical, advocacy, legal, financial aid, visa and immigration, and therapy services

If the University does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future.

OIE will promptly inform the Respondent (if they are a member of the University community) of any Supportive Measures that will directly impact the Respondent and provide an opportunity for the Respondent to respond. A Party may challenge the imposition of Supportive Measures or a decision not to impose Supportive Measures. Students may contact the Office of Student Accountability and Community Standards, and Staff and Faculty may contact the Office Human Resources and/or the Office of the Provost to address any concerns.

The Title IX Coordinator and/or designee(s) retain discretion to impose and/or modify any Supportive Measures based on all available information. Supportive Measures may remain in effect until the University's final resolution of the Formal Complaint. Supportive Measures may be extended, as needed, after the final resolution.

D. Filing of a Formal Complaint

A Formal Complaint is a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that the Formal Complaint proceed to the University Resolution Processes.

A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed in Section VII.A. of the Policy.

Should the Complainant decide to file a Formal Complaint, the Title IX Coordinator will review the Formal Complaint and determine whether it should be dismissed or move into a Resolution Process (see Section V.B. of these Procedures).

E. Complainants' Requests for Anonymity and to Not Proceed

If a Complainant does not wish to disclose their personally identifiable information (i.e. wishes to remain anonymous) and/or does not wish to file a Formal Complaint, they may make such a request to the Title IX Coordinator and/or designee(s). Regardless of their choice, the Title IX Coordinator and/or designee(s) will still offer Supportive Measures to the Complainant as appropriate. The Complainant retains the ability to file a Formal

Complaint at any time should they choose to do so.

However, the Title IX Coordinator has ultimate discretion over whether the University proceeds, and the Title IX Coordinator may sign a Formal Complaint to initiate the resolution process when appropriate.

The Title IX Coordinator's decision to sign a Formal Complaint will be based on whether:

1. An investigation is needed to comply with legal anti-discrimination requirements or is otherwise the most appropriate and effective response;
2. A violence risk assessment shows a compelling risk to health and/or safety which requires the University to pursue formal action to protect the University community.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the ability to pursue an investigation and adjudication resolution process fairly and effectively. The University's ability to remedy and respond to Prohibited Conduct may be limited if the Complainant does not want the University to proceed with the resolution process.

When the Title IX Coordinator signs the Formal Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of Prohibited Conduct. When the Formal Complaint proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

F. Designation of Prohibited Conduct and Dismissal of Formal Complaint

Title IX-based Prohibited Conduct is Sexual Harassment within an Education Program or Activity against a person in the United States. The Title IX Coordinator or designee ***must*** designate the conduct as Title IX-based Prohibited Conduct if:

1. The alleged conduct, if true, would constitute Sexual Harassment within an Education Program or Activity against a person in the United States; and
2. The Complainant is participating or attempting to participate in an Education Program or Activity at the time the Complainant or Title IX Coordinator filed the Formal Complaint.

Upon receipt of a Formal Complaint and after an Initial Assessment, the Title IX Coordinator or designee will promptly send a *Written Notice of Designation* simultaneously to both Parties of:

1. Its decision about whether to designate the alleged conduct as Title IX-based Prohibited Conduct, and the reasons for this decision;
2. Its decision to proceed with the resolution process or to dismiss the Formal Complaint; and
3. The Parties' rights to appeal the designation and/or dismissal decision.

Mandatory Dismissal

The Title IX Coordinator and/or designee(s) ***must*** dismiss a Formal Complaint or any allegations if therein, at any time during the Resolution Processes it is determined that:

1. The conduct alleged in the Formal Complaint, if substantiated, would not constitute Prohibited Conduct; or
2. The allegations in the Formal Complaint do not fall within the University's jurisdiction.[11]

Permissive Dismissal

The Title IX Coordinator and/or designee(s) ***may*** dismiss a Formal Complaint or any allegations therein if, at any time during the Resolution Processes:

1. A Complainant notifies the Title IX Coordinator and/or designee(s) in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

G. Appeal of Designation and/or Dismissal

Either Party may appeal the Title IX Coordinator's *Written Notice of Designation* in accordance with Section VI.F.1 of these Procedures.

VI. Resolution Processes

A. Consolidation of Complaints

At the discretion of the Title IX Coordinator and/or designee(s), multiple reports may be consolidated into one if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties, including those arising out of the same or different event(s).

B. Informal Resolution Process

Informal Resolution can encompass a variety of approaches agreed to by the Parties including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies facilitated by the Title IX Coordinator and/or designee(s).

The Title IX Coordinator and/or designee(s) has the discretion to determine whether a

[11] Dismissal under this Policy does not preclude a referral to another University process and/or office, as appropriate.

Formal Complaint is appropriate for Informal Resolution and which resolution approach is best utilized given the specifics of the Formal Complaint. The Title IX Coordinator and/or designee(s) retains discretion to terminate an ongoing Informal Resolution process at any time, at which point the Title IX Coordinator and/or designee(s) will make a determination as to next appropriate steps. The Title IX Coordinator and/or designee(s) will inform both Parties simultaneously in writing of the reason(s) for terminating an Informal Resolution process.

1. Informal Resolution Permitted

Either Party may request Informal Resolution. Where Informal Resolution is permitted, a Formal Complaint must be filed and approved by the Title IX Coordinator and/or designee(s). Informal Resolution must be voluntary and not a requirement or condition of continued enrollment or employment at the University.

In cases in which the Parties are considering informal resolution, the Title IX Coordinator or designee(s) will send a written *Notice of Informal Resolution* containing the following:

a. Summary of the allegations;
b. Notice that neither Party is required to respond to the allegations and/or accept responsibility for the alleged Prohibited Conduct, unless a Respondent chooses to do so;
c. Notice there is no finding of a Policy violation or Sanction, unless agreed to by the Respondent;
d. Notice that the Parties may opt out of Informal Resolution at any time prior to finalization of the informal resolution, at which point the Formal Complaint would proceed or resume to investigation or dismissal, as appropriate;
e. Notice of any potential consequences resulting from participating in the Informal Resolution process, including that records will be maintained or could be shared;
f. Notice about the reasonable confidential restrictions of the process;
g. Notice that if the Informal Resolution is finalized and implemented, it precludes the Parties from resuming investigation and adjudication of a Formal Complaint arising from the same allegations; and
h. Notice that the results of Informal Resolution are not eligible for Appeal.

In order to proceed with informal resolution, both Parties and the Title IX Coordinator and/or designee(s) must agree to the process in writing

2. Informal Resolution Not Permitted

Informal Resolution is not permitted under the following circumstances:

a. Formal Complaints by a student alleging *Quid Pro Quo* Sexual Harassment against an employee (staff or faculty);
b. Formal Complaints alleging Sexual Assault or Sexual Coercion.

3. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator and/or designee(s) makes a determination that the individual is in violation of the Policy as to the admitted Prohibited Conduct.

The Title IX Coordinator and/or designee(s) then determines appropriate interventions, Remedies, and/or Sanction(s), working with the Offices of Student Accountability and Community Standards, Human Resources, or the Provost, as appropriate. Sanctions will be implemented in a reasonably timely manner as in order to effectively stop the Prohibited Conduct, prevent its recurrence, and remedy its effects. The process then concludes, and the Parties will be informed of this outcome. Appeals by either Party are not permitted in this instance.

Any remaining allegations to which Respondent opts not to accept responsibility may proceed or continue to Informal Resolution, investigation and adjudication, and/or dismissal as appropriate and determined by the Title IX Coordinator and/or designee(s).

4. Negotiated Informal Resolution Interventions and Remedies

If agreed to by the Parties and determined appropriate by the Title IX Coordinator and/or designee(s), the following Informal Resolution interventions and remedies may be utilized, including but not limited to:

a. Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
b. Targeted or broad-based educational programming or training for relevant individuals or groups;
c. Academic and/or housing modifications for either Party;
d. Workplace modifications for either Party;
e. Completion of projects, programs, or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited;
f. Compliance with no contact orders which may limit access to specific University buildings or areas or forms of contact with particular persons;
g. Completion of community service hours over a specific period of time; and
h. Separation from the University.

The Title IX Coordinator and/or designee(s) will work with the Office of Student Accountability and Community Standards, the Office of Human Resources, the Office of the Provost, as needed, to facilitate such negotiated interventions and remedies.

5. Completion of Informal Resolution

When an Informal Resolution agreement is reached and the terms of the agreement are implemented, the matter is resolved and closed. Appeals by either Party are not permitted. The Title IX Coordinator and/or designee(s) is responsible for ensuring compliance with the Informal Resolution.

In cases where an agreement is not reached and the Title IX Coordinator and/or designee(s) determines that further action is necessary, or if either Party fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and adjudication and/or dismissal under these Procedures, as appropriate.

The Parties will be provided with a written copy of the terms of the Informal Resolution agreement. The Title IX Coordinator and/or designee(s) will maintain all records regarding Informal Resolution.

C. Investigation Process

When investigating a Formal Complaint, the below procedures will be utilized. However, at any time prior to reaching a determination regarding responsibility, an Informal Resolution may occur if appropriate conditions are satisfied (see Section VI.B of these Procedures).

1. Presumption of Not Responsible

Respondents are presumed not responsible for any and all allegations until the University provides the parties with the written determination following any appeal if an appeal is filed, or if an appeal is not filed, on the date on which an appeal would no longer be considered timely.

2. Notice of Rights and Responsibilities

The Complainant and Respondent are required to review and sign their *Notice of Rights and Responsibilities*. The Investigator will verify that the Parties have received, reviewed, and signed their *Notice of Rights and Responsibilities* and have been provided with a copy of the Policy and Procedures to ensure the Parties have adequate information about the investigation and adjudication. The Investigator will also ensure that both Parties have had an opportunity to ask and receive answers to any questions. If either Party refuses to review and sign their *Notice of Rights and Responsibilities* or declines the opportunity to meet with the Investigator to ask and receive answers to any questions, these refusals will be documented in the case file.

The *Notice of Rights and Responsibilities* will include, but is not limited to, the following:

a. Right to be treated with dignity and respect by all University officials;
b. Right for information to only be shared with others on a need-to-know basis in order to facilitate a resolution;

c. Right to be informed of available Supportive Measures;
d. Right to be informed of available community and campus resources and services;
e. Right to a Support Person and/or an Advisor;
f. Right to regular updates on the status of the investigation and/or resolution; and
g. Prohibition against Retaliation and guidance about reporting any retaliatory conduct.

3. Notice of Investigation

The Parties will be informed in writing of the *Notice of Investigation*, which will include the following:

a. The University's complete Procedures as set forth herein;
b. The allegations of Prohibited Conduct as defined by the Policy;
c. Identities of the Parties involved, if known;
d. Date(s) and location(s) of the alleged incident(s), if known;
e. A timeframe of five (5) Days for the Respondent to submit an answer to the allegations to the Investigator.
f. 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 Adjudication process;
g. Parties may have an Advisor of their choice, who may be an attorney;
h. If Parties do not select an Advisor of their choice, the University will provide a trained Advisor for the Hearing;
i. Parties may have a Support Person of their choice;
j. Advisement that University Policy prohibits knowingly making false statements or knowingly submitting false information during the investigation and adjudication;
k. Parties will be provided with written notice of any additional allegations added after this initial Notice; and
l. The range of potential Sanctions associated with the alleged Prohibited Conduct.

4. Role of the Investigator

The Title IX Coordinator and/or designee(s) will designate an Investigator to conduct a prompt, thorough, fair, and impartial investigation.

5. Overview of the Investigation

a. Standard of Proof

The standard of proof for a determination of responsibility under this Policy is preponderance of the evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility remain with the University and not on the Parties.

b. Evidence

The investigation is an impartial fact-gathering process. It is an important stage of the process in which both Parties have an opportunity to be heard regarding the Formal Complaint. During the investigation, the Investigator will speak separately with both Parties and any other individuals who may have relevant information. The Parties will each have an equal opportunity to present witnesses (including fact and expert witnesses, at their own expense) and any other relevant evidence.

Evidentiary materials, regardless of relevance, shall be made available for review; however, the Investigator will determine whether and how the evidence and witnesses submitted by the Parties are directly related to the allegations and whether and how that information will be factored into the Investigation. The Investigator will also gather any available physical evidence or documents, including prior statements by the Parties or witnesses, communications between the Parties, email messages, text messages, social media materials, and other records, as appropriate and available.

Parties are not restricted from discussing the allegations; however, if Parties do this, Investigators may take such actions into account as it could impact Witnesses ability to provide an independent account and/or jeopardize the integrity of the information provided by a Witness. Parties must not and should not disclose personally identifiable information publicly. Salisbury University is not responsible for any external legal ramifications associated with a Party disclosing information related to the investigation.

c. Special Considerations

Information related to the prior sexual history of either Party is generally not relevant to the determination of a Policy violation. However, prior sexual history between the Parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the Parties, and where Consent is at issue in the case at hand, evidence about the Parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the Parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to show Consent under the Policy. Sexual history will never be used for purposes of illustrating either Party's individual character or reputation. The Investigator will determine the relevance of prior sexual history and inform the Parties if information about the Parties' sexual history with each other is deemed relevant.

The University cannot access, consider, disclose, or otherwise use a Party's record(s) that are made or maintained by a physical examination, psychiatrist, psychologist, or other recognized professional or paraprofessional or acting in the capacity thereof or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party. However, a Party can provide voluntary, written consent to use the above-mentioned material for the investigation and adjudication. Consent shall be specifically limited to the information provided. At no time shall consent be construed as consent to access any other information in the Party's medical records.

d. Proposed Investigation Report

At the conclusion of the investigation, the Investigator will provide a written investigation report (the "Proposed Investigative Report") that provides a case timeline, appropriately summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and all evidence; including a section identifying information that was gathered during the investigation, but would not be included in the Final Investigation Report.

e. Notice of Opportunity to Review the Proposed Investigation Report

Before the investigation report is complete (the "Final Investigation Report"), the Parties will be given an equal opportunity to review and respond to the Proposed Investigation Report. Parties and their Advisors and/or Support Persons will have ten (10) Days to review the Proposed Investigation Report and all evidence obtained which is directly related to the Formal Complaint, evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a Party or other source. Parties will have the opportunity to submit a written response, including submitting comments, information, and/or questions to the Investigator. If there is any new or additional information to be provided by either Party, it must be presented to the Investigator at this time.

If further investigation is warranted based on the Parties' written responses, the Investigator will continue the investigation, as needed and share any resultant changes to the investigative report with the parties, allowing ample time to respond. The Investigator will consider the Parties' written responses prior to completing the Final Investigation Report.

f. Final Investigation Report

Upon timely receipt of the Parties' written responses, or after the ten (10) Day review period has lapsed with no written responses, the investigation ends. The Investigator will complete the Final Investigation Report. The Final Investigation Report will contain summaries of all relevant information obtained throughout the course of the investigation and analysis of fact.

The Final Investigation Report will be submitted to the Hearing Panel.

D. Adjudication Process

1. Review of Final Investigative Report

a. Following completion of the Final Investigation Report, the Title IX Coordinator or designee will communicate separately with each Party.

b. The Title IX Coordinator or designee will provide each Party with a confidential copy of the Final Investigation Report, including all attachments and explain the next steps in the process, including a list of the selected members of the Hearing Panel.

c. Each Party will be allowed ten (10) Days to submit a written response to the Final Investigative Report, which will be considered by the Hearing Panel. Exceptions may be made during times when the University is not in session or other circumstances. All written responses will be shared with the other Party prior to the Hearing.

d. In order to protect the confidentiality of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

2. Hearing Procedures

a. Written notice of the specific charges and a Hearing date are provided to the Parties at least five (5) Days in advance of the Hearing. Hearing dates are scheduled in consultation with the Parties whenever possible.

b. If a Party does not have an Advisor present at the Hearing stage of the process, the University will provide one free of charge for the purpose of conducting all questioning on behalf of that Party. When able, Parties must notify the Title IX Coordinator at least two (2) Days prior to the Hearing if an Advisor is needed from the University.

c. The University will notify all Witnesses interviewed during the investigation of the date and time of the Hearing. The Hearing Panel may also request the presence of additional witnesses.

d. The Hearing Panel will conduct the Hearing with all Parties and Witnesses virtually, with technology enabling participants simultaneously to see and hear each other.

e. If needed, the University will provide the Parties with the use of technology enabling the Hearing Panel and Parties to simultaneously see and hear the Party or Witnesses who is answering a question.

f. All Hearings are closed to the public.

g. Hearings will be recorded or transcribed by the University. No other recordings will be permitted. Recordings and transcripts are maintained by the University. Parties may submit a written request to inspect and review the recording or transcript.

h. All evidence subject to the Parties' inspection and review as explained in Section VI.C.5 of these Procedures will be available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination.

i. The Hearing Panel may question the Investigator.

j. Each Party's Advisor may question the Investigator.

k. Each Party may provide a brief opening statement.

l. The Hearing Panel may ask questions of the Parties.

m. Each Party's Advisor will be provided an opportunity to question the other Party and any witnesses. Questioning will be conducted directly, orally and in real time by the Party's Advisor only. Parties may not question each other or witnesses directly.

n. Before a Complainant, Respondent, or witness answers a question, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant and the Chair will relay any determinations related to questions. All relevant questions and follow-up questions, including those challenging the credibility of Parties and witnesses, will be allowed.

o. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence:

i. Are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or

ii. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

p. Questions and evidence about the Respondent's prior sexual history with an individual other than a Party to the proceedings may only be considered if the evidence:

i. Proves prior sexual misconduct;

ii. Supports a claim that a Party has an ulterior motive; or

iii. Impeaches a Party's credibility after that Party has put their own prior sexual conduct at issue.

q. The Hearing Panel may not consider a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to do so.

r. The Hearing Panel may not consider any questions or evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents.

s. The Hearing Panel may not consider 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.

t. If a Party or witness declines to answer any questions, the Hearing Panel will not rely on any prior statements made by that individual during the investigation process in making a determination regarding responsibility.

u. If a Party or witness refuses to submit to questioning, then the Hearing Panel is required to ignore that Party or witness's statement and reach a decision based on the remaining body of relevant evidence. The Hearing Panel 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 questions.

v. Each Party will have the opportunity to make a brief closing statement.

3. Prior to issuing the Writte*n Notice of Determination*, the following will occur:

a. The Hearing Panel Chair shall confer with the Title IX Coordinator or designee, and other University administrators as appropriate, prior to issuing the written determination. Other University administrators may include representatives from the Office of Human Resources and department/unit heads and supervisors for staff, and representatives of the Office of the Provost and school/department/unit heads and supervisors for faculty.

b. Although the Hearing Panel Chair may confer with University officials as described above, the Hearing Panel Chair is the decisionmaker responsible for issuing the *Written Notice of Determination* and this is done in consultation with the Hearing Panel.

c. The Title IX Coordinator or designee and other University administrators will provide input with respect to any recommended Sanction(s) and other responsive action to the Hearing Panel Chair.

4. Written Notice of Determination

The Hearing Panel Chair will provide the Parties with a *Written Notice of Determination* at the same time. The *Written Notice of Determination* will include:

i. Identification of the allegations at issue;
ii. A description of the procedural steps taken throughout the case;
iii. Findings of fact supporting the determination;
iv. Conclusions regarding application of the Policy to the facts;

v. A statement of, and rationale for, the determination for each allegation;
vi. A statement of, and rationale for, any Sanction(s) imposed on the Respondent and whether any Remedies will be provided to the Complainant, as set forth in more detail below; and
vii. A description of the procedures and permissible grounds for appeal.

E. Disciplinary Sanctions, Remedies, and Other Responsive Actions

The University may take responsive action based on a determination of responsibility for a violation of the Policy. Responsive action is intended to eliminate prohibited conduct, prevent its recurrence and promote accountability while supporting the University's educational mission and legal obligations. Responsive action may include Sanctions, Remedies, or other responsive action including rehabilitation, educational, restorative, or monitoring components.

The University will not publicly disclose personably identifiable information about the Parties or the written determination (including any Sanctions) except as required by law.

1. The range of Sanctions and other responsive actions that may be imposed upon the Respondent include but are not limited to the following:

a. For students:

i. **Dismissal:** A Student who has been dismissed from the University is permanently prohibited from participating in any University activities, academic or otherwise, and will be restricted from all University property and University-sponsored activities, including University-affiliated housing.

ii. **Suspension:** A Student who has been suspended from the University may not participate in any University activities, academic or otherwise, for a specific period of time, and will be restricted from all University premises and activities, including University-affiliated housing. A suspended Student who wishes to re-enroll must apply for readmission to the University and must also contact Student Accountability and Community Standards, who will meet with the Student and determine whether any and all requirements for readmission have been satisfactorily completed. Suspension may be deferred for a specified period of time, typically in the final weeks of the semester, at the Hearing Authority's discretion. During the period of deferred suspension, the Student is restricted to: a) academic activities, and b) non-academic activities specifically approved by the Student Accountability and Community Standards. A Student who is found responsible for violating the Code of Community Standards while under deferred suspension will be given immediate Suspension or Dismissal.

iii. **Probation:** Probation notifies a Student that they must avoid any further violations of the Code of Community Standards for a specified period of time and includes the probability of more severe disciplinary sanctions, including

suspension or dismissal, if the Student is found in violation of the Code of Community Standards during the probationary period. Students on probation are not in good standing with the University; therefore, certain co-curricular activities may be prohibited to a Student while on probation. A Student will remain on disciplinary probation status, at least, through the date indicated or until the date all assigned sanctions have been completed, whichever occurs later.

iv. **Warning:** A warning notifies a Student that their actions are inconsistent with the standards of behavior set forth in the Code of Community Standards. A warning has no immediate effect upon a Student's status at the University. However, once given a warning, Students should expect more severe outcomes to result from any subsequent violations.

v. In addition to Status Sanctions specified above, the students may be assigned one or more of the requirements below:

i. **Educational Sanctions:** Educational Sanctions are learning opportunities, including, but not limited to, written papers, drug and alcohol education, and program attendance, designed to be completed by the Student.

ii. **Interventions:** Interventions are structured opportunities to prompt changes to Student behavior and prevent further misconduct, including, but not limited to, parental notification, alcohol and drug assessment and/or behavioral health assessment to be completed by a qualified professional and released to an appropriate University official.

iii. **Restorative Sanctions:** Restorative sanctions are opportunities for Students to take action to address the impact of their behavior, including, but not limited to, sanctioned service, letters of apology and restitution.

iv. **Bans, Restrictions, Deactivations and Loss of Privileges:** Bans, deactivations and loss of privileges include, but are not limited to, restrictions of access to University services, activities, facilities, registration, privileges or benefits applied at the discretion of the Case Administrator in response the Student's behavior to ensure the safety of the campus community and/or maintain the order of the University and its operations.

v. **Fines:** Previously established and published fines may be imposed for certain violations of University policy, including, but not limited to, the Code of Community Standards, the Housing Contract, the Smoke-Free Campus Policy, and Traffic Rules and Regulations.

b. For staff:

i. Education and training
ii. Written reprimand
iii. No contact directive

iv. Denial of Access to campus buildings
v. Reassignment
vi. Suspension without pay
vii. Termination from employment

c. For faculty:

i. Education and training
ii. Written reprimand
iii. Reassignment
iv. No contact directive
v. Denial of Access to campus buildings
vi. Suspension without pay
vii. Termination from employment in accordance with applicable policies for tenured faculty.

2. The following factors will be considered before imposing Sanctions and other responsive action on a Respondent:

a. The nature and degree of violence involved in the conduct at issue;
b. The impact of the conduct on the Complainant;
c. The impact of the conduct on the community and/or the University;
d. Prior relevant misconduct by the Respondent;
e. Maintenance of a safe and respectful environment conducive to working and learning;
f. Protection of the University community; and
g. Any other mitigating, aggravating or compelling circumstances appropriate to reaching a just and appropriate resolution.

3. The range of Remedies that may be provided to a Complainant:

The University may provide reasonable Remedies to a Complainant based on a determination of responsibility for a violation of the Policy. The range of Remedies that may be provided to a Complainant include, but are not limited to:

a. For students:

i. **Supportive measures:** Such as extended coursework deadlines, flexible deadlines, change of venue for taking a test or exam, change in test or exam date and/o retaking of a test or exam;
ii. **Academic accommodations:** Such as retroactive drop from a particular course, retroactive withdrawal from a semester, policy exemption requests and/or tuition reimbursement;
iii. **Additional accommodations:** Such as a no contact order, denial of access, housing accommodation; course schedule changes, counseling and/or referral to outside agencies.

b. For staff:

i. **Supportive measures:** Such as reassignment to a different shift, location, supervisor or work unit.

ii. **Additional accommodations:** Such as counseling and/or referral to outside agencies.

c. For faculty:

i. **Supportive measures:** Such as reassignment of duties, change in work location, change in service assignments, change in reporting structure.

ii. **Additional accommodations:** Such as counseling and/or referral to outside agencies.

4. In the event of a *Written Notice of Determination* that Respondent violated the Policy and Remedies provided to the Complainant are warranted, the following will occur:

a. The Complainant will be invited to meet confidentially with the Title IX Coordinator or designee following the issuance of the written determination to discuss Remedies.

b. Remedies will be provided to the Complainant on a confidential basis.

c. The written determination issued by the Hearing Panel Chair will not include specific Remedies provided to the Complainant but will state whether Remedies designed to restore or preserve equal access to the Complainant's education program or activity will be provided.

d. Remedies are considered confidential and the Respondent will not have access to specific information about what Remedies will be provided except to the extent that the Remedies are punitive and burden the Respondent.

e. Remedies may not be appealed by either Party.

f. The University will not publicly disclose personably identifiable information about the parties, the written determination or the Sanctions except as required by law.

F. Appeals

1. Bases for Appeals

Either Party may initiate this appeal process when they receive a *Written Notice of Designation* or a *Written Notice of Determination*. Appeals must be submitted in writing to the Title IX Coordinator within five (5) Days of receipt of the *Written Notice of Designation* or the *Written Notice of Determination*. Appeals are limited to the bases listed below.

a. Procedural Irregularity

i. A procedural irregularity may include: a failure to follow the University's procedures; a failure to objectively evaluate all relevant evidence, including inculpatory or exculpatory evidence; or a determination regarding what evidence was excluded as irrelevant.

ii. The procedural irregularity must be material to the outcome of the determination regarding responsibility or the decision to designate/dismiss.

b. New Evidence

i. New evidence is evidence that was not reasonably available at the time the written determination regarding responsibility or decision to designate/dismiss was made, that could affect the outcome.

ii. Evidence presented prior to the time the written determination or decision to designate/dismiss is issued does not qualify as new evidence that was not reasonably available.

c. Conflict of Interest

i. The Title IX Coordinator or designee, Investigator, or Hearing Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the written determination or decision to designate/dismiss.

ii. Claims of conflict of interest or bias should be based on the current case and process in question and will be assessed accordingly.

d. Substantially Disproportionate Sanction (Applicable ONLY to *Written Notice of Determination*)

i. The Sanction is substantially disproportionate to the facts of the particular Policy violation.

2. Appeal Officers

Appeals will be reviewed by an Appeal Officer ("AO"). The AO shall be free from conflicts of interest or bias and will have had no previous involvement with the case that they are assigned to review.

a. The Vice President of Student Affairs or designee has the authority to review appeals of either Party relating to the outcome in a Prohibited Conduct matter where a student is a Respondent.

b. The appropriate Vice President overseeing a Non-Student Respondent ("Area VP") has the authority to review appeals of either Party relating to the outcome in a Prohibited Conduct matter.

3. Appellate Process

a. The appellate process will proceed as follows:

i. Appeals will be in writing only. There will be no Hearing.

ii. Parties will have five (5) Days from issuance of a *Written Notice of Designation* or *Written Notice of Determination* to submit a written appeal statement challenging the outcome.

iii. Parties will be notified if the other Party files a written appeal statement and given notice in writing of the general grounds for the appeal. The other Party will be given five (5) Days from receipt of the other Party's written appeal statement to submit a written appeal statement in response.
iv. The Appeal Officer will issue a written decision, including a rationale, which shall be shared with both parties, within fifteen (15) Days of the submission of the written appeal statement.
v. The Appeal Officer may affirm or reject the determination or decision. If the appeal is granted by the Appeal Officer, the case may be returned for further investigation or adjudication by a new Hearing Panel, as appropriate.
vi. The written decision by the Appeal Officer is final and is not subject to further appeal.
vii. After all review processes are concluded or when the time for filing an appeal has expired and neither Party has submitted an appeal, the Title IX Coordinator or designee shall notify the Parties simultaneously of the final outcome.
viii. The determination regarding responsibility for a violation of the Policy becomes final either on the date that the University provides the Parties with the written determination of the result of the appeal if an appeal if filed, or if an appeal is not filed, on the date after which an appeal would no longer be considered timely.